

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1544 of 2019

Arising Out of PS. Case No.-21 Year-2018 Thana- DOMESTIC VIOLENACE District- Patna

Madhuri Kumari, Wife of Sri Anurag @ Anurag Prasad Singh, Resident of Mohallah - 5-B, Noorani Bagh Colony, P.S. - Alamganj, District - Patna (Bihar).

... .. Petitioner

Versus

1. The State Of Bihar
2. Sri Anurag @ Anurag Prasad Singh Son of Late Janardan Prasad Singh Resident of Mohallah - Mazar Gali, Patel Path, Behind Ram Vilash Apartment, P.S. - Shastri Nagar, District - Patna (Bihar), Presently Residing at Mohallah - Cavery Hill Road, Near P.T.C. Chowk, P.S. and District - Hazaribagh (Jharkhand).

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr.Dhanendra Chaubey, Advocate
For the State	:	Mr. Md. Fahimuddin, APP
For the O.P.No.2	:	Mr. Vijay Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 30-01-2024

Heard learned counsel for the petitioner, the opposite party no.2 and the State.

2. Petitioner in the present case is seeking setting aside of the judgment dated 21.10.2019 passed by learned Additional Sessions Judge, XIV, Patna in Criminal Appeal No.37 of 2019 by which the learned Sessions Judge has been pleased to allow the appeal and set aside the order dated 08.01.2019 passed by learned Additional Chief Judicial Magistrate-cum-Sub Judge- IVth, Patna in Domestic Violence Case No.21 of 2018.

Brief facts of the case

3. It appears from the records that the petitioner in the present case filed a Domestic Violence Case No.21 of 2018 against her husband who is opposite party no.2 in the present revision application. It is the case of the petitioner that she was married with opposite party no.2 on 30.01.2013 in accordance with the Hindu Rites and Customs at Noorani Bagh, Alamganj, Patna. Her parents had given Rs.5 lacs by cheque in the name of the petitioner and had spent a sum of Rs.6 lacs in the said marriage. They had also given some gold ornaments and household utensils and other items of daily use for a prosperous martial life of the petitioner.

4. It is alleged that when the petitioner went to her matrimonial house, her mother-in-law kept the entire gold ornaments with her and the opposite party (husband) on provocation of his mother started asking her to bring a Scorpio jeep from her parents. She alleged abuse and torture in the hands of the O.P. She claimed that being an educated lady, she was facing all ill-behaviours under a hope that the things would become normal over the period. It is alleged that the O.P. in the name of visiting her *maike*, took her on his bike and left her in the way and returned back. The petitioner alleges that when

these facts were brought to the notice of her father and brother, they went to the house of the husband where they requested him, his mother and brother to keep the petitioner with honour and dignity but they abused her parents and ousted them in a shameful manner and demand of Scorpio jeep was reiterated. The petitioner has filed a complaint case no.1670(C)/2013 against the O.P., his mother and other family members who had been allegedly involved in committing mental and physical torture upon the petitioner. In the said case, cognizance has been taken by learned S.D.J.M., Patna and during hearing of the bail petition in the High Court, the O.P. has been directed to pay a sum of Rs.2,000/- per month for maintenance of complainant-petitioner. She submits that this meager amount is not sufficient to maintain her.

5. It is further stated that the O.P. has also filed a Complaint Case No.1334(C)/2013 before the court of learned C.J.M., Patna against the father and the brother of the complainant with all sorts of false and flimsy allegations. He filed a Matrimonial Case No.355 of 2013 against the complainant under Section 9 of the Hindu Marriage Act, but subsequently abandoned the said case as a result whereof the application has been dismissed in default.

6. It is stated that the O.P. has filed a Matrimonial Case No.1271 of 2016 seeking dissolution of the marriage by decree of divorce against the complainant and the same is pending before the learned Principal Judge, Family Court, Patna. The petitioner has filed an application seeking interim order directing the O.P. to pay Rs.2,000/- more per month to the complainant besides cost of litigation. Accordingly, the learned Principal Judge, Family Court allowed the application, issued a direction as prayed for on 30.11.2017 but the O.P. has neither paid the amount of cost of litigation nor has been paying Rs.2,000/- per month.

7. It is stated that the mother and brother of the O.P. are living at Hazaribagh. The brother runs a readymade garment shop and his mother has been doing job on compassionate ground after death of her husband. The O.P. is a practicing lawyer and resides at Hazaribagh. He has two *bighas* of land at village and other properties. The O.P. has four storied building at Mohalla-Sheikhpura, Shastri Nagar, Patna standing on 1 ½ *kathas* of land and the complainant was residing in the said house in one of the flats after her marriage with the O.P. This is under lock for the present and the remaining flats are given on rent fetching monthly rent of about Rs.50,000/- on account of it.

The complainant claimed that she has no source of independent income and the O.P. is residing at Hazaribagh having good earning from advocacy.

8. On the strength of the aforesaid statements, the complainant-petitioner prayed for a protection order in terms of Section 17 of the Domestic Violence Act, 2005 (hereinafter referred to as the 'Act of 2005').

Interim order dated 01.08.2019

9. The learned Additional Chief Judicial Magistrate-IV, Patna took up the application filed by the complainant-petitioner on 15.03.2018 for consideration. The learned court went through the pleadings available on the record which included the objection petition filed on behalf of the O.P. on 08.10.2018. One of the objections raised on behalf of the O.P. is that the petition seeking protection order is liable to be dismissed on the ground of limitation. The O.P. submitted that the petition seeking protection order has been filed after lapse of four years and eleven months of the alleged incident and separation. According to him, Section 468 of the Code of Criminal Procedure (hereinafter referred to as the Cr.P.C.) provides for period of limitation of one year. It was pleaded that in the present case, there was no domestic relationship between

the parties since 15.04.2013 and alleging cruelty and desertion on the part of the petitioner, O.P. had filed a divorce case before the learned Principal Judge, Family Court, Patna. The O.P. took a plea that the petition under the Act of 2005 is nothing but a counter blast of Complaint Case No. 1334C/2013 and Divorce Case No. 1471/2016. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of **Indrajit Singh Grewal Vs. The State of Punjab & Ors.** reported in (2011) 12 SCC 588 to submit that the provisions of the Cr.P.C. would be applicable and this case would be governed by Section 468 of the Cr.P.C., hence, it is liable to be dismissed on the ground of limitation.

10. The O.P. also relied upon a judgment of the Hon'ble Supreme Court in the case of **S.P. Batra & Anr. Vs. Smt. Taruna Batra** reported in AIR 2007 SC 1118 to submit that the property at Patna in this case belongs to the mother-in-law of the petitioner, hence, the petitioner cannot claim it her house within the meaning of Section 2(s) of the Act of 2005.

11. Learned A.C.J.M.-IV having considered the pleadings of the parties directed the O.P. to co-operate with hearing and further directed to make arrangement for a room with attached latrine, bathroom in matrimonial house as

submitted by the learned lawyer for the petitioner, in the house situated within the Shashtri Nagar Police Station. This order was made subject to final order in the Domestic Violence Case.

Appeal against the order dated 08.01.2019

12. Being aggrieved by and dissatisfied with the order dated 08.01.2019 passed by the learned A.C.J.M.-IV, Patna, the husband who is O.P. No. 2 in the present application moved in appeal provided under the statute. The appeal preferred by the husband being Cr. Appeal No. 37 of 2019 has been heard and disposed of *vide* order dated 21.10.2019 which is impugned herein. The learned Appellate Court has been pleased to set aside the order passed by the learned A.C.J.M.- IV, Patna on the ground that domestic violence case would be hit by the provisions of Section 468 Cr.P.C. The learned Appellate Court has taken a view that since the complainant herself has stated that she had been living at her *naiyhar* since 13.04.2013 and the present petition has been filed after almost four years of the incident, therefore, in view of the law laid down by the Hon'ble Supreme Court in the case of **Indrajit Singh Grewal (Supra)**, the complaint would be barred by limitation. The learned court has further held that because the complainant-petitioner is living away from her husband/appellant since 13.04.2013, no domestic

relationship between the complainant and her husband/appellant would exist. Therefore, a view has been taken that the petition under the Act of 2005 would not come within the purview of Section 2(f) of the Act of 2005.

13. The learned Appellate Court has further opined that because the property at Shashtri Nagar, Patna is an exclusive property of the appellant's mother, it cannot be said to be a shared house and no right to residence may be sought for in the said case.

Submissions on behalf of the Petitioner

14. Mr. Dhanendra Chaubey, learned counsel for the petitioner has assailed the impugned order on the grounds inter alia that the learned Appellate Court has failed to consider the definition of the word "domestic relationship" as defined under Section 2(f) and "domestic violence" defined under Section 2(g) of the Act of 2005. Learned counsel submits that in the circumstances alleged by the complainant-petitioner giving rise to the matrimonial discord between the parties, it cannot be held that the complaint filed by the petitioner under the Act of 2005 would be hit by Section 2(f) and 2(s) of the Act of 2005. It is further submitted that the learned Appellate Court has committed a gross error in taking a view that Section 468

Cr.P.C. would be applicable for passing of protection order in the facts of the present case. It is submitted that the court has wrongly construed the judgment of the Hon'ble Supreme Court in the case of **Indrajit Singh Grewal** (supra). It is also submitted that the ratio of the judgment rendered in the case of **S.P. Batra** (supra) would lead to a conclusion that only after adducing all the evidences by the parties, the court could have taken a view that the petitioner had not lived in her mother-in-law's house after her marriage and only in such circumstance, the property standing in the mother's name would not be covered within the meaning of the word "shared household" as defined under Section 2(s) of the Act of 2005. It is submitted that the impugned order passed by the learned Appellate Court is liable to be set aside and no interference is required with the order passed by the learned A.C.J.M.-IV, Court Patna at this stage. After setting aside of the appellate court order, the learned A.C.J.M.-IV, Patna may be directed to pass final order in the Domestic Violence Case.

Submissions on behalf of Opposite Party

15. Mr. Vijay Kumar Sinha, learned counsel for the O.P. has defended the impugned order. It is submitted that learned appellate court has rightly held that the provisions of the

Cr.P.C. would be applicable in the cases under the Act of 2005. Referring to the Section 28 of the Act of 2005, learned counsel submits that sub-Section (1) of Section 28 specifically states that all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and the provisions under Section 31 shall be governed by the provisions of Cr.P.C. Learned counsel has further relied upon a judgment of learned Co-ordinate Bench of this Court in the case of **Santosh Kumar vs. The State of Bihar and Anr (Cr. Misc. No. 41318 of 2016)**. It is submitted that in this case, the learned Co-ordinate Bench of this Court has exercised its power under Section 482 Cr.P.C. and quashed the complaint case. Similar view has been taken by the Hon'ble Karnataka High Court in exercise of power under Section 482 Cr.P.C. It is, thus, submitted that no infirmity or illegality may be found with the impugned order.

Consideration

16. Having heard learned counsel for the parties and on perusal of the records, this Court finds that basically three issues have arisen for consideration in the present case which may be enlisted as under:-

- (i) Whether the O.P. No.2 is correct in taking a plea that no domestic relationship

existed between the complainant and her husband for the reason that she had been living away from her husband since 13.04.2013?

(ii) Whether the stand of the O.P. No.2 that the house situated in Shashtri Nagar at Patna being registered in the name of his mother and the same being exclusive property of his mother cannot be said to be a shared household and the complainant cannot seek her right to residence in the said house in the facts of the present case?

(iii) Whether the complaint filed by the petitioner seeking protection order would be hit by Section 468 of Cr.P.C.?

17. In order to consider the aforesaid issues, this Court would be required to first look into the scheme of the Act of 2005. The words “domestic relationship”, “domestic violence” and “shared household” which have fallen for consideration in the present case are defined as under:-

“(f) “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage,

adoption or are family members living together as a joint family;

(g) “domestic violence” has the same meaning as assigned to it in section 3;

(s) “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household”

18. Section 3 of the Act of 2005 contains the definition of “domestic violence” and the same is being reproduced hereunder for a ready reference:-

“3. Definition of domestic violence.-For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for

any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.-For the purposes of this section,-

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes — (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any

alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.”

19. On a bare reading of Clause (f) of Section 2 it appears to this Court that where relationship between two persons has existed at any point of time through a relationship in the nature of marriage and they have lived together at any point of time in a shared household, it will be covered within the meaning of the word domestic relationship. The definition nowhere suggests that to come within the purview of the definition of the word “domestic relationship” both the persons must continue to live together. In the facts of the present case suffice it to say that the petitioner and the O.P. No. 2 having

married to each other and lived together at a point of time in a shared household would be covered under the definition of “domestic relationship”.

20. The allegation in the present case is that of commission of domestic violence. It is alleged that the O.P. had been demanding dowry and due to non-fulfillment of the said demand, he indulged in causing physical as well as mental torture to the petitioner. On a careful reading of Section 3 of the Act of 2005 coupled with the explanation, this Court would have no iota of doubt that the nature of allegations made in the complaint would be covered under Section 3 of the Act of 2005.

21. Under the scheme of the Act of 2005, Chapter IV contains Section 12 to 29. Under Section 12(1), an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the Act. By virtue of proviso to sub-Section(1) to Section 12, before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider. Under sub-Section (2) of Section 12, the relief sought for under sub-Section (1) may include a relief for issuance of an order for

payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent. Section 14 talks of counseling between the parties. Section 17 which is important in the present case provides for a right to reside in a shared house property. Section 17 reads as under:-

“17. Right to reside in a shared household.-

(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.”

22. According to Section 18, a Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima-facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from committing inter-alia any act of domestic violence. Section ‘18’ envisages the kind of orders which may be passed by the Magistrate by way of protection order.

23. Section ‘19’ provides that while disposing of an application under sub-Section (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place,

pass a residence order as under:-

“19. Residence orders.—(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the

respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.”

24. Section ‘20’ talks of monetary reliefs which may also be granted while disposing of an application under sub-Section (1) of Section 12. Under this provision, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person

and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to.-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

25. Section '21' talks of custody orders. Section 22 provides for compensation orders and Section 23 confers powers upon the Magistrate to grant interim and ex parte orders. Section 26 provides that any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of the Act. The jurisdiction of the Judicial Magistrate is provided under Section 27 and according to this provision the court

within whose jurisdiction the person aggrieved permanently or temporarily resides or carries on business or is employed or the respondent resides or carries on business or is employed or the cause of action has arisen shall be the competent court to grant a protection order under the Act and to try offences under the Act. Therefore, grant of protection order is one thing and the trial for an offence under the Act would be another thing.

26. Chapter ‘V’ contains miscellaneous provisions. Section 31 falling under Chapter V deals with penalty for breach of protection order by respondent. The said provision reads as under:-

“31. Penalty for breach of protection order by respondent.—(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.”

27. Section '32' specifically states that notwithstanding anything contained in the Code of Criminal Procedure, the offence under sub-Section (1) of Section 31 shall be cognizable and non-bailable.

28. In the aforementioned background of the scheme of the Act of 2005, this Court would look into the judgments of the Hon'ble Supreme Court and that of the learned coordinate Bench of this Court hereunder.

29. In the case of **Indrajit Singh Grewal (Supra)**, the facts of the case would reveal that the Hon'ble Supreme Court was considering an issue as to whether a wife may file a criminal complaint before the competent court to initiate criminal proceedings against her husband alleging that he had obtained decree of divorce by playing fraud upon the court. The fact was that the appellant and respondent no.2 were married in the year 1998 but because of the matrimonial discord and differences between the parties they decided to go for a divorce therefore HMA Case No. 168 of 2007 was filed under Section 13B of the Hindu Marriage Act, 1955 before the learned District Judge, Ludhiana for dissolution of marriage by mutual consent. The statements of the parties were recorded on 19.09.2007 and thereafter the proceeding was adjourned for a period of six

months. On expiry of the said period, the parties appeared before the court and on second motion again their statements were recorded and both of them affirmed that it was not possible for them to live together and, therefore, the learned District Judge, Ludhiana allowed the said petition and dissolved their marriage.

30. In the aforementioned background, the respondent no.2 filed a complaint before the Senior Superintendent of Police, Ludhiana against the appellant on 04.05.2009 alleging that the decree of divorce obtained by them was a sham transaction and even after getting divorce, they were living together as husband and wife. It was alleged that she had been forced to leave the matrimonial house. A full-fledged inquiry was conducted and it was found that both the parties had been living separately after divorce so no case was made out. Subsequently respondent no.2 filed a complaint under the Act of 2005 on 12.06.2009 in which the learned Magistrate issued summons to the appellant on the same date. Aggrieved by the said summoning, the appellant challenged the order of the learned Magistrate under Section 482 Cr.P.C. for quashing the complaint. In the meantime, the respondent no.2 also filed a civil suit in the court of Civil Judge (Senior Division), Ludhiana

seeking declaration that the judgment and decree dated 20.03.2008 was null and void and it had been obtained by fraud. An application under the Guardians and Wards Act was also filed for custody and guardianship of the minor child. Respondent no.2 filed an FIR also against the appellant.

31. The Hon'ble Supreme Court recorded in paragraph '9' of it's judgment that the case is required to be considered in the aforesaid factual background. The Hon'ble Court found that the respondent no.2 was herself a party to the alleged fraud committed by the appellant upon the Civil Court in getting the decree of divorce as alleged by her in the impugned complaint. Thus, it was observed that on her own admission she herself is an abettor to the crime. The Hon'ble Supreme Court thereafter examined the case law and referring to the judgment in the case of **Smt. Sureshta Devi , AIR 1992 SC 1304**, which was again a case where the parties had taken divorce by mutual consent held that the expression 'living separately' connotes to our mind not living like husband and wife. The Hon'ble Supreme Court observed that what seems to be necessary is that they had no desire to perform marital obligations and with that mental attitude they had been living separately for a period of one year immediately preceding the

presentation of the petitioner. In the given factual background, the Hon'ble Supreme Court opined as under:-

“....We are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the Act 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of Court. Undoubtedly, for quashing a complaint, the Court has to take its contents on its face value and in case the same discloses an offence, the Court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same...”

32. This Court has reproduced the facts of the case in the case of **Inderjit Singh Grewal** (supra) and the opinion of the Hon'ble Supreme Court which clearly suggests that the said judgment has been rendered in its own facts and circumstances of the case. That was a case where the parties had obtained a decree of divorce with mutual consent. On facts, the present case is quit different and distinguishable.

33. This Court is reminded of a judgment of the Hon'ble Supreme Court in the case of **Bharat Petroleum Corporation vs. N.R. Vairamani and Anr.** reported in **(2004) 8 SCC 579** wherein the Hon'ble Supreme Court has observed and put a word of caution saying that the judgment of the court

should not be applied like an Euclid's Theorem as a slight change in the facts of the case would make a sea difference in the opinion of the court.

34. In the present case, on facts, this Court finds that the marriage between the parties had been solemnized in the year 2013, there was a demand of dowry as alleged giving rise to filing of a complaint case by the complainant. The O.P. had filed a case for decree of divorce in the year 2016 and the case is being contested by the complainant. In the given facts and circumstances of the case, it cannot be said like the case of **Inderjit Singh Grewal** (supra) that the parties had been living separately after divorce or that the parties had no desire to perform marital obligations.

35. The judgment in the case of **S.P. Batra & Anr.** (supra) was rendered in a case where the husband had filed a divorce petition against his wife and it was alleged that the complaint case was filed as a counter blast to the divorce petition. The admitted fact in the said case was that Smt. Taruna Batra had shifted to her parent's residence because of the dispute with her husband. She alleged that later on when she tried to enter the house of the appellant no. 2, she found the main entrance locked and hence, the suit was filed for

mandatory injunction to enable her to enter into the house. The case of the appellants was that before any order could be passed by the learned trial Judge on the suit filed by their daughter-in-law, Smt. Taruna Batra along with her parents forcibly broke open the locks of the house belonging to appellant no. 2, the mother-in-law of Smt. Taruna Batra. The appellants alleged that they had been terrorized by their daughter-in-law and for some time they had to stay in their office.

36. In the said case, the mother-in-law had moved against the order granted by the learned trial Judge whereunder an application for temporary injunction filed by the daughter-in-law has been allowed and it was held that she was in possession of the second floor of the property so a temporary injunction was granted in her favour. In the facts of the said case, the Hon'ble Supreme Court noticed the finding of the learned Senior Civil Judge that in fact Smt. Taruna Batra was not residing in the premises in question. This was a finding of fact which could not have been interfered with either under Article 226 or 227 of the Constitution. Hence, it was observed that Smt. Taruna Batra cannot claim any injunction restraining the appellants from dispossessing her from the property in question for the simple reason that she was not in possession at all of the

said property and, hence, the question of dispossession does not arise. The Court observed that the house in question cannot be said to be a shared household within the meaning of Section 2(s) of the Act of 2005. The observations of the Hon'ble Supreme Court may be usefully quoted hereunder for a ready reference:-

“25. We cannot agree with this submission.

26. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grandparents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces, etc. If the interpretation canvassed by the learned counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

27. It is well settled that any interpretation which leads to absurdity should not be accepted.

28. Learned counsel for the respondent Smt Taruna Batra has relied upon Section 19(1)(f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's (*sic*) in-laws or other relatives.

29. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent

by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of Appellant 2, mother of Amit Batra. Hence it cannot be called a “shared household”.

37. In the present case, though it is stated that the house situated in Shastri Nagar, Patna is registered in the name of the mother of O.P. the mother has not challenged the order of the learned A.C.J.M-IV Court Patna. It is not the case of the O.P. that the complainant had not resided in the said house after her marriage with her husband. In the complaint petition, there is an averment that the O.P. has his four storied building at Mohalla-Sheikhpura, Shashtri Nagar, Patna whether this property is a joint family property or had been purchased from the resources of the joint family would be a matter to be looked into after allowing the parties to adduce their respective evidences. The specific case of the complainant is that she had been residing in one of the flats of the said house with the O.P. which is under lock for the present and the remaining flats are given on rent.

38. In the opinion of this Court, the learned Appellate Court has proceeded to record that the house is neither belonging to the appellant nor to joint family but this Court finds that there was no material before the learned Appellate

Court to record such a finding. The matter was still sub-judice before the learned A.C.J.M. Court and it should have been left open to be considered while passing final order on the petition.

39. At this stage, this Court would also look into the judgment of the learned Co-ordinate Bench of this Court in the case of **Santosh Kumar** (supra). In the said case, a complaint under Sections 18, 19, 20 and 27 of the D.V. Act was filed by opposite party no. 2 against the petitioner and three others in the court of learned Chief Judicial Magistrate, Patna. She alleged demand of dowry and due to non-fulfillment of the same, she was ousted from the house by her husband and in-laws at Hyderabad on 23.04.2013. The learned Judicial Magistrate served notice upon the husband calling upon him to appear and file a show cause. The husband appeared and filed a show cause denying the allegations. It was brought to the notice of the learned Magistrate that an application seeking a decree of divorce was earlier filed being H.M.O.P. No. 54 of 2014 under Section 13(i)(a) of the Hindu Marriage Act, 1955. In the said divorce case, the opposite party no. 2 knowingly did not appear whereafter a decree of divorce dated 27.02.2015 was passed by the learned Senior Civil Judge, Sangareddy. It is for this reason that it was contended that once the domestic relationship came

to an end after the decree of divorce, the complaint under the D.V. Act could not have been filed. One of the contentions before this Court was that the complaint under the D.V. Act would be barred by limitation in view of the provisions of Section 468 Cr.P.C. Reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of **Inderjit Singh Grewal versus State of Punjab and Anr** reported in (2011) 12 SCC 588.

40. This Court formulated a question as to whether an ex-wife can file a complaint under the D.V. Act when the relationship has come to an end with a decree of divorce and this question had also fallen for consideration before the Hon'ble Punjab and Haryana High Court in Amit Agarwal and Ors. Vs. Sanjay Aggarwal [III (2016) DMC 97 (P & H)]. In the aforementioned facts, the learned Co-ordinate Bench of this Court observed in paragraph '16' to '23' as under:-

“16. In Inderjit Singh Grewal (supra), the Supreme Court has answered the said question in the following words: “Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 Cr.P.C., that 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 Sections 28 and 32 of the Act 2005 read with Rule 15(6) of The Protection of Women from Domestic Violence Rules, 2006 which make the

provisions of Cr.P.C. applicable and stand fortified by the judgments of this court in Japani Sahoo v. Chandra Sekhar Mohanty, AIR 2007 SC 2762; and Noida Entrepreneurs Association v. Noida & Ors., (2011) 6 SCC 508”.

17. The law declared by the Supreme Court has got binding force and, in that view of the matter, it can safely be said that the provisions of Section 468 of the Cr.P.C. would clearly be applicable in cases instituted under the provisions of the D.V. Act.

18. Coming back to the facts of the present case, the complainant-opposite party no.2 was admittedly married to the petitioner on 12.04.2013 at Barauni, Begusarai. Subsequently, she was taken to Lingampally, Hyderabad where the petitioner was serving as a Class-II officer in B.H.E.L. She was ousted from her husband's house in Lingampally, Hyderabad on 23.04.2013. An allegation has also been made in the complaint that on 04.05.2014 at about 7:00 P.M., the complainant went together with her mother to the house of the petitioner, but the petitioner refused to return her ornaments and other utensils.

19. In Section 31 of the D.V. Act penalty has been provided for breach of protection order. The penalty provided for such breach is for a term which may extend to one year or extend to twenty thousand rupees or both. Apparently, the D.V. 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 a final or temporary protection order, he can be (i) sent to jail; (ii) ordered to pay fine upto Rs.20,000/-; or (iii) sent to jail and ordered to pay fine. (underline is mine)

20. Section 28 of the D.V. Act clearly stipulates that save as otherwise expressly provided, all

proceedings under Sections 12, 18, 19, 20, 21 and 23 and offences under Section 31 shall be governed by the provisions of Cr.P.C.

21. Section 32 of the D.V. Act provides that notwithstanding anything contained in the Cr.P.C., the offence under Section 31 shall be cognizable and non-bailable.

22. Chapter XXXVI of the Cr.P.C. deals with limitation for taking cognizance of certain offences. Section 468 of the Cr.P.C., which bars taking cognizance of the offence after lapse of one year, reads as under:-

“468. Bar to taking cognizance after lapse of the period of limitation.-

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation. (2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

23. A perusal of Section 468 of the Cr. P.C. would make it evident that the Court would be debarred from taking cognizance of the offence after expiry of

one year if the offence is punishable with imprisonment not exceeding one year.”

41. From the judgment of the learned Co-ordinate Bench of this Court, it is crystal clear that in the said case also there was a decree of divorce between the parties. The complaint was presented much after the grant of said decree of divorce and in respect of the said complaint the inherent power of the High Court under Section 482 Cr.P.C. was invoked. There were settled findings of facts and in that background Sections 31 and 32 of the Act of 2005 were examined and it was held that Section 468 Cr.P.C. would debar taking cognizance of the offence after expiry of one year if the offence is punishable with imprisonment not exceeding one year.

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42. Here, it is worth mentioning that Section 468 Cr.P.C. bars taking cognizance after lapse of the period of limitation. Under the scheme of the Act of 2005, it is Section 31 which specifically states that a breach of protection order, or of an interim protection order, by the respondent shall be an offence under the Act and shall be punishable with imprisonment of either description for a term which may extend to one year or with fine which may extend to Rs.20,000/- or with both. A careful reading of Section 31 would show that what

is made punishable under the Act of 2005 is the breach of the protection order or of an interim protection order. In other words, if the competent court has passed a protection order under either of the provisions of Sections 17, 18, 19, 20, 21 and 22, as the case may be, and/or an interim protection order has been passed but the respondent violates the said order, it would become an offence punishable under Section 31. It is with regard to this offence under Section 31 that the learned Magistrate can take cognizance under Section 32, therefore, the bar provided under Section 468 Cr.P.C. in the matter of taking cognizance may be cited only when the learned Magistrate takes cognizance of an offence in terms of Section 31 of the Act of 2005 after lapse of the period of limitation. By no stretch of imagination it may be held that the bar under Section 468 Cr.P.C. may even be cited to deprive a complainant from getting a protection order. The legislation does not provide any period of limitation for filing of a complaint seeking protection order under various provisions of the Act of 2005.

43. This Court disagrees with the submissions of learned counsel for the Opposite Party No. 2 that no protection order may be passed by the competent court in the facts of the present case. The learned Co-ordinate Bench has observed in the

case of **Santosh Kumar** (supra) that “Apparently, the D.V. Act is not considered as a criminal law as it is more concerned with providing relief to the victim. ...”.

44. To this Court, it is crystal clear that the present case is not a case of taking cognizance after lapse of the period of limitation. It is not a case in which Sections 31 and 32 of the Act of 2005 have come into play. It is still at the stage of passing of a protection order. Section 31 would come into play only when the respondent defies the protection order and in such circumstance, the Court would be required to take cognizance under Section 32 of the Act of 2005. Such cognizance order is to be passed within the period of limitation under Section 468 Cr.P.C.

45. In view of the discussions made hereinabove, the three issues which are enlisted in paragraph ‘16’ are answered as under:-

(I) In the facts of this case, the opposite party no.2 is not correct in taking a plea that no domestic relationship existed between the complainant and her husband only because the complainant is said to be living away from her husband since 13.04.2013.

(II) Whether the house situated in Shastri Nagar at Patna which is registered in the name of the mother of the petitioner may be said to be a shared household or not would depend on the

evidences which would come before the court.

(III) The complaint filed by the petitioner seeking protection order would not be hit by Section 468 Cr.P.C.

46. In view of the discussions made hereinabove, this Court is of the considered opinion that the learned Appellate Court has completely erred in setting aside the order passed by learned A.C.J.M-IV Court, Patna. The appellate order is, therefore, set aside. The appeal preferred by O.P. No.2 is held devoid of merit. The interim order of learned A.C.J.M.-IV, Patna City is restored.

47. The learned A.C.J.M.-IV, Patna in whose court the domestic violence case was filed shall proceed to deal with the complaint and pass an appropriate order in accordance with law.

48. The revision application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

arvind/rishi-

AFR/NAFR	AFR
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