

Patna High Court

Santosh Kumar vs State Of Bihar & Anr on 6 October, 2017

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41318 of 2016

Arising Out of PS.Case No. -110 Year- 2015 Thana -DOMESTIC VIOLENACE District- PATNA

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Santosh Kumar, son of Sri Siyaram Mandal, resident of House No.241/2/5 Govindpur Housing Colony Chota Govindpur (Jamshedpur), P.S.-Chota Goovindpur, District-East Singhbhum (Jharkhand) at present residing at BHEL RC Puram Lingampally Hyderabad, P.S.-Lingampally, District-Hyderabad, State of Telangana (at present).

..... Petitioner

Versus

1. The State of Bihar

2. Neha Kumari, Daughter of Sri Rameshwar Prasad, resident of Purnendu Nagar, Plot No. E/3/3, Near Shiv Mandir, Adjacent house of Baby Niwas, P.S.-Phulwarisharif, District-Patna.

. O p p o s i t e P a r t i e s
===== Appearance :

For the Petitioner/s : Mr. Dinu Kumar, Advocate Mr. Swapnil Kumar, Advocate For the Opposite Party no.2 : Mr. Baijnath Thakur, Advocate

===== CORAM:

HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH C.A.V. JUDGMENT Date: 06-10-2017

This application under Section 482 of the Code of Criminal Procedure (for short Cr.P.C.) has been filed by the petitioner for quashing the entire proceeding of Domestic Violence Case No. 110 of 2015 including the order dated 22.07.2016 passed by the learned Judicial Magistrate, Patna by which ad interim relief Patna High Court Cr.Misc. No.41318 of 2016 dt.-06-10-2017 has been granted to the opposite party no.2 whereby the petitioner has been directed to pay Rs.15,000/- per month to the opposite party no.2 for her day-to-day maintenance and to continue her studies.

2. Three important issues, which arise for determination in this case are:-

(i) Whether an ex-wife can file a complaint under the Protection of Women from Domestic Violence Act, 2005 (for short the D.V. Act) when the relationship has come to an end with a decree of divorce?

(ii) Whether an application under Section 482 of the Cr.P.C. would be maintainable for quashing a proceeding under the provisions of the D.V. Act?

(iii) Whether the provisions of Section 468 of the Cr.P.C. would be applicable in case of a proceeding under the D.V. Act?

3. Before, I proceed ahead to discuss and decide the aforesaid questions, it would be essential to briefly narrate the factual issues.

4. A complaint under Sections 18, 19, 20 and 27 of the D.V. Act was filed by the opposite party no.2 against the petitioner and three others in the court of Chief Judicial Magistrate, Patna High Court Cr.Misc. No.41318 of 2016 dt.-06-10-2017 Patna alleging therein that she was married to the petitioner on 14.02.2013 at Barauni, Begusarai. Her parents had spent Rs.18 Lakhs over her marriage. After the marriage, she was taken to her sasural at Jamshedpur. In sasural, she was subjected to harassment by her husband and in-laws for demand of Rs. 10 lakhs. They used to utter that the petitioner being a class-II officer in B.H.E.L., whose monthly salary is Rs.1.25 lakhs, was being offered Rs.25 lakhs as dowry by several persons. They asked her to demand Rs.10 Lakhs from her parents failing which she was threatened to be driven out of her matrimonial house. She has alleged that after sometimes, she was taken to Lingampally, Hyderabad (Andhra Pradesh) where her husband was posted. Even there, she was being subjected to cruelty by her husband and in-laws for non-fulfilment of demand of Rs.10 lakhs and a luxury car. She has alleged that her husband and in-laws also attempted to kill her, but somehow she could save her life and, ultimately, on 23.04.2013, she was ousted from the house by her husband and in-laws at Hyderabad. An information, in this regard, was given to the Hyderabad Police, but no action was taken on her complaint. Thereafter, she came back to Patna at her parents house. Even in Patna, she was threatened to bring dowry as demanded.

5. On the basis of these allegations, the complainant prayed for the following reliefs from the court under the D.V. Act Patna High Court Cr.Misc. No.41318 of 2016 dt.-06-10-2017 from the husband:-

- (i) Rs. 10 lakhs as compensation for physical and mental sufferings;
- (ii) Rs. 15 lakhs for loss of education;
- (iii) Rs. 25 thousand per month for maintenance;
- (iv) Rs. 20 thousand per month for residential accommodation or a direction to allow the petitioner to reside in the flat of her husband at Hyderabad; and
- (v) Rs. 25 lakhs for cumulative suffering and loss.

6. Mr. Dinu Kumar, learned counsel for the petitioner submitted that as the case was transferred to the court of learned Judicial Magistrate and notice was served to the petitioner and another accused persons, he appeared and filed show cause on 31.05.2016 denying the allegations levelled by the opposite party no.2. A specific stand was taken before the learned Magistrate that the D.V. case is malicious and has been filed with oblique motive and is not maintainable. It was also pleaded that the provisions of Sections 18, 19, 20 and 21 of the Act, 2005 are not made out. It was also pleaded that the opposite party no.2 had hardly stayed for 5-6 days at Jamshedpur after marriage and she stayed for about two months at Hyderabad. The marriage was performed without any dowry and the allegation of demand of dowry and torture as Patna High Court Cr.Misc. No.41318 of 2016

dt.-06-10-2017 mentioned in the complaint is concocted and false. As a matter of fact, due to cruelty meted out by the opposite party no.2, the petitioner had gone in depression and, for that, he underwent treatment in hospital. Since the steps taken for settlement of the issue could not deliver any fruitful result, a divorce case being H.M.O.P. No.54 of 2014 under Section 13(i)(a) of the Hindu Marriage Act, 1955 was filed for dissolution of the marriage between the petitioner and the opposite party no.2 in the court of Senior Civil Judge at Sangareddy, Andhra Pradesh. The opposite party no.2 knowingly did not appear in the divorce case filed by the petitioner even, after valid service of notice. A decree of divorce dated 27.02.2015 was passed by the learned Senior Civil Judge, Sangareddy. Learned counsel for the petitioner further submitted that once the domestic relationship came to an end after the decree of divorce, the complaint under the D.V. Act could not have been filed. In support of his submission, he has placed reliance on a judgment passed by the High Court of Punjab and Haryana in the matter of Amit Agarwal and Ors. Vs. Sanjay Aggarwal [III (2016) DMC 97 (P & H)]. He submitted that the complaint under the D.V. Act is also barred by law of limitation in view of the provisions of Section 468 of the Cr.P.C.. In this regard, he has placed reliance on the decision of the Supreme Court in the matter of Inderjit Singh Patna High Court Cr.Misc. No.41318 of 2016 dt.-06-10-2017 Grewal vs. State of Punjab & Anr. [(2011) 12 SCC 588].

7. Per contra, learned counsel for the opposite party no.2 submitted that the instant application under Section 482 of the Cr. P.C. is not maintainable, as the impugned order of maintenance passed under Section 20 of the D.V. Act is appealable under Section 29 thereof. He contended that when there is statutory remedy available, the inherent power under Section 482 of the Cr.P.C. cannot be exercised. He contended that the decree of divorce dated 27.02.2015 passed by the Senior Civil Judge, Andhra Pradesh is an ex parte decree for which the opposite party no.2 came to know only after she appeared in Cr. Misc. No.36243 of 2015 filed by the petitioner before this court against the order of cognizance passed in Complaint Case No.56 C of 2015 instituted under Section 498A of the Indian Penal Code against the petitioner and others. After coming to know about the said decree of divorce, the opposite party no.2 filed a petition in H.M.O.P. No.54 of 2014 on 30.09.2015 under Order IX Rule 13 read with Section 151 of the Cr.P.C. for setting aside the decree. He contended that the said petition is still pending before the court of Senior Civil Judge, Sangareddy. He contended that even otherwise the complainant-opposite party no.2 is entitled to receive maintenance under Section 20(1)(d) of the D.V. Act, as the allegation of domestic violence in Domestic Violence Case Patna High Court Cr.Misc. No.41318 of 2016 dt.-06-10-2017 No.110 of 2015 relate back to the date prior to the institution of the said divorce case.

8. I have heard learned counsel for the parties and carefully perused the record.

9. The first question whether an ex-wife can file a complaint under the D.V. Act when the relationship has come to an end with a decree of divorce fell for consideration before the Punjab and Haryana High Court in Amit Agarwal (supra). In that case, a challenge was made by the husband to the complaint filed by the brother of his ex-wife in 2009, after a year of decree of divorce was passed. The facts of the said case were that the petitioner was married in 2003, but in 2006 his wife left the matrimonial house. In the meantime, a complaint under the D.V. Act was also filed by her against her husband and his family members. The husband filed a divorce case. Against which, he got an ex parte order in 2008. The complaint filed by the wife in 2006 was withdrawn in March,

2009, but a month later, her brother again filed a complaint. The Punjab and Haryana High Court held that as per provisions of the Act, the brother of the aggrieved was duly competent to file a complaint, but in a case where the decree of divorce had already been passed, it was not maintainable. The court while exercising power under Section 482 of the Cr.P.C. quashed the complaint and observed that "the Patna High Court Cr.Misc. No.41318 of 2016 dt.-06-10-2017 provisions under the D.V. Act can be invoked only when the domestic relationship is in existence".

10. Referring to Section 2(a) of the D.V. Act, the Court observed: "the use of the word is any woman who is or has been. Both the expressions are in the present tense. The legislature has not used the word who was or had been. This means the domestic relationship has to be in the present and not in the past. The definition requires that on the date Act come into force, the woman should be in domestic relationship".

11. Referring to Section 2(f) of the D.V. Act, which defines the domestic relationship, the Court observed: "the definition clearly speaks of a domestic relationship between two persons who live or have at any point of time lived together in a shared household and are related by marriage or through a relationship in the nature of marriage. This definition also speaks about the existence of a relationship by marriage or a relationship in the nature of marriage at the time. The expression used is are related by marriage. The expression by the legislature is not were related. From the bare reading of these two provisions it is apparent that the intention of the legislature is to protect those women who are living in a domestic relationship".

12. While deciding the said question, the Court Patna High Court Cr.Misc. No.41318 of 2016 dt.-06-10-2017 referring to decision of Delhi High Court in Harbans Lal Malik vs. Payal Malik [(2010) DLT 67], held: "the definition of wife as available in Section 125 Cr.PC cannot be merged into Domestic Violence Act".

13. While examining the second question in Amit Agarwal (supra) whether an application under Section 482 of the Cr.P.C. would be maintainable for quashing a proceeding under the provisions of the D.V. Act, the Punjab and Haryana High Court held: "The Apex Court in Ashish Dixit and others Vs. State of U.P. and another MANU/SC0156/2013 had quashed the proceedings under the Domestic Violence Act in a petition filed under Section 482 Cr.P.C. This High Court in Jasvir Kaur and another Vs. Manpreet Kaur in CRM No. M-29792 of 2011 allowed the petition filed under Section 482 Cr.P.C. seeking quashing of the complaint filed under the Domestic Violence Act. The Karnataka High Court in Smt. Nagarathnamma Vs. M.S. Vanithashree in Cr.P.No.5246 of 2010 had allowed the petition filed under Section 482 Cr.P.C. Thus, a complaint can be quashed in the petition filed under Section 482 Cr.P.C. if it is found that the complaint was an abuse of the process of the Court or has filed only with a view to harass the others".

14. On both the above said questions, I fully concur with the view taken by the Punjab and Haryana High Court in Amit Patna High Court Cr.Misc. No.41318 of 2016 dt.-06-10-2017 Agarwal (supra).

15. So far as the third question whether the provisions of Section 468 of the Cr.P.C. would be applicable in case of a proceeding under the Act is concerned, the same is no more res integra.

16. In Inderjit Singh Grewal (supra), the Supreme Court has answered the said question in the following words: "Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 Cr.P.C., that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the Act 2005 read with Rule 15(6) of The Protection of Women from Domestic Violence Rules, 2006 which make the provisions of Cr.P.C. applicable and stand fortified by the judgments of this court in *Japani Sahoo v. Chandra Sekhar Mohanty*, AIR 2007 SC 2762; and *Noida Entrepreneurs Association v. Noida & Ors.*, (2011) 6 SCC 508".

17. The law declared by the Supreme Court has got binding force and, in that view of the matter, it can safely be said that the provisions of Section 468 of the Cr.P.C. would clearly be applicable in cases instituted under the provisions of the D.V. Act.

18. Coming back to the facts of the present case, the Patna High Court Cr.Misc. No.41318 of 2016 dt.-06-10-2017 complainant-opposite party no.2 was admittedly married to the petitioner on 12.04.2013 at Barauni, Begusarai. Subsequently, she was taken to Lingampally, Hyderabad where the petitioner was serving as a Class-II officer in B.H.E.L. She was ousted from her husbands house in Lingampally, Hyderabad on 23.04.2013. An allegation has also been made in the complaint that on 04.05.2014 at about 7:00 P.M., the complainant went together with her mother to the house of the petitioner, but the petitioner refused to return her ornaments and other utensils.

19. In Section 31 of the D.V. Act penalty has been provided for breach of protection order. The penalty provided for such breach is for a term which may extend to one year or extend to twenty thousand rupees or both. Apparently, the D.V. Act is not considered as a criminal law as it is more concerned with providing relief to the victim. However, if the offender does not comply with a final or temporary protection order, he can be (i) sent to jail; (ii) ordered to pay fine upto Rs.20,000/-; or (iii) sent to jail and ordered to pay fine.

20. Section 28 of the D.V. Act clearly stipulates that save as otherwise expressly provided, all proceedings under Sections 12, 18, 19, 20, 21 and 23 and offences under Section 31 shall be governed by the provisions of Cr.P.C.

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21. Section 32 of the D.V. Act provides that notwithstanding anything contained in the Cr.P.C., the offence under Section 31 shall be cognizable and non-bailable.

22. Chapter XXXVI of the Cr.P.C. deals with limitation for taking cognizance of certain offences. Section 468 of the Cr.P.C., which bars taking cognizance of the offence after lapse of one year, reads as under:-

"468. Bar to taking cognizance after lapse of the period of limitation.-

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation. (2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

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23. A perusal of Section 468 of the Cr. P.C. would make it evident that the Court would be debarred from taking cognizance of the offence after expiry of one year if the offence is punishable with imprisonment not exceeding one year.

24. As seen above, the maximum punishment provided under the D.V. Act is for a term which may extend to one year. Hence, the Court would be debarred from taking cognizance after one year. Evidently, the complaint has been filed in the present case after the expiry of the period of limitation. In this regard, the petitioner has rightly placed reliance on the ratio laid down by the Apex Court in Inderjit Singh Grewal (supra) wherein it has been held that the complaint under the D.V. Act could be filed only within a period of one year from the date of incident in view of the provisions of Sections 28 and 32 of the D.V. Act.

25. Further, the application filed by the petitioner under Section 13(1)(a) of the Hindu Marriage Act, 1955 for dissolution of the marriage between him and the opposite party no.2 held on 14.02.2013 was allowed by the learned Senior Civil Judge at Sangareddy, Andhra Pradesh on 27.02.2015 whereas the complaint under the D.V. Act was filed after more than four months of passing of the decree of divorce on 10.07.2015.

26. In view of the discussions made above, as I have Patna High Court Cr.Misc. No.41318 of 2016 dt.-06-10-2017 already concurred with the view taken by the Punjab and Haryana High Court in Amit Agarwal (supra), the complaint under the D.V. Act by the ex-wife after divorce was not maintainable in law.

27. Thus, I am of the opinion that the entire proceeding of the D.V. Case No. 110 of 2015 is an abuse of the process of the Court. Accordingly, the complaint and the entire proceeding of the aforesaid

case including the impugned order dated 22.07.2016 passed by the learned Judicial Magistrate, Patna are hereby quashed.

28. The application stands allowed.

(Ashwani Kumar Singh, J.) Sanjeet/-

AFR/NAFR	AFR
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