

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18129 of 2016

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Rubi Kumari, wife of Madhup Kumar @ Munna, Daughter of Subhash Prasad Singh, Resident of Mohalla – Isopur, P.S. Phulwarisharif, Distt. Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Madhup Kumar @ Munna, aged about 36 years, son of Arjun Singh, Resident of Mohalla – Ranipur, P.S. Phulwarisharif, Distt. Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Shashank Chandra, Advocate. Mr. Nitish Kumar, Advocate.
For the State	:	Mr. Uday Pratap Singh, APP
For the Opposite Party No. 2:	:	Mr. Mukesh Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

13 19-04-2024 The present petition has been preferred under Section 482 Cr.PC against the impugned order dated 17.03.2016 passed by Ld. Additional District and Sessions Judge VIII, Patna, in Cr. Appeal No. 74 of 2015 whereby Ld. Appellate Court has allowed the appeal setting aside the order dated 25.3.2015 passed in Complaint Case D.V. No. 84 of 2013 whereby Ld. Magistrate had directed the Opposite Party No.2-husband to pay Rs.5,000/- per month the maintenance of the wife-petitioner and her minor son born out of the wedlock between the petitioner and the Opposite Party No. 2 towards maintenance during the pendency of the Complaint Case before the Ld. Magistrate.

2. Ld. counsel for the petitioner submits that the



ground given by Ld. Appellate Court to set aside the order of Ld. Magistrate is not sustainable in the eye of law because as per the impugned order, Ld. Appellate Court has stated that before passing the interim maintenance order, an inquiry was required to be conducted by the Magistrate, whereas under Section 23 of D.V. Act, there is no such provisions for conducting any inquiry before passing any interim order. As per the statutory provisions of Section 23 of D.V. Act, if the Ld. Magistrate is satisfied that the Complaint/Application, *prima facie*, discloses that the Domestic Violence has been committed by the Respondent or there is likelihood of commission of such violence, the Ld. Magistrate is empowered to pass any interim order and Ld. Magistrate has rightly passed the order dated 25.3.2015 in Complaint Case D.V. No. 84 of 2013 after getting satisfied about the commission of the Domestic Violence and the material on record in support of the income of the husband- Opposite Party No. 2.

3. *Per contra*, Ld. Additional Public Prosecutor for the State and Ld. counsel for the Opposite Party No. 2 supported the impugned order passed by Ld. Appellate Court saying that there is no illegality or infirmity in the impugned order. They further submit that the Opposite Party No. 2-husband is



unemployed and he has no source of income and he is also ready to keep his wife and child along with himself and there is no commission of any Domestic Violence by the Opposite Party No. 2-husband against the petitioner-wife. The Petitioner is living separately without any rhyme and reason.

4. Perused the case record and considered the submission advanced by both the parties. I find that under Section 23 of Protection of Women from Domestic Violence Act, 2005, conducting inquiry prior to passing interim order is not necessary. It is for the Ld. Magistrate to get satisfied from the Complaint filed before him whether Domestic Violence has been committed or there is likelihood of commission of Domestic Violence, he is empowered to pass any interim order towards maintenance during pendency of the Complaint before Ld. Magistrate.

5. From perusal of the order passed by the Ld. Magistrate, it also transpires that the Complaint filed by the Opposite Party No. 2 before the Ld. Magistrate was accompanied by some documents related to the property of the husband-Opposite Party No. 2 and on the basis of that document and being satisfied with commission of Domestic Violence, Ld. Magistrate has passed the interim order directing the husband-



Opposite Party No. 2 to pay Rs.5,000/- per month to the wife-Petitioner towards her maintenance and maintenance of the minor child living with her. Considering the totality of the facts and circumstances of the case, I find that even quantum of the interim maintenance does not seem to be high in view of the requirement of the wife and her minor child. Any husband who is able bodied person is duty bound to maintain his child and his wife. Hence, the impugned order is not sustainable. As far as the submission of Ld. counsel for the husband-Opposite Party No. 2 that the wife is living separately without any rhyme and reason, the husband has liberty to move the Family Court and file a petition under Section 9 of the Hindu Marriage Act.

6. Considering the aforesaid facts and circumstances of the case, the present petition is allowed setting aside the impugned order dated 17.3.2016 passed by Ld. Additional District and Sessions Judge-VIII, Patna, in Cr. Appeal No. 74 of 2015.

7. However, Ld. Magistrate is directed to conclude the trial within six months without any fail.

8. Towards compliance of the order of Ld. Magistrate, the husband-Opposite Party No. 2 has made part payment and as per Ld. counsel for the wife-Petitioner, as of today, near about



Rs.1,00,000/- is still remaining to be paid. Ld. Magistrate is directed to ensure that the arrears of the interim maintenance is paid by the husband-Opposite Party No. 2 to the wife-Petitioner and in case the husband-Opposite Party No. 2 fails to pay the arrears of maintenance, the Magistrate, must take coercive measure to enforce his order.

(Jitendra Kumar, J)

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CAV DATE	N.A.
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