

Criminal Misc. M- No. 40829 of 2016 (O&M)

Date of decision : July 05, 2017

Chand alias Raj Arora

.....Petitioner

Versus

State of Haryana

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sanjiv Gupta KKR, Advocate for the petitioner.

Mr. Sanjay K. Saini, AAG, Haryana.

Mr. R.S. Mamli, Advocate for the complainant.

LISA GILL, J.

The petitioner, who is the husband of the complainant seeks the concession of anticipatory bail in FIR No. 469 dated 24.08.2016 registered under Sections 323, 406, 498A IPC at Police Station Sadar Thanesar, Kurukshetra.

The following order was passed on 16.11.2016 while issuing notice of motion in this case:-

“ Notice of motion.

At this stage, Mr. Ravinder Bangar, Advocate has put in appearance on behalf of the complainant who submits that as on date entire clothing and dowry articles of the complainant are lying in her matrimonial home.

Counsel for the petitioner fairly submits that all the articles as available will be produced before the mediator on the next date of hearing.

Parties are directed to appear before the Mediation & Conciliation Center of this Court on 22.11.2016.

Meanwhile, the arrest of the petitioner is stayed till that date in order to enable him to appear before the mediator.

However, it is made clear that in case he does not cooperate, the interim bail granted today shall stand cancelled automatically.

A report, in this regard, be furnished to this Court by the mediator on 23.11.2016.”

As per the report of the Mediator, the parties could not arrive at any amicable resolution of the dispute between them. It is noted by the Mediator that on 15.12.2016 the petitioner got himself marked present at about 3.25 p.m. and thereafter he was not present for mediation. Therefore, it appeared that he is not interested in mediation. It is, in this situation, that the matter was returned to be placed before this Court.

It was submitted before this Court on 27.01.2017 that there is still a possibility of an amicable resolution of the dispute notwithstanding the failure of mediation between them. The parties were, accordingly, called before this Court.

This Court on 18.04.2017 noted that when the matter was taken up on 22.02.2017, it appeared that there is no possibility of the parties living together. The complainant was amenable to part ways with the petitioner in case the future of their minor child could be secured and she would not stake any other claim. It was proposed by her that a sum of Rs. 10 lakhs be deposited in a Fixed Deposit Account in favour of the minor child, which would not be encashed by her. The said FDR could be encashed by the minor child on attaining the age of 21 years. However, the interest be permitted to be used for the upbringing of the child. The petitioner sought time to respond to the said proposal and in the meanwhile on his request he was permitted to appear before the Investigating Officer and join investigation.

However, on 18.04.2017 the petitioner expressed that he was not ready to deposit any amount whatsoever in favour of the minor child. The matter was adjourned to 19.05.2017 and thereafter adjourned for today on request of learned counsel for the petitioner. Learned counsel for the petitioner seeks to address arguments on the merits of the case today.

He vehemently argues that it is the third marriage of the complainant. She had not obtained divorce before solemnising marriage with the present petitioner. Thus, no offence under Sections 498A, 406 IPC is made out against the petitioner. However, the paternity of the minor child in question is not denied by the petitioner.

It is further urged that the petitioner has joined investigation pursuant to interim orders passed by this Court. Thus, this petition be allowed.

Learned counsel for the State, on instructions, from SI Mohinder Singh, Police Station Sadar Thanesar submits that the petitioner has not co-operated at all in the investigation of the case. Learned counsel for the petitioner, however, refutes this averment and submits that recovery of all articles has been effected and the articles i.e. four bags of clothing and one gold ring were handed over to the complainant before the Mediator of this Court on 22.11.2016. Certain additional items of clothing were handed over to the complainant on 07.12.2016.

Learned counsel for the petitioner relies on judgment of this Court in **Prit Pal Singh versus State of Punjab and another 2014 (5) RCR (Criminal) 771** to say that non recovery of certain articles cannot be a ground for not affording the concession of anticipatory bail to the petitioner.

He also relies upon the judgment of the Hon'ble Supreme Court in **Arnesh Kumar versus State of Bihar and another 2014 (3) SCC (Cri) 449**. It is vehemently argued that this petition should be allowed.

I have heard learned counsel for the parties.

There is no doubt regarding the ratio of judgments as cited by learned counsel for the petitioner, however, the conduct of the petitioner completely disentitles him for the discretionary relief, he is claiming in this petition. Interim relief was afforded to the petitioner to facilitate the mediation proceedings. The sequence of events thereafter has been detailed above. It is apparent that the petitioner has tried to take undue advantage of the interim relief afforded to him. Thus, no benefit can accrue to the petitioner on the grounds sought to be urged.

This petition is, accordingly, dismissed.

July 05, 2017

rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No