

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43832 of 2016

Arising Out of PS.Case No. -230 Year- 2014 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

=====

Shambhu Kumar, son of Late Bishwanath Mishra, Resident of Mohalla-
Parbatti, Dhabiya, Kali Asthan, P.S. University, District –Bhagalpur.

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pravin Kumar Sinha, Advocate

For the Opposite Party/s : Mr. Sri Tarkeshwar Nath Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

9 18-05-2017 Heard learned counsels appearing on behalf of the

petitioner and complainant as well as learned APP appearing on

behalf of the State.

The petitioner and the complainant are present before
the Court.

The petitioner being the husband of the complainant is
apprehending arrest in a complaint case wherein process has been
directed to be issued after cognizance being taken for the offences
punishable under Section 498A of the Indian Penal Code and
Section 3/4 of the Dowry Prohibition Act.

Basic accusation is of torture for non-fulfillment of
dowry demand.

Learned counsel for the petitioner submits that the
petitioner admits his marriage with the complainant and birth of



three children. The two daughters are residing with the petitioner while the son is residing with the complainant. Earlier also the complainant filed Complaint Case No.2325/2011 levelling accusation under sections 323/504/498A of the Indian Penal Code and sections 3/4 of the Dowry Prohibition Act, wherein, the petitioner is on bail. A statement to that effect has been made in paragraph no. 3 of the petition. In fact, it is the complainant, who deserted the petitioner, hence, the petitioner filed Matrimonial Suit No.206/2012, with a prayer for divorce and, thereafter, the present complaint has been filed on 28.02.2014. It is further submitted that the petitioner is ready to keep the complainant as wife with full dignity and honour, though specific statement to that effect has not been made in the petition. However, so far as the accusation has now been levelled by the complainant that the petitioner has performed second marriage is absolutely false. Statement to that effect has been made in paragraph 4 of the supplementary affidavit that the petitioner has not performed second marriage.

It is submitted by the learned counsel for the complainant that the complainant has definite information that the petitioner has performed second marriage. In the circumstances the complainant is not ready to accept the offer of the petitioner of resuming the conjugal life. It is further submitted that the



complainant filed Miscellaneous (Maintenance) Case No.16 of 2014, before the Principal Judge, Family Court, Bhagalpur, under section 125 of the Cr.P.C, claiming maintenance of Rs.7500/-, per month. In the said proceeding, the learned Principal Judge, Family Court, Bhagalpur, vide order dated 05/12/2015 granted Rs.2500/- per month to the complainant and Rs.1500/- per month to her minor son as maintenance but, the aforesaid order has not been complied with, though the said maintenance case was dismissed for default. Subsequently, an application for restoration of the same has been filed.

It is further submitted on behalf of the petitioner that in alternative the petitioner is ready to comply the order dated 05.12.2015, passed by the Principal Judge Family Court, Bhagalpur, in Miscellaneous Petition No.16 of 2014, by depositing the monthly maintenance amount as awarded in the order aforementioned in the bank account of the complainant by second week of every succeeding month. The petitioner also undertakes to deposit the arrears of the maintenance amount within a period of three months arising out of the aforesaid maintenance case.

The counsel for the complainant further submits that the complainant is ready to accept the offer of the petitioner and undertakes to submit her bank account number on affidavit before



the learned court below within a period of three weeks. In the circumstances, she is not opposing the prayer for bail of the petitioner.

Considering the present stand of the parties, let the above-named petitioner be released on anticipatory bail provisionally for four months, in the event of arrest or surrender before the learned Court below within a period of 12 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 the learned SDJM, Bhagalpur, in connection with Complaint Case No.230/2014, subject to the conditions as laid down under Section 438(2) Cr.P.C.

The provisional bail of the petitioner will be confirmed by the learned Court below on submission of proof with regard to deposit of entire maintenance amount as awarded by the Principal Judge Family Court, passed in Miscellaneous (Maintenance) Case No.16 of 2014.

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 complainant to file an application for cancellation of bail of the petitioner.



The present order will not preclude the parties to
reconcile the issues otherwise.

(Dinesh Kumar Singh, J)

Ashwini/-

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