

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37216 of 2016

Arising Out of Complaint Case No. -270 Year- 2016 Thana -BHABHU(KAIMUR) COMPLAIN C
District- BHABHUA (KAIMUR)

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Surendra Tripathi, S/o Late Uma Nath Tripathi, Resident of Village-
Akhalspur, Bhabua, P.S. District- Kaimur (Bhabua).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sunita Devi, wife of Surendra Tripathi, Daughter of Late Gagarnath Pandey, Resident of Village- Akhalspur, Bhabua, P.S. District- Kaimur (Bhabua). Currently residing at Village- Niwi, P.O.- Manihari, P.S.- Bhabua, District- Kaimur (Bhabua).

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sumeet Kumar Singh, Adv.
For O.P. No.2 : Mr. Santosh Kumar, Adv.
For the State : Mr. J. N. Thakur, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

13 07-08-2017 Heard learned Counsels appearing on behalf of the
petitioner, complainant and learned APP for the State.

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 Sections 498A, 494 and 379 of the Indian Penal Code.

The prosecution case got initiated with the filing of the



Complaint Case No.270 of 2016 on 29.03.2016 by the complainant Opposite Party No.2, alleging therein that her marriage was performed with the petitioner in May, 1999. In April 2004, when the complainant went to her matrimonial house after her 'gauna', further demand of Hero Honda motorcycle was made by the accused persons. In 2008, the complainant gave birth to a male child namely Lakki Tripathy, but the torture and assault continued to be inflicted upon her for non-fulfillment of dowry demand of Hero Honda motorcycle and she was threatened that the petitioner would perform another marriage, if the demand is not met. On 20.03.2016, the complainant went to her matrimonial house with her brother when she came to know that the petitioner has performed second marriage with one Nikki. When the complainant protested, then the accused persons, after snatching her jewellery and other articles, drove her out from the matrimonial house. Considering solemn affirmation of the complainant and statement of the enquiry witnesses, the order of cognizance was passed.

It is submitted by learned Counsel appearing on behalf of the petitioner, that the petitioner admits his marriage with the complainant and birth of a male child. The petitioner denies



having performed second marriage with Nikki Tiwary and a statement to that effect has been made in paragraph no. 17 of the petition, which reads as under :-

“17. That it is humbly submitted that petitioner has not married to any Nikki Tiwari and false allegation has been brought by complainant to falsely implicate the petitioner under bigamy.”

Learned Counsel appearing on behalf of the petitioner further submits that the petitioner filed Matrimonial Suit No. 58 of 2016 on 17.03.2016, with a prayer for divorce and thereafter, the present complaint was filed on 29.03.2016. Subsequently, a complaint case under the provisions of the Protection of Women from Domestic Violence Act, 2005, was filed being Complaint Case No.391 of 2016 on 02.05.2016, wherein, vide interim order dated 13.07.2016, passed by the learned Chief Judicial Magistrate, Bhabua (Kaimur), the petitioner was directed to make payment of Rs.5000/- per month to the complainant opposite party no.2 by the 15th day of every succeeding month. The petitioner was also directed to provide residential accommodation to the complainant/ opposite party no.2 in matrimonial house and to keep her with full honour and dignity. The said order has been brought on record by way of Annexure-7 to the bail application.



The interim order dated 13.07.2016, passed by the learned Chief Judicial Magistrate, Bhabua (Kaimur) in Complaint Case No. 391 of 2016 was unsuccessfully challenged by the petitioner in Domestic Violence Appeal No.47 of 2016. Both the above mentioned orders were challenged during pendency of the present application and a co-ordinate Bench of this Court stayed the above mentioned orders passed in Domestic Violence case and Appeal, vide order dated 07.08.2017, passed in Criminal Miscellaneous No.25676 of 2017. At an earlier point of time, the complainant/opposite party no.2 preferred Title Suit No. 8 of 2011 with a prayer for partition of the joint family property, wherein, vide *ex parte* judgment and order dated 22.04.2015, passed by the Sub-Judge-III, Kaimur (Bhabua), opposite party no.2 and her son were jointly granted 2/9th share in the joint family property. The said judgment is under challenge in Appeal, the details of which has not been brought on record. The opposite party No.2 has also filed Maintenance Case No. 19 of 2014 on 07.04.2014, which is still pending before the Principal Judge, Family Court, Kaimur. In the background of such litigated relationship, the petitioner is not ready to keep the complainant opposite party no.2.

Learned Counsel appearing on behalf of the



complainant submits that marriage with the petitioner and birth of a male child are admitted facts. The complainant/opposite party no.2 is still ready to resume the conjugal life, but on one pretext or the other the order passed in Complaint Case No. 391 of 2016 has not been complied, as neither the payment has been made nor complainant/opposite party no.2 has been allowed to reside in matrimonial house in pursuance to the said order. So far as challenge of the interim order passed in Domestic Violence case in Criminal Miscellaneous No. 25676 of 2017 is concerned, the complainant is unaware about the same, though it has been filed during pendency of the present case. The complainant is also not provided the benefits of the judgment and decree passed in Title (Partition) Suit No. 8 of 2011.

It is further submitted by learned Counsel appearing on behalf of the petitioner that in the alternative, the petitioner is ready to make payment of Rs.4000/- per month to the complainant/ opposite party no.2 from August, 2017 by depositing the same in the bank account of the complainant by second week of every succeeding month.

The counsel for the complainant submits that the complainant reluctantly accepts the offer of the petitioner, since



she is facing financial hardships and undertakes to submit her bank account number, on affidavit, before the learned Court below within a period of one week.

Considering the rival submission of the parties, it appears that in view of the litigated relationship, reconciliation between the parties is not feasible, at present, hence, in order to save the complainant/opposite party no.2 and the minor child from destitution and vagrancy, with a lurking hope that the issue may reconcile between the parties 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 Chief Judicial Magistrate, Kaimur at Bhabua in connection with Complaint Case No.270 of 2016, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

The bail bond of the petitioner will be accepted by the learned Court below on furnishing of proof with regard to payment of monthly amount of Rs.4000/- for August, 2017.

The aforesaid payment will be subject to any order



being passed in matrimonial/ maintenance/ domestic violence case or any other collateral proceeding.

Two 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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