

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43609 of 2015

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

Shailendra Kumar Singh, S/o Ram Ratan Singh R/o Village- Rampur P.S.-
Gaurichak, District- Patna.

... .. Petitioner/s

Versus

1. State of Bihar
2. Manju Kumari, W/o Shailendra Kumar Singh R/o Gautam Nagar, Janta Road, P.S.- Gardanibagh, District Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Patanjali Rishi, Advocate Ms. Perna Rishi, Advocate
For the Opposite Party for the State	:	Mr. Dayshanker Pandey, Advocate Mr. Binod Kumar No.3, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

4 07-01-2025 Heard Ms. Perna Rishi, learned counsel for the petitioner, Mr. Dayshanker Pandey, learned counsel for the O.P. No.2 and Mr. Binod Kumar No.3, learned APP for the State.

2. The instant criminal miscellaneous petition has been filed for setting aside the order dated 24.02.2015 passed in Criminal Revision No. 948 of 2010 by the learned Additional District and Sessions Judge-VI, Patna whereby the revision petition filed by the petitioner against the order dated 10.08.2010 passed in Domestic Violence Case No. 03 of 2008 preferred by the O.P. No.2, by Judicial Magistrate 1st Class, Patna has been rejected.

3. Ms. Perna Rishi, learned counsel appearing for the



petitioner submits that the O.P. No.2 filed a petition on 22.01.2008 before the Chief Judicial Magistrate, Patna under the provisions of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'D.V. Act') for seeking protection under Sections 18 and 19 of the D.V. Act and based on that petition, on 05.06.2009 behind the back of the petitioner an interim relief was granted to the O.P. No.2 restraining the petitioner from alienating any part of his joint or separate property in any manner. After passing of the said order the petitioner filed a petition before the concerned Magistrate which was decided by order dated 10.08.2010 directing the petitioner to file an affidavit to this effect that he had not transferred or sold any part of his land regarding which he had been debarred from alienating by the order dated 05.06.2009 and he was also directed to file an affidavit to this effect that he would not alienate or dispose of any of his property and it was directed that in the situation of non-compliance of the said order a proceeding under Section 31 of D.V. Act would be initiated against him and said order dated 10.08.2010 was challenged by the petitioner before the revisional Court by filing the Cr. Revision No. 948 of 2010 and the same was rejected by the Revisional Court vide order dated 24.02.2015 which is under challenge in this matter.



It is further submitted that the relief granted to the O.P. No.2 under Section 18 of D.V. Act restraining the petitioner from alienating any land or property in which he has a joint or independent share while the O.P. No. 2 has no share or interest is completely beyond the jurisdiction of the concerned Magistrate as such relief cannot be passed under Section 18 of D.V. Act .

4. On the contrary, Mr. Dayshanker Pandey, learned counsel appearing for the O.P. No. 2 submits that the order as to directing the petitioner to allow the O.P. No. 2 to reside in his house has not been complied with by the petitioner rather the petitioner has filed a divorce case and he is not paying maintenance to the O.P. No. 2 despite accumulating the arrears of huge amount of said maintenance amount.

5. Heard both the sides and perused the order dated 24.02.2015 passed by the revisional Court as well as the order dated 10.08.2010 passed in the Domestic Violence Case No. 03 of 2008 by the concerned Judicial Magistrate. It appears that by the learned Magistrate where the D.V. Case No. 03 of 2008 is pending, a protection order under Section 18 of the D.V. Act has been passed by which the petitioner has been prohibited from transferring any joint or other property of him and in this regard



an interim order was initially passed by the learned Magistrate on 05.06.2009, and thereafter by order dated 10.08.2010 the petitioner was directed to file an affidavit to show whether he had transferred any of his land or not and by the same order he was also directed to file an affidavit for giving an undertaking that he would not dispose of any of his property till further order of the concerned Magistrate. Though, as per the provisions of Section 18 of the D.V. Act, the respondent can be prohibited from alienating any assets which is used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent. It is clearly evident from the provisions of Section 18 that where a prohibition order is to be passed in respect of a property under Section 18 of D.V. Act, then such property must be held either jointly by the aggrieved person and the respondent or singly by the respondent or separately by any of them but such prohibition order mainly being in civil nature and also when it is vague cannot be passed in respect of a property or assets other than a shared household defined in D.V. Act in which a person, other than the respondent and aggrieved, has valid title or interest along with the interest of respondent. So, while passing such prohibition order, it must be looked into by the Magistrate that the assets or property,



regarding which the prohibition order is to be passed, is held jointly by the aggrieved person and the respondent or singly by the respondent or held by any of them separately, but such prohibition order cannot be passed in vague manner in respect of any property, in which another person other than both the parties has some interest as such order may affect the interest of another person who has no concern with the dispute between both the parties and this aspect was not properly appreciated by the revisional court while examining the order dated 10.08.2010 passed by the Judicial Magistrate in D.V. Case No. 03 of 2008, and it appears that the provisions of Section 18 were not properly taken into consideration by the learned Magistrate while granting the relief to the O.P. No.2, as such, the revisional court's order dated 24.02.2015 and the order dated 10.08.2010 passed in D.V. Case No. 03 of 2008 are hereby set aside and the instant petition stands allowed.

6. It is clarified that the right of O.P. No.2 as to residing in the shared household as well as getting maintenance from the petitioner will not be affected by this order if in this regard, any relief has been granted to her by the learned Magistrate and regarding a relief under Section 18 of D.V. Act for prohibiting the respondent (petitioner) from alienating any



property or assets in which the petitioner and the O.P. No. 2 have joint interest or independent interest and also for any other relief under Section 19 of D.V. Act, she (O.P. No. 2) will have a liberty to file a fresh petition before the Judicial Magistrate under Sections 18 and 19 of D.V. Act.

(Shailendra Singh, J)

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