

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.258 of 2024

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

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1. Sumit Kumar, Son of Dr. Vijay Kumar, Resident of Plot No. 32, H.I.G., Mohalla- Sardar Patel Nagar Housing Colony, Dhanbad, P.S.- Dhanbad, Distt.- Dhanbad, Jharkhand
 2. Dr. Vijay Kumar, Son of Raj Kishore Prasad Singh, Resident of Plot No. 32, H.I.G., Mohalla- Sardar Patel Nagar Housing Colony, Dhanbad, P.S.- Dhanbad, Distt.- Dhanbad, Jharkhand

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kumari Ekta Singh W/o Sumit Kumar, S/o Dr. Vijay Kumar, Resident of House No. H.I.G.-32, Mohalla- Sardar Patel Nagar Housing Colony, Dhanbad, P.S. Dhanbad, District-Dhanbad, Jharkhand, at present Daughter of Surendra Kumar Singh, C/o Sunil Kumar, Near Kali Sthan Mohalla- Khilanganj, Sasaram, P.S.- Sasaram, District- Rohtas

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Priyank Samdarshi, Advocate
For the Respondent/s : Mr. Rajesh Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

10 03-04-2025 The instant criminal revision is directed against the order dated 03rd February 2024 passed by the learned Additional Sessions Judge 19th, Rohtas at Sasaram in Criminal Appeal No. 30 of 2023 arising out of Domestic violence Case No. 5 of 2018, directing the petitioner no. 1 and 2 to pay monetary allowance of Rs. 12,000/- and Rs. 5,000/- respectively per month in favour of the respondent and her son from the date of filing of the



application.

2. It is submitted by the petitioners that the marriage of petitioner no. 1 was solemnized with the O.P. No. 2 on 29th May 2015 and in their wedlock a male child was born on 04th April 2016. Previously, the O.P. No. 2 filed a case under the protection of Women from Domestic Violence Act, 2005 which was registered as D.V. Case No. 5 of 2018, praying for various reliefs provided under the Act. The learned Chief Judicial Magistrate, Sasaram called for the report of the protection officer regarding the allegations of domestic violence. The protection officer submitted his report in favour of the petitioners and observed that no domestic violence was caused to the O.P. No. 2 and the report was called against the O.P. No.

3. However, the learned Chief Judicial Magistrate passed an order dated 17th May 2019, directing the petitioner no. 1 to pay interim monetary allowances at the rate of Rs. 10,000/- per month. Finally, the D.V. Case No. 5 of 2018 was disposed of by the learned Chief Judicial Magistrate, Rohtas, Sasaram *vide* order dated 26th June 2023 granting monetary allowance at the rate of Rs. 12,000/- per month in favour of O.P. No. 2 and Rs. 5,000/- per month for the minor son, total being Rs. 17,000/-.

4. Being aggrieved with regard to the quantum of



monetary allowance, the O.P. No. 2 filed criminal appeal No. 30 of 2023 and the said appeal was disposed of vide order dated 3rd February 2024 directing the petitioners to pay monetary allowance as fixed by the learned Chief Judicial Magistrate, Sasaram from the date of application and not from the date of the order. The said order is challenged in the instant criminal revision. The learned Advocate for the petitioners submits that the O.P. No. 2 previously, filed a case under Section 498(A) and other coordinate provisions of the IPC. She also filed an application under Section 125 of the CrPC praying for maintenance. The above-mentioned criminal case and the proceeding under Section 125 of the CrPC were disposed of on compromise, receiving a sum of Rs. 2,00,000/- (Two lakhs only) from the petitioners. In the case under Section 498(A) IPC, the petitioners were granted bail on condition that they would pay a sum of Rs. 4,000/- per month in favour of the O.P. 2. The O.P. No. 2 has also filed another case under Section 125 of the CrPC which is pending before the Jurisdictional Magistrate for disposal. It is also contended on behalf of the petitioners that monetary allowance was granted in favour of the opposite party by the learned Chief Judicial Magistrate and affirmed in criminal appeal by the learned Additional Sessions Judge



without considering Domestic Incident Report(hereafter read as DIR, for short). The learned Advocate for the petitioners take me to Annexure P/2 being a copy of Domestic Incident Report. On perusal of the DIR, it is found that the protection officer inquired about the allegation made by the O.P. No. 2 from the petitioners, the household helper of the petitioners and their neighbours. They obviously stated that no domestic violence was caused upon the O.P. No. 2 by the petitioners and the incident of domestic violence were nothing but false and frivolous allegations.

5. The learned Advocate for the petitioners submits that neither the learned Chief Judicial Magistrate, nor the court of appeal considered the report of the protection officer which was their obligatory duty under the statute and without considering such report, order was passed granting monetary allowance to the opposite party. Accordingly, it is submitted on behalf the petitioners that the impugned order is illegal, incorrect and passed in violation of the statutory requirements of the PWDV Act.

6. Learned Advocate appearing on behalf of the O.P.s, on the other hand, submits that the instant revision is not maintainable, in view of the fact that the petitioners ought to



have challenged the order passed by the learned Chief Judicial Magistrate. When the order, passed by the learned Chief Judicial Magistrate was affirmed by the learned court of appeal, the said order is not revisable.

7. This Court is not in a position to accept such contention made by the learned Advocate for the OPs due to the reason that by virtue of the doctrine of merger, the order passed by the learned Chief Judicial Magistrate is merged with the order passed by the learned Additional Sessions Judge 19th at Rohtas, Sasaram in Criminal Appeal No. 30 of 2023. Therefore, the instant revision, challenging the order dated 03rd February 2024 in Cr. App. No. 30 of 2023, is revisable and the instant revision is maintainable in accordance with law.

8. It is submitted by the learned Advocate on behalf of the opposite party that both the courts below passed the order of monetary allowance, taking into consideration the provision of Section 18 of the PWDV Act, however, Section 18 prescribes protection order which is in the nature of injunction prohibiting the respondent from-

“(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of



employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependents, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order”

9. The Court is empowered to grant monetary relief under Section 20 of the PWDV Act.

10. It is submitted by the learned Advocate for the petitioners that Clause 1 of Section 20 of PWDV Act, clearly states that the payment of monetary relief by the respondents to the aggrieved, to meet the expenses, shall be made in case of proved violence, but to invoke the same, compliance of Section 12(1) is mandatory which provides taking into consideration the



Domestic Incident Report submitted by the Protection Officer. In the instant case, both the courts below failed to consider the domestic incident report and pass the impugned order which is not maintainable under the law.

11. Having heard the learned Advocates on behalf of the parties, this Court likes to record, at the outset, that Section 12(1) of the PWDV Act provides that 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 this Act:

“Provided that 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.”

12. In the instant case, the Domestic Incident Report was submitted by the protection officer in favour of the petitioners. On perusal of the said DIR, this Court finds that the said report is absolutely one-sided and partisan because of the fact that the protection officer did not think even to examine the aggrieved person and her family members to ascertain as to whether domestic violence was caused or not to the OP No. 2.

13. It is the statutory requirement that no final order



under Section 12(1) of the PWDV Act for any relief can be passed without due consideration of DIR. This Court has already held that DIR submitted in the instant case partisan and one-sided. In view of such circumstances, the impugned orders passed by the learned Chief Judicial Magistrate and affirmed by the learned Additional Sessions Judge 19th, Rohtas at Sasaram cannot sustain.

14. Both the orders are therefore, set-aside. The learned Chief Judicial Magistrate, Rohtas at Sasaram is directed to dispose of the D.V. Case No. 5 of 2018 afresh after obtaining a DIR to be submitted by the protection officer after making thorough inquiry, examining both the parties, i.e., the petitioners and the opposite parties and her family members.

15. The learned CJM shall pass appropriate direction to the protection officer for submission of DIR in the manner stated above.

16. Further, the learned Chief Judicial Magistrate is also directed to dispose of the D.V. Case No. 5 of 2018 within 6 months from the date of receipt of fresh DIR from the protection officer. It is also directed that while considering the prayer for monetary allowance, the learned Chief Judicial Magistrate shall take into account the provision contained in Section 20 of the



PWDV Act.

17. With the above order, the instant criminal revision
is disposed of.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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