

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35467 of 2016

Arising Out of Complaint Case No. -429 Year- 2011 Thana -SARAN COMPLAINT CASE District-
SARAN

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Jai Prakash Pandey @ Jay Prakash, son of Late Nathuni Pandey, R/o
Village-Nadawan, P.S.-Nadawan, District-Buxar.

.... Petitioner/s

Versus

1. State of Bihar
2. Kanchan Devi, wife of Jai Prakash Pandey @ Jay Prakash, D/o Late Jagdish Das, R/o Village-Dawalatganj Badi Songhat, P.S.-Bhagwan Bazar, District-Saran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Awadhesh Kumar Singh, Adv.

For the State : Mr. J. N. Thakur, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

11 22-06-2017

Heard learned counsels for the petitioner and the State.

The petitioner is present in person.

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.

Prosecution case got initiated with the filing of Complaint Case No. 429 of 2011, by Kanchan Devi, on 05/03/2011. The complainant claims to have married the petitioner on 07/06/2005. Subsequent to the marriage, the complainant gave birth to a male child, on 01/07/2006, but



thereafter, torture was inflicted for non-fulfillment of dowry demand of Alto Car and the accused persons including the petitioner tried to kill the complainant and her son by causing burn injury, but somehow, the complainant managed to save herself. Subsequently, the complainant was driven out from the matrimonial house.

It is submitted by learned counsel for the petitioner that the petitioner admits his marriage with the complainant and birth of a male child, but the matrimonial harmony could not continue for long and ultimately the petitioner filed Matrimonial Suit No.36 of 2010 with a prayer for divorce before the learned Principal Judge Family Court, Dwarka, New Delhi, In the said matrimonial suit, the complainant appeared and preferred an application under section 24 of the Hindu Marriage Act claiming maintenance amount of Rs.15,000/- per month along with Rs.30,000/- as litigation cost and Rs.5000/- towards travelling and other expenses. The complainant claimed in the said proceeding that the petitioner has a rental income of Rs.10000/- per month from his residential property, whereas agricultural income of Rs.2,00,000/- per year from the agricultural property and Rs.35000/- per month from his own business. Learned counsel for the petitioner further submits that petitioner works in



a factory of his brother and gets Rs.4000/- per month as salary. Moreover, under an agreement the petitioner handed over the house of native place to the complainant where she resides and also authorized her to collect all the agricultural income thereof so long she is his wife. A panchnama was also recorded before the Sarpanch Nadaon Panchayat to that effect. Though, the complainant declined to accept the offer, but the learned Principal Judge, Family Court, Dwarka vide order dated 13/04/2012 disposed of the application of the petitioner preferred under section 24 of the Hindu Marriage Act on the ground that it was the case of the complainant that the petitioner has rental income of Rs.10,000/- and Rs.2,00,000/- per annum from the agricultural property and if the same has been given to the complainant then she is not entitled for any further maintenance.

The certified copy of the order has been brought on record by way of supplementary affidavit. The contents of the supplementary affidavit have not been controverted by learned counsel appearing on behalf of the complainant.

However, learned counsel for the petitioner further submits that, apart from what has been held in the matrimonial suit, the petitioner is ready to make payment of Rs.3000/- per month to the complainant for the welfare of the child from



August, 2017 by depositing the same in the bank account of the complainant by second week of every succeeding month.

It is submitted by learned counsel for the complainant that the complainant in pursuance to the order dated 13/04/2012, passed in Matrimonial Suit No.36 of 2011 is neither receiving the agricultural income nor the rental income as she never took the charge of the property situated at the native place of the petitioner.

However, it is submitted that the complainant has not challenged the order of the Principal Judge, Family Court, Dwarka, New Delhi till date and the matter has now been transferred to the Court of Principal Judge, Family Court, Saran at Chapra.

Above all, learned counsel for the complainant submits that in spite of several reminders transmitted to the complainant, he is unable to contact her, though, on behalf of the complainant, he accepts the offer of payment to be made on behalf of the petitioner. However, he will make effort to get the bank account number of the complainant submitted before learned Court below on affidavit within a period of four weeks.

In the circumstances, at present, the counsel for the complainant is not opposing the prayer for bail of the petitioner,



since he has no instruction since last several months.

Considering the rival submissions of the parties, order being passed in the Matrimonial Suit with regard to the maintenance and the same being not challenged by the complainant before the competent Court and the present stand of the petitioner with regard to making monthly payment which will at present save the complainant and the minor child from destitution and vagrancy with a lurking hope that the matter may reconcile 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 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, Saran at Chapra, in connection with Tr. No. 1042 of 2016, arising out of Complaint case No.429 of 2011 , 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.

If the complainant fails to submit her bank account number on affidavit before the learned Court below, then the petitioner will deposit the said amount before the learned SDJM, Saran at Chapra, which will be released in favour of the



complainant, if she files any such application with prayer for release before the Court concerned, otherwise it will be subject to result of the case.

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)

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