

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.23951 of 2017

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Nagendra Narayan Tripathi @ Nagendra Tripathi

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Naresh Dikshit, Advocate

For the Opposite Party/s : Mr. Jai Narain Thakur, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 05-07-2017

Heard learned counsels for the parties.

The present application has been filed for modification of the order dated 24.06.2013, passed in Cr. Misc. No. 10816 of 2013, as contained in Annexure-1, to the extent that the petitioner may be allowed not to make payment of monthly amount of Rupees Three Thousand to the complainant from the date the marriage between the petitioner and the complainant has been dissolved, vide judgment and decree dated 23.01.2017, passed in HMA No. 2133 of 2014.

This Court is not inclined to modify the order, rather this Court intends to explain the order dated 24.06.2013, passed in Cr. Misc. No. 10816 of 2013. Hence, in view of the nature of order this Court intends to pass, learned counsel for the petitioner is not being asked to implead the complainant as O.P. No. 2 for notice to be issued to her.



The factual matrix would unveil that the petitioner being husband of the complainant, preferred Cr. Misc. No. 10816 of 2013, with a prayer for anticipatory bail in a complaint case, wherein, process were directed to be issued after cognizance being taken for the offence under Section 498A of the IPC.

The basic accusation is of torture. The factum of marriage between the parties in 2009 is admitted. The petitioner was granted anticipatory bail on submission made on behalf of the petitioner that he is ready to make payment of Rupees Three Thousand per month to the complainant from August, 2013. The abovementioned payment was subject to any order being passed in matrimonial/maintenance proceeding. The relevant portion of the order reads as-

“The aforesaid payment will be subject to any order being passed in matrimonial or maintenance proceedings.”

Statement has been made in paragraph 3 of the petition that the marriage has been dissolved vide judgment and decree dated 23rd January, 2017, passed by the learned Principal Judge, Family Court, East Biswas Nagar, Delhi, in HMA No. 2133 of 2014. Photo copy of the certified copy of the said judgment and decree has been brought on record as Annexure 2 to the modification application.



In the circumstances, by operation of the above mentioned quoted stipulation in order dated 24.06.2013 passed in Cr. Misc. No. 10816 of 2013, since the marriage got dissolved, the petitioner was liable to make payment of maintenance amount till the date of dissolution of marriage of the petitioner and the complainant since the order of payment was subject to any order being passed in matrimonial or maintenance proceeding.

However, since the certified copy of the judgment dated 23.01.2017 passed in the Matrimonial Suit is not on record, the present modification application is disposed of with a liberty to the learned Judicial Magistrate Ist Class, Bhojpur at Ara to issue notice to the complainant and on production of certified copy of the judgment, necessary order will be passed in terms of the condition incorporated in this order dated 24.06.2013 passed in Cr. Misc. Case No. 10816 of 2013 that payment will be subject to any order being passed in matrimonial or maintenance suit. Hence, such condition of payment stands modified with dissolution of marriage.

(Dinesh Kumar Singh, J)

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