

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14146 of 2016

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1. Dina Nath Barnwal Son of Shri Durga Prasad Barnwal, Resident of Kedar Hardware, Govt. Colony Gomia, P.S.- Gomia, District- Bokaro, State- Jharkhand.

.... Petitioner/s

Versus

1. The State of Bihar
2. Madhu Barnawal Wife of Sri Dinanath Barnawal, Daughter of Shankar Prasad Barnawal, Resident of Commissionary Bazar, P.S.- Sheikhpura, District- Sheikhpura.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bipin Kumar

For the Opposite Party/s : Mr. Pushpa Sinha(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 13-07-2016

The present application has been filed for modification of the order dated 11.01.2016 passed in Cr. Misc. No. 45892 of 2015 with a prayer for a direction to the learned Court below to grant permission to the petitioner to leave the country during the pendency of the case.

It is submitted by learned counsel for the petitioner that petitioner works in the Indian Embassy, Muscat, Oman, hence the condition of Section 438(2) Cr.P.C should be modified to the extent that petitioner may leave the country.

Learned Magistrate has rejected the prayer of the petitioner only on the ground that this Court granted anticipatory bail to petitioner subject to condition under Section 438(2) Cr.P.C.

This Court granted bail to the petitioner vide order dated 11.01.2016 passed in Cr. Misc. No. 45892 of 2015



on submission of counsels for both sides that both sides have decided to part ways on payment of permanent alimony of Rs. 14,00,000/- on dissolution of marriage. As per the terms of agreement the petitioner was to submit a draft of 25 percent of permanent alimony of Rs. 14,00,000/- before learned Sub-Divisional Judicial Magistrate, Sheikhpura within two weeks of the order which was to be released in favour of the complainant on or before furnishing the bail bonds. The next 25 percent of permanent alimony of Rs. 14,00,000/- was to be submitted through bank draft within a period of three months after filing of the matrimonial suit before learned Principal Judge, Family Court, Sheikhpura which was to be released by the concerned Court in favour of the complainant and the rest 50 percent of the permanent alimony of Rs. 14,00,000/- within three months thereafter was to be deposited by the petitioner through bank draft before learned Principal Judge, Family Court, Sheikhpura which was to be released in favour of the complainant on conclusion of the matrimonial suit by the learned Court below.

It is submitted by learned counsel for the petitioner that the petitioner has already submitted the draft of Rs. 7,00,000/- which has been released in favour of complainant, hence the learned Court below mechanically rejected the prayer of the petitioner to grant permission to leave the country.

It is submitted by learned counsel for the



complainant that the petitioner is neither appearing in person either before the matrimonial suit or in complaint Case. The complainant admits the payment of Rs. 7,00,000/- out of 14,00,000/- of permanent alimony. Though the complainant has no objection if the petitioner is permitted to go abroad provided the petitioner deposits rest of Rs. 7,00,000/- of permanent alimony before the Principal Judge, Family Court, Sheikhpura and undertakes to appear before Principal Judge, Family Court, Sheikhpura as well as in the present complaint case.

It is submitted by learned counsel for the petitioner that petitioner is ready to accept the offer of the complainant and undertakes to deposit rest of Rs. 7,00,000/- of permanent alimony within a period of four weeks through bank draft in favour of the complainant before the Principal Judge, Family Court, Sheikhpura and will appear on the next date fixed in the matrimonial suit as well as in the complaint case. The petitioner also undertakes to appear before both the Courts till he leaves the country and will try to appear as and when Court directs him to appear.

In view of the stand of the parties, the order dated 21.03.2016 passed by learned Sub-Divisional Judicial Magistrate, Sheikhpura in Complaint Case No. 526(C) of 2014 whereby petitioner's prayer for grant of permission to leave the country has been rejected, is hereby quashed. Learned Sub-

Divisional Judicial Magistrate, Sheikhpura will pass fresh order with regard to the prayer of the petitioner in view of the present stand of the parties to go abroad if petitioner files proof that he has deposited Rs. 7,00,000/- out of the permanent alimony of Rs. 14,00,000/- before learned Principal Judge, Family Court, Sheikhpura.

The period of surrender is extended by four weeks.

It is made clear that both the Courts will not allow the petitioner to be absent in either of the proceeding for three consecutive dates. The learned Principal Judge, Family Court, Sheikhpura will release the draft of Rs. 7,00,000/- to the complainant on conclusion of the matrimonial suit or if the suit is not concluded due to laches on the part of the petitioner.

It is expected from both learned Sub-Divisional Judicial Magistrate, Sheikhpura and learned Principal Judge, Family Court, Sheikhpura to conclude the proceedings expeditiously.

Accordingly the modification application as well as I.A. No. 769 of 2016 are allowed.

(Dinesh Kumar Singh, J)

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