

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.485 of 2019

Arising Out of PS. Case No.-64 Year-2016 Thana- DOMESTIC VIOLENACE District- Patna

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PRAMOD KUMAR ROY Son of Wakil Roy Resident of Flat No.B-4 Lotus Apartment, Manda Titwala (W), Taluka Kalyan, P.S.- Titwala, District- Thane, Maharashtra.

... ... Petitioner/s

Versus

VARTIKA RAI Wife of Pramod Kumar, D/O Ashok Kumar Chakravorty, Resident of C/o Arvind Kumar, Senior Advocate, House No.102, Jaganand Varsi Apartment, 10 Gokul Path, North Krishnapuri, Boring Road, P.S.- S.K. Puri, District- Patna.

... ... Respondent/s

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Prevention of Women from Domestic Violence Act, 2005- Sec.12— can trial court pass final order without giving opportunity to the parties to adduce evidence- can such order be upheld by Appellate court?—Cr.P.C- Sec. 125- parties are allowed to adduce evidence- court is obliged to record evidence- bounden duty of Ld. magistrate to give opportunity to parties to adduce evidence- Rule 6(5) of P.W.D.V. Act to be taken into recourse while disposing application u/s 12 of P.W.D.V. Act, 2005- orders passed suffers procedural illegality- orders passed without giving opportunity to the parties to lead evidence set aside- application under PWDV Act no longer re integra application- any relief is not a complaint and cannot be registered as complaint case- Held

Trial court directed to give opportunity to parties to lead evidence- execution of order stayed till disposal of the application u/s 12 of P.W.D.V. Act.

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Appearance :

For the Petitioner/s : Mr. Syed Hussain Majeed, Advocate
For the Respondent/s : Mr. Ashok Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT**

Date : 31-01-2024

Though, the opposite party entered appearance in the instant proceeding through her learned Advocate, namely Mr. Ashok Kumar by filing vakalatnama on 5th/6th May, 2019, when the matter is called on, the opposite party is not represented. I have heard the learned Advocate for the petitioner.

2. Only issue involved in the instant Revision is as to whether the trial court in a proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005 can pass final order without giving any opportunity to the parties to adduce the evidence and secondly, whether such order can be



upheld by the court of Appeal in Criminal Appeal No. 216 of 2018 which is impugned in the instant Revision. Factual aspect of the matter though not highly relevant to dispose of the instant Revision, it may be noted down that the petitioner is the husband of the opposite party and their marriage was solemnized on 18th November, 2013. After marriage, the opposite party complaint of having the victim of domestic violence and filed an application under Section 12 of the aforesaid Act praying for relief as contemplated under Sections 18,19,20 and 22 of the said Act.

3. The present petitioner being the opposite party in the trial court entered appearance and filed his show cause/written statement on affidavit and on the basis of the statements made by the parties on affidavit, the trial court passed an order of granting monetary relief in favour of the opposite party directing the petitioner to pay a sum of Rs. 23,000/- by way of maintenance to be deposited in the existing account of the opposite party.

4. The said dated 21st June, 2018 was affirmed in Criminal Appeal No. 216 of 2018 vide order date 13th February, 2019.

5. It is contended by the learned Advocate for the



petitioner that Section 28 of the P.W.D.V. Act states that all proceedings under Section 12, 18, 19, 20, 21, 22, 23 and the offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure. Rule 6 (5) of the P.W.D.V. Rules, 2006 states :-

“The applications under Section 12 shall be dealt with and the orders enforced in the same manner laid down under Section 125 of the Code of Criminal Procedure.”

6. It is needless to say that the Code of Criminal Procedure provides summary trial of a procedure under Section 125 of the Cr.P.C. In summary a trial, the parties are allowed to adduce evidence and the court is obliged to record the evidence of the parties in gist and on the basis of such evidence on record, a proceeding under Section 125 of the Cr.P.C. is decided.

7. Though it is provided that a proceeding under Section 125 of the Cr.P.C. shall be dealt with in the similar minor like that of a summary trial, but in the courts of the learned Magistrate, barring some exceptions throughout the country. The Magistrates in their convenience record the evidence of the parties in the manner laid down in summons procedure. Thus, while disposing of an application under Section 125 of the Cr.P.C., it is the bound and duty of the learned Magistrate to give opportunity to both the parties to



adduce evidence there will be placed for cross-examination and on the basis of the evidence of record, the Magistrate can dispose of the application. In find, the Magistrate has power to finally adjudicate an application under Section 125 of the Cr.P.C. without recording evidence of the parties. Sub-rule (5) of Rule 6 of P.W.D.V. Act clearly states that the applications under the Act shall be dealt with and the orders enforced in the same manner laid down under Section 125 of the Code of Criminal Procedure.

8. Similar question arose before the High Court at Madhya Pradesh (Gwalier Bench) and a coordinate Bench by a judgment in the case of *Madhusudan Bhardwaj and Ors. vs. Mamta Bhardwaj* reported in *2009 CRLJ 3095* directed trial courts to adopt the same procedure as adopted while disposing of an application under Section 125 of the Cr.P.C.

9. Sub-rule (2) of Section 28 of course empowers the learned Magistrate to lay down its own procedure for disposal of an application under Section 12 or under Sub-section (2) of Section 23, but the said provision does not regulate the duty of the court relating to the procedure to be adopted while finally disposing of an application under Section 12 of the P.W.D.V. Act etc. in taking recourse of Rule 6(5) of the P.W.D.V.



Act.

10. The courts of Appeal while disposing of criminal Appeal No. 216 of 2018 wrongly placed reliance on a judgment passed by a coordinate Bench of this court in ***Manish Kumar Soni & Ors. vs. State of Bihar & Ors.*** reported in ***2016 (4) Crimes 236 (Patna)***.

11. In the said decision, it is clearly laid down in paragraph 23 that the trial court shall have to take recourse of Rule 6(5) of the P.W.D.V. Rules while disposing of an application under Section 12 of the P.W.D.V. Act.

12. In the instant case, the orders passed by the learned Magistrate as well as the court of Appeal suffers from procedural irregularity because final order was passed granting monetary relief to the opposite party without giving any opportunity to the parties to lead evidence.

13. The aforesaid irregularity touches the root of procedural error and renders both the orders of the trial court and the appellate court illegal, inoperative and liable to be set aside. Accordingly, both the orders passed by the learned Judicial Magistrate 1st Class, Patna in D.V. Case No. 64 of 2016 are quashed and set aside.

14. The learned Magistrate is directed to dispose of



the application under Section 12 of the P.W.D.V. Act, 2005 after operating the parties to lead evidence.

15. Before a part with, I must mention that in many courts in the State of Bihar an application under the P.W.D.V. Act is registered as a complaint case. It is no longer re integra application under the provision of P.W.D.V. Act for any relief is not a complaint and it cannot be registered as a complaint case. Henceforth, such applications be registered as Domestic Violence Case or D.V. Case along with the serial no. and year of filing. For compliance of this order, the order be circulated to all the Magistrates in the State of Bihar through the Bihar Judicial Academy. The Director, Bihar Judicial Academy is also directed to apprise the learned Magistrates about the reason for not registering an application under the P.W.D.V. Act as a complaint case.

16. Since the opposite party filed the application under P.W.D.V. Act in the year 2016, the learned Magistrate shall take all endeavour to conclude the trial of the case by giving opportunity to both the parties to adduce evidence within six months from the date of communication of the order.

17. In view of the impugned order being set aside, execution of such order be stayed till fresh disposal of the



application filed by the opposite party in the year 2016 under
Section 12 of the P.W.D.V. Act.

18. The parties are at liberty to act on the server
copy of the order.

(Bibek Chaudhuri, J)

Guddu/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	5/2/2024
Transmission Date	5/2/2024

