

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.52777 of 2016

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Md. Saif Raza @ Saif Raza son of Md. Ishaque Ansari resident of village -
Gangapur, P.S. Kurtha, District - Arwal.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Fahimuddin

For the Opposite Party/s : Mr. J.N. Thakur, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH
ORAL ORDER

02/ 07-12-2016

Heard learned counsels for the petitioner,

State and the informant.

The present application has been filed for modification of order dated 22.09.2016 passed in Cr. Misc. No. 47780 of 2015 in connection with Kurtha P.S. Case No. 94 of 2015 registered under Sections 498A, 341, 323, 379/34 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, pending in the court of learned Additional Chief Judicial Magistrate, Arwal.

The basic accusation is of torture for non-fulfillment of the dowry demand.

It was submitted on behalf of the petitioner that the petitioner was forced to marry the informant on



13.03.2015, as a result the petitioner filed Matrimonial Suit No. 100 of 2015 on 20.07.2015 for annulment of the marriage. Though, the FIR was lodged on 19.07.2015.

It was submitted on behalf of the informant that the petitioner is not making payment of the interim maintenance amount of Rs.4,000/- per month and Rs.5,000/- as litigation case as ordered by learned Principal Judge, Family Court, Jehanabad vide order dated 22.07.2016 passed in Matrimonial Suit No. 100 of 2015.

Learned counsel for the petitioner submits that the petitioner is ready to make payment of maintenance as directed by the Principal Judge, Family Court, Jehanabad, the petitioner was granted anticipatory bail on such submission with stipulation that the bail bonds of the petitioner will be accepted by learned court below on filing proof with regard to the up-to-date payment of maintenance amount and the litigation cost and the payment will be subject to any order being passed in matrimonial, maintenance or connected proceedings.

It is submitted by learned senior counsel for the petitioner that a co-ordinate Bench of this Court vide order dated 16.11.2016 passed in Civil Misc. No. 1248 of 2016 has stayed the operation of order dated 22.07.2016 passed by the



learned Principal Judge, Family Court, Jehanabad in Matrimonial Case No. 100 of 2015 on the ground that the divorce case was filed by the petitioner under the provisions of Mohammedan Law i.e. Article 307 of the Mohammendan Law by Mullah which clearly bars payment of cost during the pendency of divorce case as provided under Article 355 of the same Act. However, the learned Principal Judge, Family Court, Jehanabad has directed the husband to p ay monthly maintenance and cost under Section 24 of the Hindu Marriage Act which is not at all applicable to the present petition. In the circumstances, the petitioner is preclude to make payment of maintenance amount and his bail bond has also not been accepted due to such non-payment. The petitioner has been precluded by an order of this Court. In the circumstances, the order dated 22.09.2016 is modified to the extent that the petitioner may be allowed to furnish bail bond without making payment of maintenance amount in view of the interim order passed in the connected proceeding.

On the contrary, it is submitted by learned counsel for the informant that the stay order has been passed in different proceeding filed by the petitioner.

Keeping in view of the fact that the order of this Court clearly stipulates that above payment will be subject to



any order being passed in matrimonial or maintenance proceeding, the order dated 22.09.2016 passed in Cr. Misc. No. 47780 of 2015 is modified to the extent that the undertaking of the petitioner to make payment of maintenance amount will kept in abeyance which will be subject to the result of Civil Misc. No. 1248 of 2016. The learned court below will accept the bail bond of the petitioner within three weeks from today.

Accordingly, this modification application is disposed of.

(Dinesh Kumar Singh, J)

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