

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.61030 of 2024**

Arising Out of PS. Case No.-1075 Year-2020 Thana- GAYA COMPLAINT CASE District-  
Gaya

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1. Yashpal Bharti Son of Late Bihari Lal Bharti R/O House No. 8/1494/9B, Chilka Road Samrat Vikram Colony, Opp. Durga Mandir, Saharanpur, P.S. Mandi, Dist. Saharanpur (U.P).
  2. Rohit Bharti Son of Yashpal Bharti R/O House No. 8/1494/9B, Chilka Road Samrat Vikram Colony, Opp. Durga Mandir, Saharanpur, P.S. Mandi, Dist. Saharanpur (U.P).
  3. Shivanki Bharti D/O Yashpal Bharti R/O House No. 8/1494/9B, Chilka Road Samrat Vikram Colony, Opp. Durga Mandir, Saharanpur, P.S. Mandi, Dist. Saharanpur (U.P).

... .. Petitioner/s

Versus

1. The State of Bihar
2. Nish Raj @ Nesh Raj Bharti Wife of Shreya Bharti R/O House no. 1494/ 9 B, Samrat Vikram Colony, In front of Durga mandir, Chilkana Road, P.S.- Mandi Kotwali, Dist.- Saharanpur, U.P. at present Residing at Gaya with her Parent (Daughter of shree Rajesh Kumar, Advocate), Near Bageshwari Goomti in the Campus of St. Joseph, P.S.- Delha, Dist.- Gaya, Bihar, Pin - 823002.
3. The S.H.O Of Mandi Kotwali, P.S.- Saharanpur, Dist.- Saharanpur U.P. Uttar Pradesh.
4. The Protection Officer of Mahila Helpline, Saharanpur, U.P. Uttar Pradesh.

... .. Opposite Party/s

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**Appearance :**

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|----------------------------|---|------------------------------------------------------------------------------------------|
| For the Petitioner/s       | : | Mr.Shailendra Kr. Singh, Advocate<br>Mr. Shubh Raj, Advocate<br>Mr. Karu Kumar, Advocate |
| For the Opposite Party/s : |   | Mr.Ram Sumiran Rai, APP                                                                  |
| For the O.P. No. 2         | : | Mr. Sheo Nandan Prasad, Advocate                                                         |

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**CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY**  
**ORAL JUDGMENT**

**Date : 10-02-2026**

Heard the learned counsel for the parties.

2. The present application has been filed for  
following relief(s):

*‘That this present Quashing*



*application is being filed on behalf of the petitioners before this Hon'ble High court for setting aside/quash the judgment/order dated 8.4.2024 passed in connection with Cr. Appeal No. 30/2023 which was heard along with Cr. Appeal No. 4 of 2023 (arising out of order dated 21.12.2022) passed in complaint case No.1075 of 2020 by the court of Md. Afzal Khan, J.M. 1st Class, Gaya, in proceedings under the prevention of women from domestic violence Act 2005) whereby and whereunder the Cr. Appeal No. 3 of 2023 filed by the petitioners was also dismissed along with Cr. Appeal No.4/2024. Mechanically with an option to provide a temporary residence accommodation to the aggrieved person matching to their status in society till further event as a temporary measure. The provision of alternative residential accommodation might be valued at Rs. 10,000/-per month upward.'*

3. The facts giving rise to the present application is that a complaint petition was preferred by the opposite party/complainant under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for brevity, D.V. Act) before the learned C.J.M., Gaya, which was registered as Complaint Case No. 1075 of 2020. In the said complaint it was alleged, inter alia, that prior to marriage the opposite party/complainant



had developed relationship with Shrey Bharti at Sikkim on the pretext of marriage, leading to registration of Malviya Nagar P.S. (Delhi) Case No. 1829/2015, which was subsequently compromised upon assurance of marriage. It was further alleged that thereafter a rented accommodation was provided at Saharanpur and that Mahila P.S. Case No. 40 of 2020 under Sections 498a, 354, 323, 504 of the IPC and section 3/4 of the D.P. Act was instituted. Alleging acts of cruelty, non-payment of rent and denial of entry into the shared household on 31.08.2020, the opposite party/complainant claimed to have returned to her maika at Gaya on 30.10.2020 and sought various reliefs under the D.V. Act. The learned C.J.M., Gaya, vide order dated 08.01.2021, took cognizance under section 190(1)(a) of the Cr.P.C. and transferred the case for enquiry and further proceedings, which has given rise to the present case.

4. Learned counsel for the petitioner submits that the learned Judicial Magistrate has passed an *ex parte* order dated 21.11.2022 in connection with Complaint Case No. 1075 of 2020 arising out of an application of opposite party/complainant preferred under section Section 12 of the Protection of Women from Domestic Violence Act, 2005, whereby the complaint petition under section 12 of the D.V. Act



was allowed with a direction to Shrey Bharti to keep the O.P. No.2 in the matrimonial house with household facilities and further it was also directed to maintain the O.P No. 2/complainant in a dignified manner and give her Rs. 10,000 per month to meet her expenses. A further direction was issued against the petitioners not to commit any kind of domestic violence against the O.P. No.2/complainant under Section 18 of the D.V. Act. The petitioners being aggrieved and dissatisfied with the judgment and order dated 21.12.2022 preferred an appeal being Criminal Appeal No. 3 of 2023, however, the learned Additional District Judge-III, Gaya vide order dated 08.04.2024, dismissed the appeal preferred by the petitioners with an observation that the petitioner Yashpal Bharti and his family may provide a temporary residence accommodation matching to their status in society till further event as a temporary measure. It has also been directed that alternative residential accommodation was to be valued at Rs. 10,000 per month or upward.

5. Learned counsel for the petitioner submits that the O.P. No. 2 and Shrey Bharti married with their own sweet will and were not even residing with the petitioners. It has been contended that the petitioner no. 1 Yashpal Bharti has dis-



entitled Shrey Bharti, the husband of the O.P. No.2/complainant, from the claim, right, title operating to his property and for this, an Original Case being 386 of 2019, new number 361 of 2021 was filed prior to the institution of the instant complaint preferred by the O.P. No.2 and by order dated 23.12.2021, the petitioner Yashpal Bharti got a decree from the court of competent jurisdiction at Saharanpur (U.P) to disentitle Shrey Bharti, husband of the O.P. No.2 from claiming any property. He further submits that the appellate court miserably failed to appreciate the fact that the O.P. No.2/complainant was not sharing any domestic relationship with the petitioners after her marriage with Shrey Bharti. It has been submitted that the house in question as mentioned in Schedule-I of the complaint was not a joint family property, which the husband of O.P. No. 2/complainant, namely, Shrey Bharti would lay his claim over the right, title or possession thereof. It has been asserted that the said house cannot be said to be a shared household as the said house is the self-acquired property of the petitioner no.1 and moreover, petitioner no. 1 has disentitled Shrey Bharti from any claim of his right or claim over his property. It has been submitted that the learned court below has not held that the complainant was residing in the house as mentioned in



Schedule-I of the complaint and has mechanically passed the order and so has the learned appellate court failed to appreciate the said fact.

6. Learned counsel for the petitioner submits that the opposite party no. 1/complainant and Shrey Bharti were separate in mess and business with the petitioners and they were not sharing any domestic relationship with them. It has been submitted that the petitioner no. 1 Yashpal Bharti is an old person and is suffering from various ailments. It has lastly been submitted that the petitioners have no concern with the O.P. No.2 and her husband Shrey Bharti and therefore, the order passed against the husband Shrey Bharti for providing her any accommodation to the O.P. no.1 and for further maintenance, can be passed only against the husband of the O.P. No.2 and not against the petitioners.

7. It has thus been submitted that the order passed by the appellate court directing the petitioners to provide a temporary residence to the aggrieved person as matching to their status and society is bad in law and it is opposed to the orders passed in the Original Case No. being 386 of 2019.

8. Learned counsel appearing on behalf of the O.P. No.2 has opposed the submissions made on behalf of the



petitioners and has submitted that the O.P. No.2 is legally wedded wife of Shrey Bharti and the petitioners being the immediate relatives of Shrey Bharti are obliged to comply with the orders and provide accommodation as directed. It has been submitted that the decree which is being claimed by the petitioners to have been passed in Original Case No. 386 of 2019 is also by way of planning and their defence to torture the O.P. No.2, in connivance with Shrey Bharti. It has been submitted that O.P. No.2 has no source of income and her parents are also incapable to maintain her and thus, she wants to reside at Saharanpur with her husband. It has thus been submitted that the present application is misconceived and the same may be dismissed.

9. Having heard learned counsel for the respective parties and after perusal of their respective pleadings, it is evident that the petitioners appear to be the father-in-law and brother-in-laws of the O.P. No.2. From perusal of the original orders passed by the learned Judicial Magistrate's court, it would be evident that the same was disposed of with a direction which is as under:

*'After perusal of report of Protection  
Officer of Mahila Helpline Saharanpur, Uttar  
Pradesh and petition of the complainant and*



*submission of learned counsel this complaint petition under section 12 of the Protection of Women from Domestic Violence Act, 2005 is hereby allowed.*

*The respondent Shrey Bharti is directed to keep the applicant Nish Raj @ Nish Raj Bharti in his matrimonial home with respect and dignity and make separate arrangement in the matrimonial home with household facilities for her. Further he is also directed to maintain the applicant in dignified manner and also give Rs. 10,000/- (Ten Thousand) per month to meet with the expenses towards her and including other necessities of her. And other respondents are directed not to commit any kind of violence against the applicant as mentioned under section 18 of the Protection of Women from Domestic Violence Act, 2005.'*

10. From perusal of the order dated 08.04.2024 passed in Criminal Appeal No. 3 of 2023, it is evident that the petitioners had challenged the said order passed by the learned DB Court contending that the impugned order has been passed without giving them any opportunity of hearing and they came to know about the said order only when the O.P. No.2 tried to forcibly enter the house with the help of local police. This court finds that the only order passed against the petitioners was that they should not commit any type of violence against the



complainant mentioned under Section 18 of the D.V. Act. The learned Appellate Court has gone ahead and has directed the petitioner and his family to provide a temporary residence/accommodation to the O.P. No.2 matching to their status in society. Such observation seems to be misconceived especially for the fact that the original court had not directed for any such accommodation to be given by the petitioners and moreover, the petitioners were never heard prior to passing of such order. Taking into account the fact that the petitioners live separately with the husband of the complainant and moreover, the husband of the complainant has been ousted from claiming her right over the property of petitioner no.1, passing of such an order would amount to overreaching the order passed by the competent court of law which has been brought on record by way of Annexure 2. It is also a settled law that the direction with respect to giving maintenance and providing household facility is the duty of the husband, who had performed marriage on his own and therefore forcing the petitioners to provide accommodation in their house wherein even the son of petitioner no.1 does not have any right was bad in law.

11. In view of the aforesaid, the order dated 08.04.2024 passed in connection with Cr. Appeal No. 3 of 2023



is set aside.

12. The application stands allowed.

(Sourendra Pandey, J)

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