

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.29952 of 2016

Arising Out of PS.Case No. -197 Year- 2015 Thana -SITAMARHI COMPLAINT CASE District-
SITAMARHI

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Md. Ishteyaque @ Ishteyaque Ahmad @ Gulab @ Istiyaquw Ahmad, Son
of Md. Iqbal, resident of village – Jhajhihat, P.S. – Pupri, District –
Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar
2. Bilkish Bano @ Gena D/o Md. Wasiur Rahman, resident of village –
Bhemua, OP Bhitta, P.S. Sursand, District – Sitamarhi.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa

For the Opposite Party/s : Mr. J.N.Thakur (App)

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**

ORAL ORDER

06/ 16-02-2017

Heard learned counsels for the petitioner, State

and complainant-opposite party no.2.

The petitioner being the husband of the
complainant is apprehending his arrest in a protest –cum-
complaint case wherein processes have been directed to be
issued after cognizance being taken for the offences punishable
under Section 498A of the Indian Penal Code.

The basic accusation is of torture.

The petitioner and the complainant are present
in the Court.

It is submitted by learned counsel for the
petitioner that the petitioner admits his marriage with the



complainant on 23.11.2013 but the complainant gave birth to a child on 24.04.2014 which suggests that she was carrying pregnancy prior to the marriage, hence, the petitioner gave Talaq to the complainant and thereafter filed Complaint Case No. 05 of 2015 on 05.01.2015 levelling accusation against the complainant and her family members wherein cognizance has been taken under Sections 417 and 323/34 of the Indian Penal Code. In the present case, though, on conclusion of the investigation closure report was filed with Final Form No. 08/15 on 31.01.2015 but subsequently on the basis of the protest the order of cognizance has been passed. Hence, in the present predicament it is not feasible for the petitioner to keep the complainant.

Counsel for the complainant submits that the marriage between the petitioner and the complainant is not in dispute and the complainant never delivered any child on 24.04.2014. The complainant denies the factum of Talaq and is still read to resume the conjugal life and the complainant has filed maintenance case which is still pending.

Considering the rival submissions of the parties, this Court is of the view that this Court can neither decide the factum of delivery of the child by the complainant within five



month of the marriage nor the factum of Talaq in the present proceeding, but keeping in view of the fact that on conclusion of the investigation the petitioner was not sent up for trial, hence, effort was made to get the issue reconciled but it does not appear that the issue can be reconciled at present.

However, the petitioner is ready to make payment of Rs.1,800/- per month from March, 2017 to the complainant by depositing the same in her account by second week of every succeeding month.

Counsel for the complainant submits that the complainant is ready to accept the offer of the petitioner and undertakes to submit the bank account number on affidavit before the learned court below within a period of three weeks.

Considering the present stand of the parties, in order to save the complainant, at present, from vagrancy and destitution with a lurking hope that the issue may reconcile in future, let the above named petitioner be released on anticipatory bail in the event of his arrest or surrender before the learned court below within a period of twelve 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 learned Sub-divisional Judicial Magistrate, Pupri at Sitamarhi in



connection with Protest –cum- Complaint Case No. C1-197 of 2015, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

The aforementioned payment will be subject to any order passed in matrimonial, maintenance or connected proceedings.

Three consecutive defaults in making payment will give liberty to the complainant to file application for cancellation of bail of the petitioner.

The present order, in no way, will preclude the parties to resolve the issue otherwise.

(Dinesh Kumar Singh, J.)

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