

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.734 of 2021

Arising Out of PS. Case No.-756 Year-2016 Thana- BHOJPUR COMPLAINT CASE
District- Bhojpur

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Punit Agarwal @ Puneet Agrawal, S/O Indubhushan Das Agrawal @ Arup Agrawal @ Indubhushan Agrawal Resident Of J 13/93, E-1, Plot No. 11, Cotton Mill Colony, P.S. - Chauka Ghat, Varanasi, District- Varanasi (U.P).
Firm Ashok Auto Service, S-11/6/Dt Road Pani Tanki, Chauka Ghat, Varanasi (U.P.).

... .. Petitioner/S

Versus

Ankita Jain @ Ankita Kumari, D/O Deepak Kumar Jain R/O Village- Mahajan Toli No. 1, Ara, Police Station- Ara Town, District- Bhojpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. N.K. Agarwal, Sr. Advocate
Mr. Gopal Govind Mishra, Adv
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 10-04-2024

1. The instant Criminal Revision is directed against an order, dated 6th of September, 2021, passed by the Learned Additional Session Judge, XVIth, Bhojpur at Ara, in Criminal Appeal No. 23 of 2017, under Section 29 of the Protection of Women from Domestic Violence Act 2005, (hereinafter



described as the “said Act”), whereby and whereunder, the Learned Sessions Judge affirmed the order, dated 29th of November, 2016, passed by the Learned Additional Chief Judicial Magistrate, VIth Court, Bhojpur at Ara in Complaint Case No. 175(C) of 2016, being a proceeding under Section 12 of the Domestic Violence Act, allowing *ex parte* interim monetary relief, directing the Petitioner to pay monetary relief at the rate of Rs 15,000/- per month to the aggrieved person and Rs 10,000/- per month for the maintenance of the minor son of the parties and also one-time payment of Rs 25,000/- under the head of expenses of education of the said minor son of the parties.

2. It appears from the materials on record that marriage between the Petitioner and the Opposite Party was solemnized according to the Hindu Rites and Ceremonies on 3rd of February, 2012. The Petitioner filed an application under Section 12 of the said Act, read with Sections 18, 19, 20, 21, and 22 of the said Act on 19th of May 2016. In the said application under Section 12, it was stated by the Opposite Party that she was consistently cheated by her husband, the Petitioner herein. The matrimonial relations of the applicant/Opposite Party snatched away her original passport, academic certificates and



birth certificate of her son. They also misappropriated ornaments of the applicant, amounting to Rs. 15 lakhs and also her wearing apparels. The applicant/Opposite Party left her matrimonial home on being tortured by the Petitioner and other matrimonial relations. They are presently residing at Ara Town, Dist- Bhojpur at the parental house of the Opposite Party. The Petitioner/husband employed local goons and anti-social elements and they are still threatening her and her minor son whenever they are out of the house for the purpose of taking the minor child of the parties to the school or for any other purpose. Accordingly, the applicant/Opposite Party prayed for protection order under Section 18, residence order under Section 19, monetary relief under Section 20, custody Order of her minor son under Section 21 and compensation order under Section 22 of the said Act by filing the application under Section 12 of the said Act. The Learned Magistrate passed *ex parte* interim monetary relief at the rate of Rs 15,000/- per month in favour of the Opposite Party and Rs 10,000/- per month for the maintenance of her minor son and one-time payment of Rs 25,000/- to the head of expenses of education of her son by passing an order, dated 29th of November, 2016. The Petitioner/husband preferred an appeal under Section 29 of the



said Act which was dismissed by the Appellate Court.

3. Hence, the Instant Criminal Revision.

4. It is contended on behalf of the Petitioner that according to the Opposite Party, she was driven away from her matrimonial home and was subjected to domestic violence by her husband and other relatives of her husband, lastly on 28th of January, 2014. The application under Section 12 of the said Act was filed on 19th of May, 2016, i.e., after a lapse of 2 years and 3 months and therefore the application under Section 12 was grossly barred by limitation under Section 468 of the Cr.P.C.

5. It is also contended by the Petitioner that the Opposite Party filed Complaint Case No. 1410(C) of 2015 alleging offences against the Petitioner and other matrimonial relations under Section 498A of the IPC read with Sections 3 and 4 of the Dowry Prohibition Act on 3rd of July, 2015. However, the order of cognizance was set aside by the Revisional Court *vide* order dated 18th of May, 2016, passed in Criminal Revision No. 55 of 2016 and Criminal Revision No. 27 of 2016 on the issue of lack of territorial jurisdiction.

6. The Petitioner also filed an application under Section 125 of the Cr.P.C. which was registered as Maintenance Case No. 222 of 2015 but the said maintenance case was



withdrawn on 8th of December, 2016.

7. It is further contended by the Petitioner that the Opposite Party filed a suit for divorce which was registered as Matrimonial Suit No. 161 of 2016. The said suit was decreed and marital tie between the Petitioner and the Opposite Party was dissolved by judgment, dated 8th of September, 2017 and decree for divorce dated 18th of September, 2017. Thus, from the date of dissolution of marriage by a decree of divorce, there is no domestic relationship between the parties and the petition under Section 12 of the said Act is not maintainable at the instance of a divorced wife because there is no domestic relationship between the Petitioner and the Opposite Party.

8. The learned Advocate for the Petitioner submits that law on the point of limitation in respect of filing of an application under Section 12 of the said Act is no longer *res integra*, in view of the judgment of this Court, in the case of ***Santosh Kumar vs. State of Bihar***, reported in ***2018 CriLJ 1553***. In the said report, a Coordinate Bench of this Court, relying upon ***Inderjit Singh Grewal vs. State of Punjab & Anr***, reported in ***2011 12 SCC 588***, observed that in view of the provisions of Section 468 Cr.P.C., 1973, the complaint could be filed only within a period of one year from the date of the



incident, seem to be preponderous in view of the provisions of Section 28 and 32 of the Act, read with Rule 15(6) of the Domestic Violence Rules, 2006, which make the provisions of Cr.P.C. applicable and stand fortified by the judgments of the Hon'ble Supreme Court in *Japani Sahoo vs. Chandra Sekhar Mohanty* reported in *AIR 2007 SC 2762* and *Noida Entrepreneurs Association vs. Noida & Ors* reported (2011) 6 SCC 508. Thus, Patna High Court held that the provisions of Section 468 of the Cr.P.C. would clearly be applicable in cases instituted under provisions of the said Act.

9. It was further held by this Court in Santosh Kumar (supra) that in Section 31 of the said Act penalty has been provided for breach of protection order. The penalty provided for such breach is imprisonment for a term which may extend to one year or extend to Rs. 20,000/- or both. Apparently, the said Act is not considered as a criminal law as it is more concerned with providing relief to the victim. However, if the offender does not comply with the final or temporary protection order, he can be sent to jail or directed to pay fine of Rs. 20,000/- or both.

10. Section 28 of the said Act stipulates that save as otherwise expressly provided, all proceedings under Sections



12, 18 and 19, 20, 21 and 23 and offences under Section 31 shall be governed by the provisions of Cr.P.C. Section 32 of the said Act, provides that the offence under Section 31 shall be cognizable and bailable. In the light of the above provisions contained in the said Act, this Court in **Santosh Kumar** (supra) considered applicability of Section 468 of the Cr.P.C. in respect of the application under Section 12 of the said Act. In paragraph 24 of the said judgement the Coordinate Bench held as hereunder:-

“24. Another case on which reliance was placed during the hearing was Krishna Bhattacharjee v. Sarathi Choudhury [Krishna Bhattacharjee v. Sarathi Choudhury, (2016) 2 SCC 705 : (2016) 2 SCC (Civ) 223 : (2016) 1 SCC (Cri) 810] . In that case, a decree for judicial separation was passed by a competent court. Thereafter, an application under Section 12 of the Act was preferred by the wife seeking return of stridhan articles and allied reliefs. A plea was taken by the husband that the proceedings under the Act were barred by time. The Magistrate held that as a result of decree for judicial separation, the parties ceased to be in domestic relationship and as such, no relief could be granted. The appeal arising therefrom was dismissed by the lower appellate court and finally revision preferred by the wife was also dismissed by the High Court.”

11. It is also contended on behalf of the Petitioner



that the marriage between the parties was dissolved by a decree of divorce on 18th of September, 2017. A divorced wife cannot file an application under Section 12 of the said Act as there is no domestic relationship between the two persons whose marriage is dissolved by a decree of divorce.

12. The law as to the applicability of Sections 468, 469 and 470 in relation to an application under Section 12 of the said Act for relief under Sections 18, 19, 20, 21 and 23 is settled by the Hon'ble Supreme Court in *Kamatchi vs. Lakshmi Narayan*, reported in (2022) 15 SCC 50. In this report, the Hon'ble Supreme Court held that though Section 468 Cr.P.C. mandates that cognizance ought to be taken within a specified period from the commission of offence, but by invoking the principal of purposive construction, a Complainant should not be put to prejudice, if for reasons beyond the control of the prosecuting agency or the Complainant, the cognizance was taken after the period of limitation.

13. It is also held that a cumulative reading of various provisions contained in Chapter XXXVI Cr.P.C. clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of course prohibits the Court from



taking cognizance of an offence where the complaint is filed after the period of limitation in relation to an offence, shall commence either from the date of the offence or from the date when offence is detected. It is also held by the Hon'ble Supreme Court that relief under Sections 18, 19, 20, 21 and 23 and for the purpose of the relief, application under Section 12 is not a complaint within the meaning of Section 2(d) of the Cr.P.C. The said Act speaks about the offence in Section 31 for non-compliance of the protection order under Section 18 of the said Act. Therefore, Section 468 Cr.P.C. will be applicable in relation to complaint under Sections 31 and 32 of the said Act and not in relation to an application under Section 12. Practically, there is no limitation for filing an application under Section 12 of the said Act.

14. In *Kamatchi* (supra), the application under Section 12 was filed 10 years after the alleged domestic violence. The Hon'ble Supreme Court held that the application cannot be dismissed on the ground of limitation and it is for the Trial Court to consider with regard to the question as to whether the aggrieved person is entitled to get any relief for such delayed application or not.

15. In the instant case, the Opposite Party filed



application under Section 12 of the said Act on 19th of May, 2016. Her marriage was dissolved on and from 18th of September 2017. Therefore, on the date of filing of the application under Section 12 of the said Act, there was domestic relationship between the Petitioner and the Opposite Party. For causing domestic violence as alleged during the period between 28th of January, 2014 or even before that after her marriage solemnized on 3rd of February, 2012 till 17th of September, 2017, the Opposite Party was in domestic relationship with the Petitioner and other matrimonial relations. If, on facts, it is proved that she was subjected to domestic violence during the said period, the Opposite Party is entitled to get relief for the period when domestic relationship between the parties was in existence.

16. The decision of *Inderjit Singh Grewal* (supra) is not applicable in the instant case because in the said report, marriage between the parties was dissolved by judgment and decree, dated 28th of March, 2008. Thereafter, the wife preferred an application under Section 12 of the said Act on 4th of May, 2009. In the instant case, the application under the said Act has been filed before decree for divorce was passed.

17. In view of the above discussion, I come to a



conclusion that the decision of this Court in ***Santosh Kumar*** (*supra*) is clearly distinguishable and can no longer be said to be a good law in view of the decision of the Hon'ble Supreme Court in ***Kamatchi*** (*supra*).

18. For the reasons stated above, this Court holds that the application under Section 12 of the said Act is not barred by limitation and the application is maintainable, as on the date of application there was domestic relationship between the parties.

19. Besides the above-mentioned questions of law, the learned Advocate on behalf of the Petitioner has not raised any issue with regard to the legality, validity and propriety of the order passed in Complaint Case No. 756(C) of 2016 on 29th of November, 2016, granting interim monetary relief to the Opposite Party and the son of the parties. The Petitioner has not also raised any factual dispute with regard to the finding of the Court of Appeal in Criminal Appeal No. 23 of 2017.

20. However, this Court finds that the opposite party is entitled to get interim monetary relief till 7th of September, 2017, i.e., upto the date prior to delivery of judgment of the suit for divorce filed by the Opposite Party.

21. The Petitioner is, however, under an obligation



to pay interim monetary relief to their minor child at the same rate as decided by the Trial Court.

22. The instant revision is accordingly disposed of with the above order.

23. There shall, however, be no order as to costs.

(Bibek Chaudhuri, J)

uttam/skm-

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