

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34677 of 2016

Arising Out of PS.Case No. -540 Year- 2011 Thana -COMPLAINT CASE District- ARRARIA

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Md. Tabrej Alam Son of Sami Ahamad Resident of Village-
Forbesganj,Gudari Mohalla P.S-Forbesganj,Dist-Araria..

.... Petitioner/s

Versus

1. The State of Bihar.
2. Kahkansha @ Salatun D/o Mojibuddin, Wife of Md. Tabrej Resident of
Village-Khaira-Gathiya,P.S-Narpatganj, District – Araria.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ramesh Kumar Singh

For the Opposite Party/s : Mr. J.N. Thakur, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

05/ 02-03-2017

Heard learned counsels for the petitioner and
Mr. J.N. Thakur, learned counsel for the State. None appears for
the complainant-opposite party no.2.

The petitioner being the husband of the
complainant is apprehending his arrest in a complaint case wherein
process has 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.

It is submitted by learned counsel for the
petitioner that the petitioner admits his marriage with the
complainant having no issue. It is further submitted that the



complainant herself divorced the petitioner and performed second marriage with Mumtaz Rajmistry. Statement to that effect has been made in paragraph 7 of the petition which reads as follows:-

“That, in fact the complainant herself divorce the petitioner as per Islamic custom and performed second marriage much earlier with one Mumtaz Rajmistry son of Abdul Hassan Resident of village Madhubani, Ward No. 12 P.S. Laligram Dist Supaul and the present case has been filed only to harass and humiliate the petitioner in society and for illegal gain.”

It is further submitted that the petitioner is still ready to keep; the complainant as wife with full dignity and honour. Statement to that effect has been made in paragraph 8 of the petition which reads as follows:-

“That, in spite of all these happenings the petitioner is still ready to resume the conjugal life and to keep the complainant with all honour, affection and dignity and same pleading has been advanced before the learned court below.”

On the abovementioned submissions, notices were issued to complainant-opposite party no. 2 vide order dated 16.08.2016 and thereafter notices were also issued to the complainant-opposite party no. 2 vide order dated 24.11.2016. The office note dated 07.02.2017 reflects that the notices were received by the complainant-opposite party no. 2 but she failed to acknowledge the same. In the circumstances, notices issued to



opposite party no. 2 was treated to be deemed valid service vide order dated 09.02.2017. Today also none is appearing on behalf of the complainant-opposite party no. 2 to controvert the contention of the petitioner.

Considering the fact that the complainant chose not to appear to controvert the contention of the petitioner and stand of the petitioner that he is ready to keep the complainant as wife with full dignity and honour, 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 bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate, Ist Class, Araria in connection with Complaint Case No. 540C of 2011, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

The grant of bail will not preclude the informant to resume conjugal life. If the complainant files such an application before the learned court below then the petitioner will be obliged to comply the undertaking given before this Court.

(Dinesh Kumar Singh, J)

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