

**Mainak Roy and Ors Vs. The State of Jharkhand and Anr**

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**Court :** Jharkhand

**Decided On :** Sep-11-2015

**Appellant :** Mainak Roy and Ors

**Respondent :** The State of Jharkhand and Anr

**Judgement :**

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Revision No.99 of 2015  
----- 1. Mainak Roy, S/o Nirmal Roy 2. Nirmal Roy @ Nirmal Kr. Roy, S/o Late Shyam Bilash 3. Agamoni Roy @ Agomani Roy, W/o Nirmal Roy All resident of 16/1 Gour Mandal, P.O., P.S. South Asansol, District- Bardwan 4. Gautam Kumar Chakraborty, S/o B.B. Chakraborty 5. Mahua Chakraborty, W/o Gautam Chakraborty Both resident of Haldia, P.O. and P.S. Haldia District- East Midnapur (W.B.) ... .. Petitioners Versus 1. The State of Jharkhand 2. Supria Roy, W/o Mainak Roy, D/o Ashok Kumar Roy Resident of Bibhuti Apartment, Luby Circular Road, P.O., P.S. & District- Dhanbad ... .. Opp. Parties ----- CORAM: HON'BLE MR. JUSTICE RAVI NATH VERMA For the Petitioners : Dr. M.K. Laik, Sr. Advocate Mr. Nishit Kumar Sahani, Advocate For the State : Mr. Amaresh Kumar, A.P.P. For the O.P.No.2 : Mr. Kr. Sourav Chatterjee, Advocate Mr. Rupesh Singh, Advocate Mr. Amrendra Pradhan, Advocate ----- C.A.V. ON:

05. 08.2015 PRONOUNCED ON:- 11.09.2015 Challenge in this revision application is to the order dated 20.12.2014 passed by Additional Sessions Judge- VI, Fast Track Court, Dhanbad in Cr. Appeal No.134 of 2014 whereby and whereunder the order of Sub Divisional Judicial Magistrate, Dhanbad dated

03.09.2014 passed in C.P. Case No.1059 of 2011 refusing to dismiss the complaint case filed by the present opposite party no.2 under Section 12 of the Protection of Women from Domestic Violence Act, 2005, (in short the D.V. Act, 2005), has been affirmed.

2. The solitary question, which has come up for consideration before this Court, is whether the non-receipt and non-consideration of the domestic incident report of Protection Officer before initiation of an enquiry under Section 12 of the D.V. Act, 2005 vitiates the entire proceeding? 2 Cr. Revision No.99 of 2015 3. The relevant fact of the case which is necessary for the proper adjudication of the above issue, in short, is that an application under Section 12 of the D.V. Act, 2005 was filed by the complainant- Supria Roy against the present petitioners on the allegation that her marriage with the present petitioner no.1-Mainak Roy was solemnized on 27.01.2008 at Dhanbad and on the very night of marriage her father-in-law, mother-in-law and brother-in-law misbehaved with her and with her parents. At the time of her Bidai also she was humiliated by them. It is also alleged that after Bidai she came to her matrimonial home but after 5 or 6 days of marriage she was tortured for demand of Maruti car and even she was assaulted in which she sustained injury and any how she escaped from there and took shelter in her parents house. Whereafter a case under Section 498A I.P.C. read with Section 3/4 of Dowry Prohibition Act was filed against the present petitioners and subsequently a petition for grant of maintenance under Section 125 of the Code of Criminal Procedure (hereinafter referred to as the Code) was also filed by the complainant. The complainant in her complaint petition claimed various reliefs including right of residence and monitory relief.

4. It appears from the record that after service of notice, the petitioners appeared before the court and filed an application with prayer to dismiss the complaint case on two grounds (i) court of Dhanbad has no jurisdiction to entertain the alleged complaint as the domestic violence was committed at Asansol and not within the territorial jurisdiction of Dhanbad court; and (ii) before initiating the proceeding or enquiry, a report of Protection Officer of Asansol, where the alleged domestic violence was committed, was mandatory to be looked into in terms of proviso of Section 12 of the D.V. Act, 2005 but as the same has not been followed, the

continuation of proceeding is bad in law and the complaint petition is not maintainable. It appears from the record that though a report was called for by the court from Protection Officer, Dhanbad but not from the Protection Officer, Asansol. The court below after hearing both the parties rejected the 3 Cr. Revision No.99 of 2015 objection raised by the petitioners on non-maintainability of the complaint case. Aggrieved by the said order, the petitioners preferred an appeal before the Sessions court. By order impugned dated 20th December, 2014, the Additional Sessions Judge, Fast Track Court, Dhanbad dismissed the appeal holding that the mandates as given in proviso to Section 12 calling for the report of Protection Officer relates to final orders and not at the stage of initiation of enquiry/proceeding under the said Act. Hence, this revision.

5. Learned senior counsel, Dr. M.K Laik while assailing the order impugned of the Sub Divisional Judicial Magistrate (in short S.D.J.M.) as also that of the appellate court, as perverse and bad in law seriously contended that the court of S.D.J.M., Dhanbad without following the mandates as contemplated in proviso to Section 12 initiated the proceeding under D.V. Act and issued summons to the petitioners to face enquiry. According to the learned senior counsel, the order taking cognizance relying upon the allegations made in the complaint petition, without taking into the consideration the domestic incident report from the Protection Officer, is not sustainable in law. It was also submitted that the complainant-opposite party no.2 has already filed a case under Section 498A of the Indian Penal Code and also under Section 3/4 of Dowry Prohibition Act due to matrimonial disputes between the parties and also filed petition claiming maintenance under Section 125 of the Code. As such, the continuation of the proceeding against the petitioners, in such circumstance, is bad in law.

6. Refuting the above submissions, learned counsel Mr. Chatterjee appearing for the opposite party no.2 and the learned counsel representing the State submitted that the application filed by the petitioners for dismissal and non-maintainable of complaint before the S.D.J.M, Dhanbad was pre-mature and the mandates given under proviso to Section 12 relates to final order passed under Section 18 of the Act and no report was required for initiation of the proceeding or enquiry as contemplated in the D.V. Act. 4 Cr. Revision No.99 of 2015 7. Before I enter into

the rival contentions of the learned counsels, a reference of Section 12 of Protection of the D.V. Act, 2005 is necessary for proper adjudication of the issue involved in this case, which reads as follows:

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 Code of Civil Procedure, 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 endeavor to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

8. From bare perusal of the aforesaid provision, it would appear that before passing any order on the complaint application, the Magistrate shall take into consideration the domestic incident report received by him from the Protection Officer. Apparently, neither Sub section (1) nor the proviso of sub Section (1) of the above Section 12 contemplates that for initiation of an enquiry or before issuance of summon to the accused persons, a report of Protection Officer is 5 Cr. Revision No.99 of 2015 required. The word before passing any order on such

application relates to the final orders which the Magistrate may pass under Section 18 of the Act.

9. The intention of the legislature in regard to the word any order used in the proviso of Sub-section 1 of Section 12 would be clear from Section 18 of the said Act and to appreciate that, a reference of Section 18 is also necessary, which reads as follows:

18. The Magistrate may, after giving the aggrieved person and the respondent an 'opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from- (a) committing any act of domestic violence; (b) aiding or abetting in the commission of acts of domestic violence; (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person; (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact; (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate; (f) causing violence to the dependents, other relatives or any person who give the aggrieved person assistance from domestic violence; (g) committing any other act as specified in the protection order.

10. It would, thus, appear that only under Section 18 of the Act the Magistrate has the power to pass order granting relief or reliefs as prayed for after giving proper opportunity to the aggrieved person and the respondent. So the word order used in the proviso of Section 1 of Section 12 relates to the final order passed under Section 18 of the Act and not to any other order either for initiation of enquiry or for 6 Cr. Revision No.99 of 2015 issuance of notice to the other side against whom there is allegation of domestic violence. In a case *Rakesh Sachdeva & Ors. Vs. State of Jharkhand & Anr.*; 2011 (1) East Cr. C. (Jhr.) a similar issue was raised and the court after considering the submissions held that the insistence to take

into consideration the domestic incident report of the Protection Officer would not apply at the stage of initiation of the enquiry under Section 12 of the Act. Apparently, in the instant case, after filing of the complaint petition, the court below had issued notice to the present petitioners to take part in the enquiry. Any order under Section 18 can only be passed after providing opportunities to both the parties to bring on record their respective evidences oral as well as documentary. Besides the above issue involved in this case, no other point was argued by the learned senior counsel appearing for the petitioners.

11. In the light of the above discussion, I do not find any plausible ground to interfere in the order impugned. This revision application is, accordingly, dismissed. (R.N. Verma, J.) Jharkhand High Court, Ranchi Dated, 11th September, 2015 Anit/N.A.F.R.

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