

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.824 of 2019**

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

1. Vikash Kumar Giri, S/o Sri Virendra Kumar Giri Presently residing at C/O-Home create India finance Pvt. Ltd. Reliable Touch Space Plot No. R847, 1/3 T.T.C Industrial Area MIDC, Rawle, P.S.- Rabale, Navi Mumbai 4000701
2. Sarita Giri W/o Virendra Kumar Giri Presently Residing at WZ-174 Narayana Village, P.S.- Narayana, Delhi- 28
3. Virendra Kumar Giri S/o Rajdev Giri Presently Residing at WZ-174 Narayana Village, P.S.- Narayana, Delhi- 28
4. Vinit Kumar Giri S/o Virendra Kumar Giri Presently Residing at WZ-174 Narayana Village, P.S.- Narayana, Delhi- 28
5. Vivek Kumar Giri S/o Virendra Kumar Giri Presently Residing at WZ-174 Narayana Village, P.S.- Narayana, Delhi- 28

... .. Petitioner/s

Versus

Sarita Kumari, W/o Vikash Kumar Giri and D/o Sri Sita Ram Giri Presently residing at Housing Board Colony L.I.G-45, P.S.- Kanti, District-Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Nagendra Kumar, Advocate
Mr. Navesh Nandan
For the Respondent/s : Mr. Ravi Ranjan

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

5 02-04-2024

1. An interim order of monetary relief, passed by the learned Judicial Magistrate, 1st Class at Muzaffarpur, under Section 20 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter described as the “said Act”), directing the petitioner to pay interim monetary relief at the rate of Rs. 10,000/- per month in D.V. Complaint Case No. 1043 of 2017, was challenged by the Opposite Parties before the Court of



Appeal under Section 29 of the said Act. The appeal was registered as Cr. Appeal No. 31 of 2018 in the Court of the learned District and Sessions Judge, Muzaffarpur. The learned Sessions Judge dismissed the appeal and thereby affirmed the order of interim monetary relief, granted in favour of the Opposite Party / wife against the petitioners.

2. The order passed by the learned Court of Appeal is under challenge by the original Opposite Parties by filing the instant revision.

3. The learned Advocate for the petitioners has made out the following submissions: -

(i) The Trial Court did not assess the monthly income of the Opposite Party / Petitioner No. 1, who happens to be the husband of the present Opposite Party and without assessing the monthly income of the Petitioner No. 1, the Trial Court fixed Rs. 10,000/- per month towards interim monetary relief.

(ii) Secondly, it is submitted by the learned Advocate for the petitioners that the Opposite Party previously filed an application under Section 125 of the Code of Criminal Procedure and the said proceeding was withdrawn on the basis of compromise between the present Petitioner No. 1 and his



wife. Subsequently, on the same ground, the Opposite Party preferred another application under various provisions of the said Act, and, therefore, D.V. Complaint Case No. 1043 of 2017 was not maintainable. Both the Trial Court as well as the Court of Appeal failed to consider the said fact and wrongly passed an order of interim monetary relief.

4. The Opposite Party is the legally wedded wife of the Petitioner No. 1. She has been residing from 2016 at her parental home. In the Trial Court, the Petitioner No. 1 made a plea that the Opposite Party / wife is suffering from mental disorder. However, the Trial Court passed the order on perusal of the DIR, submitted by the Protection Officer before the Trial Court. The said Domestic Incident Report (DIR), *prima facie* established the case of domestic violence perpetrated upon the aggrieved person, i.e., the wife.

5. However, I am in conformity with the learned Advocate for the petitioners, on careful perusal of the impugned order that there is absolutely no discussion with regard to the income of the Petitioner No. 1.

6. It is bounden duty of the Trial Court as well as the Court of Appeal, while disposing of a case under the said Act or an appeal arising thereto, to consider the income of the



husband before passing any order of monetary relief, either interim or final.

7. The view of this Court is supported by a decision of the Hon'ble Supreme Court in the case of *Rajnesh Vs. Neha & Anr.*, reported in *(2021) 2 SCC 324*.

8. In view of such circumstances, this Court is of the considered view that the impugned order is liable to be quashed and set aside and accordingly it is quashed and set aside.

9. The Trial Court is directed to first direct both the parties to file affidavits of assets and liabilities to ascertain the income of the Petitioner No. 1 and after ascertaining the income of Petitioner No. 1, the Trial Court is at liberty to pass proper order of interim monetary relief in favour of the Opposite Party.

10. It is further directed that the parties shall file affidavits of assets and liabilities within one month from the date of communication of this order and on the basis of such affidavits of assets and liabilities, the Trial Court shall pass a fresh order within a period of three weeks thereafter.

11. Before I part with the order, I would like to record that in many districts and sub-divisions in the State of



Bihar, proceedings under the Domestic Violence Act is registered as a Complaint Case. It is made clear that an application under the said Act is not a complaint. Therefore, the learned Magistrates are directed to register the cases under the Domestic Violence Act as Domestic Violence Case (D. W. Case). Similarly, the Appellate Courts shall also register the appeal, arising out of an order passed in D. V. Case as D. V. Appeal and not as Criminal Appeal.

12. This order of the Court be circulated through the learned Registrar General, Patna High Court, Patna to the learned Sessions Judges and the Magistrates in the State of Bihar for immediate compliance.

13. The instant Criminal Revision is accordingly disposed of.

(Bibek Chaudhuri, J)

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