

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5945 of 2016

Arising Out of PS.Case No. -1 Year- 2012 Thana -MAHILA P.S. District- PATNA

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Ravi Bhushan Prasad, Son of Sri Shyam Bihari Prasad, Resident of C/1 Housing Colony, Lohiya Nagar, P.S.- Kankarbagh, District-Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. Uma Kumari wife of Ravi Bhushan Prasad, daughter of Sri Raghubansh Kumar Resident of Type-II, P.N.T. Colony, Kaidwai puri P.S.-Budha Colony, District-Patna.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Digamber Kumar Singh, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

For the Opposite Party No.2: Ms. Uma Kumari, in person

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-08-2016

By way of the present application preferred under Section 482 of the Code of Criminal Procedure (For short 'the CrPC'), the petitioner has sought for quashing of the orders dated 07.11.2015 to 23.01.2016 passed by the learned Judicial Magistrate-1st Class, Patna in G.R. No. 3508 of 2012 arising out of Mahila P.S. Case No. 1 of 2012.

2. The petitioner has been made an accused in the aforesaid police case registered under Sections 341, 323, 354 and 498A/34 of the Indian Penal Code. Apart from the petitioner, four others have also been made named accused in the aforesaid FIR. The FIR has been instituted on the basis of the oral statement of

the opposite party No. 2, Smt. Uma Kumari, wife of the petitioner, recorded by the Station House Officer of the Mahila Police Station, Patna.

3. In course of investigation, the petitioner was arrested by the police and was remanded to judicial custody on 13th October, 2012. His application for bail was rejected by the courts below. He moved for grant of bail before this Court and vide order dated 04.02.2013 passed in Cr. Misc. No. 49447 of 2012, he was granted interim bail by this Court subject to the condition that he would allow the complainant to reside in his house.

4. Thereafter, the matter proceeded in the court below in usual course. Since the order dated 4th February, 2013, passed by this Court was interim in nature, the matter was, once again, taken up on 26th of August, 2015 before this Court and on the same day, the application was disposed of with a direction to the trial court to pass appropriate order in the light of the observation made while granting interim bail to the petitioner. It would also appear from the order dated 26th August, 2015, as contained in Annexure-3 to the present application, that the trial court was granted liberty either to confirm or reject the interim bail of the petitioner.

5. It would further appear from the record that on 7th November, 2015, when the case was fixed before the Judicial



Magistrate, Patna, an application under Section 317 of the CrPC, was filed on behalf of all the five accused persons for dispensing with their personal attendance and allowing them to be represented through lawyer. It would further be evident from the order dated 07.11.2015 that the aforesaid application under Section 317 of the CrPC, was allowed in respect of four other co-accused persons, but so far as the petitioner is concerned, the interim bail granted to him in the light of the order passed by this Court was not confirmed and he was not allowed to be represented thorough lawyer. On the same day, even without forfeiting the sureties and cancelling the bail bond, a non-bailable warrant of arrest was issued against him fixing 18.12.2015 as the next date for appearance of the accused persons. As the petitioner failed to appear, he was declared a proclaimed offender, vide order dated 18th December, 2015, and the next date was fixed on 23rd January, 2016. As the petitioner failed to appear before the court, the Magistrate issuing proclamation under Section 82 of the CrPC ordered for attachment of the property of the petitioner, moveable and immovable, under Section 83 of the CrPC, vide order dated 23rd January, 2016.

6. In the present application, the petitioner has challenged the aforesaid orders passed from 7th November, 2015 to 3rd January, 2016.

7. Mr. Digamber Kumar Singh, learned counsel



for the petitioner has submitted that the impugned orders are bad in law and are fit to be set aside. He has submitted that there was no reason before the jurisdictional Magistrate to deny the prayer of the petitioner made under Section 317 of the CrPC, as on the basis of the same application, four other co-accused were allowed to be represented through their counsel. He has submitted that the ingredients necessary for declaring an accused, as an offender, were absent and, hence, the court has erred in declaring the petitioner, as a proclaimed offender for non-appearance before the court on one date. For the same reason, he has assailed the order passed under Section 83 of the CrPC whereby process has been issued for attachment of moveable and immovable property. He has contended that being a law abiding citizen, the petitioner surrendered before the Magistrate on 11th February, 2016 and since then, he is languishing in jail. The trial of the case is running at a slow pace. Till date, out of the fifteen charge-sheet witnesses, only three have been examined, cross-examined and discharged and the opposite party No. 2 is being examined before the court as witness No. 4. He submits that the trial of the case is not likely to conclude in near future.

8. *Per contra*, Mrs. Uma Kumari, opposite party No. 2, who has appeared in person, has submitted that the petitioner, being her husband, has coerced her in various ways and



has not even paid heed to the order passed by this Court while granting him interim bail. She has contended that she has not been allowed to live in her matrimonial home. She has submitted that since she is not being allowed to live in her matrimonial home, she is compelled to live with her daughter in her official accommodation at the Post and Telegraph Colony, Kidwaipuri. She has stated that she is working as a Postal Assistant in Railway Mail Service at Patna and has to face a lot of difficulties in maintaining her daughter alone. She has also contended that the conduct of the petitioner does not justify him to be granted bail.

9. I have heard learned counsel for the petitioner and opposite party No. 2, in person, and perused the record.

10. In my considered opinion, the impugned orders passed by the court below cannot be sustained. The petitioner, along with four of his family members, is facing criminal prosecution lodged by his wife. It can be inferred from the pleading of the parties that there is matrimonial discord and incompatibility between the husband and wife. The court cannot force them to live together. It does not stand to reason as to why while allowing the other four co-accused persons to be represented through lawyer, the petitioner's prayer to be represented through lawyer was refused on 7th November, 2015. Furthermore, it would be evident from reading the impugned order dated 07.11.2015 that



while disallowing the prayer made under Section 317 of the CrPC, the Magistrate has not only refused to confirm the provisional bail, but also directed for issuance of non-bailable warrant of arrest against the petitioner even without forfeiting the sureties submitted earlier under the order of this Court or cancelling the bail bond.

11. Be it noted that the process of the court is for dispensation of justice and not for harassment of the parties. The insistence on appearance of the parties before the court would be proper only if it is necessary for some purpose. From the reading of the order impugned, it does not appear as to why the court wanted the personal appearance of the petitioner on 7th November, 2015. Similarly, the subsequent orders dated 18.12.2015 whereby the petitioner has been declared proclaimed offender and the order dated 23.01.2016 whereby order for attachment of property moveable or immovable, has been passed cannot be justified. It is *sine qua non* for action under Section 82 of the CrPC that there must be a report before the Magistrate that the person against whom the warrant was issued has absconded or had been concealing himself.

12. In the present case, there was no such report before the Magistrate and the proclamation order and the order of attachment were passed in complete breach of the provision of law.

13. Under the circumstances mentioned above, the

impugned orders dated 07.11.2015, 18.12.2015 and 23.01.2016 passed by the Judicial Magistrate-1st Class, Patna, in Mahila P.S. Case No. 1 of 2012, are quashed. Consequently, the petitioner is directed to be released on bail on furnishing bail bond of Rs. 10,000/- (rupees ten thousand) with two sureties of the like amount to the satisfaction of the Magistrate concerned in connection with Mahila P.S. Case No. 1 of 2012.

14. With these observations and directions, the application is allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	-----
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