

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12272 of 2016

Arising Out of PS.Case No. -48 Year- 2015 Thana -MAHILA P.S. District- PATNA

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Niraj Kumar

.... Petitioner/s

Versus

1. The State of Bihar
2. Madhumita Singh

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jai Kishore Sharma

For the Opposite Party/s : Mr. Awadhesh Kr.Singh(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

7 13-12-2016 Heard learned counsels for the petitioner, O.P. No. 2
and the State.

The petitioner being husband of the informant is apprehending arrest in a case registered for the offences punishable under Sections 498A,494 and 420/34 of the Indian Penal Code.

The basic accusation is of torture and performance of second marriage.

The petitioner and the informant are present in court. Learned counsel for the petitioner submits that the petitioner admits his marriage with the informant and birth of two children but it is being canvassed by learned counsel for the petitioner that the informant is his second wife whereas the first wife is Vijeta Mani. The petitioner is still ready to keep the informant and



children with dignity.

It is submitted by learned counsel for the informant that the petitioner fraudulently claimed her as his second wife. The informant is still residing under the guardianship of the father of the petitioner. The father of the petitioner namely Mohan Prasad Singh has entered appearance and filed an affidavit wherein he has clearly stated that the informant is the first wife of the petitioner whereas the petitioner falsely claimed that he performed marriage with Vijeta Mani on 13.2.2003 but the marriage was registered on 5.5.2014 which suggests that it has wrongly been claimed by the petitioner that he married Vijeta Mani on 13.2.2003. Statement to that effect has been made in paragraph 4 of the counter affidavit filed by Mohan Prasad Singh, which reads as follows:

“That falsity of the statement made by the petitioner can easily be borne out even by casual reference to the statement made by him on paragraph no. 9 of the petition, where he has stated that marriage with Vijeta Mani though was solemnized on 13.2.2003, but was registered on 5.5.2014, and this fact is clearly indicating towards the truth that Vijeta Mani was, in fact, married to the petitioner on 13.02.2003, and concealing the previous marriage with first wife Madhumita Singh, the O.P. No. 2, daughter-in-law of the deponent, the petitioner got marriage with Vijeta Mani registered on 5.5.2014. It is not worthy that there was no occasion to get the



marriage registered with Vijeta Mani registered on 5.5.2014 after about long 11 years.”

The father of the petitioner claimed that he is an old retired persons and now he has to maintain the informant and two grand children who are studying in St. Michael’s High School, Patna. The father of the petitioner was really hurt due to misconduct of the petitioner which has been canvassed in paragraph 7 of the counter affidavit which reads as follows:

“That conduct of the petitioner, who is the son of the deponent, has tarnished the image and prestige of the family in society, and the deponent is unable to raise his head with shame, whereas the deponent burnt his whole life on giving the petitioner well education, but the petitioner left his wife and two sons helpless unscrupulously to lead virtually a life of destitute; in the result future of his two sons has fallen in darkness without any hope, and old, aged and ailing father like the deponent has to stand on his weak legs to bear his responsibility.”

On behalf of the father of the petitioner as well as the informant it is submitted that, at present, their main concern is the welfare of the informant, children and the education of children. If that is being taken care of, they will not like to oppose the prayer of the petitioner for bail.

An affidavit has been filed on behalf of the petitioner



stating in paragraphs 7 and 8 thereof that the petitioner is ready to relinquish his right and claim over entire ancestral/paternal property in favour of the informant and two children. Paragraph nos. 7 and 8 of the supplementary affidavit of the petitioner read as follows:

“7.That in spite of aforementioned circumstances the petitioner has already expressed his willingness to surrender his interest in all his ancestral property and paternal property in favour of informant and two kids.”

“8.That petitioner once again hereby declare that he surrenders his entire interest in his entire ancestral property and paternal property from today itself in favour of the informant of the instant case and the two kids and besides the same he undertake to pay Rs.2000/- monthly maintenance, which shall be subject to final settlement.”

Though it is stated that some time ago petitioner was head of the Department of Physiotherapy in a private medical college at Dehradun and was getting salary of rupees thirty thousand but right now due to case being lodged he has been reverted back to his earlier post and now he is getting salary of about rupees twenty thousand per month. The affidavit suggests that the petitioner is ready to make payment of rupees two thousand per month apart from relinquishing his right and claim in



ancestral/paternal property but keeping in view the liability of maintaining the informant and education of two children, the petitioner is ready to make payment of Rs.9000/- per month from January, 2017 by depositing the same in the bank account of the informant by second week of every month. Though statement to that effect has not been made in the affidavit.

Learned counsel for the informant submits that the informant is ready to accept the offer of the petitioner and undertakes to submit the bank account number before the learned court below on affidavit within three weeks.

Considering the present stand of the parties, particularly, keeping in view of saving the informant and children from destitution and vagrancy, with a lurking hope of the issue being reconciled in future, let the above named petitioner be released on anticipatory bail in the event of 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 JM Ist Class, Patna in connection with Mahila P.S. Case No. 48 of 2015 subject to the conditions as laid down under Section 438(2) Cr.P.C.



The aforesaid payment will be subject to any order being passed in matrimonial or maintenance proceeding.

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

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

(Dinesh Kumar Singh, J)

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