

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39438 of 2016

Arising Out of PS.Case No. -930 Year- 2015 Thana -SAMASTIPUR COMPLAINT CASE District-
SAMASTIPUR

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Mukesh Prasad Singh late Ram Sawarth Singh Resident of
Village/Mohalla- Bathuwa Bugurg, P.S.- Musrigharari, District-
Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Madhuri Kumari wife of Mukesh Prasad Singh Resident of Village-
Sangrampur, P.S.- Patory, District- Samastipur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nilesh Kumar

For the Opposite Party/s : Mr. Sri Rajendra Nath Jha

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

ORAL ORDER

05/ 28-03-2017

Heard Mr. Ajay Kumar Thakur, learned counsel

for the petitioner, Mr. Ajay Kumar Singh, learned counsel for
the complainant-opposite party no. 2 and Mr. J.N. Thakur,
learned counsel for the State.

The petitioner and the complainant are present
in the Court.

The petitioner being the husband of the
complainant is apprehending his arrest in a complaint case
wherein processes have been directed to be issued after
cognizance being taken for the offences punishable under
Sections 498A and 494 of the Indian Penal Code.

The basic accusation is of torture after 34 years



of the marriage when the petitioner has performed second marriage about 24 years ago.

It is submitted by learned counsel for the petitioner that the petitioner admits his marriage with the complainant on 27.06.1983 but since no issue was born to complainant, hence, with the consent of the complainant the petitioner performed second marriage in 1991 but subsequently, each wife gave birth to a baby boy, petitioner took care of both children. The present complaint has been filed after about 24 years of second marriage. Both the sons born are now about 22 years of age. The petitioner is still ready to keep the complainant as wife with full dignity and honour. Similar was the stand of the petitioner before the learned court below. Statement to that effect has been made in paragraph 17 of the petition which reads as follows:-

“That from the order of learned Sessions Judge, it is evident that the petitioner was ready to keep the complainant with all dignity but it was the complainant who refused to live with the petitioner on false and incorrect pretext.”

It is further submitted that the complainant till recently used to reside with the petitioner. Moreover, the petitioner is making payment of maintenance amount of Rs.5,000/- per month to the complainant in pursuance to the



order passed in Maintenance Case No. 69 of 2015 passed by learned Principal Judge, Family Court, Samastipur.

On the joint prayer of the parties this Court vide order dated 16.12.2016 referred the matter to the Mediation and Conciliation Centre of the State Legal Services Authority. The report of the Mediator dated 28.02.2017 at Flag 'A' reflects that the issue could not be reconciled through the process of mediation.

A supplementary affidavit has been filed to the effect that during mediation also the petitioner expressed his willingness to keep the complainant, making payment of maintenance amount of Rs.5,000/- and if the complainant does not want to live with the petitioner then he is ready to make payment of lump sum amount of Rs.3,00,000/- and partition the joint family property within a period of three months. Similar is the stand of the petitioner today. The petitioner underwent open heart surgery on 16.09.2016, hence, at present, his financial condition is poor.

Learned counsel for the complainant submits that since the petitioner is residing with the second wife hence she is not ready to accept the offer of petitioner of resuming conjugal life. However, the complainant opts for the second



option of receiving maintenance amount of Rs.5,000/- per month, getting the share on partition of the joint family property and receiving lump sum amount of Rs.3,00,000/-.

Considering the rival submissions of the parties, in view of this Court directing the petitioner to surrender and to remain in custody will further jeopardise the welfare of the complainant, hence, in order to save the complainant from destitution and vagrancy, 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, Samastipur in connection with Complaint Case No. 930 of 2015, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

Either party will be at liberty to file appropriate application in case of breach of abovementioned terms of agreement.

(Dinesh Kumar Singh, J.)

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