

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr). 163 of 2018**

Surendra Kumar, aged about 60 years, son of Parmanand Sharma, resident of Ladhenam Ka Gola Ganj No. 2, P.O. and P.S. Betia, District West Champaran (Bihar). Petitioner

Versus

1. The State of Jharkhand
2. Smt. Renu Kumari, wife of Surendra Kumar, resident of Qr. No. 203, Madhusudan Devendra Lok, Dimna Road, P.S. Olidih, Mango, P.O. Mango, Jamshedpur, District-East Singhbhum Respondents

With

Cr.M.P. No. 1202 of 2018

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Manish Kumar, Advocate
For the State : Mr. P.C. Sinha, Advocate

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04/Dated: 24/02/2022

Let Cr.M.P. No. 1202 of 2018 be detached from W.P.(Cr). No. 163 of 2018.

2. Heard Mr. Manish Kumar, learned counsel for the petitioner and Mr. P.C. Sinha, learned counsel for the respondent-State.

3. This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

4. Service report is on record wherein it has been recorded that respondent no. 2 has received notice personally. This is a case of the year, 2018.

5. On repeated calls, nobody responded on behalf of the respondent no.2. Mr. P.C. Sinha, learned counsel is present on behalf of State.

6. This petition has been filed for quashing of order dated 13.04.2018 passed in C/1 -3069/2016 by learned Judicial Magistrate, Ist Class,

East Singhbhum whereby cognizance of offence under section 31 of Protection of Women from Domestic Violence Act, 2005 has been taken against the petitioner and he has been sentenced to undergo S.I. for one year with a fine of Rs. 20,000/- and further S.I. of three months in default of payment of fine, pending in the Court of learned Judicial Magistrate, Ist Class, East Singhbhum at Jamshedpur.

7. The respondent no. 2 has filed a case under section 12 of the Protection of Women from Domestic Violence Act, 2005 alleging therein that she was married with the petitioner on 11.05.1996 but she could never settle in her matrimonial home due to petitioner's aggressive and dominant attitude and he also did not allow her to do any job and finally ousted her from her matrimonial home. It is further alleged that although a home was made available to her by her husband but he never maintained her and never fulfilled her financial dreams and also used to physically assault her.

8. Mr. Manish Kumar, learned counsel for the petitioner submits that the impugned order was passed in violation of judicial procedure and filing of appeal amounts to accept the penalty that too is against the order which is illegal. He further submits that the petitioner has filed writ petition under Article 226 of the Constitution of India. He further submits that respondent no. 2 has filed a case under section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to "the Act"). Pursuant to that after receiving notice, petitioner appeared and filed show-cause denying the allegation of violence and not maintaining the respondent no. 2. The conciliation was not made between the parties. The petitioner examined himself and two witnesses has been examined on behalf of respondent no. 2.

9. Learned counsel for the petitioner further submits that in the same case maintenance order was passed by order dated 18.07.2017 which was challenged by the petitioner before the learned Sessions Judge in Criminal

Appeal No. 155 of 2017. He further submits that the order impugned was passed in this case is on the same case number which has been disposed of which was subject matter of appeal before the Sessions Judge. He further submits that on the same day cognizance was taken and the petitioner was found guilty under section 31 of the Act and also sentenced on the same day which is unknown to the judicial procedure. He further submits that impugned order has been passed under section 31 of the Act is without jurisdiction.

10. Mr. P.C. Sinha, learned counsel for the respondent-State tried to justify the order by way of submitting that the allegations are there that is why impugned order has been passed.

11. In view of aforesaid facts and considering the arguments advanced by the learned counsel for the petitioner as well as respondent-State, the Court has perused the impugned order dated 13.04.2018. It transpires from the impugned order that cognizance was taken by the impugned order itself and for non payment of maintenance passed by order dated 18.07.2017 penalty has been imposed upon the petitioner and under section 31 of the Act the petitioner was sentenced to undergo S.I. for one year with fine of Rs. 20,000/-.

12. The question remains how the concerned court has passed order in the same case which was subject matter of the appeal and after passing of the order, the Court has become functus officio.

13. Section 31 of the Act provides for penalty for breach of protection order by respondent. Section 31 of the Act is very clear that this section can be invoked whenever there is order of protection has been breached.

14. It is an admitted fact that there was no violation of protection order by the petitioner inspite of that impugned order has been passed on the strength of Section 31 of the Act.

15. Sub clause (2) provides that the offence of breach of protection order or interim protection order shall be tried as far as practicable by the Magistrate who has passed the order which is alleged to have been breached.

16. Sub clause (3) provides Magistrate to frame charge under section 498A of the Indian Penal Code or any other provision of that the Indian Penal Code or the Dowry Prohibition Act, 1961 in case the facts disclose the commission of an offence under those provisions.

17. It is an admitted fact that condition precedent of Section 31 of the Act has not been taken care of by the learned court by passing order under section 31 of the Act. Thus invoking this section without jurisdiction moreover on the same day cognizance has been taken without hearing the petitioner and penalty has been imposed which is unknown to the law.

18. Accordingly, impugned order dated 13.04.2018 passed in C/1 - 3069/2016 by learned Judicial Magistrate, Ist Class, East Singhbhum, at Jamshedpur is hereby quashed and set aside.

19. The writ petition is allowed and disposed of.

(Sanjay Kumar Dwivedi, J.)