

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.30439 of 2015

Arising Out of PS.Case No. -478 Year- 2014 Thana -ARA NAWADA District- BHOJPUR

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1. Vinit Kumar Tiwari Son of Sheo Nath Tiwari resident of village -
Durgadih, P.S. Bikramganj, District - Rohtas..... .. Petitioner/s

Versus

1. The State of Bihar.

2. Seema Kumari wife of Vinit Kumar Tiwari, daughter of Vijay Kumar
Singh resident of Village- Kurmauri Police Station Sikarhatta, District-
Bhojpur.

.. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rahul Nath

For the Opposite Party/s : Mr. Ram Chandra Sahni(App)

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

4 13-10-2015 Heard learned counsel for the petitioner and learned counsel
appearing on behalf of the opposite party No. 2.

The petitioner apprehends his arrest in connection with a
case registered for the offences punishable under Section 498(A)
and other Sections of the Indian Penal Code and Section 3 of the
Dowry Prohibition Act.

Learned counsel for the petitioner submits that though the
allegation has been made that the petitioner is husband of opposite
party No. 2, yet it seems that the marriage in question is not a
valid marriage as there is no document to prove the same nor were
any rituals performed according to the Hindu rites. He further
submits that even the child alleged to have been born out of the
said marriage is not his child and he is unaware as to where and

how the child was conceived.

The petitioner is present today in Chambers and so is opposite party No. 2. This Court has interacted with both the petitioner and opposite party No. 2 and after much deliberations, it has come that the petitioner is not willing to live with opposite party No. 2 as she is not his legally married wife. Furthermore, submits that he has already married another lady and the early marriage being an invalid one, the same cannot be forced upon him. He is just unwilling to live with her.

Opposite party No. 2 has different story to tell. She submits that she was married to the petitioner as earlier she had come to know him from the time they both appeared in an examination in Arrah. She also submits that thereafter, the petitioner obtained her phone number and had been communicating with her and when she started withdrawing her communication with him, he started threatening her that he will tell her parents and also by stating that he can prove that she is having a bad character. Ultimately, to escape away the wrath of her father, they married secretly on 27.09.2011 at Rookmani Temple, Vikramganj, Rohtas. Apprehensive of the fact that he may be implicated in a case, he as well as Seema Kumari (opposite party No. 2) have sworn affidavit before the Notary Public at Danapur that they were husband and

wife and they were living together at Digha, Patna. It was in pursuance of this marriage that a baby girl was born namely, Masoom Kumari at Kurji Family Hospital and she had produced in Chambers today the birth certificate issued from the said Hospital and in the said certificate, name of the petitioner has been recorded as the father of the child.

Learned counsel for the petitioner however, submits that such documents are not permissible legally and are mere creations of the opposite party No. 2. On the other hand, petitioner's counsel has produced another affidavit by the opposite party No. 2 in which it has been stated that she is willing to let her husband get married for the second time as she is unable to bear any child further. Such affidavit however, seems to be a questionable document, if the same parameter are to be exercised.

Be that as it may, in view of the allegations and counter allegations and the fact as it their stand today that the said documents are subject to verification, the same can only be done by the Court below. The only issue is that there is a child born out of the marriage between the parties and in order to sustain herself alongwith child it is in the interest of justice that an amount of subsistence be rendered to her by the husband-petitioner till such issues are resolved.

Accordingly, this Court directs that the petitioner shall deposit a sum of rupees five thousand per month in the bank account of the opposite party No. 2 beginning from November, 2015 that is by 10th November, 2015. If the same is deposited by way of first installment, let the petitioner, in the event of his arrest / surrender within a period of four weeks from the date of receipt/production of a copy of this order, be enlarged on bail on furnishing bail bonds of Rs. 10,000/- (ten thousand) with two sureties of the each amount to the satisfaction of the learned Chief Judicial Magistrate, Bhojpur in connection with Ara Nawada P.S. Case No. 478 of 2014, subject to the conditions as laid down under Section 438(2) of the Cr. P.C.

It is further made clear that if the aforementioned amount which is paid to be paid to opposite party no. 2 in her bank account, if not paid for two consecutive months, it shall be open to the opposite party No. 2 to take appropriate steps in accordance with law which shall include moving this Court for modification of the order passed today.

(Anjana Mishra, J)

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