

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12581 of 2017

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Sudeep Gupta

.... Petitioner/s

Versus

The State of Bihar & Anr

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Alok Ranjan

For the Opposite Party/s : Mr. Sri Asharaf Ansari

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

12 06-07-2018 Heard Smriti, learned counsel for the petitioner, Mr. Satyendra Roy, learned counsel for the complainant, opposite party No. 2 and learned APP for the State.

The present application has been filed for modification of order dated 01-02-2016 passed in Cr. Misc. No. 5178 of 2016 to the extent of extending the period for furnishing the bail bonds.

The factual matrix of the case is that the petitioner, Sudeep Gupta being husband of the complainant having apprehension of arrest in a complaint case, wherein process had been directed to be issued after cognizance being taken for the offences punishable under Section-498A of the Indian Penal Code and Section-4 of the D.P. Act, preferred Cr. Misc. No. 5178 of 2016 with a prayer for anticipatory bail. The said Criminal Miscellaneous application was disposed of vide order dated 01-02-2016 and the petitioner was granted provisional anticipatory bail



for one year on the basis of submission, coupled with the statement made in paragraph-9 of the petition that the petitioner is still ready to keep the complainant with full dignity and honour.

Paragraph-9 of the petition reads as follows:

“ That the petitioner is husband of the complainant and the petitioner is still ready to keep her wife (the complainant) with full dignity and all respect. And for that the petitioner visited to his Sasural to bring back the informant, but she is not ready to live with her husband (the petitioner) at her Sasural”.

While granting provisional anticipatory bail, the learned Court below was given liberty to issue notice to the complainant and on her appearance, the petitioner was directed to take the complainant to matrimonial house to keep her as wife with full dignity and honour in view of this stand stated in paragraph-9 of the petition as quoted above. The provisional anticipatory bail granted to the petitioner was to be confirmed by the learned Court below in three eventualities- (i) if the matrimonial harmony is substantially restored or (ii) if the complainant fails to appear before the learned court below or (iii) if the complainant deliberately gets reluctant to reconcile the issue, but the petitioner somehow or the other did not furnish the bail bonds as a result of which, the order could not be given effect to. The period of



provisional anticipatory bail got lapsed on 31st day of January, 2017, whereas the present modification application has been filed on 10-03-2017.

It appears that the petitioner preferred an application for restitution of conjugal rights Suit under Section- 9 of Hindu Marriage Act being M.C. No. 06 of 2015, before the Family Court, Bangalore. Thereafter, the complainant (opposite party No. 2) preferred Transfer Petition (Civil Suit No. 594 of 2015) before the Hon'ble Supreme Court wherein vide order dated 29-04-2015, notices were issued to the petitioner and further proceeding of M.C. No. 06 of 2015 before the Family Court, Bangalore was stayed. The petitioner entered appearance before the Hon'ble Supreme Court on 03-02-2015. Thereafter, vide order dated 18-09-2015, the Hon'ble Supreme Court referred the matter to the Supreme Court Mediation Centre and both the parties were directed to appear before the Mediation Centre on 01-10-2015. It was observed by the Hon'ble Supreme Court that the Mediator will explore the possibility of settlement and will send a report thereof within four weeks. The settlement of agreement was arrived at between the petitioner and the complainant (opposite party No. 2) on 23-02-2016 to the extent that both the parties will withdraw the criminal case as well as Restitution Suit. The



petitioner will make payment of Rs. 10,000,00/- (ten lacs), as full and final settlement amount and get the marriage dissolved with mutual consent. The matter was adjourned vide order dated 02-12-2016, passed in Transfer Petition (Civil No. 594 of 2015) for 9th December, 2015 to enable the counsel for the petitioner to bring Bank draft of Rs. 10,000,00/- (ten lacs) in favour of the complainant (opposite party No. 2). The order dated 02-12-2016 reads as follows:

“List the matter on 9th December, 2016, to enable the learned counsel for the respondent-husband to bring draft of Rs. 10,000,00/- (ten lacs) in favour of the petitioner-wife.”

But, it appears from the order dated 31-01-2017 passed in Transfer Petition (Civil No. 594 of 1995) that it was submitted on behalf of the petitioner that he withdrew the proceeding under Section 9 of the Hindu Marriage Act and hence the transfer petition was disposed of in following terms:

“Learned counsel for the respondent says that his client has withdrawn the proceedings under Section 9 of Hindu Marriage Act, 1955. Consequently, nothing further survives in this petition and it is disposed of accordingly”.

It is submitted by learned counsel for the petitioner that



the petitioner could not furnish the bail bonds since the matter was pending before the Hon'ble Supreme Court and the petitioner could not act in terms of agreement of settlement, which was agreed during mediation, particularly payment of one time settlement amount, since the complainant (opposite party No. 2) failed to file an application for withdrawal of the criminal case. At present, the petitioner is ready to keep the complainant (opposite party No. 2) as wife with full dignity and honour and now he does not want to get the marriage dissolved. It is further submitted that now the petitioner is ready to face the trial and is not ready to make payment of one time settlement amount. However, it is submitted by Mr. Satyendra Rai, learned counsel for the complainant (opposite party No. 2) that the complainant is apprehensive due to past conduct of the petitioner, hence she is not ready to accept the offer of the petitioner of resuming conjugal life. It is further submitted that since the agreement of settlement was made for payment of Rs. 10,000,00/- (Rs. Ten lacs) as one time settlement amount but the said terms of agreement was not complied with, in spite of several adjournments granted by the Hon'ble Supreme Court. Maliciously, the Restitution suit was withdrawn in order to frustrate the terms of agreement of settlement, particularly the



payment of one time settlement amount. The petitioner knows that now the complainant (O.P. No. 2) will not resume the conjugal life, hence he has changed his stand and expressed the willingness to keep the opposite party No. 2 as wife with dignity and honour.

Considering the rival submission of the parties, it appears that the matter is pending before this Court since last several months. During such period, the Court adjourned the matter on several occasions on prayer of the parties allowing them to get the issue resolved but on one pretext or the other, both did not take sincere efforts to resolve the issue or to get the issue resolved through Mediation. However, this Court is of the view that the learned Court below should get the issue mediated as the Supreme Court in the case of **K. Srinivas Rao V. D.A. Deepa** reported in **(2013) 5 SCC 226** has recognized “mediation” as an effective method of alternative dispute resolution in matrimonial matters and has given certain directions to the Court dealing with the certain Matrimonial matters. The relevant portion of paras-45 and 46 read as follows:

45.- “We would, however, like to clarify that reduction of burden of cases on the courts will, however, be merely an incidental benefit and not the reason for sending the parties for mediation. We recognize “mediation” as an effective method of



alternative dispute resolution in matrimonial matters and that is the reason why we want the parties to explore the possibility of settlement through mediation in matrimonial disputes”.

46.- “We, therefore, issue directions, which the courts dealing with the matrimonial matters shall follow”.

46.1.- “In terms of Section 9 of the Family Courts Act, the Family Courts shall make all efforts to settle the matrimonial disputes through mediation. Even if the counselors submit a failure report, the Family Courts shall, with the consent of the parties, refer the matter to the mediation centre. In such a case, however, the Family Courts shall set a reasonable time-limit for mediation centres to complete the process of mediation because otherwise the resolution of the disputes by the Family Courts may get delayed. In a given case, if there is good chance of settlement, the Family Court in its discretion, can always extend the time-limit”.

46.2.- “The criminal courts dealing with the complaint under Section-498-A IPC should, at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement and both the parties are willing. However, they should take care to see that in this exercise, rigour, purport and efficacy of Section 498-A IPC is not diluted. Needless to say that the discretion to grant or not to grant bail is not in any way curtailed by this direction. It will be for the court concerned to work out the modalities taking into consideration the facts of each case”.

46.3.- “All mediation centres shall set up pre-



litigation desks/clinics; give them wide publicity and make efforts to settle matrimonial disputes at pre-litigation stage”.

Though the period of provisional bail granted to the petitioner got lapsed on 31-01-2017 and present bail application is registered on 10-03-2017 for extending the period of furnishing the bail bond without any cogent explanation for not furnishing the bail bond and for not appearing before the learned Court below for a year. This Court is reluctant to interfere, but with a lurking hope that good sense will prevail and both the parties will make a sincere effort to get the issue resolved through Mediation, this Court extends the period of provisional anticipatory bail of the petitioner till 31st October, 2018 on furnishing the bail bond of Rupees Ten Thousand with two sureties of the like amount each to the satisfaction of learned Sub Divisional Judicial Magistrate/concerned Court, Patna in connection with Complaint Case No. 30365(C) of 2014.

It is expected from the learned Court below to get the issued mediated in terms of the ratio laid down in case of Srinivas (supra) as quoted above.

The provisional anticipatory bail granted to the petitioner will be confirmed by the learned Court below if the parties get the issue reconciled either in terms of resumption of



conjugal life or in terms of payment of alimony after getting the marriage dissolved or any other agreed terms to which the parties agree.

It is made clear that the provisional bail will also be confirmed if the complainant (O.P. No. 2) becomes reluctant to resolve the issue through Mediation or fails to appear before the learned Court below.

This modification application stands disposed of.

(Dinesh Kumar Singh, J)

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