

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1725 of 2023

Arising Out of PS. Case No.-137 Year-2021 Thana- DOMESTIC VIOLENACE District-
Patna

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1. Hira Lal Hans @ Hira Lal Mahto Son Of Late Batoran Mahto Resident Of Post Office- Fulmalik, Ps- Sahebpur Kamal, Dist- Begusarai
 2. Sharmeela Devi Wife Of Hira Lal Hans @ Hira Lal Mahto Resident Of Post Office- Fulmalik, Ps- Sahebpur Kamal, Dist- Begusarai
 3. Nand Kishore Kumar Son Of Hira Lal Hans @ Hira Lal Mahto Resident Of Post Office- Fulmalik, Ps- Sahebpur Kamal, Dist- Begusarai
 4. Mrityunjay Kumar Son Of Hira Lal Hans @ Hira Lal Mahto Resident Of Post Office- Fulmalik, Ps- Sahebpur Kamal, Dist- Begusarai

... .. Petitioner/S

Versus

1. The State of Bihar Through The Principal Secretary, Home Dept. Govt. Of Bihar, Patna Bihar
2. Ruchika Patel Wife Of Dr. Parmanand Parmhansh Resident Of Village- Flat No. G 01, Block A, Mahua Bagh Road, Ps- Hawaiiadda, Dist- Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ashish Giri, Advocate
Mr.Sumit Kumar Jha, Advocate
Ms.Riya Giri, Advocate
For the Respondent/s : Mr.Iqbal Asif Niazi, AC to GP5

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

2 27-02-2024 1. The petitioners are the elder brother-in-law, his wife
and their two children, having been implicated in a proceeding



under the Protection of Women from Domestic Violence Act, 2005, which was registered as Domestic Violence Case No. 137 of 2021.

2. The petitioners have prayed for the issuance of a writ of certiorari for quashing the aforesaid proceeding with other incidental relief.

3. It is manifestly stated by the petitioners that there was no domestic relationship between the petitioners and Respondent No. 2 and as there was no domestic relationship at any point of time, Respondent No. 2 cannot be treated as aggrieved person qua the petitioners.

4. Having heard the learned Advocate for the petitioners as well as the learned Counsel for the State and on careful perusal of the writ petition and the documents annexed therewith, this Court is of the view that the question as to whether there was domestic relationship between the petitioners and Respondent No. 2 or that the Respondent No. 2 is an aggrieved person and accordingly entitled to file an application under various provisions of P.W.D.V. Act qua the petitioners, can only be decided by the Trial Court. Therefore, in the instant writ petition, this Court is not in a position to decide the aforesaid issues.



5. I shall be failing to discharge my duties if I do not mention that the learned Advocate for the petitioners has referred to a decision of the Hon'ble Supreme Court in the case of *Shyamlal Devda & Ors. vs. Parimala* reported in (2020) 3 SCC 14. It is laid down by the Hon'ble Supreme Court in the aforesaid decision that unless there is a specific averment of domestic violation, making out a *prima facie* case against each of the accused persons, a proceeding under P.W.D.V. Act is not maintainable.

6. The Hon'ble Supreme Court also held in this decision that when acts of domestic violence are alleged, before issuing notice, Court has to *prima facie* satisfied that there have been instances of domestic violation by the accused in question. Here, the word "Court" means the Court of the learned Magistrate.

7. At this stage, the Constitutional Court cannot hold that there is no ingredient of domestic violence alleged against the petitioners.

8. For the reasons stated above, the ratio laid down in Shyamlal Devda (supra) is not applicable in the instant writ petition.

9. Accordingly, the instant writ petition is dismissed.



10. However, the petitioners can take the same plea before the Trial Court, challenging the maintainability of the proceeding under P.W.D.V. Act.

(Bibek Chaudhuri, J)

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