

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.657 of 2024

Arising Out of PS. Case No.- Year-0 Thana- BEGUSARAI TOWN District- Begusarai

1. Prashat Kumar Son Of Shayam Kishore Singh Village- Iniyar, Ps- Muffasil, Dist- Begusarai
2. Mintu Singh Son Of Shyam Kishore Singh Village- Iniyar, Ps- Muffasil, Dist- Begusarai At P/A- Lohiya Nagar, Ward No. 28, Ps- Town (lohiya Nagar Op), Dist- Begusarai
3. Shyam Kishore Singh Son Of Late Laxhmi Narayan Singh Village- Iniyar, Ps- Muffasil, Dist- Begusarai At P/A- Lohiya Nagar, Ward No. 28, Ps- Town (lohiya Nagar Op), Dist- Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar
2. Archana Kumari Wife Of Prashant Kumar Village- Ramdiri Tola Ram Nagar, Ps- Matihani, Dist- Begusarai

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dr. Anjani Pd. Singh, Advocate
For the Respondent/s : Ms. Renu Kumari, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 23-06-2025

The petitioners are the husband, mother-in-law and father-in-law of the opposite party no.2 in a case bearing D.V. Case No. 2P/2020 filed by the opposite party no.2 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'D.V. Act, 2005') for various reliefs contained in Section 17, 18, 19, 20 and 22 of the said Act. By an order dated 21.01.2020, the learned Chief Judicial Magistrate, Begusarai took cognizance upon the application under Section 12 of the D.V. Act, 2005. The said order was



challenged by the petitioners in Criminal Appeal No. 44/2023. The learned Additional Sessions Judge-II, Begusarai with an impugned judgment dated 27.06.2024 dismissed the said appeal affirming *inter alia* that the order dated 21.01.2020 passed in D.V. Case No. 2P/2020 is legal, valid and proper.

2. The petitioners have challenged the said order in the instant revision. The only question involved in the instant revision is as to whether an application under Section 12 of the D.V. Act is a complaint within the meaning of Section 200 of the Cr.P.C. and whether the order of cognizance is bad in law or not.

3. The aforesaid question was very recently decided by the Hon'ble Supreme Court in ***Shaurabh Kumar Tripathi vs. Vidhi Rawal reported in 2025 SCC OnLine SC 1158***. Section 12 of the D.V. Act 2005 authorises an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person to prefer an application to the Magistrate seeking one or more reliefs under the Act. Section 12 runs thus:

"12. Application to Magistrate- (1) *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.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.”

4. The term ‘Magistrate’ has been defined under Section 2(i) which is as under:

“2(i) “Magistrate” means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Criminal Procedure Code, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place”.

5. Thus, Section 12 of the D.V. Act, 2005 makes a provision enabling an aggrieved person, a Protection Officer or



any other person on behalf of an aggrieved person to make an application to the learned Magistrate seeking one or more relief provided in Chapter IV. In exercise of the rule making power under Section 37 of the D.V. Act, 2005, the D.V. Rules, 2006 have been framed. Rule 6(1) of the D.V. Rules, 2006 provides that every application of the aggrieved person made under Section 12 shall be in Form II appended to the Rules.

6. The Hon'ble Supreme Court thereafter held in paragraph nos. 18 and 19 as hereunder:

18. "As can be seen from the scheme of the DV Act, 2005 and in particular section 12, it is not a complaint under Section 200 of the Cr.P.C. or Section 223 of the BNSS. While dealing with a complaint under Section 200 of the Cr.P.C., the learned Magistrate cannot mechanically take cognizance of the offences alleged in the complaint. To ascertain the truth about the allegations made in the complaint, the learned Magistrate is required to examine the complainant and witnesses, if any. Only after the learned Magistrate is satisfied that a case is made out to proceed against the accused, a process is issued and cognizance is taken. This is also true about a complaint under Section 223 of the BNSS. However, Section 223(2) of the BNSS takes it a step further. It provides that no cognizance of an offence can be taken by the Magistrate without giving an opportunity of being heard to the accused.

19. In case of an application under Section 12 of the DV Act, 2005, as provided in sub-Section 4 thereof, the learned Magistrate is duty bound to fix the first date of hearing which shall not ordinarily be beyond three days from the date of receipt of the application by the Court. Section 13(1) provides that a notice of the date fixed in terms of sub-Section 4 of Section 12 shall be served on the respondent or any other person in the manner laid down



therein. Rule 2 of the DV Rules, 2006 lays down the methods and means of service of notice issued under Section 13(1).”

7. Thus, an application under the D.V. Act, 2005 is not a complaint within the meaning of Section 200 of the Cr.P.C. or 223 of the BNSS. Therefore, there is no need to take cognizance upon an application under the D.V. Act, 2005. The learned Magistrate on receipt of the application shall only fix a date for hearing within three days from the date of filing of the application under Section 12(4) of the said Act. Therefore, this Court finds that the order of cognizance taken by the learned Magistrate as well as the order of the learned Additional Sessions Judge dismissing the appeal against the order of cognizance is bad in law. Both the Courts below did not consider the provision under Sections 12 and 13 of the D.V. Act, 2005.

8. Therefore, while setting aside the above orders, the learned Judicial Magistrate, Begusarai is directed to issue notice upon the present petitioners in D.V. Case No. 2(P)/2020 for hearing of the application under Section 12 of the said Act. Such notice shall be sought upon the present petitioners in terms of Rule 2 of the D.V. Rules, 2006 following the modes and means of service of notice issued under Section 13(1) of the said Act.



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

10. There shall be no further order as to cost.

(Bibek Chaudhuri, J)

Anushka/-

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CAV DATE	
Uploading Date	25.06.2025
Transmission Date	

