

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38797 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

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Nand Kishore Singh, son of late Nagina Singh, resident of village/Mohalla –
Ashiana Nagar, House No. 133, Phase-1 near Pump House, P.S. Shastri Nagar,
District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Urmila Singh daughter of late Ram Muni Singh, wife of late Vinod Kumar,
resident of Moti Bhawan, Ram Lakhan Path, Ashok Nagar Road No. 8 P.O. Lohia
Nagar, P.S. Kankarbagh, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : None

For the Opposite Party/s : Mr. Uma Nath Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 19-08-2017

Despite repeated calls no one appears on behalf of the
petitioner or the opposite party No.2. Counsel for the State is present.

This case has a chequered history. The opposite party
No. 2 filed complaint Case No. 2484 (C) of 2005 alleging torture. The
petitioner applied for and granted bail on 15.9.2006 in Cr. Misc. No.
37929 of 2006 on the undertaking that the petitioner was ready to
maintain his daughter-in-law along with her baby. The Court in the
aforesaid circumstances directed the court below to pass order with
the consent of the parties for giving reasonable amount to the
satisfaction of the complainant in favour of the complainant and her
baby for maintenance in honourable way. The court below after



considering the totality of the fact situation fixed Rs. 2500/- per month as maintenance to the complainant daughter-in-law along with her baby.

The petitioner thereafter filed Cr. Misc. No. 18212 of 2007 with a prayer to reduce the maintenance amount of Rs. 2500/-. This Court on consideration of the submissions of the parties, reduced the maintenance amount from Rs. 2500/- to Rs. 2000/- per month by order dated 4.5.2007 passed in Cr. Misc. No. 18212/2007 after hearing the petitioner and the opposite party No. 2 and with their consent. The petitioner who was party to the consent order and undertaking dated 15.9.2006 passed in Cr. Misc. No. 37929/2006 was also party to the subsequent consent order dated 4.5.2007 whereby the monthly maintenance of Rs. 2000/- was fixed for maintenance of the complainant and her baby.

In the order dated 4.5.2007 it was made clear that any breach of the condition with regard to payment of maintenance of Rs. 2000/- per month will lead to cancellation of the bail bonds of the petitioner without further reference to the Bench.

The petitioner for some time obeyed the direction of this Court after modification of the amount of monthly maintenance by the order dated 4.5.2007 but once again he filed this application for modification of the order dated 4.5.2007 passed in Cr. Misc. No.



18212 of 2007. The present application was filed with new story and stand that the opposite party No. 2 is in a position to maintain herself and her baby and as such the order dated 4.5.2007 may be modified and the petitioner may be absolved from the responsibility of maintaining the opposite party no. 2 and her baby (daughter-in-law and the grand child).

This application was heard on various dates and finally it was admitted on 19.3.2012. Today, the case has been listed for hearing. In the first half the case was called out but no one appeared on behalf of the parties except the counsel appearing on behalf of the State. In the second half also the case was again called out with a view to facilitate the party to assist the Court. Again except the counsel appearing on behalf of the State, no one had appeared to assist the Court.

It appears from the records of Cr. Misc. No. 37929/2006, Cr. Misc. No. 18212/2007 and the present petition, being Cr. Misc. No. 38797 of 2010 that the petitioner, who is the father-in-law of the opposite party No. 2, approached the Court and himself tendered to maintain the daughter-in-law and the grand child and was party to the consent order in Cr. Misc. No. 18212/2007, has filed the present application after enjoying the privilege of bail on the condition as per his own undertaking. This conduct of the petitioner is indicative of the



fact that he gave undertaking to maintain the daughter-in-law and the grand child when he was relegated to the court below for fixation of quantum of alimony and he had approached this Court stating that quantum of Rs. 2500/- is excessive, again this Court directed for payment of Rs. 2000/- per month with the consent of parties. The Court at the time of fixing the amount of Rs. 2000/- per month as maintenance observed that any departure from the undertaking may lead to cancellation of his bail bonds.

Now he filed the present application for modification of the order dated 4.5.2007 which was a consent order. There is absolutely no assertion of any fraud or misrepresentation in the matter of consent or in the order dated 4.5.2007 justifying any interference by this Court. In the totality of the fact situation, any prudent man can understand the foul played by the petitioner to procure the order of bail and then after availing the privilege of bail adopting one or the other sharp practice or tactics to defeat the direction of this Court.

The pleading of the petitioner with regard to the income on account of registration of certain land in favour of the opposite party No. 2 is not a ground to modify the condition for grant of bail. It was fixed by this Court on his own volition and undertaking. It is needless to state that it is not a case where the Court fixed the quantum of maintenance under Section 125 Cr.P.C. which has been



challenged in the instant case and justify modification of the order in the changed circumstance, since the petitioner has himself tendered to maintain his daughter-in-law and the grand child, for grant of bail as one of the conditions he cannot be allowed to resile from that position and now seek modification on the plea which he has taken in the pleading of this case.

On consideration of the entire materials on record in totality this Court is not inclined to modify the consent order dated 4.5.2007.

The application is, accordingly, dismissed. There shall be no order as to costs.

(Anil Kumar Upadhyay, J)

S.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.08.2017
Transmission Date	

