

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51893 of 2014

Arising Out of PS.Case No. -12 Year- 2014 Thana -MAHILA P.S. District- PURNIA

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Md. Kausar Ali @ Md. Kausar Azam Son of Yusuf Ali Resident of village
- Sandalpur, P.S. Araria, District - Araria

.... Petitioner/s

Versus

1. The State of Bihar.
2. Roshan Ara Khatoon, W/o Kaushar Ali, D/o Abdul Kayum, Resident of
Chimani Bazar, Miyan Bazar, P.S. Sadar, Dist. Purnea.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dharmendra Kumar, Advocate.

For the Opposite Party/s : Mr. L.K.Sharma(App)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

8 23-07-2015

Heard learned counsel for the parties.

2. The petitioner facing allegation for offence under Section 498(A), 494, 323, 504 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act has not been able to deny the allegation of second marriage against him despite repeated opportunities given to the learned counsel for the petitioner to file supplementary affidavit. In this regard the relevant portion of the earlier order of this Court dated 22.4.2015, reads as follows:-

“As per para-7 of the complaint petition there happens to be disclosure over second marriage of petitioner which has been refuted by the learned counsel for the petitioner. As, no such averment has been made in the pleading on account thereof, there should be specific assertion on behalf of petitioner on that very score.”

3. The subsequent order dated 26.5.2015 will also bear it out that on that date also, time was sought for filing supplementary affidavit, which reads as follows:-

“Both sides present.

It has been stated that affidavit could not be filed by petitioner which shall be filed soon after the opening of the Court after Summer Vacation.

As prayed, list this matter after Summer Vacation.”

4. Thereafter, the case was again listed on 26.6.2015 and the prayer made on behalf of the petitioner for adjournment for a period of three weeks for filing supplementary affidavit was allowed as would be evident from the aforesaid order which reads as follows:-

“Counsels for the petitioner and the State are present. Nobody has appeared on behalf of O.P. No.2.

As prayed on behalf of the petitioner, let this matter be placed after three weeks enabling the petitioner to file supplementary affidavit as per the order dated 22.04.2015.”

5. Thus, when the petitioner has not been able to muster courage till date to even deny the allegation of the opposite party no.2 as with regard to his entering into second marriage, the submission of learned counsel for the petitioner that the petitioner is a Muslim and can enter into more than one marriage unlike the



Hindu will also make no impact on this court because even for such second marriage under Mohammedan law, the consent of the first wife is absolutely necessary. Once the petitioner does not even want to say on an affidavit as with regard to his entering into second marriage, the question of consent of the opposite party no.2, his wife, the complainant-cum-informant, does not arise.

6. As a matter of fact, in such a situation, the plea of the petitioner that he is ready to keep the opposite party no.2 as his duly wedded wife in presence of his second marriage also appears to be a mere excuse.

7. Learned counsel for the opposite party no.2 in fact has not only supported the allegation made in the First Information Report based on the complaint filed by the opposite party no.2 with regard to causing mental and physical torture to the opposite party no.2 but has also submitted with the experience, the opposite party no.2 had in the hands of the petitioner and his family members, her life would not be secured in the house of the petitioner in presence of second wife of the petitioner.

8. In such a situation, this Court had pointedly asked the learned counsel for the petitioner as to whether he was ready to support financially the opposite party no.2, the complainant, till conclusion of the trial in the pending criminal case against him but

his answer was in negative.

9. It thus becomes clear that the petitioner had not only sufficiently harassed, both physically and mentally, his first wife i.e. the opposite party no.2 and now having entered into second marriage without consent of the opposite party no.2, his first wife, he wants her to suffer for life long.

10. Thus, for the reasons recorded above, this Court is not inclined to grant privilege of anticipatory bail to the petitioner, namely, Md. Kausar Ali @ Md. Kausar Azam.

11. This application is, accordingly, dismissed.

12. Nothing said in this order shall stand in the way of the petitioner if he surrenders and makes a prayer for regular bail which shall be considered on its own merit without being prejudiced by this order.

(Mihir Kumar Jha, J)

Sujit/-

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