

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46935 of 2024

Arising Out of PS. Case No.-4 Year-2023 Thana- DOMESTIC VIOLENACE District- Patna

1. Abhishek Kumar Chandan, Son of Kamta Prasad R/o- House No.- 15, New Bypass Road Jhumari Tilaiya, P.S.-Jhumari Tilaiya, District - Koderma.
2. Kamta Prasad, Son of Late Awadhesh Kumar, R/o- House No.- 13, New Bypass Road Jhumari Tilaiya, P.S.-Jhumari Tilaiya, District - Koderma.
3. Gayatri Devi, Wife of Kamta Prasad Singh, R/o- House No.- 13, New Bypass Road Jhumari Tilaiya, P.S.-Jhumari Tilaiya, District - Koderma.
4. Kiran Kumari, Wife of Kumar Prabhat Ranjan, R/o- At Purnanagar Road, P.O.- Koderma, P.S.- Koderma, District - Koderma.
5. Roshani Singh, Wife of Sidhnath Singh, R/o- First Floor, 2nd Cross, C/O- U.V. Kalyal Ayappa Laout, Bengaluru, Karnatka - 560037.
6. Sidhnath Singh, Son of Arjun Singh, R/o- First Floor, 2nd Cross, C/O- U.V. Kalyan Ayappa Layout, Bengaluru, Karnatka - 560037.
7. Jyotsana Kumari, Wife of Navneet Kumar R/o- Department of Medical Laboratory Technology, Ganpat University, Village - Kherva, District - Messina, Gujrat - 384012.
8. Navneet Kumar, Son of Ram Dayal Singh, R/o- Department of Medical Laboratory Technology, Ganpat University, Village - Kherwa, District - Messina, Gujrat - 384012.

... .. Petitioners

Versus

1. The State of Bihar
2. Nivedita Nischal, Wife of Abhishek Kumar Chandan, D/o Jitendra Prasad, R/o at present House No. 603A, Mundeshwari Baily Greens Apartment, Kaliket Nagar, P.S.- Rupaspur Danapur, District - Patna.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Rajendra Narain, Senior Advocate Mr. Sanjay Kumar Sharma, Advocate
For the State	:	Md. Mushtaque Alam, APP
For the O.P. No.2	:	Mr. Ramakant Sharma, Senior Advocate Mr. Ranjan Kumar Sinha, Advocate Ms. Seema Kumari, Advocate Ms. Jyoti Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
CAV JUDGMENT

Date : 05-08-2025

Heard Mr. Rajendra Narain, learned senior counsel

appearing for the petitioners, Md. Mushtaque Alam, learned



APP for the State and Mr. Ramakant Sharma, learned senior counsel appearing for the O.P. No.2.

2. The present application preferred under Section 482 of the Code of Criminal Procedure (in short 'CrPC') to quash the entire proceedings of Domestic Violence Case No.4 of 2023 filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short 'D.V. Act 2005') dated 13.02.2023 against the petitioners, which was filed by opposite party no.2, namely, Nivedita Nishchal, wife of petitioner no.1.

3. Admittedly, there is no impugned order including any interim order in view of Section 23(2) of the Act of 2005, passed in aforesaid proceeding.

4. Case of complainant/O.P. No.2, in brief, speaks that her marriage was solemnized with petitioner no.1 on 07.12.2009 as per Hindu rites and rituals at Patna. Out of the said wedlock, a daughter was born to them on 24.12.2010. Thereafter, the petitioner no.1 started to commit physical and mental harassment by demanding money from her parents for purchasing a house at Bengaluru and due to



non-fulfillment of his aforesaid demand, the husband ousted her from their shared household at Bengaluru. She has no personal income, whereas her husband is earning about Rs. 5 lacs per month and spending a luxurious life ignoring complainant and her daughter, as he is not extending any monetary support.

5. Mr. Rajendra Narain, learned senior counsel while arguing on behalf of petitioners submitted that the present case was filed almost with a delay of eight years from the alleged date of incident and, therefore, same is barred under Section 468 of the CrPC. It is further submitted that aforesaid case was lodged against the distant relative i.e. married daughters, who were married long before the marriage of complainant/O.P. No.2 with petitioner no.1. They are living separately and having no connection with daily and domestic affairs of complainant and her husband.

6. It is further submitted by Mr. Narain that the present complaint under D.V. Act has been filed in retaliation of divorce case filed by the petitioner no.1/husband being Matrimonial Case (MC) No.1335 of 2015/renumbered as 168



of 2024 before learned Principal Family Judge at Bengaluru, Karnataka, which now transferred to the Principal Judge, Family Court, Patna as per the direction of the Hon'ble Apex Court. It is submitted by Mr. Narain that after the filing of the said divorce case in retaliation, the complainant/O.P. No.2 also filed a Complaint Case No.1684 of 2016 before the court of learned Chief Judicial Magistrate, Patna for the offences punishable under Sections 323, 324, 354, 498-A read with 34 of the Indian Penal Code (in short 'IPC') as well as Sections 3 and 4 of the Dowry Prohibition Act, alleging therein almost similar and identical allegations for which the learned trial court has taken cognizance only against petitioner no.1 for the offence punishable under Section 498-A of the IPC, where the allegation raised against other members were found false. In this context, it is further pointed out that O.P. No.2 has also filed a maintenance case bearing No. 280(M) of 2015 pending before the court of learned Additional Principal Judge, Family Court, Patna, where vide order dated 26.02.2018, the O.P. No.2 is getting maintenance amount of Rs.4,000/- per month. It is pointed out that the present case



under D.V. Act, 2005 was lodged out of vengeance to harass the innocent family members of petitioner no.1 as no cognizance was taken against them in Complaint Case No.1684 of 2016 and furthermore, the O.P. No.2 is not happy with the maintenance amount of Rs.4,000/-. It is submitted that having all such pending litigation in hand, the O.P. No.2 kept silence for long seven years and, thereafter, all of a sudden, without having no cause of action, the present domestic violence case was filed in the year 2023 without explaining the delay and, therefore, the entire proceedings of present domestic violence case, as mentioned aforesaid, is liable to be quashed/set aside as same appears to be filed only with oblique and ulterior motive.

7. Mr. Narain further pointed out that there is no bar to quash the domestic violence proceedings by exercising power under Section 482 of the CrPC in view of the legal report of Hon'ble Supreme Court as available through **Shaurabh Kumar Tripathi vs. Vidhi Rawal [2025 SCC OnLine SC 1158]**.

8. *Per contra*, Mr. Ramakant Sharma, learned



senior counsel while arguing on behalf of O.P. No.2 submitted that the whole argument of petitioners is roaming around the maintainability of the complaint case lodged under D.V. Act, 2005 on the ground of limitation as available under Section 468 of the CrPC that same was filed after a lapse of eight years of the alleged incident. It is submitted that the argument is misconceived and unfounded as per the legal provisions available under the D.V. Act, 2005 itself.

9. Explaining his submission, Mr. Sharma submitted that only the breach of any order passed for any protection under Section 12 of the D.V. Act constitute an offence, as it is clear from Section 31 of the D.V. Act. It is submitted that the limitation prescribed under Section 468 of the CrPC would apply from the date of commission of such offence. In support of his submissions, Mr. Sharma has relied upon the legal report of Hon'ble Supreme Court as available through **Kamatchi vs. Lakshmi Narayanan [(2022) 15 SCC 50]**.

10. It is submitted by Mr. Sharma that petitioner no.1 raised an issue *qua* legitimacy of female child born out of their wedlock and asked for a DNA test, which was rejected by



the learned trial court vide its order dated 23.03.2024. It is pointed out that the divorce case is pending between the parties before learned Principal Judge, Family Court, Patna. It is further submitted by Mr. Sharma that there is no protection order in this matter and the parties represented themselves before learned trial court directed to take all endeavours for early disposal of the case for protection as sought for. It is submitted that the petitioner no.1 is a software engineer and earning in lacs, drawing monthly salary about Rs. 5 lacs, whereas daughter of O.P. No.2 is living with her, who is a student of Class-X and also suffering from different ailments were completely ignored by petitioner no.1 to forced them to lead their life in destitution, and, therefore, as meager amount of Rs. 4000/-is not sufficient to protect monetary requirements/interest of O.P. No.2 and her daughter.

11. It would be apposite to reproduce the order dated 31.10.2023 passed by learned A.C.J.M.-II, Danapur in Domestic Violence Act Case No.4 of 2023, which is as under:-

“Record is fixed for order for grant of interim maintenance of application filed on behalf of the applicant dated 20-06-23 and its reply dated 02-09-23 and additional reply dated 13-10-



23.

2. It is submitted on behalf of the petitioner that the petitioner's marriage was solemnized with Opposite Party No. I. Abhishek Kumar Chandan on 07-12-2009 according to Hindu rites and rituals at Patna, and a daughter was born to them of this wedlock. The husband of petitioner committed physical and mental harassment and ousted the petitioner from their shared household located at Bangalore. It is further submitted that the petitioner has got no personal income whereas, the husband of the petitioner has got an income of at least Five lakhs per month and is spending a luxurious life but he is not giving even a single penny for the maintenance of the petitioner and her daughter. Thus, it is prayed on behalf of the petitioner to pass interim order as the court deems just and proper.

3. Reply dated 02-09-23 and additional reply dated 13-10-23 were filed on behalf of the opposite parties opposing and denying the above allegations and averments made by the petitioner while also submitting that the instant petitioner has also filed a maintenance case before the Ld. Family Court, Patna in which she has already been granted relief of maintenance. So, it was submitted that no question of maintenance will arise in the present case. It was also submitted that in times of medical as well as physical needs, when Opposite Party No. 1 required petitioner the most, the petitioner was not with the opposite party No. 1. It



was also submitted that the petitioner has tortured the opposite parties. It was also submitted that OP-1 has filed a divorce case before the Bangalore court which is pending for disposal. It was also submitted that the petitioner has filed multiple cases in different forum, harassing the opposite parties. It was further submitted that petitioner is well educated and is capable of earning for her and her daughter. It is submitted by the opposite party that the instant petition is not maintainable and is liable to be rejected

4. I have carefully perused the case record along with the instant petition, rejoinder filed by the opposing party. Domestic Incident Report by the protection officer as well as the declaration of assets and liabilities on affidavit in the form of enclosure I submitted by the petitioner and heard both parties on point of grant of interim maintenance. On perusal it transpires that the application was preferred by the applicant petitioner under Protection of Women from Domestic Violence Act, 2005. It was registered on 14-02-2023. It was received on transfer to this court on July 02-07-2023. The Domestic Incident Report was put on record on 25-04-2023 which mentions that verbal and emotional misbehavior, use of economic strength, harassment by demand for dowry was allegedly committed upon the petitioner. From perusal, it reveals that:

a) The petitioner and Opposite Party No. 1 are married to each other.

b) The petitioner and respondent no. 1



had a daughter from this wedlock who is a minor.

c) The petitioner is currently unemployed.

d) The petitioner along with her daughter, is currently residing within the jurisdiction of this court when she was not allowed to reside at her matrimonial house.

e) The opposite parties in the rejoinder has not made any submissions regarding giving financial support to maintaining the petitioner or/and her daughter since the day the petitioner is living apart from her husband and in-laws. It was only submitted that the petitioner is getting Rs. 4,000/- maintenance vide order of Family Court in Maintenance case.

f) The Opposite Parties have not filed any affidavit in support of income, rather, has not disclosed the income of Opposite Party No. 1 in their entire rejoinder. Under the circumstance, the court ought to believe the income as has been filed through affidavit by the petitioner as directed by the Hon'ble Supreme Court in Rajnesh V. Neha & Anr.

g) The law regarding grant of maintenance under different Acts has been settled by the Hon'ble Supreme Court in 'Rajnesh V. Neha.' The Hon'ble Apex Court in Rajnesh V. Neha & Anr. / Cri Appeal No. 730 of 2020 arising out of SLP (Crl.) No. 9503 of 2018 formulated guidelines for grant of maintenance and directed the appellant to pay interim maintenance along with debts to his wife and their minor child. As per the



Hon'ble Supreme Court of India in Neha Tyagi V. Lt. Colonel Deepak Taygi [Civil Appeal No. 6332 of 2021]. Husband cannot be absolved from his liability and responsibility to maintain his minor child. Whatever be the dispute between the husband and the wife, a child should not be made to suffer. It has also been observed that the child has the right to be maintained as per the status of the father.

5. Thus, in light of the above facts, circumstances, case law of Rajnesh V. Neha, and the discussions made above, the instant petition is allowed. It is hereby ordered that:

i. Opposite Party No. 1 will pay to the petitioner an interim maintenance of Rs. 35,000/- (thirty-five thousand rupees only) monthly to the petitioner under all the heads cumulatively for petitioner and their minor daughter.

ii. The petitioner is directed to provide her bank account details to the court for communication to the Opposite Party No. 1 for making such payment.

iii. In light of the directions of the Honorable Supreme Court in Rajnesh vs. Neha, this order for interim maintenance shall be applicable from the date on which the application for the same was filed and shall continue till the disposal of the instant case.

iv. The petitioner is directed to disclose the interim maintenance granted in the instant petition, in any subsequent proceeding of maintenance for the adjustment of set-off.



6. Both parties are directed to represent themselves properly on each and every date and take all endeavours for early disposal of this case and no deviations from the same would be allowed otherwise proper order may be passed.

7. Put up on 22-11-2023 for further proceeding.”

12. It would be further apposite to reproduce para Nos. 17, 18, 19, 28, 29 and 30 of the legal report as available through **Kamatchi case** (supra), which are as under:-

“**17.** It is, thus, clear that though Section 468 of the Code mandates that “cognizance” ought to be taken within the specified period from the commission of offence, by invoking the principles of purposive construction, this Court ruled that a complainant should not be put to prejudice, if for reasons beyond the control of the prosecuting agency or the complainant, the cognizance was taken after the period of limitation. It was observed by the Constitution Bench that if the filing of the complaint or initiation of proceedings was within the prescribed period from the date of commission of an offence, the Court would be entitled to take cognizance even after the prescribed period was over.

18. The dictum in *Sarah Mathew v. Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62] has to be understood in light of the situations which were dealt with by the Constitution Bench. If a complaint was filed within the period



prescribed under Section 468 of the Code from the commission of the offence but the cognizance was taken after the expiry of such period, the terminal point for the prescribed period for the purposes of Section 468, was shifted from the date of taking cognizance to the filing of the complaint or initiation of proceedings so that a complaint ought not to be discarded for reasons beyond the control of the complainant or the prosecution.

19. Let us now consider the applicability of these principles to cases under the Act. The provisions of the Act contemplate filing of an application under Section 12 to initiate the proceedings before the Magistrate concerned. After hearing both sides and after taking into account the material on record, the Magistrate may pass an appropriate order under Section 12 of the Act. It is only the breach of such order which constitutes an offence as is clear from Section 31 of the Act. Thus, if there be any offence committed in terms of the provisions of the Act, the limitation prescribed under Section 468 of the Code will apply from the date of commission of such offence. By the time an application is preferred under Section 12 of the Act, there is no offence committed in terms of the provisions of the Act and as such there would never be a starting point for limitation from the date of application under Section 12 of the Act. Such a starting point for limitation would arise only and only after there is a breach of an order passed under Section 12 of the Act.

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28. It is thus clear that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution. In our considered view, the High Court was in error in observing that the application under Section 12 of the Act ought to have been filed within a period of one year of the alleged acts of domestic violence.

29. It is, however, true that as noted by the Protection Officer in his domestic inspection report dated 2-8-2018, there appears to be a period of almost 10 years after 16-9-2008, when nothing was alleged by the appellant against the husband. But that is a matter which will certainly be considered by the Magistrate after response is received from the husband and the rival contentions are considered. That is an exercise which has to be undertaken by the Magistrate after considering all the factual aspects presented before him, including whether the allegations constitute a continuing wrong.

30. Lastly, we deal with the submission based on the decision in *Adalat Prasad* [(2004) 7 SCC 338]. The ratio in that case applies when a Magistrate takes cognizance of an offence and issues process, in which event instead of going back to the Magistrate, the remedy lies in filing petition under Section 482 of the Code. The scope of notice under Section 12 of the Act is to call for a response from the respondent in terms of the statute so that after considering the rival submissions, appropriate order can be issued.



Thus, the matter stands on a different footing and the dictum in *Adalat Prasad* [(2004) 7 SCC 338] would not get attracted at a stage when a notice is issued under Section 12 of the Act.”

13. Taking note of the aforesaid factual and legal discussions, as there is no cognizance order in view of Section 31(1) of the D.V. Act, 2005 in present case, the applicability of limitation as available under Section 468 of the CrPC is not applicable, therefore, prayer *qua* quashing of present domestic violence case on the sole ground of limitation is unfounded.

14. Accordingly, the present petition stands dismissed being devoid of any merit.

15. However, the learned trial court is directed to expedite the proceeding in accordance with law.

16. Let a copy of this judgment be communicated to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	16-07-2025
Uploading Date	05-08-2025
Transmission Date	05-08-2025

