

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1010 of 2024

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

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Anil Kumar Son of Late Dinesh Chandra Mahto Resident of Mohalla-
Panchupur, Ward No 4, PS -Rosera District -Samastipur

... .. Petitioner/s

Versus

Nutan Devi wife of Anil Kumar Resident of Mohalla -Panchupur, Ward No 4,
PS- Rosera, District -Samastipur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjit Kumar, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 04-08-2025 The instant revision is directed against an order passed by the learned Additional Chief Judicial Magistrate-I, Rosera, Samastipur in Criminal Appeal No.70 of 2019, whereby and whereunder, the learned Appellate Court affirmed the order dated 16.08.2019 passed by the learned Additional Chief Judicial Magistrate-I, Rosera, Samastipur in Miscellaneous Case No.08 of 2018 directing the petitioner to pay monetary relief to the opposite party at the rate of Rs.3000/- per month and in favour of his two children at the rate of Rs.4000/- per month, total being Rs.7,000/- per month and dismissed the appeal.

2. The aforesaid judgment passed by the Appellate Court is under challenge in the instant revision.

3. It is stated by the petitioner that his marriage was



solemnized with the opposite party on 16.04.2004 and in the wedlock between them, opposite party gave birth to two children, namely, Rahul Kumar and Rohit Kumar. Subsequently, however, the opposite party fell in love with another person and left the association of the petitioner and started the live with him. The petitioner tried to bring her back with a view to leading a happy and peaceful conjugal life but the opposite party was not ready to come to a compromise. The said fact has been reported to the learned Additional Chief Judicial Magistrate-I, Rosera, Samastipur by the petitioner by filing an informatory petition on 21.01.2016. It is alleged by the petitioner that the opposite party is leading adulterous life with one Vikas Kumar.

4. The petitioner filed a suit for divorce before the learned Principal Judge, Family Court at Samastipur, which was registered as Matrimonial (Divorce) Case No.25 of 2016. The said suit for divorce is still pending. After filing of the matrimonial case, the opposite party filed Complaint Case No.164 of 2016 in the Court of the learned Chief Judicial Magistrate, Rosera, Samastipur against the petitioner for the offence punishable under Sections 323, 379, 494, 498A of the I.P.C. and Section 3/4 of Dowry Prohibition Act on false, fabricated and frivolous allegation. She also filed Maintenance Case No.111 of 2016 before the learned Principal Judge, Family



Court at Samastipur under Section 125 of the Cr.P.C. In the said maintenance case, the learned Principal Judge, Family Court disposed of an application for interim maintenance directing the petitioner to pay Rs.1500/- per month to the opposite party and Rs.500/- towards litigation cost, total being Rs.2,000/- per month.

5. The opposite party has also alleged that the petitioner had married to another lady during subsistence of his marriage with the opposite party, which she came to know on 01.04.2018. It is further contended by the petitioner that the petitioner was initially acquitted of the charge under Sections 323, 379, 494, 498A of the I.P.C. and Section 3/4 of the Dowry Prohibition Act in connection with Rosera P.S. Case No.103 of 2018 from the Court of the learned Sub-Divisional Judicial Magistrate, Rosera, Samastipur. Against the order of acquittal, the opposite party filed an appeal in the First Court of the learned Additional Sessions Judge, Samastipur. The said appeal was allowed and the order of acquittal was reversed. The petitioner was convicted and sentence to suffer rigorous imprisonment for three years for the offence punishable under Section 498A of the I.P.C. with fine of Rs.10,000/- and rigorous imprisonment for three years for the offence under Section 494 of the I.P.C. with fine of Rs.10,000/-. It was directed that both



the sentences would run concurrently. It is further urged by the petitioner that the petitioner has been going on paying Rs.2,000/- per month towards interim maintenance to the opposite party but the opposite party filed a false criminal case against the petitioner. The petitioner also states that the opposite party has filed a case under the Protection of Women from Domestic Violence Act, 2005 in the Court of the learned Additional Chief Judicial Magistrate-I, Rosera, Samastipur, which was registered as Miscellaneous Case No.08 of 2018. The learned Trial Court as well as the Court of Appeal passed the impugned order in violation of the mandatory provision of Sections 12, 26(3) Form-2, Rule-6(1) of the Domestic Violence Act. It is contended that the opposite party is entitled to get any monetary relief in Miscellaneous Case No.08 of 2018.

6. Though, it is not mention anywhere in the revisional application that the impugned order is interim in nature and it is not a final order, on perusal of the order passed on 16.08.2019 by the learned Additional Chief Judicial Magistrate-I, Rosera, Samastipur, this Court finds that the impugned order is practically an interim relief in the form of monetary allowance passed by the learned Additional Chief Judicial Magistrate-I, Rosera, Samastipur in favour of the opposite party.



7. The said order was affirmed in appeal under Section 29 of the Domestic Violence Act by the learned Additional Sessions Judge-I, Rosera, Samastipur.

8. Hence, the instant revision.

9. I have heard the learned Advocates for the petitioner.

10. It is alleged by both the parties that they live adulterous life with other persons. It is the case of the petitioner that the opposite party on her own accord left her matrimonial home and has been staying with one Vikas Kumar. The opposite party also alleged that the petitioner has married for the second time. In view of the conflicting case and counter case, it would have been necessary for the learned Additional Chief Judicial Magistrate-I, Rosera, Samastipur to call for a Domestic Incident Report from the Protection Officer under Section 9(b) of the Domestic Violence Act. Domestic Incident Report was absolutely necessary in this case because the opposite party previously filed a case under Section 125 of the Cr.P.C., she is getting interim maintenance allowance from the petitioner at the rate of Rs.2,000/- per month. As a condition for anticipatory bail, the petitioner was directed to pay Rs.4,000/- per month. Again vide order dated 16.08.2019, the learned Additional Chief Judicial Magistrate-I, Rosera, Samastipur passed an interim



order of monetary relief at the rate of Rs.7,000/- per month. The said order was affirmed by the learned Court of Appeal also without considering the Domestic Incident Report. There is absolutely no discussion regarding adjustment of the amount, which the petitioner has been paying to the opposite party as per the provision of Section 26 of the Protection of Women from Domestic Violence Act, 2005.

11. Considering such aspect of the matter, this Court finds that the impugned order passed by the learned Trial Court and affirmed by the Court of Appeal in Criminal Appeal No.70 of 2019 dated 16.08.2019 is set aside.

12. The case under the Protection of Women from Domestic Violence Act, 2005 filed by the opposite party be heard afresh by the learned Additional Chief Judicial Magistrate-I, Rosera, Samastipur after obtaining Domestic Incident Report from the Protection Officer.

13. Accordingly, the instant revision is allowed on contest. There shall, however, be no order as to cost.

(Bibek Chaudhuri, J)

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