

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42891 of 2015

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Subhash Sharma Son of Late Raghunath Sharma, Resident of Mohalla - Nabiganj Near Naka No. 5, P.O. - Rajendra College Chapra, P.s. - Bhagwan Bazar, District - Saran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Punani Devi, Wife of Subhash Sharma, Daughter of Kamakhya Sharma, Resident of Village - Nayagaon, P.s. - Nayagaon, District - Saran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ravi Bhushan Prasad Sinha, Advocate.

For the Opposite Party/s : Mr. Amitesh Kumar(App)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 15-09-2015

Heard learned counsel for the parties.

This application has been filed for modification of the order dated 16.07.2015 in Cr. Misc. No. 50057 of 2014 so far it relates to condition no. (ii), which reads as follows:

"(ii) At the time of surrender, the wife/O.P.No. 2 shall also remain present in the court and after the petitioner gives an undertaking not only with regard to having already withdrawn the divorce case but also of keeping the wife/O.P.No. 2 with due dignity and will take her alongwith him after grant of provisional bail, he will be granted provisional bail only for a period of three months."

Learned counsel for the petitioner, in this regard, has explained that in terms of the order of this Court, the petitioner had withdrawn his matrimonial case No. 350 of 2013 pending in the Family Court, Saran at Chapra and in support of it, he relies on the order of the Family Court dated 12.08.2015.

From the reading of the order dated 12.08.2015, it



becomes very clear that learned counsel for the opposite party, contesting the matrimonial case, was present and was aware of the further action to be taken in terms of the order of this Court dated 16.07.2015 whereby and whereunder after withdrawal of the divorce case, both the petitioner and the O.P.No. 2, were supposed to appear before the court below for fulfilling the aforementioned condition no. (ii) and the remaining part of the order of this Court dated 16.07.2015.

It is here that the learned counsel for the petitioner has sought to explain that when after withdrawing the divorce case, the petitioner had gone to the house of O.P.No. 2 for taking her along with him to his house for living together, the O.P.No. 2 had refused to accompany the petitioner on the ground that till the petitioner would not separate himself in mess and business from his joint family and leave the company of his Bhabhi, the O.P. No. 2 will not be prepared to live with the petitioner.

As this fact been stated in the petition would need verification also from the O.P. No. 2, this Court would deem it expedient in the ends of justice now to direct the petitioner to surrender before the court below within a period of four weeks by giving advance information of his date of surrender to the learned counsel for the O.P. No. 2 appearing in the court below and if on

that date, the O.P. No. 2 does not remain present, the petitioner shall be granted provisional bail for a period of three months whereafter the court below shall carry out the rest of the orders subject to the co-operation and willingness of the O.P. No. 2.

It is made clear that if the O.P. No. 2 is found to be defiant and taking a different stand and posture, contrary to what was recorded in the order of this Court dated 16.7.2015 on the basis of submission of learned counsel for the opposite party no. 2, the provisional bail of the petitioner on expiry of period of three months shall also be confirmed but if, on the other hand if it is found that petitioner infact is feigning and creating uncalled for dispute, instead of complying the order of this Court of living together peacefully with opposite party no. 2, the provisional bail of the petitioner on expiry of period of three months shall also be cancelled and he will be taken into custody.

The order of this Court dated 16.07.2015 in Cr. Misc. No. 50057 of 2014 shall stand accordingly modified in terms of the aforementioned extent.

With the aforesaid observations and directions this application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

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