

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.1316 of 2018

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

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1. Arvind Kumar Prasad, S/o Rajendra Prasad
2. Rajendra Prasad, Sson of Late Kauleshwar Prasad
3. Bindu Prasad, Wife of Rajendra Prasad

All are resident of A-71, Gurudwara Road, Mohan Garden, Uttam
Nagar, P.S.- Uttam Nagar, District- New Delhi, Pin Code No.-110059

... ... Petitioner/s

Versus

1. State Of Bihar
2. Geeta Prasad, D/o Maheshwar Das, MID-287, Lohiya Nagar, Kankarbagh,
P.S.- Kankarbagh, District-Patna, Pin-800020.

... ... Respondent/s

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Section 29 of the Protection of women from domestic violence act - - an appellate order under section 29 of the act is under challenge - order against the husband petitioner for maintenance as well as in lieu of rent,- in case the wife (O.P. NO. 2) is Allowed to stay in the shared household - order was affirmed by appellate Court directing inter alia that the husband (petitioner No, 1) shall provide alternative accommodation of same level to wife failing which he shall pay as sum of Rs. 5000 per month to her for arranging residential accommodation- In addition to Rs. 4000 which the applicant has been receiving in compliance of order passed in maintenance case number 73(M)of 2007

Marriage was solemnized on 15th may 1997 - after two years on 19th November 1999' Gauna' was perform - o.p.no. 2 went to her matrimonial home - wife filed a case under Section 498 of the IPC against her husband and in laws - husband convicted by trial court - later on acquitted in appeal- on 21st August husband filed a suit for divorce - which initially dismissed by Trial Court - husband got decree of divorce in appeal - Against the order of maintenance, a revision was also filed by wife and in that revision this court directed the Husband to pay a sum equivalent to one third of his monthly salary which the wife is getting regularly

Petitioner in this revision pleaded that at present there is no domestic relationship between them after grant of divorce decree - Actually o.p. No. 2 (wife) is getting Rs 18000 per month being one third of the salary of husband as per order of this court - only question involved in this revision application that whether opposite Party number 2 (wife) is entitled to get any amount as alternative to her accommodation in the shared household under section 2(S) of the protection of women from domestic violence act – As per section 2(f) of the act it is not incumbent to O.P No.2 (wife) to prove that the domestic relationship exist on the date of adjudication of the dispute - if there was domestic relationship at any point of time and the parties lived together in a shared household , the aggrieved person is entitled to get either alternative accommodation or money equivalent to rent for alternative accommodation . It is held - Trial court order is upheld by this court also but the monetary relief under the section 20 of the said act is set aside - And order of monetary relief for alternative accommodation is affirmed -----

Revision allowed in part.

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... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Adv.,
Mr. Giridhar Gopal Tewary, Adv.
For the Respondent/s : Smt. Pushpa Sinha, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 23-01-2024

Heard learned Advocate for the petitioners as well as learned APP for the State.

2. An appellate order under **Section 29 of the Protection Of Women From Domestic Violence Act** (hereinafter described as the said Act) is under challenge in the instant revision.

3. It is pertinent to mention that the opposite party no. 2 filed Domestic Violence Case No. 13 of 2013 before the learned Judicial Magistrate, Ist Class, Patna. An order of monetary relief for maintenance as well as in lieu of rent, in case the opposite



party no. 2 is allowed to stay in the shared household, was passed by the trial court. The said order was affirmed by the appellate court directing, *inter alia*, that the petitioner no.1 shall provide alternative accommodation of same level to the opposite party no. 2, failing which he shall pay a sum of Rs. 5,000/- per month to her for arranging residential accommodation. The petitioner no. 1 was further directed to pay Rs.5,000/- per month to the applicant in addition to Rs.4,000/- which the applicant has been receiving in compliance of order passed in Maintenance Case No. 73(M) of 2007. The said order is under challenge in the instant revision.

4. It is submitted by the learned Advocate for the petitioners that petitioner's no.1 marriage was solemnized with the opposite party no.2 on 15th May, 1997. After two years of marriage a ceremony commonly known as "*Gauna*" was performed on 19th November, 1999 and the opposite party no. 2 went to her matrimonial home. The petitioner no. 1 got his employment after performance of "*Gauna*" sometimes in February, 2006.

5. The opposite party no. 2 filed a written complain before the Kadamkuan Police Station, on the basis of which a case under Section 498A was registered against the husband/petitioner no.1 and other matrimonial relations of the opposite party no. 2. The trial court convicted the husband for the offence under Section



498A of the I.P.C. and other accused persons were acquitted. The husband preferred an appeal which was allowed and the order of conviction and sentence was set aside. Subsequently, on 21st August, 2005, the present petitioner no.1 /husband filed a suit for divorce, which was registered initially as Matrimonial Suit No. 665 of 2005. On the prayer made by the opposite party no.2, the case was transferred to Patna and re-numbered as Matrimonial Suit No. 559 of 2007. The suit for divorce was initially dismissed on contest. Against the said order of dismissal the petitioner no.1 preferred an appeal before this Court. The appeal was allowed by the Division Bench of this Court and a decree of divorce was passed on the ground of cruelty and torture perpetrated by the opposite party no. 2 upon the petitioner no.1 vide order dated 15th March, 2017. The opposite party no.2 preferred a Special Leave to Appeal (C) No(s). 16931 of 2017 before the Hon'ble Supreme Court, which was also dismissed sometimes on 18th July, 2017. After the grant of decree of divorce the petitioner no.1 married again for the second time and in the said wedlock his wife gave birth of a male child. The opposite party no. 2 also filed a Maintenance Case under Section 125 of the Cr.P.C. and the trial court passed an order directing the petitioner no.1. to pay maintenance allowance @ Rs. 4,000/- per month. Against the said



order of maintenance the opposite party no. 2 preferred a Criminal Revision before this Court and the said revision was disposed of directing the petitioner no.1 to pay a sum equivalent to 1/3 of his monthly salary. The petitioner no.1 has been going on paying the said amount to the opposite party no. 2 in hand regularly.

6. Under such factual backdrop, it is submitted by the learned Advocate for the petitioners that at present there is no domestic relationship between the petitioners and the opposite party no.2 after grant of decree of divorce. Secondly, since the decree of divorce was passed on the ground of physical and mental cruelty perpetrated by opposite party no.2 upon the petitioners. It is the petitioner no.1 who is subjected to domestic violence and not the opposite party no.2. Therefore, the petitioner no.1 is not in domestic relationship by a decree passed by the competent court. It is conclusively proved that petitioner no.1 was subjected to physical and mental torture and, therefore, he is not under obligation to pay monthly allowance towards monetary relief. The learned Judge while disposing of the appeal, wrongly held that in a proceeding under Section 125 of the Cr.P.C., the opposite party no. 2 is getting Rs. 4,000/- per month. Actually, the opposite party no. 2 is at present getting a sum of Rs. 18,000/- per month being 1/3 of the salary of the petitioner no.1 as per order of this Court.



Therefore, there is absolutely no reason to grant monetary relief to the opposite party no.2 under Section 20 of the said Act.

7. It is also contended by the learned Advocate for the petitioners that since domestic relationship between the petitioner no.1 and opposite party no. 2 has severed, the opposite party no. 2 is not entitled to get any monetary relief in lieu of shared household from the petitioner no.1.

8. Having heard the learned Advocate for the petitioners and on perusal of the entire materials on record, this Court finds that both the trial court as well as the appellate court under the said Act erred in law in holding that the opposite party no. 2 is entitled to get monetary relief under Section 20 of the said Act. The appellate court has recorded that the opposite party no. 2 is entitled to get Rs. 5000/- per month towards monetary relief in addition to Rs.4,000/- which she is getting under Section 125 of the Cr.P.C. The said order is patently wrong because of the fact that the opposite party no. 2 is getting approximately about Rs.18,000/- per month in view of the order passed by this Court in Criminal Revision No. 188 of 2012.

9. At this stage, the question that falls for adjudication is as to whether the opposite party no.2 is entitled to get any amount as alternative to her accommodation in the shared household under



Section 2(s) of the Protection Of Women From Domestic Violence Act which defined shared Household in the following words:-

“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 household 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;”

10. Admittedly, the opposite party no. 2 is a divorced lady. At present, there is no marital tie between the petitioner no.1 and the opposite party no. 2. **Section 2(f) of the Protection Of Women From Domestic Violence Act** defines domestic relations in 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;”



11. Thus, in order to prove domestic relationship, it is not incumbent upon the opposite party no. 2 to prove that the domestic relationship exists on the date of adjudication of the dispute. If, there was domestic relationship at any point of time and the parties lived together in a shared household, the aggrieved person is entitled to get either alternative accommodation or money equivalent to rent for alternative accommodation.

12. I am in agreement with the learned Advocate for the petitioners that after the decree of divorce on the ground of cruelty, there is no domestic relationship between the parties. But before divorce there was domestic relationship between the parties and it is the case of the petitioners that after two years of marriage and performance of "*Gauna*", the opposite party no. 2 came to her matrimonial home. I have already recorded the definition of shared household, it means and improve a household where **the aggrieved person lives or at any stage has lived in a domestic relationship either singly or along with the respondent** irrespective of whether respondent or aggrieved person has any right title and interest in the shared household is entitled to get residence orders under Section 19 (1) (f) of the said Act. The appellate court directed the petitioner no.1 to pay Rs.4,000/- per



month as rent for the alternative accommodation for the aggrieved person.

13. Considering the entire scheme of the Act, this Court is of the view that the residential order, which was passed by the trial court and affirmed by the appellate court, does not suffer from any illegality or irregularity.

14. In view of the above discussions, the instant revision is allowed in part.

15. The order of monetary relief under Section 20 of the said Act is set aside. However, order of monetary relief for alternative accommodation is affirmed.

(Bibek Chaudhuri, J)

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CAV DATE	
Uploading Date	
Transmission Date	

