

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.166 of 2019**

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

- 
1. Vivek Gupta Son of Jai Prakash Gupta Resident of Mohalla - Sahebganj (Sonarpatti),
  2. Jai Prakash Gupta Son of Late Vishwa Nath Gupta Resident of Mohalla - Sahebganj (Sonarpatti), P.S.- Chapra Town, Chapra
  3. Mira Devi Wife of Jai Prakash Gupta Resident of Mohalla - Sahebganj (Sonarpatti), P.S.- Chapra Town, Chapra
  4. Nikki Gupta @ Vikash Kumar Son of Jai Prakash Gupta Resident of Mohalla - Sahebganj (Sonarpatti), P.S.- Chapra Town, Chapra
  5. Mikku Gupta @ Subham Gupta Son of Om Prakash Resident of Mohalla - Sahebganj (Sonarpatti), P.S.- Chapra Town, Chapra

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Chanda Gupta Wife of Vikek Gupta, D/o- Arvind Kumar Resident of Mohalla - Sabji Bazar, P.O. and P.S.- Khusrupur, Patna

... .. Respondent/s

---

**Appearance :**

|                      |   |                                         |
|----------------------|---|-----------------------------------------|
| For the Petitioner/s | : | Mr. Shashi Shekhar Kr. Prasad, Advocate |
|                      |   | Mr. Surya Nandan Kumar, Advocate        |
| For the Respondent/s | : | Mr. Ram Anurag Singh, A.P.P.            |

---

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**ORAL ORDER**

7      06-02-2024                      Heard learned advocate for the petitioners and learned  
Additional Public Prosecutor for the State.

2. This Court in Criminal Revision No.485 of 2019 elaborately discussed and held that a proceeding under the Domestic Violence Act is not a complaint within the meaning of Section 2(d) of the Code of Criminal Proceeding and therefore, the learned Magistrate has no scope to examine the witnesses on behalf of the petitioners in a case under the D.V. Act under



Section 200 and thereafter, take cognizance and proceed with the case under the relevant provisions of the Code of Criminal Procedure relating to trial of complaint case. Section 28 of the Protection of Women from Domestic Violence Act, 2005 authorizes application of Code of Criminal Procedure so far as the procedure to adjudicate all proceedings under the said Act. It is specifically stated in Rule 6(5) of the P.W.D.V. Rules, 2006 that the application under Section 12 shall be dealt with or order is enforced in the same manner laid down under Section 125 of Cr.P.C.. Section 126 of the Cr.P.C. prescribes the procedure for adjudication of proceeding under Section 125 of the Cr.P.C.

3. It is relevant to record at this stage that Section 12 of the said Act speaks about filing of an application to Magistrate by an aggrieved person. The statute purposefully used the term 'application' in Section 12 of the said Act, therefore, an application under Section 12 of the said Act is not a complaint. If the reliefs which are available to an aggrieved persons as contained in Section 17, 18, 19, 20, 21 & 22. It will appear that the reliefs available to the aggrieved person is in the nature of civil and equitable relief. Therefore, Protection of Women from Domestic Violence Act, 2005 is essential a civil code, trial of which although is directed to be conducted by the



Magistrate for only reason i.e. to provide speedy and immediate relief. In Chaitanya Singhania & Anr. Vs. Khusboo Singhania Criminal Revision No. 2911/2019 decided on 27.09.2021 by me while in High Court at Calcutta, a detailed discussion has been made on this issue. The principle laid down in the above mentioned case squarely applicable in all cases under the Protection of Women from Domestic Violence Act, 2005.

4. In the instant case, it appears from the record that on 11.07.2016 application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 for various reliefs was filed by the opposite party no.2 and the said application was registered as a complaint, albeit wrongly.

5. Vide order dated 06.12.2016, the learned Trial Court passed an order of ex-parte hearing of the case without receiving the service report of the notice of the said proceeding sent in the name of the petitioner. Thereafter, on 09.01.2017 the aggrieved person was examined on oath, subsequent thereto on 23.01.2017 and 31.01.2017 two more witnesses on behalf of the aggrieved person were examined. Thereafter, the learned Magistrate fixed series of dates for taking cognizance of offence against the petitioner. All such orders dated 21.04.2017, 28.04.2017 and 08.05.2017 are palpably wrong and passed by



the learned Magistrate without jurisdiction. On 10.10.2017 after appearance the petitioner filed show cause in the said proceeding. However, the petitioner was not allowed to cross examine the witnesses on behalf of the aggrieved person and he was denied the opportunity of adducing evidence in support of his case. Therefore, basic canon of the principle of natural justice was violated.

6. Finally on 04.05.2018, the learned Magistrate passed an order without considering the case of the petitioner with regard to his income etc. for monetary relief. The said order was affirmed in Criminal Appeal No.145 of 2018 by the learned Additional District and Session Judge-1st, Patna City.

7. This Court is of the view that the impugned orders are bad in law for the reason that the petitioner was not granted opportunity to cross examine the witnesses on behalf of the petitioner. He was also denied his legal right to adduce evidence in support of his case.

8. Under such circumstances, both the orders passed by the Trial Court as well as Appellate Court are quashed and set aside. Accordingly, the instant revision is allowed.

9. The D.V. Case No.19 of 2016, the learned Magistrate is directed to proceed with D.V. Case No.19 of 2016



afresh after giving opportunity to the petitioner to cross examine the witnesses on behalf of the opposite party no.2 and also to adduce evidence by the petitioner himself and his witnesses. On the basis of the evidence on record, the learned Magistrate is directed to dispose of the application being D.V. Case No. 19 of 2016 on merit on contest.

**(Bibek Chaudhuri, J)**

mdrashid/-

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|

