

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35147 of 2014

Arising Out of Case No. -1270 Year- 2011 Thana -BHOJPUR COMPLAINT CASE District-
BHOJPUR

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Vikash Kumar S/o Ram Nath Rai Resident of Village Bhaju Tola Beyapur, P.S.
Maner, District Patna (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Kavita Devi W/o Vikash Kumar Resident of Bhaju Tola, Byapur, P.S. Maner,
District Patna at present Daughter of Ram Narayan Rai, Resident of Village
Gidha Tola, Sakaddi, P.S. Koilwar, District Bhojpur (Bihar).

.... Opposite Party/s

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Appearance :

For the Petitioner	:	Mr. Manoj Kumar, Advocate
For the State	:	Mr. Bhanu Pratap Singh, APP
For the Opp. Party No. 2	:	Mr. Ravindra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 12-04-2017

Heard learned counsel for the petitioner, learned A.P.P. for
the State and learned counsel for the opposite party no. 2.

2. The petitioner had been granted provisional bail by order
dated 09.12.2014. Thereafter, upon notice and appearance by order
dated 16.03.2016, the Court had directed the parties to appear before
the Civil Surgeon, Patna on 04.04.2016 at 11:00 A.M. when the



petitioner and opposite party no. 2 and the children of opposite party no. 2 were to be tested for matching their D.N.A. Such exercise failed because the opposite party no. 2 had not appeared, despite the petitioner having appeared before the Civil Surgeon on the date fixed. After that the Court, despite several attempts, was not able to secure the attendance of the opposite party no. 2 and even learned counsel representing her had expressed his helplessness in getting her to appear before the Court. Lastly, pursuant to order dated 29.03.2017, when the Court directed the Superintendent of Police, Bhojpur to ensure that the opposite party no. 2 is present before the Court today along with the child, the same has been complied with and she is present in Court along with her son. The Court having made a direct query as to whether she is ready for D.N.A. test of herself, her son and the petitioner, the answer is in the negative. The Court again asked the same question through her counsel and the answer was that she was not ready for such test. In the alternative she has prayed that she is ready for divorce provided the petitioner returns the money which was given to him at the time of marriage by the father of the opposite party no. 2. At this juncture, both the parties have agreed to a one-time-settlement of Rs. 50,000/-. The Court was not required to carry out this exercise, but in view of there being a child aged about nine years, who is facing an uncertain future only because of the



misdeeds of his parents, the Court cannot shut its eyes to the interest of the child, who has no role to play in the controversy but yet has been made victim of the circumstances. Thus, with the object of preventing any future controversy with regard to the parentage of the child, the Court deems it appropriate that once and for all the petitioner and the opposite party no. 2 get separated without the question of parentage of the child being gone into. The petitioner agreed to pay Rs. 50,000/- to the opposite party no. 2, but sought some time to make the payment.

3. Having regard to the aforesaid, the provisional bail granted to the petitioner earlier by order dated 09.12.2014 stands confirmed on the following conditions:

(i) The petitioner shall deposit Rs. 50,000/- in the name of the child, namely Sachin Kumar, in installments but the same shall be made latest by 31st December, 2017.

(ii) The opposite party no. 2 and her father have agreed that the present case against the petitioner shall not be pursued by them.

(iii) Full amount of Rs. 50,000/- having been deposited by 31st December, 2017, a petition shall be filed before the trial court by both the parties with regard to the case being closed and upon the same, the trial court shall pass appropriate orders.

(iv) It has further been agreed that the parties shall not file



frivolous cases against each other in future also.

(v) The opposite party no. 2 shall get an account opened in the name of Sachin Kumar under her guardianship, in a nationalized Bank, and shall provide the details of the bank account and number to the petitioner on the next date fixed in the main case, through her counsel appearing in the said case before the Court below.

(vi) The amount of Rs. 50,000/- having been deposited by 31st December, 2017, shall thereafter be invested in fixed deposit and the fixed deposit shall be renewed from time to time till Sachin Kumar attains the age of 21 years. He shall be entitled to withdrawal of the amount, along with interest which may have accrued during the period, upon attaining the age of 21 years.

(vii) The parties shall file a case for mutual divorce before the learned Principal Judge, Family Court, Bhojpur, in January, 2018, upon the entire Rs. 50,000/- having been paid by the petitioner, by 31st December, 2017.

4. In case of non-compliance of any of the terms of the order, the bail granted to the petitioner shall be cancelled and it shall be deemed that the present application has been dismissed, and the petitioner shall be taken into custody.

5. The application stands disposed off in the aforementioned terms.



6. Personal appearance of the parties stands dispensed with.

(Ahsanuddin Amanullah, J)

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