

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21089 of 2018

In
Criminal Miscellaneous No.31892 of 2016

Arising Out of PS. Case No.- Year- Thana- District- Munger

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Kumar Ashutosh, Son of Arvind Kumar Singh Resident of Nakta, P.O.-Nakta,
P.S.-Motipur, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kumari Jayati, Wife of Kumar Ashutosh, Daughter of Jai Prakash Singh,
Resident of House No. 329, Mohalla-Madhopur, D.N. Road, Post-Basudeopur,
P.S.-Koptwali, District-Munger.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha
For the Opposite Party/s : Mr. Bharat Bhushan

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

7 29-08-2018 Heard learned counsels for the parties.

The present application has been filed for modification
of the order dated 3.10.2016 passed in Cr. Misc. No. 31892 of
2016 with regard to monthly payment by the petitioner to O.P.
No. 2.

The factual matrix of the case is that the petitioner,
being the husband of the O.P. No. 2, preferred Cr. Misc. No.
31892 of 2016 with the prayer for anticipatory bail in Complaint
Case No. 854 of 2015 wherein process was directed to be issued
after cognizance being taken for the offences punishable under
Sections 498A and 420 of the IPC and Sections 3 and 4 of Dowry
Prohibition Act.



The basic accusation is of torture for non-fulfillment of dowry demand.

In spite of the matter being referred to Mediation, the issue could not be resolved between the parties. In alternative, it was submitted by learned counsel for the petitioner that the petitioner is ready to make payment of Rs.5,000/- per month from November, 2016 to the O.P. No. 2 by depositing the same in her bank account by second week of every succeeding month and the complainant undertook to supply her bank account to the petitioner. The aforesaid payment was subject to any order being passed in matrimonial, maintenance or connected proceeding.

Learned counsel for the petitioner submits that vide order dated 24.1.2017 passed in Maintenance Case No. 4 of 2016, the learned Principal Judge, Family Court, Munger allowed the petition of O.P. No. 2 dated 8.1.2016 filed under Section 24 of the Hindu Marriage Act and directed the petitioner to make payment of Rs.10,000/- per month to the O.P. No. 2. Though this fact was brought to the notice of the learned Principal Judge, Family Court that the petitioner is making payment of Rs.5,000/- in pursuance to the order passed in Cr. Misc. No. 31892 of 2016 but the learned Principal Judge, Family Court did not clarify whether the petitioner has to make payment of Rs.5,000/- per month to the



complainant in pursuance to the order of this Court apart from the order passed on the petition of the O.P. No. 2 or not.

It is submitted by learned counsel for the petitioner that since the payment in pursuance to the undertaking given before this Court was to be made from November, 2016 and in pursuance to the order of learned Principal Judge, Family Court from January, 2016, hence the petitioner has made payment of Rs. 10,000/- per month from January, 2016 as directed by the learned Principal Judge, Family Court. Since there was clear stipulation in the order of this Court that the payment made by the petitioner will be subject to any order passed in matrimonial, maintenance or connected proceeding, hence, technically both the orders have been complied with by the petitioner.

However, learned counsel for the O.P. No. 2 submits that the O.P. No. 2 is entitled to payment of Rs.5,000/- per month as the petitioner agreed while disposal of Cr. Misc. No. 31892 of 2016, as incorporated in order dated 3.10.2016 apart from the amount of Rs.10,000/- per month as directed by the learned Principal Judge, Family Court, Munger in Maintenance Case No. 4 of 2016.

In view of this Court, learned counsel for the informant has misconstrued the purport of the order 3.10.2016 passed in Cr.



Misc. No. 31892 of 2016. The order is very specific with regard to the payment as agreed by the petitioner that it will be subject to any order being passed in matrimonial, maintenance or connected proceeding.

Accordingly, this Court clarifies that the payment of Rs.5,000/- by the petitioner was not made by way of maintenance, moreover in exercise of jurisdiction under Section 438 Cr.P.C. this Court usually cannot fix the maintenance amount. The amount, which the petitioner agreed to pay, was for the welfare of the O.P. No. 2 and such payment was subject to any order being passed in matrimonial, maintenance or connected proceeding, hence, the petitioner is not required to make payment of any amount apart from what has been ordered by the learned Principal Judge, Family Court, Munger vide order dated 24.1.2017 in Maintenance Case No. 4 of 2016. In other words, the petitioner is not required to make payment henceforth in pursuance to the order dated 3.10.2016 passed in Cr. Misc. No. 31892 of 2016.

This application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

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