

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1363 of 2019

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

SANJEEV KUMAR GUPTA @ PAPPU JEE Son of Shri Rameshwar Prasad Gupta Resident of At M. N. 212/4, Muher, Gorbi, P.S.- Morwa, District - Singrauli, Madhya Pradesh.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Arti Kumari Wife of Shri Sanjeev Kumar Gupta @ Pappu Jee D/o Shri Jeevachh Prasad, Presently Resident of At Mohalla - Senapath, Masraf Bazar, P.S.- Town, District - Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Shama Sinha, Adv., Mr. Saurav Kumar Suman, Adv., Ms. Asmita, Adv., Ms. Shreya, Adv.
For the Respondent/s	:	Mr. Anil Kumar Singh No. 1, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 02-02-2024

Heard learned Advocate for the petitioner as well as learned APP for the State.

2. In M.R. Case No. 14 of 2017 (Misc Case No. 145 of 2017), the Sub Judge-IX, Darbhanga vide order dated 20th November, 2017, allowed the prayer of the opposite party for interim monetary relief and directed the petitioner to pay the said amount month by month during the pendency of the M.R. Case No. 14 of 2017 (Misc Case No. 145 of 2017) being an application



under Section 12 of the Protection of Women From Domestic Violence Act.

3. The said order was challenged in an appeal by the present petitioner and the learned Additional Sessions Judge-V, Darbhanga, in Cr. Appeal No. 06 of 2018 affirmed the order dated 20th November, 2017 and dismissed the appeal.

4. Being aggrieved, the petitioner/husband has preferred the instant revision.

5. The learned Advocate for the petitioner has assailed the impugned order on the ground that the application under Section 12 of the said Act was filed on 17th October, 2017. Section 13 of the said Act obligates service of notice by the Magistrate to the opposite party within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt. The provision of Section 13 of the Protection of Women From Domestic Violence Act runs thus:-

“ 13. Service of notice

(1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.



(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

6. It is contended by the learned Advocate for the petitioner that the learned Magistrate failed to take recourse of Section 13 within the statutory period of time. On the other hand, he fixed the next date of hearing on 2nd November, 2017 and thereafter on 20th November, 2017 the ex parte order of granting maintenance was passed.

7. Next limb of submission made by the learned Advocate for the petitioner that Sub-section (2) of Section 23 of the Protection of Women From Domestic Violence Act states that if the Magistrate is satisfied that an application prima facie discloses that the respondent is committing or has committed an act of domestic violence or there is likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form as may be prescribed, of the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be Section 22 against the respondent.

8. Thus, it is contended by the learned Advocate for the petitioner that to seek a relief under Section 23 of the Protection of



Women From Domestic Violence Act relating to interim maintenance under Section 23, a prima facie case qua maltreatment and existence of the instances of domestic violence was required to be made. In the instant case neither the learned Magistrate nor the court of appeal held that the petitioner has been able to make out a prima facie case. In the absence of such finding the impugned order is bad in law.

9. Having heard the learned Advocate for the petitioner and on perusal of the entire materials on record, I like to state at the outset that the word “prima facie case” has not been defined in any statute. In common parlance, “prima facie case” means a case consisting of certain facts which according to the court leads the petitioner to go for trial or to proceed the proceeding further. “Prima facie case” is not a magic word which is required to be stated in the order. If from the order impugned, it is found that the learned trial court and a court of appeal has considered the case of the petitioner and found that there are sufficient ground to proceed with the case further or to decide the case on trial, “prima facie case” is said to be established.

10. In the light of the above discussion, let me consider the impugned order dated 20th November, 2017, passed by the



learned Magistrate and the order dated 2nd August, 2019, affirmed by the learned Additional Sessions Judge.

11. The learned Magistrate recorded in his order that after marriage the petitioner went to her matrimonial home. In the said marriage a sum of Rs.12,00,000/- were demanded by the parents of the opposite party so petitioner herein. The opposite party was subjected to physical and mental torture. In the meantime, in the year 2011, she gave birth to a male child. At the time of marriage of the brother of the opposite party, the petitioner claimed Rs. 12,00,000/-. Again in 2015 the petitioner gave birth to another child. The opposite parties took away her wearing apparels and ornaments and thereafter she was driven away. The petitioner inform the incident to her parents.

12. The said fact was initially inquired into and reported by the Protection Officer under the Protection of Women From Domestic Violence Act. The learned Magistrate considered the report of the Protection Officer also. Therefore, due consideration of the case of the petitioner along with the report of the Protection Officer suggest that the learned Magistrate consider prima facie case of the petitioner. The said order was affirmed by the appellate court.



13. I have also perused the order dated 2nd August, 2019 and come to the finding that the order does not suffer from illegality or material irregularity. It may be a fact that the learned Additional Sessions Judge misdirected himself in placing reliance on the decision of this Court reported in **2016 (2) PCCR 114 (SC) Prakash Nagardas Dubal- Shaha Vrs. Sou. Meena Prakash Dubal Shah & Ors.**. However, such misdirection does not vitiate the entire order.

14. Before I part with, I will be failing to discharge my duties, if I do not record that failure on the part of the learned Magistrate to comply with the guideline contained in Section 13 of the said Act is a procedural error and it does not vitiate the substantial justice.

15. In view of such circumstances, I do not find any illegality in the order. Accordingly, the instant revision is dismissed.

16. However, since the application under Section 12 of the Protection of Women From Domestic Violence Act is pending from 17th October, 2017, the learned Magistrate shall take all endeavour to conclude the hearing of the case within six months from the date of communication of this order.



17. The above direction is peremptory and must and strictly complied with by the learned Magistrate.

18. The petitioner shall be provided with the opportunity of hearing while disposing of the application under Section 12 of the Protection of Women From Domestic Violence Act.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

