

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.7993 of 2016

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Rajeev Ranjan Kumar Son of Birendra Prasad Singh, Resident of Mohalla-
Mirzapur, P.S.- Nawada, in the District of Nawada

.... Petitioner/s

Versus

1. The State of Bihar
2. Smt. Pinki Kumari Wife of Rajeev Ranjan Kumar d/o Arvind Kumar
Sinha Resident of village- Nonhi, Tola Keshopur, P.S. Kako, in district of
Jehanabad

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Deepak Kumar, Adv.

For the Opposite Party/s : Mr. R.N.Jha(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 01-04-2016

Heard learned counsel for the parties.

The present application has been filed for quashing the order dated 22.01.2016 passed by learned Principal Judge, Family Court, Nawada in Matrimonial Case No. 89 of 2014, filed with a prayer for passing a decree of divorce, whereby the petitioner is directed the petitioner to make payment of Rs.1,500/- per month to the opposite party no. 2 as expenses for pursuing the litigation.

The factual matrix is that the petitioner solemnized the marriage with O.P. No. 2 Smt. Pinki Kumari on 10.12.2005 in accordance with Hindu rites and rituals but the marriage could not be consummated. The relationship deteriorated then ultimately after nine years of the marriage the petitioner filed Matrimonial

Suit No. 89 of 2014 under Section 13 of the Hindu Marriage Act with a prayer for divorce on 23.4.2014.

The O.P. No. 2, subsequent to the filing of the Matrimonial Suit, filed Jehanabad Mahila P.S. Case No. 26 of 2014 against the petitioner and others levelling accusation under sections 498A/34 IPC.

The petitioner preferred Cr. Misc. No. 47807 of 2014 before this Court with a prayer for anticipatory bail which was allowed on 14.7.2015. During hearing of anticipatory bail application this court made endeavour to get the issue reconciled between the parties but it could not be reconciled. An offer was made on behalf of the petitioner that he is ready to make payment of Rs.4000/- per month from August, 2015 by depositing in the bank account of the opposite party no.2 by second week of every succeeding month. The counsel for opposite party no.2 accepted the offer of the petitioner on behalf of opposite party no.2. The above payment was directed to be subject to any order being passed in any order being passed in matrimonial, maintenance or other related proceedings. The relevant portion of the order dated 14.7.2015 is quoted hereunder:

“Considering the inconsistent stand taken by both the parties and the matrimonial suit filed at earlier point of time, the reconciliation does not

appear to be feasible at this juncture. However, the petitioner is ready to pay Rs.4,000/- per month from August, 2015 to the informant by depositing the same in her account by second week of every succeeding month.

The offer is acceptable to the informant, who undertakes to supply the bank account number by submitting the same on affidavit before the learned court below within a period of two weeks.

Considering the present stand of the parties, let the above named petitioner be released on anticipatory bail in the event of his arrest or surrender before the learned court below within a period of twelve weeks from today, on furnishing bail bond of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Jehanabad in connection with Jehanabad Mahila P.S. Case No. 26 of 2014, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

The abovementioned payment will be subject to any order being passed in matrimonial, maintenance or other related proceedings.

Three consecutive defaults in making payment will give liberty to the informant to file application for cancellation of bail bond of the petitioner.

The present order, in no way, will preclude the parties to resolve the issue otherwise.”



The O.P. No. 2 on 17.1.2015 filed an application in Matrimonial Suit No. 89 of 2014 filed under section 24 of the Hindu Marriage Act claiming litigation cost on each date fixed in the matrimonial suit since she is residing at Jehanabd and has to travel to Nawada to attend the proceeding. The said application has been brought on record as Annexure 4 to the petition. The petitioner filed rejoinder on 17.01.2015 to the petition of O.P. No. 2 dated 17.01.2015 as contained in Annexure-5. The petitioner contended in the rejoinder that he is making payment of rupees four thousand per month to the O.P. No. 2 and he has lost his job of a shipping company due to the lodging of the criminal case.

The learned Principal Judge, Family Court, Nawada, allowed the petition of the O.P. No. 2 vide order dated 22.1.2016 by holding that the O.P. No. 2 is legally wedded wife of the petitioner, she has to come from Jehanabad to attend the proceedings at Nawada and she is still ready to reside with the petitioner hence directed the petitioner to pay Rs.1500/- per month as expense of litigation cost to the O.P. No. 2 in addition to payment of Rs.4000/- per month in pursuance to the order dated 14.7.2015 passed in Cr. Misc. No. 47807 of 2014.

Learned counsel for the petitioner submits that since

the petitioner is already making payment of rupees four thousand per month to the complainant hence the learned court below has wrongly directed to make payment of litigation cost of Rs.1500/- per month. More over, the petitioner has lost his job due to filing of the complaint.

The order of learned Principal Judge dated 22.1.2016 passed under Section 24 of the Hindu Marriage Act is under challenge in the present proceeding. The question is whether an order passed in exercise of jurisdiction under section 24 of the Hindu Marriage Act can be challenged in an application preferred under section 482 Cr.P.C.? The answer is absolutely not, hence it is absolutely misconceived application and is fit to be dismissed with costs.

From the materials on record, it appears that the present application was filed on 17.2.2016 but the Stamp Reporter has not pointed out any defect, which reflects the competence of the concerned Stamp Reporter. It is expected from the Registrar General to take needful action in the matter and apprise this Court.

The impugned order needs no interference on three grounds. Firstly, that the impugned order passed under section 24 of the Hindu Marriage Act cannot be interfered with under an application preferred under section 482 Cr.P.C.; secondly, the

order of this Court passed in Cr. Misc. No. 47807 of 2014 clearly stipulates that the payment of rupees four thousand per month which the petitioner agreed to make is subject to any order being passed in matrimonial, maintenance or other related proceedings.

Thirdly, Section 24 of the Hindu Marriage Act provides relief by way of maintenance and litigation expenses to a spouse who is unable to maintain herself during pendency of a proceeding. Section 24 reads as follows:

“24.Maintenance pendente lite and expenses of proceedings.- Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.”

Hence, this Court finds no infirmity in the impugned order passed under section 24 of the Hindu Marriage Act. This court is restraining itself by not imposing cost but the application is dismissed.

(Dinesh Kumar Singh, J)

Amrendra/Anil/

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