

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.895 of 2025

In

Criminal Writ Jurisdiction Case No.548 of 2024

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1. Rekha Bihar @ Rekha Bihari wife of Saket Bihari resident of Dighra House, Club Road, Pani Tanki Chowk, Musahri, Police Station – Mithanpura, District – Muzaffarpur – 842002
 2. Saket Bihari son of Late Lakshman Jha resident of Dighra House, Club Road, Pani Tanki Chowk, Musahri, Police Station – Mithanpura, District - Muzaffarpur -842002
 3. Ms. Katyani daughter of Saket Bihari resident of Dighra House, Club Road, Pani Tanki Chowk, Musahri, Police Station Mithanpura, District - Muzaffarpur – 842002

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Department, Government of Bihar, Old Secretariat, Patna – 800 001.
2. Mr. Arvind Kumar Chaudhary, The Additional Chief Secretary, the Home Department, Government of Bihar. Old Secretariat, Patna-800 001.
3. Mr. Vinay Kumar, The Director General of Police, Government of Bihar, Patna-800 001.
4. Mr. Sushil Kumar, The Senior Superintendent of Police, Muzaffarpur
5. Mr. Asmit Kumar, The Station House Officer, Sadar Police Station, District - Muzaffarpur
6. Aditi Kumari, The Sub Inspector, Mahila Thana, Muzaffarpur.
7. Nancy Kashyap daughter of Sanjay Singh resident of Pani Tanki Chowk, Police Station - - Mithanpura, District – Muzaffarpur.

... .. Opposite Party/s

with

Criminal Writ Jurisdiction Case No. 365 of 2024

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

Kastub Sourabh Son of Saket Bihari Resident of Dighra House, Club Road, Pani Tanki Chowk, Musahri, Police Station- Mithanpura, Dist.- Muzaffarpur - 842002

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department



Government of Bihar, Old Secretariat, Patna -800001

2. The Additional Chief Secretary, the Home Department Government of Bihar, Old Secretariat, Patna-800001
3. The Director General of Police, Government of Bihar Patna - 800001
4. The Senior Superintendent of Police, Muzaffarpur Bihar
5. The Station House Officer, Sadar Police Station, Dist.- Muzaffarpur Bihar
6. Nancy Kashyap Daughter of Sanjay Singh Resident of Pani Tanki Chowk, P.S.- Mithanpura, Dist.- Muzaffarpur

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 548 of 2024

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

1. Smt. Rekha Bihar wife of Saket Bihari R/o- Dighra House, Club Road Pani Tanki chowk Musahari Ps- Mithanpura Dist- Muzaffarpur
2. Shri. Saket Bihari son of Late Kameshwar Prasad Singh R/o- Dighra House, Club Road Pani Tanki chowk Musahari Ps- Mithanpura Dist- Muzaffarpur
3. Smt. Katyaini D/o- Saket Bihari R/o- Dighra House, Club Road Pani Tanki chowk Musahari Ps- Mithanpura Dist- Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Dept. Govt. of Bihar, Patna Bihar
2. The Additional Chief Secretary, the Home Department, Bihar, Patna Bihar
3. The Director General of Police, Govt. of Bihar, Patna Bihar
4. The Senior Superintendent of Police, Muzaffarpur Bihar
5. The Station House officer, Sadar Muzaffarpur Bihar
6. The Sub Inspector, Mahila Thana Muzaffarpur Bihar
7. Nancy Kashyap D/o- Sanjay Singh R/o- Pani Tanki Chowk Ps- Mithanpura Dist- Muzaffarpur

... .. Respondent/s

with

CRIMINAL REVISION No. 482 of 2025

Arising Out of PS. Case No.-27 Year-2024 Thana- MAHILA P.S. District- Muzaffarpur

Nancy Kashyap W/o Kastub Saurabh R/o Didhra House, Pani Tanki Chowk Mithanpura, P.s.- Mithanpura, Distt.- Muzaffarpur, Bihar, Currently Residing at vill - Dighra, P.S.- Sadar, Distt.- Muzaffarpur



... .. Petitioner/s

Versus

1. The State of Bihar through the Home Deptt., Govt. of Bihar, Old Secretariat, Patna Bihar
2. Kastub Saurabh S/o Saket Bihari R/o Dighra House, Pani Tanki Chowk, Club Road, Musahri, P.s.- Mithanpura, Distt.- Muzaffarpur, Bihar
3. Saket Bihari S/o Late Kameshwar Prasad Singh R/o Dighra House, Pani Tanki Chowk, Club Road, Musahri, P.s.- Mithanpura, Distt.- Muzaffarpur, Bihar
4. Rekha Bihari W/o Saket Bihari R/o Dighra House, Pani Tanki Chowk, Club Road, Musahri, P.s.- Mithanpura, Distt.- Muzaffarpur, Bihar
5. Sneha Sonam D/o Saket Bihari R/o Dighra House, Pani Tanki Chowk, Club Road, Musahri, P.s.- Mithanpura, Distt.- Muzaffarpur, Bihar
6. Katyaini D/o Saket Bihari R/o Dighra House, Pani Tanki Chowk, Club Road, Musahri, P.s.- Mithanpura, Distt.- Muzaffarpur, Bihar

... .. Respondent/s

Appearance :

(In Miscellaneous Jurisdiction Case No. 895 of 2025)

For the Petitioner/s : Mr. Amit Anand Tiwari, Sr. Advocate
Mr. Abhishek Kumar, Advocate
Mr. Avanish Tripathi, Advocate
Mrs. Tanu Kumari, Advocate

For the Opposite Party No. 7: Mr. Yashvardhan, Advocate
Mr. Avanish Kumar Singh, Advocate
Mr. Piyush Singh, Advocate

For the State : Ms. Kumari Anita, GP 3
Mr. Rajesh Kumar, AC to GP 3

(In Criminal Writ Jurisdiction Case No. 365 of 2024)

For the Petitioner/s : Mr. Amit Anand Tiwari, Sr. Advocate
Mr. Abhishek Kumar, Advocate

For the Respondent/s : Mr. S.C.21

(In Criminal Writ Jurisdiction Case No. 548 of 2024)

For the Petitioner/s : Mr. Amit Anand Tiwari, Sr. Advocate
Mr. Abhishek Kumar

For the Respondent No. 6 : Mr. Yashvardhan, Advocate
Mr. Avanish Kumar Singh, Advocate
Mr. Piyush Singh, Advocate

For the State : Ms. Kumari Anita, GP 3

(In CRIMINAL REVISION No. 482 of 2025)

For the Petitioner/s : Mr. Yashvardhan, Advocate
Mr. Avanish Kumar Singh, Advocate
Mr. Piyush Singh, Advocate
Mr. Mukul Kumar Singh, Advocate

For the Opposite Party No. 2: Mr. Amit Anand Tiwari, Sr. Advocate
Ms. Tanu Kumari, Advocate

For the State : Mr. Abhishek Kumar, Advocate

Ms. Asha Kumari, APP



CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date: 18-07-2025

It is not an uncommon experience not only of the Court and the people associated with legal fraternity but society at large that how matrimonial dispute and discord make lives of both husband and wife, nay, almost all the members of both the family miserable. Time has come to revisit certain provisions of laws relating to matrimonial dispute and other related disputes by the legislature to rewrite certain provisions of the statute.

2. The Protection of Women from the Protection of Women from Domestic Violence Act, 2005 was enacted by the Central legislature and published in the Official Gazette of Extraordinary Part 2 on 17th October 2006. Thus, the said Act came into force with effect from 17th October 2006.

3. Section 3 of the said Act defines domestic violence in the following words: -

“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.”

4. Section 2(a) of the said Act defines aggrieved person as “.....any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.”



5. Further, Section 2(f) of the said Act defines domestic relationship in the following words:

“2(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;”

6. Section 2(s) defines “shared household” as hereunder:

“2(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 house hold 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;”

7. This happens time and again that an aggrieved person files application under Section 19 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter described as “the said Act”) for residence order with a prayer in the nature of injunction, 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 the legal or equitable interest in the shared household.

8. Therefore, if a lady, after her marriage comes to her matrimonial home to stay with her husband though, the husband has no legal or equitable interest in the said household, being exclusively owned by either the father-in-law, mother-in-law or any other person of the family, in case of domestic violence, the wife is entitled to a residence order in the manner provided under Section 19(a) to 19(e) of the said Act.

9. Alternatively, the court may under Section 19(1)(f) direct the respondent to secure same level of alternative accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so required.



10. In most of the cases, the trial court passes order restraining the respondent from dispossessing or in any manner disturbing the possession of the aggrieved person from the shared household. Clause (f) of Section 19(1) of the said Act is considered as an exception when there is no shared household where the parties used to reside. The trial court seldom considers that in a shared household there may be old-aged parents of the respondents and other family members having various physical and mental problems which necessitate their privacy also in the shared household but other members of the shared household are unnecessarily put to marital turmoil as a result of failed domestic relationship between two persons and they are also subsequently dragged in various criminal cases, as being members of shared household.

11. In many cases, it has been observed that the owner and other members of the shared household are ultimately compelled to vacate the premises, effectively resulting in the forced transfer of possession of the entire house in favour of the aggrieved person.

12. The statement of objects and reasons of enactment of the said Act is stated herein-below:



“3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, *inter alia*, seeks to provide for the following:-

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the



proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression “domestic violence” to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place



frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.”

13. Bearing in mind the forgoing paragraphs, let me now decide the factual matrix of the dispute between the parties:

Factual Matrix

14. There are four legal proceedings instituted in this Court, following an incident of taking possession of shared household by the aggrieved person. One Shrimati Rekha Bihari filed the Cr. WJC No. 548/2024 praying for the following reliefs:

“1(a). For issuing a writ, direction or order in the nature of Mandamus or any other writ, order or direction directing the Respondent no. 3, Director General of Police, for conducting a proper



enquiry into the incident occurred on 02.02.2014 and 03.02.2024 at the residence of the Petitioner where the Respondent No. 5 & 6 alongwith other Police Officials in connivance with the Respondent no. 7 and her parents broke into the house of the Petitioners;

b. For issuance of a writ, direction or order in the nature of Mandamus or any other writ, order or direction directing the Respondents to restore the possession of the property back to the Petitioner and prohibit the Respondents for unlawfully accessing the property of the Petitioner by use of force and fear;

c. For issuance a writ, direction or order in the nature of Mandamus or any other writ, order or direction directing the Respondent No. 1 to 6 from taking any coercive action against the Petitioners during the pendency of the present proceedings;

d. For issuance of writ in the nature of mandamus, restraining the respondents mainly police officials from acting unlawfully who, in connivance



with respondent no. 6 and her parents are behaving in a manner forbidden by the law;

e. For issuance of writ in the nature of mandamus, restraining the respondents from interfering in the life of the petitioners and/or for any other relief[s] for which the Petitioner may be found entitled to in the facts & circumstances of the present case.”

15. The petitioner of the above referred writ petition is the mother-in-law of the aggrieved person.

16. The husband of the aggrieved person has filed **Criminal Writ Jurisdiction Case No. 365 of 2024 (Cr.W.J.C. 365/2024)**, with almost similar reliefs:

17. In both the writ petitions, it is alleged by the petitioners that the marriage of one Kastub Sourabh was solemnized with Nancy Kashyap, aggrieved person herein, on 06th December 2020, as per Hindu Rites and Customs. It is also stated that the said marriage was never consummated. The aggrieved person/wife seldom stays at her matrimonial home. In the month of November 2022, she left her matrimonial home on her own accord and volition. Therefore, the petitioner was compelled to file a suit for divorce on 25th April, 2023 under Section 13(1)(i-a) of



the Hindu Marriage Act, 1955 before the learned Principal Judge, Family Court at Muzaffarpur which was registered as matrimonial (Divorce) Case No. 189/2023. After her departure from her matrimonial home, the aggrieved person and her family members constantly harassed and intimidated the family members of the petitioner. The mother of the petitioner made complaints against the aggrieved person before the SHO, Mithanpura, P.S. and subsequently, on 6th July 2023 to the Director General of Police, Government of Bihar but police did not take any action against the aggrieved persons and her family members. On 3rd November 2023, the petitioner/husband filed an informatory petition before the Sub-Divisional Magistrate, East Muzaffarpur. The learned Magistrate forwarded the copy of the said application to the concerned SHO, but police did not take any action against the aggrieved person. On 2nd February 2024, when the petitioner was alone at his residence, the aggrieved person arrived at the house accompanied by a police party and approximately fifteen to twenty unknown individuals, and they surrounded the entire house. The petitioner out of fear of life, left the house scaling and jumping from the boundary wall. The aggrieved person took possession of the household and started living there with the help of local police party. She entered into the house by breaking upon the lock of the



entrance door with the help of three police constables. The petitioner has annexed CCTV footage dated 02nd February 2024 and 3rd February 2024 to show that the aggrieved person came to her matrimonial home with two police vehicles full of police personnel and she was provided with active help by the three lady constables. The petitioner/husband informed about the matter on 05.02.2024 to the Superintendent of Police. He also sent his complaint by e-mail to the Director General of Police, but the police authority did not take any action on his complaint. So, is the instant writ petition. The mother and other family members of the Kastub Sourabh filed **Cr. WJC No. 548/2024**, stating, almost the same fact and mentioning different dates of lodging complaint to the police authority, alleging the act of trespassing by the aggrieved person but police did not take any action, therefore, she also has prayed for the following reliefs in the instant writ petition.

“1(a). For issuing a writ, direction or order in the nature of Mandamus or any other writ, order or direction directing the Respondent no. 3, Director General of Police, for conducting a proper enquiry into the incident occurred on 02.02.2014 and 03.02.2024 at the residence of the Petitioner where the Respondent No. 5 & 6 alongwith other Police



Officials in connivance with the Respondent no. 7 and her parents broke into the house of the Petitioners;

b. For issuance of a writ, direction or order in the nature of Mandamus or any other writ, order or direction directing the Respondents to restore the possession of the property back to the Petitioner and prohibit the Respondents for unlawfully accessing the property of the Petitioner by use of force and fear;

c. For issuance a writ, direction or order in the nature of Mandamus or any other writ, order or direction directing the Respondent No. 1 to 6 from taking any coercive action against the Petitioners during the pendency of the present proceedings;

d. For issuance of writ in the nature of mandamus, restraining the respondents mainly police officials from acting unlawfully who, in connivance with respondent no. 6 and her parents are behaving in a manner forbidden by the law;

e. For issuance of writ in the nature of mandamus, restraining the respondents from



interfering in the life of the petitioners and/or for any other relief[s] for which the Petitioner may be found entitled to in the facts & circumstances of the present case.”

18. In Cr. WJC No. 548 of 2024, the aggrieved person is arrayed as the respondent no. 7. She has filed a counter-affidavit denying all the allegations made against her in the writ petition. In the counter affidavit, she also had dealt with Cr. WJC No. 365 of 2024, filed by her husband. In her counter affidavit, she denied each and every allegation made by the petitioners.

19. It is specifically stated by her that her marriage was solemnized with Kastub Sourabh on 06.12.2020 at Mithanpura, Muzaffarpur as per Hindu rites and rituals. In the said marriage, her father spent about 80 lakhs as per the demand of the petitioners. After marriage, she went to her matrimonial home where she was ill-treated from the very first day. Her mother-in-law used to taunt on her average look and the quality of bridal gifts. She demanded that her son would have been gifted a four-wheeler at the time of marriage and failure to give a four-wheeler to her husband was an insult to their *zamindari* status. The respondent no. 7 became perplexed, experiencing the behaviour of respondent nos. 1 to 3 (In Cr. Rev. No. 482 of 2025). After 15/20



days of marriage, the husband of the respondent informed her that he would have to go to Kolkata and then to Delhi for some urgent work. Then, he left respondent no. 7 and did not establish any contact. His mobile was found constantly switched off. Being a newly wedded lady, the respondent was facing an unwelcoming environment in her matrimonial home. The husband of the respondent came to meet the deponent in the month of April. As there was a matrimonial discord arising between the parties, the father of the respondent no. 7 and her husband had a talk in the month of June and they were asked to come to the matrimonial home of the respondent for discussion to sort out the matter. In the month of June, 2021, the parents of the respondent/wife and her brother went to Dighra house owned by the petitioners. The respondent's father asked them the reason for the strange and cold behaviour towards the respondent and as to why she was not being allowed to return to her matrimonial home and to live with her husband. At this, the petitioner no. 1 disclosed that they were not satisfied with the reception given to the *Baraat* and bridal gifts given by the girl's parents. Sometimes in July 2021, the deponent's father gave Rs. 25 lakhs in cash to the petitioners to purchase a car in the name of the husband of the respondent on 19th July 2021. The respondent was allowed to come back to her matrimonial



home at Muzaffarpur. Thereafter, her husband went to Kolkata for some fixed programme in the month of September and returned back only in the month of November 2021. On being asked, her husband did not respond to his wife about the nature of his business which he allegedly started in Silliguri and Kalimpong. In her matrimonial home, the respondent used to stay like a maid, performing all sorts of household works. The petitioners did not allow the maid/ servants to enter into the kitchen. Respondent used to inform the matter to her parents. In the month of December 2021, the husband of the respondent told her that he would take her parents and sisters to Delhi, and asked the respondent to go back to her paternal home during the period when they would be in Delhi. The respondent came back to her paternal home on 10th December 2021. During their stay in Delhi for about 8 months, the husband of the respondent did not respond even for a single time of her calls. In the month of August 2022, her husband again took her to her matrimonial home but after a week, he left away the respondent. The respondent mentions the incidents of ill-treatments happened with her to her brother and parents on 7th October 2022, 7th November 2022 and also on subsequent dates. During the period between the last quarter of 2022 till 26th January 2023, the husband of the respondent did not maintain any



relationship with the respondent. The entire incident was reported to the Officer-in-charge Sadar Thana Muzaffarpur on 1st February 2024. On 2nd February 2024, she went to her matrimonial home with her brother and relatives at Dighra, seeing them, her husband was totally aback and immediately instructed his servants to lock the gate of the house. The husband urged her with folded hands that she should be allowed to enter into her matrimonial home but the husband and other matrimonial relations of the respondents fled away through another door leaving the house locked. The respondent refused to return to her paternal home and was sitting continuously for about 36 hours in front of the said house. She spent the chilling winter night sitting in the open courtyard waiting for her husband to come. But on 3rd February 2024, she made a distress call to the local police for help, thereafter, the Officer-in-charge of Women P.S. Muzaffarpur sent a patrolling team to inquire into the matter and in presence of the police party, the deponent broke the lock and the gate and entered into her matrimonial home. It is also stated by the respondent that she came to know from "Negotiation Agreement" that her husband is practically married to one Mamta Rai, daughter of Dev Kumar Rai and their marriage was solemnized on 23rd November 2018 at Silliguri. Her husband concealed the said fact of his first marriage



from the respondent and her family members. The copy of the “Negotiation Agreement” is marked as Annexure C series. The respondent no. 4, Deputy Superintendent of Police, Muzaffarpur and the respondent no. 5, namely, the SHO of Mahila P.S. Muzaffarpur filed separate counter affidavit against the writ petition bearing no. Cr. WJC No. 548/2024 stating that the SHO, Muzaffarpur P.S. was directed to show cause as to why no action was taken for registration of FIR in the light of the application submitted by the petitioner on 05.07.2023. Thereafter, he was further directed to explain as to why disciplinary action shall not be taken against him. It is also stated by the respondent no. 4 that the SHO, Mahila P.S. *vide* letter dated 07th May 2024 submitted a report stating the circumstances under which the wife entered into the house of the petitioner.

20. It appears from the counter affidavit filed by the respondent no. 5, SHO, Mahila P.S. Muzaffarpur that on 3rd February 2024, she received a call from the respondent no. 7 who disclosed to her that she had been staying in the verandah of the matrimonial house for last three days and her in-laws had locked the door and she was not allowed to enter into the house. The SHO, Mahila P.S. informed the matter to her superior officer and on the direction of the superior authority, she reached the house of



the petitioner along with the patrolling party. Seeing the police party, some local people gathered. They came to know about the condition of respondent no. 7 from the local villagers. Then, the respondent no. 7 broke the lock of the house and entered into the house in presence of the SHO and other police personnel on 3rd February 2024. Thus, the SHO, Mahila P.S. Muzaffarpur denied the allegation that the respondent entered into the house of the petitioner breaking upon the lock of the entrance door on 02nd February 2024.

21. The wife of the Kastub Sourabh, namely, Nancy Kashyap also filed Criminal Revision No. 482/2025 challenging the legality, validity and propriety of an order dated 11th April 2025 passed by the learned Additional Sessions Judge- XI, Muzaffarpur in D.V. Appeal No. 06 of 2024, whereby and whereunder the appeal filed by the petitioner was dismissed and the order dated 25th November 2024 passed by the learned Chief Judicial Magistrate, Muzaffarpur in D.V. Case No. 2 of 2024, directing the opposite party/husband of the petitioner to provide alternative accommodation to the petitioner was upheld.

22. The petitioner claims herself to be a married wife of the O.P. No. 2. She referred to different incidents which has been described herein before in the counter affidavit filed by her in Cr.



WJC No. 548/2024. It is also stated by her that she went to her matrimonial home on 2nd February 2024 along with her brother, and on seeing them, her husband and other matrimonial relations fled away from the house from another door, keeping the house under lock and key. The petitioner/wife waited in front of the said house for more than 36 hours and thereafter, she made a distress call to the local police for help. The police authority came to the spot and then, she opened the lock of the house on 03rd February 2024 and entered into the house. It is not in dispute that she is in possession of the said house. The petitioner/wife further filed a complaint against the O.P.s on the basis of which Mahila P.S. Case No. 27 of 2024 under Section 323/ 341/ 504/506/438A/494/420/34 and Section 3/4 of the Dowry Prohibition Act was registered. The petitioner and her family members tried to settle the matter amicably with her husband and other matrimonial relations but they refused to settle the dispute out of court. Moreover, they illegally retained her *streedhan* properties and bridal gifts. As she was subjected to domestic violence, mental cruelty, dowry demands and emotional and economic abuse, she filed an application under Section 12 of the Protection of Women from Domestic Violence Act before the learned Chief Judicial Magistrate, Muzaffarpur which was registered as D. V. Case No.



02/24. In the said proceeding, the learned Chief Judicial Magistrate passed an order on 25th November 2024, holding, *inter alia*, that the petitioner has been illegally occupying the house in the village Dighra, Muzaffarpur and the said house is not a shared household and finally passed an order directing the respondent /opposite party to provide same level of alternative accommodation for the aggrieved person as enjoyed by her in the shared household. The said order was affirmed by the learned Additional Sessions Judge XI Court at Muzaffarpur. The petitioner has challenged the said order in the Criminal Revision No. 482 of 2025.

Proceedings in the Court

23. Cr. WJC 548 of 2024 and Cr.WJC No. 365 of 2024 were taken up for hearing together by this Court on 19th April 2024. This Court upon hearing the parties at the stage of admission passed an order directing the respondent to submit counter affidavit against the writ petitions and also restrained the police authority from taking any coercive steps against the petitioners till the next date of hearing. Respondents no. 4 to 6 were also directed to allow the petitioners to take away the agricultural equipment and livestock from the house of the petitioners situated at village Dighra.



24. The petitioners filed a contempt petition, registered as MJC No. 895 of 2025 in Cr. WJC No. 548 of 2024, alleging that the police authority/state respondents did not allow them to take/receive agricultural equipment and livestock stored in the said house of Dighra *vide* order dated 19th April 2024.

25. On the other hand, the state respondents contend that in view of the order passed on 19th April, 2024 in Cr.WJC No. 548/2024, the police seized 8 items of agricultural articles from the said house on 25th March 2025 and the said articles were received by the petitioners. Subsequently, *vide* order dated 20th June 2025, the contempt petition is directed to be taken with the above-mentioned writ petitions and criminal revision filed by the contesting parties.

Submission at the Bar

26. Learned Advocate for the petitioner of the proceeding under the Domestic Violence Act, who is arrayed as respondent no. 7 in the writ petition, submits at the outset that the writ petitions filed by the husband and other matrimonial relations of the petitioner is not at all maintainable in view of the decision of the Hon'ble Supreme Court in the case of ***Sudhir Bhaskar Rao Tambe Vs. Hemant Yashwant Dhage and Others*** reported in **2016 (6) SCC 277**. *In this case, the Hon'ble Supreme Court had taken*



into account the settled principles in **Sakiri Vasu's Case** reported in **(2008) 2 SCC 409** and held that the impugned judgment of the High Court cannot be sustained and therefore, the said judgment was set aside. The Judicial Magistrate was directed to ensure proper investigation into the alleged offence under Section 156(3) of the CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned, a change of Investigating Officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate as investigation is job of the police. In the aforesaid case, Sudhir Bhaskar Rao Tambe as an appellant filed two appeals against the common judgment of the High Court of Bombay dated 08th September 2009, by virtue of which the Bombay High Court has changed the investigating officer and appointed special investigating officer to investigate into the alleged offence, applying its power under Article 226 of the Constitution of India. The Hon'ble Supreme Court held that the High Court cannot pass such order when the criminal case was registered under Section 156(3) of the CrPC and the power is in the hands of the Magistrate to pass necessary order for proper investigation.

27. The learned Advocate on behalf of the petitioner of the above numbered criminal revision further refers to a 3- Judges



Bench's decision in the case of *M. Subramaniam and Anr. Vs. S. Janaki and Anr.* reported in *(2020) 16 SC 728*. In this case, the appellants challenged an order dated 06th November 2010 passed by the Madurai Bench of Madras High Court in *Criminal O.P. (MD) No. 1162 of 2009*, on an application under Article 26 of the Constitution filed by the first respondent, directing the Inspector of Police City Crime Branch, K.K. Nagar, Trichy to register a case, i.e., first information report, on the basis of the complaint dated 08th September 2008, after investigation, they filed the final report in accordance with law. The Hon'ble Supreme Court was pleased to hold that writ petition cannot be the first recourse seeking direction from the High Court for filing of the FIR unless above remedies are first exhausted. It was held by the Hon'ble Supreme Court that when efficacious relief is available under Section 156(3) of the CrPC, exclusive jurisdiction lies upon the Judicial Magistrate to direct the SHO of the concerned police station to treat a complaint as an FIR. The power vested upon the High Court cannot be exercised without taking recourse to the provisions contained in Section 156(3) of the CrPC.

28. The learned Advocate on behalf of the petitioner also refers to the decision of the Hon'ble Supreme Court in *Sakiri Vasu's Vs. State of Uttar Pradesh and Ors.* reported in *(2008) 2*



SCC 409. Paragraphs no. 24 to 28 of the aforesaid judgment is relevant and are quoted below: -

“24. In view of the above-mentioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court



should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?



27. *As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.*

28. *It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.”*



29. Thus, it is contended by the learned Advocate on behalf of the petitioner/wife that the writ petitions filed by the husband and the matrimonial relations of the petitioner are not maintainable because of the fact that the opposite parties could have approached the trial court for appropriate relief.

30. The learned senior counsel for the petitioners, namely, Mr. Amit Anand Tiwari, in Cr. WJC No. 548 of 2024 and Cr. WJC No. 365 of 2024 submits that in all the judgments referred to by the learned Advocate for the respondent/wife, the Hon'ble Supreme Court discouraged institution and registration of FIR by the concerned police station and consequent direction by the Hon'ble Supreme Court to register FIR.

31. In the instant case, the petitioner never approached this Court for registration of any FIR. On the other hand, the petitioners (In **Cr. WJC No. 548 of 2024 and Cr. WJC No. 365 of 2024**) moved before this Court in Criminal writ jurisdiction for excess of police action amounting to police atrocities.

32. In order to substantiate his condition, it is submitted by the learned Advocate for the respondents/wife that according to the petitioners, she was sitting in the open *verandah* of her matrimonial home for 36 hours, since 02nd February 2024. In the evening of 3rd February 2024, she informed the local Mahila P.S.



about the incident and sought for help. Accordingly, the police went there and in presence of police, she opened the lock of the door of her matrimonial home and entered into the said house in the absence of the residents of the said house.

33. The case of the opposite parties/writ petitioners, on the other hand, is that the respondent no.7/wife by taking help of the police authority, illegally entered into her matrimonial home, breaking upon the lock of the entrance door on 02nd February 2024.

34. Be that as it may, series of CCTV footages, annexed with the writ petition as annexure P/7A, *prima facie* show that two police vehicles went to the matrimonial house of the petitioner and a group of police personnel were present in front of the said house to render police help to the petitioner/wife. As a writ court, it is not possible for this Court to decide the disputed question of fact as to whether the petitioner took possession of her matrimonial home with the help of police on 02nd February 2024 or 03rd February 2024. But admittedly, she took possession of the said house with the help of police either on 02nd February or on 03rd February 2024, when the residents of the house were absent.

35. Now, comes the question as to whether police authority can render any such help without a case being instituted by the



petitioner/wife? It is found from the record that except a case under Section 323/341/504/494/420B/506/498A and 34 of the IPC along with Sections 3/4 of the Dowry Prohibition Act dated 15th April 2024, the petitioner/wife did not register any FIR against the petitioners of the writ petitions. Thus, it is found that police authority extended police help to the petitioner/wife without any criminal case being registered in the local police station.

36. The petitioners approached this Court under Article 226 of the Constitution for a direction to the Director General of Police for conducting a proper inquiry into the incident dated 02nd February 2024 and 03rd February 2024 at the residence of the petitioners of the Cr. WJC No. 548/2024, where respondents no. 5 and 6 along with other police personnel in connivance with respondent no. 7/wife and her parents broke upon the lock of the house of the petitioners and other incidental reliefs including restoration of possession of the said house in favour of the petitioners. Thus, the said writ petitions contain allegations of police atrocities and exercise of police force illegally to deliver possession of the matrimonial home in favour of the respondent no. 7/wife by breaking open the lock of the entrance door. The question involved in these writ petitions is as to whether police



have the power to render such help without having a case registered against the petitioners.

37. Common law relief suggests that if a person is illegally dispossessed from his/her house, efficacious relief exists in filing a suit for recovery of possession. Can such possession be recovered through the muscle power of the police authority?

38. With regard to the revisional application filed by the petitioner/wife against her husband, it is submitted by the learned Advocate for the petitioner that the petitioner is the legally wedded wife of the opposite party. The petitioner elaborately stated the incidents of domestic violence purported upon her by her husband and other matrimonial relations from the very beginning of her marriage. She was harassed and humiliated on the ground of average look, quality of bridal gifts and failure on the part of her father to give a four-wheeler car to her husband at the time of her marriage. After the marriage, the husband seldom used to stay with her and on the pretext of business, he used to spend months together in Delhi, Kolkata, Silliguri and Kalimpong. It is alleged by the petitioner that her husband did not maintain even talking tongue with her over phone when he was away from her home.



39. Therefore, it is contended on behalf of the petitioner that the petitioner portrayed series of domestic violence purported upon her and being an aggrieved person, she filed an application under Section 12 of the D.V. Act before the jurisdictional court of the learned Magistrate. In the said application, she prayed for her possession in the shared household.

40. Both the courts below, without considering the case of the petitioner/wife and her primary right to stay in the shared household, directed her to take shelter in an alternative accommodation settled by her husband on rent.

41. The learned Advocate for the petitioner further submits that there is reasonable apprehension that her husband may not pay rent to the landlord in respect of the alternative accommodation where the petitioner/wife was proposed to stay. When the parties are at loggerhead and both the criminal cases at the instance of the petitioner and suit for divorce at the instance of the opposite party are pending, there is every apprehension that domestic violence would be purported upon the petitioner by her husband and other matrimonial relations.

42. Considering such aspect of the matter, the learned Advocate for the petitioner has called upon this Court to revise the order passed by both the courts below.



43. In support of his argument, he refers to a decision of the High Court at Delhi, in the case of ***Ritu Chernalia Vs. Amar Chernalia and Others*** reported in ***2023 SCC OnLine Del 3102: (2023)2 CCC 389***. Paragraphs no. 9 to 11 of the said judgment are relevant and quoted below:

“9. Heard. The Hon'ble Supreme Court of India in its judgement dated 15th October, 2020 in CA No. 2483/2020 titled Satish Chander Ahuja v. Sneha Ahuja while discussing the concept of 'shared household' held as under:

"83. Before we close our discussion on Section 2(s), we need to observe that the right to residence under Section 19 is not an indefeasible right of residence in shared household especially when the daughter-in-law is pitted against aged father-in-law and mother-in-law. The senior citizens in the evening of their life are also entitled to live peacefully not haunted by marital discord between their son and daughter- in-law. While granting relief both in application under Section 12 of Act, 2005 or in any civil proceedings, the Court has to balance the rights of both the parties. The directions issued by High



court in paragraph 56 adequately balances the rights of both the parties."

10. Thus, the concept of 'shared household' clearly provides that the right of the daughter-in-law in a shared household is not an indefeasible right and cannot be to the exclusion of the in-laws. The stand of the Petitioner that the in-laws should not be allowed to live in their own property is completely contrary to the settled understanding on the subject. The daughter-in-law, while claiming rights to live in her matrimonial home or shared household, cannot be seen to argue that the in-laws ought not to live with her in the shared household. If circumstances exist which demonstrate that they cannot live together, alternate accommodation may also have to be explored for the daughter-in-law.

11. In the present case, the DC has merely held that the Respondent No. 1 and 2 have a right to stay in the suit property, which obviously cannot be questioned because the property belongs to them. The Petitioner is currently in occupation of the entire property consisting of one floor. The Petitioner is not



willing to considering shifting to any alternate premises, though the same is offered by the Respondents 1 and 2. Considering the impugned order passed by the DC, in the above factual background, the following directions are issued:

(i) The Petitioner and her son shall occupy one room in the suit property. The Respondent Nos. 1 and 2 together shall also occupy one bedroom.

(ii) The grandson, i.e., Petitioner no. 2 shall be permitted to use the third bedroom for his studies, tuitions, etc., However, the said room shall be accessible to all the parties.

(iii) The common areas such as the kitchen, the drawing and the dining room and staircase, etc., shall be used by all the occupants.

(iv) The Respondent Nos.1 and 2 are permitted to put up CCTV cameras and the recordings of the same shall be accessible to the Petitioner.”

44. The learned Advocate for the petitioner/wife also refers to a Co-ordinate Bench’s decision of Delhi High Court in the case of ***Sneha Ahuja Vs. Satish Chander Ahuja reported in 2021 SCC OnLine Del 4984***. It is relevant to mention here that the above-



mentioned judgment was delivered on 15th November 2021, after the Hon'ble Supreme Court's decision in the case of ***Satish Chander Ahuja Vs. Sneha Ahuja*** reported in ***(2021) 1 SCC 414***. In the aforesaid proceeding before the Delhi High Court, Sneha Ahuja filed a petition under Section 227 of the Constitution for setting aside of the order dated 19th April 2024 passed by the learned Additional District Judge, South-East District Saket, New Delhi in CS No. 792/2017 filed by the respondent No. 1 against the petitioner.

45. It is pertinent to mention here the facts involved in the aforesaid case; the respondent no. 1 is the father-in-law of the petitioner. He filed a suit for eviction against the petitioner and her husband, i.e., respondent no. 2, who happens to be the son of the respondent no. 1. The said suit was decreed under the provision of ordered XII Rule 6 of the Civil Procedure Code, 1908. The petitioner preferred an appeal before the Delhi High Court against the said judgment and decree. A Co-ordinate Bench of Delhi High Court vide a judgment dated 18th December, 2019 was pleased to set aside the decree dated 08th April 2019 and remanded back the matter to the learned trial court for fresh adjudication. The respondent no. 1 filed an appeal against the judgment passed by the High Court at Delhi before the Hon'ble Supreme Court titled



as *Satish Chander Ahuja Vs. Sneha Ahuja* reported in (2021) 1 SCC 414. The said appeal being *Civil Appeal No. 3483 of 2020* was dismissed by the Hon'ble Supreme Court on *15th October, 2020*.

46. In view of the order passed by the Hon'ble Supreme Court in *Satish Chander Ahuja* (supra) at paragraph no. 167, the Hon'ble Supreme Court remanded the matter to the trial court for fresh adjudication.

47. On 19th April, 2021, the trial court passed the following order:-

"6. The learned Trial Court vide the impugned order dated 19th April, 2021 allowed the application of the respondents and issued the following directions:

"38. In the light of aforesaid discussion, the present application under Section 19(1) (f) of the D.V. Act filed on behalf of plaintiff is allowed with following directions:

(i) The Plaintiff and defendant no.2 shall jointly or severally pay a total sum of Rs.1,60,000 as an advance amount of the two months rental value to the defendant no.1 in



her bank account before 10th May, 2021 in order to enable her to take on rent a suitable accommodation for herself.

(ii) There the plaintiff and defendant no.2 jointly or severally pay next monthly payment of Rs.80,000 within 30 days i.e. by 10th June, 2021 and after that on the succeeding month by tenth day of every month directly into her bank account

(iii) Upon the said payment being commenced, the daughter-in-law (Defendant no.1) shall vacate the suit property within 40 days from the date of first payment or counting from 01.05.2021 whichever is later e.g. if the payment of Rs.1,60,000 is received on 05.05.2021, she will vacate by 15.06.2021 after receiving the next instalment of Rs.80,000 by 10.06.2021

(iv) The advance amount of Rs.1,60,000 shall not be adjusted in next monthly instalment till further orders.



*(v) This order is subject to final decision
of the present suit.”*

48. Aggrieved by the above-mentioned impugned order, Sneha Ahuja filed an application under Section 227 of the Constitution of India before the High Court at Delhi. After a detailed discussion, the Delhi High Court passed the following order in paragraph 42 of the said judgment which reads as under:

*“42. In light of the special
circumstances in the present case that: (a)
since marriage, the petitioner has been in
occupation of the first floor;*

*(b) the premises in her occupation was
separate from the premises in occupation of
the respondents;*

*(c) the subsistence of an injunction
order in this very suit, restraining the
petitioner from disturbing the possession of the
respondents of the ground floor;*

*(d) the fact that this order has not been
violated by the petitioner;*



(e) the petitioner being pushed to file Execution Petitions to obtain the maintenance awarded to her;

(f) the application moved by the petitioner for payment of the electricity charges in respect of the first floor of the premises where the petitioner is residing and the claim of the respondent No.2 that he did not have the means to do so;

(g) the uncertainty, in these circumstances of the respondents meeting their obligation of paying rent regularly, and

(h) finally, the prevailing circumstances of the pandemic when such an order was passed, all reflect the perversity and unreasonableness of the impugned order. The directions issued to the petitioner to shift out to a rented accommodation were most unwarranted.”

49. Learned advocate on behalf of the opposite parties, on the other hand relied upon the decision of the Hon'ble Supreme Court's decision in Satish Chander Ahuja (supra). It is submitted



by him that Sneha Ahuja was the daughter-in-law of Satish Chander Ahuja. She and her husband used to stay in the house of Satish Chander Ahuja after their marriage. As a result of matrimonial discord, and number of litigation between the parties, Satish Chander Ahuja filed a suit for mandatory and permanent injunction of the property occupied by Sneha and her husband. The Hon'ble Supreme has held that the said suit is maintainable. It is observed by the Hon'ble Supreme Court that the appellant being the father-in-law has the right to stay peacefully in his house during the evening of his life. The Hon'ble Supreme Court decided the issue regarding maintainability of Civil Suit by the appellant holding, *inter alia*:

“166. From the above discussions, we arrive at following conclusions:-

(166.1) The pendency of proceedings under Act, 2005 or any order interim or final passed under D.V. Act under Section 19 regarding right of residence is not an embargo for initiating or continuing any civil proceedings, which relate to the subject matter of order interim or final passed in proceedings under D.V. Act, 2005



(166.2) The judgment or order of criminal court granting an interim or final relief under Section 19 of D.V. Act, 2005 are relevant within the meaning of Section 43 of the Evi- dence Act and can be referred to and looked into by the civil court.

(166.3) A civil court is to determine the issues in civil proceedings on the basis of evidence, which has been led by the parties before the civil court.

(166.4) In the facts of the present case, suit filed in civil court for mandatory and permanent injunction was fully maintainable and the issues raised by the appellant as well as by the defendant claiming a right under Section 19 were to be addressed and decided on the basis of evidence, which is led by the parties in the suit.”

50. Thus, the issue involved in the case of Satish Chander Ahuja (Supra) was as to whether a civil suit is maintainable praying for mandatory injunction and eviction of the petitioner.



The Hon'ble Supreme Court was pleased to decide the case in affirmative.

51. In the instant case, both the courts, below under the facts and circumstances, directed the petitioner/wife to live in the alternative accommodation settle by her husband. The petitioner is not agreeable to such order and filed the instant revision.

52. The learned senior counsel on behalf of the petitioner refers to paragraph no. 90 of the *Satish Chander Ahuja* (Supra) wherein, the Hon'ble Supreme Court discussed the concept of "Shared household" and held as under: -

"90. Before we close our discussion on Section 2(s), we need to observe that the right to residence under Section 19 is not an indefeasible right of residence in shared household especially when the daughter-in-law is pitted against aged father-in-law and mother-in-law. The senior citizens in the evening of their life are also entitled to live peacefully not haunted by marital discord between their son and daughter-in-law. While granting relief both in application under Section 12 of Act, 2005 or in any civil



proceedings, the Court has to balance the rights of both the parties. The directions issued by High court in paragraph 56 adequately balances the rights of both the parties.”

53. Thus, right to stay in the shared household is not an absolute right of the wife who is involved in marital discord and litigations with her husband. Therefore, both the courts below correctly decided the matter and there is no reason to interfere with the impugned orders.

Conclusion

54. At the very beginning of this judgment, I have narrated the law on the issue, the definition of aggrieved person, Shared household, domestic relationship, etc., which were reproduced from the Act. Therefore, I am not going to reiterate the said definitions at this stage.

55. One very important matter was lost sight of both the learned counsels for the parties. In her counter affidavit against Cr. WJC No. 548/2024, the petitioner/wife herself filed a copy of so-called “Negotiation Agreement” executed on 25th January 2022 between the one Kastub Sourabh, the husband of the petitioner and one Dev Kumar Rai, father of one Mamta Rai, in which Kastub Sourabh admitted that he married to Mamta Rai on 23rd November 2018 at Siliguri. The said marriage was subsisting even



on 25th January 2022 when the so-called the “Negotiation Agreement” was executed.

56. The marriage of the petitioner of the instant revision was solemnized on 6th December 2020, i.e., during the subsistence of Kastub Sourabh’s marriage with Mamta Rai. The Section 5(i) of the Hindu Marriage Act, 1955 says as follow:

“A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely: —

(i) neither party has a spouse living at the time of the marriage;.....”

57. Further, Section 11 of the Hindu Marriage Act,1955 reads as under:

“11. Void marriages. —Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto 2[against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.”

58. So, the marriage of Kastub Sourabh with Nancy Kashyap was *prima facie* a void marriage. The said fact was known to the petitioner, therefore, she lodged a complaint against



her husband under Section 494 of the IPC amongst other penal provisions. Taking into consideration the factual background, this Court at least can prima facie hold that by virtue of the marriage between Nancy and Kastub Sourabh, no domestic relationship in the nature of marriage was established and their living together in a shared household was through a relationship in the nature of marriage.

59. The phrase relationship in the nature come to be considered before the Hon'ble Supreme Court in the case of ***D.Velusamy vs D.Patchaiammal*** reported in ***AIR 2011 SC 479***. The Hon'ble Supreme Court in paragraph no. 33 of the aforesaid reported judgment states as under:

“33. In our opinion a `relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married:

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.



34. *In our opinion not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage'*

35. *No doubt the view we are taking would exclude many women who have had a live in relationship from the benefit of the 2005 Act, but then it is not for this Court to legislate or amend the law. Parliament has used the expression 'relationship in the nature of marriage' and not 'live in relationship'. The Court in the grab of interpretation cannot change the language of the statute.*

36. *In feudal society sexual relationship between man and woman outside marriage was totally taboo and regarded with disgust and horror, as depicted in Leo Tolstoy's novel 'Anna Karenina', Gustave Flaubert's novel 'Madame Bovary' and the novels of the great Bengali writer Sharat Chandra Chattopadhyaya.*

37. *However, Indian society is changing, and this change has been reflected and recognized by Parliament by enacting The*



*Protection of Women from Domestic Violence
Act, 2005.”*

60. Now, coming back to the facts of this case, it is found that the opposite party solemnized marriage with the petitioner in accordance with the Hindu Rights and ceremonies in 2020, when he had a living spouse and the said marriage is still subsistence even up to 25th January, 2022. Considering this aspect of the matter, the relationship between the petitioner and the opposite party cannot be said to be better than a relationship in the nature of marriage. Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 recognizes such relationship in the nature of marriage as domestic relationship. The said relationship exists even today, though the parties are not staying together.

61. Under such facts and circumstances, it is necessary to decide as to whether the act of the petitioner to take possession of the shared household by breaking the padlock can be said to be legal, valid and in consonance with the provisions of law. The Protection of Women from Domestic Violence Act, 2005 provides right to an aggrieved person to present an application to the Magistrate seeking one or more reliefs, including residence order under Section 19 of the said Act. In the instant case, the petitioner filed an application under Section 12 of the D.V. Act, praying for residence order under Section 19 of the said Act with other



reliefs/prayers on 7th May 2024, i.e., long after taking possession of the shared household.

62. It is not in dispute that the petitioner/wife took over possession of the shared household by breaking upon the lock of the entrance door. Thus, she took the law in her own hands to have possession over the shared household with the help of police authority.

63. The act of the petitioner cannot be supported by any stretch of legal principles.

64. Both the courts below passed orders directing the respondent/opposite party to provide same level of alternative accommodation to her as enjoyed by her in the shared household. It is submitted by the learned Advocate for the respondents/opposite parties that the opposite party/husband has already arranged for an alternative accommodation as enjoyed by her in the shared household on rent.

65. In view of the above discussion, I hold that both the court below did not commit any illegality or irregularity in passing the impugned orders, directing the petitioner/wife to take possession of the alternative accommodation fixed by the O.P./husband as enjoyed by her in the shared household.



66. The revisional application is accordingly dismissed on contest. Orders passed by both the courts below in D.V. Case No. 02 of 2024 and D.V. Appeal No. 06 of 2024 are affirmed. Petitioner in Cr. Revision No. 482 of 2025 is directed to leave the shared household and take possession of the alternative, suitable accommodation, so fixed by the husband within four weeks from the date of this order.

67. Now, coming to the writ petitions, this Court is inclined to state that they were not filed seeking a direction to register an FIR or any similar relief. Rather, the writ petitions were filed alleging police excesses or atrocities. "In the case of *State of West Bengal & Others vs. Committee for Protection of Democratic Rights, West Bengal & Others*, reported in (2010) 3 SCC 571, a Constitution Bench comprising five Judges of the Hon'ble Supreme Court concluded in the following words:

"68. Thus, having examined the rival contentions in the context of the Constitutional Scheme, we conclude as follows:

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any Constitutional or Statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed



under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations, even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part



III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between the Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than the Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between the Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of "the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review".

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law



cannot be termed as violating the federal structure.

(v) Restriction on the Parliament by the Constitution and restriction on the Executive by the Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Article 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of The Seventh Schedule on the one hand and Entry 2A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the Statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, the CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State Police, the court can also exercise its constitutional power of judicial review and direct the CBI to



take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the Constitutional Courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under



Article 21 of the Constitution in particular, zealously and vigilantly.

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise, the CBI would be flooded with a large number of cases and with limited resources, may find it



difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

68. Though, the aforementioned judgments relate to determination of a question as to High Court's power to give direction to CBI to investigate into a cognizable offence without a consent of the State or the Central Government, High Court's power under Article 226 of the Constitution is laid down in clear terms to entertain an application under Article 226 of the Constitution against police atrocities and excesses of police power. I have already recorded reliefs sought for by the petitioners in both the writ petitions.

69. When the police had no power to restore possession of a particular building in favor of the respondent no. 7 without any order of the court or superior authority, rendering police help to break open the lock of the entrance door is *per se* illegal and in excess of the power vested upon the police authority; therefore, this Court disposes of both the writ petitions, providing relief in respect of prayer at 1(a) and 1(e).

70. These reliefs, however, do not dis-entitle the police authority from taking appropriate action against the petitioners for proper investigation of Mahila P.S. Case No. 27 of 2024 under Section 323/341/504/506/438A/494/420/34 and Section 3/4 of the



Dowry Prohibition Act or any other complaint which may be filed by the respondent no. 7 in accordance with law.

71. In view of disposal of the writ petitions by the above order, I do find any reason for passing any further order in the MJC No. 895 of 2025. Therefore, MJC No. 895 of 2025 is disposed of, at this stage, without any order.

72. The petitioners are further granted liberty to file an application for contempt, if the occasion so arises. Accordingly, Writ Petitions bearing Cr. WJC No. 365 of 2024 and Cr. WJC No. 548 of 2024, Criminal Revision No. 482 of 2025, and MJC No. 895 of 2025 are disposed of.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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