

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Revision No. 862 of 2012

With

Criminal Revision No. 779 of 2014

Jogeshwar Saw @ Yogeshwar Saw @ Dabloo Sao @ Dabloo @
Babloo @ Babloo Sao, Son of Khirodhar Sao, resident of village-
Katkamdag, PO- Sultana, PS- Katkamsandi, District- Hazaribagh
..... Petitioner (in both cases)

--Versus--

1. The State of Jharkhand
2. Poonam Devi, wife of Yogeshwar Sao @ Dabloo, daughter of Kesho Sao,
Resident of village- Pasai, PO- Sultana, PS- Katkamsandi,
District- Hazaribagh Opposite Parties(in both cases)

For the Petitioner :- Mr. Binod Kumar Dubey, Advocate (in both cases)

For the State:- :-Mr. Asif Khan, Add.P.P. (in both cases)

For the O.P. No.2:- M/s. Moti Gope & Rajiv Anand, Advocate(in both cases)

CORAM: HON'BLE MR. JUSTICE RAVI NATH VERMA

C.A.V. ON: 12/08/2015

PRONOUNCED ON-04/09/2015

The solitary question, which has come up for consideration by this Court is whether a relief claimed under protection of woman from the Domestic Violence Act, 2005 (hereinafter referred to as " the D.V. Act, 2005") may also be sought for in any other legal proceeding even before a Civil Court and Family Court, apart from the Criminal Court under Section 125 of the Code of Criminal Procedure (in short "the Code") and whether the monthly relief as granted under Section 20 of the D.V. Act, 2005 can be in addition to an order of maintenance passed under Section 125 of the Code or any other law.

2. Since a common question of law is involved in the both the revision applications, they have been heard together and are being disposed of by this common order.

3. In Criminal Revision No. 862 of 2012, the petitioner has questioned the legality of the order dated 27.06.2012 passed by the learned Sessions Judge-III, Hazaribagh in Criminal Appeal No. 109 of

2011 whereby and whereunder the lower appellate court has affirmed the order dated 28.05.2011 passed by the learned Chief Judicial Magistrate, directing the petitioner to deposit a sum of Rs.2,000/-per month in the Savings Bank Account of the present opposite party no.2 and also to pay Rs.1,000/- per month each to her minor daughters till they attain majority. In Criminal Revision No. 779 of 2014, the petitioner has questioned the legality of the order dated 30.06.2014 passed by the learned Principal Judge, Family Court, Hazaribagh in M. Case No. 109 of 2009 whereby a direction has been given to the petitioner to pay a sum of Rs. 4,000/- per month to opposite party no.2 as maintenance.

4. The prosecution case, as it appears from the record that the present opposite party no.2 Poonam Devi is the legally wedded wife of the petitioner and their marriage was solemnized as per Hindu rites and custom on 06.03.2002 and out of their wedlock, they were blessed with two daughters but as no male baby was born, she was subjected to cruelty at the hands of her husband and in-laws after which a Panchayati was convened. It is also alleged that being annoyed with the opposite party no.2, the petitioner got her uterus removed and solemnized his second marriage with one Kanchan Kumari. Finally, the opposite party no.2 was ousted from her matrimonial home whereafter a case under Section 498-A of I.P.C. vide Katkamsandi P.S. Case No. 166 of 2009 was instituted on 01.07.2009. Since after her ouster from matrimonial home, she along with her two minor daughters have been residing in her parental house and maintaining her children by doing work of labour. She filed a Maintenance Case bearing no. 109 of 2009 in the court of Principal Judge, Family Court, Hazaribagh for maintenance under Section 125 of the Code and during the pendency of above case, She also filed Miscellaneous Case no. 01 of 2011 in the court of Chief Judicial Magistrate, Hazaribagh under different provisions of D.V.

Act, 2005 claiming maintenance of Rs.7,000/- per month and compensation under Section 22 of the said Act.

5. In the case filed under D.V. Act, 2005, the present petitioner by filing his show cause pleaded that with ulterior motive and intention to harass him, the opposite party no.2 Poonam Devi has filed this case, which is not maintainable. The present petitioner while admitting his relationship with Poonam Devi of husband and wife, has further admitted that out of their wedlock, two daughters were born but the allegation that he has monthly income of Rs. 30,000/- per month is false and is without any documentary evidence and that neither the opposite party no.2 nor the two children were ever tortured nor they were ousted from the matrimonial home rather the said Poonam Devi deserted her matrimonial home and thereafter she has filed one case under Section 498-A of the I.P.C. and another for maintenance under Section 125 of the Code. It is also pleaded that after marriage, his father had given Rs.50,000/- to Poonam Devi and some lands were also transferred in her name by two sale deeds executed in her favour to enable her to maintain herself and the two daughters. Even then he is ready to keep his wife and the two children with all due respect.

6. It appears from the record that the court of learned Chief Judicial Magistrate after framing issues for the determination of the dispute between the parties and examining the witnesses adduced by the present opposite party no.2 held that the relationship between the husband and wife are not cordial and comes within the four corners of the definition of 'domestic violence' as defined under D.V. Act, 2005. The court further held that the grant of maintenance under Section 125 of the Code is different from the protection and maintenance granted under different provisions of the Domestic Violence Act, which would be clear from Section 26 of the said Act. Hence, the claimant Poonam Devi- the present opposite party no.2 and their children are entitled to the maintenance and the petitioner

is competent to pay the maintenance and finally the court below granted Rs. 2,000/- per month to Poonam Devi and Rs.1,000/- per month to the two minor daughters till they attain majority. Aggrieved by the said order, the present petitioner preferred an appeal under Section 29 of the D.V. Act, 2005 before the Sessions Judge- Hazaribagh. The learned appellate court after hearing both the parties and considering the evidences available on record and also considering the findings recorded by the trial court dismissed the appeal holding that the grant of interim relief by court below is just and proper and in accordance with law. Hence, the revision application no. 862 of 2012.

Similarly, considering the same fact and examining the oral and documentary evidences brought on record by the parties, the Principal Judge, Family Court, Hazaribagh in other case filed under Section 125 of the Code of Criminal Procedure directed the husband-petitioner to pay a sum of Rs. 4,000/- per month to the present opposite party no.2 and also held that the petitioner is capable and has sufficient means to pay the maintenance. Hence, the revision application no. 779 of 2014.

7. Learned counsel Mr. Binod Kumar Dubey appearing for the petitioner in both the revisions assailing the order impugned as perverse and bad in law seriously contended that the proceeding under Domestic Violence Act, 2005 for grant of protection and maintenance and a criminal proceeding under Section 125 of the Code for grant of maintenance being similar in nature cannot proceed simultaneously and no maintenance can be granted under the D.V.Act, 2005 in addition to the grant of maintenance under Section 125 of the Code. It was also submitted that since Poonam Devi was admittedly not living and not sharing the households with this petitioner cannot be entitled to claim any protection under Section 12 of the D.V. Act, 2005. Learned counsel further seriously contended that the orders of the lower appellate court confirming the order of

the trial court granting maintenance under the provisions of D.V. Act, 2005 is not sustainable in the eye of law. Besides the above, no other submission was made by the learned counsel.

8. Contrary to the aforesaid submissions, learned counsel Mr. Gope appearing for opposite party no.2 in both the above cases contended that Section 26 of the D.V. Act, 2005 clearly stipulates that the relief granted under different provision of the Act are in addition to any other relief granted either by Civil Court in a proceeding or by a Family Court or a Criminal Court and the only obligation given to the victim wife under sub-section (3) of Section 26 is to inform the court of the relief granted by another court. Hence, the submissions made by the petitioner is not in accordance with law.

9. For determination of the solitary question as framed by this Court, it is desirable to examine the different relevant provisions of the Domestic Violence Act, 2005, which are as follows:-

Section 2(a) of the D.V. Act, 2005 defines "aggrieved person."

"2.(a) 'aggrieved person' means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent."

From bare perusal of the aforesaid provision, it is amply clear that any woman who has been, in a domestic relationship with her husband and other family members, if alleges to have been subjected to any act of domestic violence comes within the meaning of "aggrieved person". In the said definition, two words "domestic relationship" as defined in Section 2(f) and "domestic violence" as defined in Section 3 have been shown to be the essential ingredients. Accordingly, the definition of two words are also given hereinbelow for proper appreciation, which read as follows:

"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."

“3. Definition of domestic violence.- For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

- (a) harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”

10. Section 12 of the said Act deals with the procedure for obtaining the order or reliefs. Section 12 relates to filing of an application before the Magistrate by the aggrieved person or by a Protection Officer or any other person on behalf of the aggrieved person and the reliefs, which can be granted by the Magistrate under this Act are enumerated herein are as follows:

- (i) Section 17-Right to reside in a shared household;
- (ii) Section 18-Orders granting protection;
- (iii) Section 19-Residence orders;
- (iv) Section 20- Monetary reliefs;
- (v) Section 21- Grant of custody or custody orders;
- (vi) Section 22- Grant of compensation orders; and
- (vii) Section 23- Grant of interim and ex parte orders.

11. The present opposite party no.2, who was the applicant before the Magistrate, had sought relief under Sections 18 to 23 of the D.V. Act, 2005 and the Court considering the pleading and evidences on record granted the reliefs. Admittedly, no other relief or maintenance as pleaded by the present opposite party no.2 in a proceeding under Section 125 of the Code had been granted till the grant of relief in the instant case. In a case *Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori and another; (2014) 10 SCC 736*, besides other issues, the claim under different provisions of Domestic Violence Act, 2005 was also made and the Hon’ble Supreme Court in paragraph 23 of the said judgment held as follows:

“23. In the instant case, the applicant sought relief under Sections 18 to 23 of the Domestic Violence Act, 2005. It includes protection order under Section 18, monetary relief under Section 20, custody orders under Section 21, compensation under Section 22 and interim relief under Section 23. The relevant provisions read as follows:

“20. *Monetary reliefs-* (1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to-

- (a) the loss of earnings;
- (b) the medical expenses;
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.”

The monetary relief as stipulated under Section 20 is different from maintenance, which can be in addition to an order of maintenance under Section 125 CrPC or any other law. Such monetary relief can be granted to meet the expenses incurred and losses suffered by the aggrieved person and child of the aggrieved person as a result of the domestic violence, which is not dependent

on the question whether the aggrieved person, on the date of filing of the application under Section 12 is in a domestic relationship with the respondent.”

12. From bare reading of the ratio decided in the above judgment and in view of Section 26 of D.V. Act, it is amply clear that the grant of maintenance under this Act by a competent court even in addition to grant of maintenance in any other criminal proceeding like under Section 125 of the Code of Criminal Procedure is permissible and not barred. It was well within the jurisdiction of the Magistrate where the opposite party no.2 had filed petition, to grant the interim relief if the Magistrate was satisfied that the husband, who is petitioner here, had committed an act of domestic violence. The two courts below have rightly considered the factual aspect as well as the legal aspect regarding grant of maintenance and no plausible ground has been given by the learned counsel for the petitioner to interfere in those two orders.

13. In the result, the above two revision applications being devoid of any merit are, hereby, dismissed.

(R.N. Verma, J.)

Jharkhand High Court, Ranchi
Dated, 4th September, 2015
Ritesh/N.A.F.R.