

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.697 of 2016

Arising Out of PS. Case No.-808 Year-2014 Thana- BHOJPUR COMPLAINT CASE
District- Bhojpur

Sanjay Kumar Verma S/o Mohan Prasad, Resident of Village- Sahar, P.S.-
Sahar, District- Bhojpur

... .. Petitioner

Versus

Sharda Devi W/o Sri Sanjay Kumar Verma, D/o Bhagwan Prasad Mukta,
Resident of Mohalla- Machhua Toli, P.S. Ara town, District- Bhojpur

... .. Respondent

Appearance :

For the Petitioner/s : Mr.Ravindra Kumar, Advocate
For the Respondent/s : Mr.Sri Ajay Kumar-1, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

8 04-02-2020 Heard learned counsel for the petitioner and learned
counsel for the opposite party.

The petitioner in this case is aggrieved by and dissatisfied with the order dated 13th May, 2016 passed by learned Sessions Judge, Ara in Cr. Appeal No. 28 of 2015 whereby and whereunder instead of setting aside has only absolved the other accused persons from the charges of committing any Domestic violence and has modified and confined to the petitioner the judgment dated 01.12.2015 passed by the learned Judicial Magistrate Ist Class, Ara in connection with Complaint Case No. 808C of 2014 / Sl. No. 75 of 2014 which the learned Magistrate has ordered to pay compensation of Rs. 4000/- to the opposite party and further ordering the petitioner and others not to commit any Domestic



violence against the opposite party and the petitioner has been further directed to pay Rs. 2500/- per month to the opposite party.

Learned counsel for the petitioner has argued the solitary point that in view of Section '26' of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act of 2005') there being a proceeding pending in the Family Court between the parties, the petitioner should have filed an appropriate application before the Family Court itself for the reliefs prayed before the learned Magistrate under the provisions of the Act of 2005.

Learned counsel for the opposite party submits that a bare perusal of Section '26' of the Act of 2005 would show that it is not mandatory for the wife to file an application before the Family Court only for the relief/reliefs which may be filed under Sections 18, 19, 20, 21 and 22 of the Act of 2005. In his submission there is option available to the wife and in this case if the opposite party has exercised that option and filed an appropriate application before the learned Magistrate and an order has been passed under Section '18' of the Act of 2005 awarding a sum of Rs. 2500/- per month as rent for the residence of the opposite party, no illegality or infirmity may be



found with the impugned order.

Having heard learned counsel for the parties and on perusal of the records, this Court is in agreement with the submission of learned counsel for the opposite party. Section '26' of the Act of 2005 reads as under:

"26. Relief in other suits and legal proceedings.-

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal Court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief."

In the present case the opposite party who seems to be the wife of this petitioner chose to file an application under Section 12 of the Act of 2005 in which after giving appropriate opportunity of hearing to the parties and after allowing them to adduce evidences, the learned court below has passed the impugned order. The impugned order has been upheld by the learned appellate court.

In course of argument learned counsel for the



petitioner has not challenged the quantum of the amount considering the kind of employment which the petitioner has and the solitary issue which has been raised before this court does not find favour in view of the provision of Section '26' of the Act of 2005 which is crystal clear. Section '26' of the Act of 2005 thus, provides an option to the complainant but that cannot be construed in the manner as has been sought to be done by the learned counsel for the petitioner.

This application has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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