

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Misc. No.M- 46070 of 2016(O&M)

Date of Decision: March 27 , 2018.

Rohit Khanna

..... PETITIONER (s)

Versus

State of Punjab and another

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rajeev Lochan, Advocate
for the petitioner.

Ms. Seena Mand, DAG, Punjab.

Mr. Ruhani Chadha, Advocate
for the complainant/respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Today when the matter was taken for hearing on its own turn, none appeared on behalf of the petitioner. This petition was ordered to be dismissed for non-prosecution while observing as under:-

“The following order was passed on the last date of hearing:-

“The petitioner seeks the concession of anticipatory bail in FIR No.148 dated 06.11.2016, under Sections 406, 498-A IPC, registered at Police Station Women Cell, District Jalandhar.

It is noticed that the matter was listed before

Mediation and Conciliation Centre of this Court. Mediation between the parties failed. The petitioner as well as respondent No. 2 were directed to be present in Court today.

Respondent No. 2 duly identified by her counsel is present in Court.

However, the petitioner is not present. Learned counsel for the petitioner submits that he has instructions not to appear in this case. He seeks to withdraw his power of attorney.

There is no other counsel representing the petitioner. Prima-facie, the conduct of the petitioner is not bona fide.

In the interest of justice, adjourned to 27.03.2018.

Interim order dated 22.12.2016 affording interim anticipatory bail to the petitioner is vacated.”

Today, there is no representation on behalf of the petitioner. It appears that petition is not interest in pursuing the matter any longer.

Dismissed for non-prosecution.”

Thereafter before the abovesaid order was signed, a request was made by Mr. Lochan, Advocate stating that he had been instructed to appear on behalf of the petitioner. Mr. Lochan prayed for recalling the order dismissing the petition for non-prosecution while submitting that as he is an outstation counsel, due to unavoidable delays on the way, he could not appear when the matter was take up on its turn.

No serious objection has been raised by learned counsel for the State and complainant/respondent No.2. Accordingly, the earlier order dismissing the petition for non-prosecution is recalled. With the consent of the parties, matter is taken up for hearing on merits.

Arguments heard at length.

The petitioner seeks the concession of anticipatory bail in FIR

No.148 dated 06.11.2016 under Sections 406/498A IPC, registered at Police Station Women Cell, District Jalandhar.

As per allegations in the FIR, marriage between the complainant and the petitioner took place in September, 2009. A child was born out of this wedlock on 09.12.2010. It is alleged that a sum of ₹20,00,000/- were spent by the complainant's parents on the marriage. However, the complainant was subjected to ill-treatment and harassment at the hands of the petitioner and in-laws on account of bringing insufficient dowry. There are specific detailed allegations against the petitioner in the FIR. Specific demands were raised including that of a car by the petitioner and in-laws family of the complainant. It is stated that the complainant came to know about certain untruths told to her and her family at the time of marriage in regard to the petitioner and his family. It is alleged that the petitioner and his family members were habitual of getting fake identities issued, availing loans from banks and then shifting to other premises when recovery was to be affected by the banks. The complainant thus sought action against the petitioner and her in-laws for ill-treatment and harassment for bringing insufficient dowry.

Learned counsel for the petitioner submits that the FIR in question has been registered due to temperamental differences between the petitioner and his wife, the complainant. The petitioner and the complainant started living separately from the in-laws in rented premises after one year of their marriage. However, the complainant herself left the matrimonial home in the year 2015. The petitioner, it is stated, is ready and willing to resume matrimonial ties with the complainant. Moreover, he has filed a petition under Sections 7 and 25 of the

Guardian and Wards Act seeking custody of the minor son (Annexure P3). It is submitted that the petitioner also filed a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights which is still pending. A suit for mandatory injunction has been filed by the petitioner in respect to the premises taken on rent by the petitioner and the complainant as the landlord of the property was instructed by the complainant's father not to allow access to the petitioner. It is thus prayed that this petition be allowed.

Learned counsel for the complainant has opposed this petition while submitting that specific allegations have been raised in the FIR against the petitioner, who has not come forth to even pay the maintenance granted to the complainant under Section 125 Cr.P.C. Moreover, efforts were made for mediation between the parties before the Mediation and Conciliation Centre of this Court. The same could not fructify. The petitioner failed to appear before Mediation and Conciliation Centre of this Court, despite a specific direction when the matter was placed before the Mediator for the second time. Thereafter, it was noted by this Court on 10.10.2017 that resumption of matrimonial ties may not be possible for the parties and the parties were directed to be present in Court to explore the possibility of a settlement again. The petitioner did not come present before this Court except on one occasion. None of the dowry articles have been returned. Thus, it is prayed that this petition be dismissed.

Learned counsel for the State, on instructions from ASI Ravi Kumar, submits that though the petitioner joined investigation, no recovery has been effected.

In respect to the recovery of dowry articles, learned counsel for the

petitioner submits that Special Leave Petition (Diary No.39126 of 2017) was filed by the petitioner before the Hon'ble Supreme Court against order dated 22.12.2016 as it was felt by the petitioner that direction of the Court regarding return of all articles in the petitioner's possession, was vague. It is submitted that the said petition was disposed of by the Hon'ble Supreme Court on 06.02.2018 itself, therefore non-recovery of the articles cannot be held against the petitioner in any manner.

At this stage, it is appropriate to reproduce order dated 22.12.2016 passed by a coordinate Bench of this Court in this case, which was perceived to be vague by the petitioner and accordingly challenged by him which reads as under:-

“Learned counsel states that the petitioner is ready to join the investigation.

Notice of motion, returnable for 30.03.2017.

In the meanwhile, the petitioner is directed to join the investigation and if he is sought to be arrested, he shall be released on bail to the satisfaction of the arresting/investigating officer subject to the conditions laid down in Section 438 sub section 2 clauses (i)(ii) and (iii) of the Code of Criminal Procedure. The petitioner would return all the articles which are in his possession.”

Special Leave Petition (Diary No.39126 of 2017) filed by the petitioner was disposed of by the Hon'ble Supreme Court on 06.02.2018 while observing as under:-

“The petitioner is aggrieved by the directions contained in the impugned order dated 22nd December 2016 with regard to “all the articles which are in his possession”. According to the petitioner, the said direction is wholly vague and, therefore, he is not in a

position to comply with the same.

The aforesaid direction was issued by the High Court as far back as on 22nd December, 2016. Be that as it may, if the petitioner has any grievance he may approach the High Court, if so advised.

The Special Leave Petition is disposed of in the above terms.”

No application whatsoever has been moved by the petitioner in this respect.

It is noticed that when the matter was placed before the Mediation and Conciliation Centre of this Court, on the first occasion mediation between the parties failed. Following order was passed by this Court on 10.10.2017:-

“Though report of the Mediator has not been received, it is informed that mediation between the parties has failed.

Today, an effort was again made to help the petitioner and respondent No.2 to reconcile their differences with the aid of Mr. Atul Nehra, Mediator.

It is stated that resumption of matrimonial ties between the petitioner and respondent No.2 may not be possible. However, the parties be afforded some time to work out the ways and means to amicably part ways.

On request, adjourned to 05.12.2017.

In the meanwhile, the petitioner and respondent No.2 are directed to appear before the Mediator on 25.10.2017.”

It was noticed by this Court on 05.12.2017 that mediation between the parties again failed and the petitioner as well as the complainant were directed to remain present in Court on the next date of hearing i.e., 25.01.2018. The following order was passed by this Court on 25.01.2018:-

“The petitioner seeks the concession of anticipatory bail in FIR No.148 dated 06.11.2016, under Sections 406, 498-A IPC,

registered at Police Station Women Cell, District Jalandhar.

It is noticed that the matter was listed before Mediation and Conciliation Centre of this Court. Mediation between the parties failed. The petitioner as well as respondent No. 2 were directed to be present in Court today.

Respondent No. 2 duly identified by her counsel is present in Court. However, the petitioner is not present.

Learned counsel for the petitioner submits that he has instructions not to appear in this case. He seeks to withdraw his power of attorney.

There is no other counsel representing the petitioner. Prima-facie, the conduct of the petitioner is not bona fide.

In the interest of justice, adjourned to 27.03.2018.

Interim order dated 22.12.2016 affording interim anticipatory bail to the petitioner is vacated.”

Learned counsel for the petitioner is unable to explain as to why the petitioner was not present before this Court on 25.01.2018 despite a specific direction. It is further noticed that the petitioner has not submitted to the process of law, despite vacation of the interim order dated 22.12.2016. Neither has any application been moved by the petitioner even after the decision of the Special Leave Petition preferred by him. The contention that the petitioner was pursuing the matter before the Hon'ble Supreme Court is clearly fallacious and of no avail to him. Another argument vociferously raised by learned counsel for the petitioner is that once the petitioner had instructed his earlier counsel not to appear in this case, the said counsel should not have appeared in the matter at all, much less apprised the Court of such instructions or have sought permission to withdraw his power of attorney. Such an argument is clearly misconceived and is

indicative of the lack of bonafides on the part of the petitioner. It appears that the petitioner merely sought to delay the proceedings while enjoying the interim protection afforded to him wayback on 22.12.2016. It is relevant to note that it was specifically noted by this Court on 10.10.2017 that after another attempt was made to enable the parties to reconcile their differences (with the aid of the Mediator Mr. Atul Nehra), it was stated that they may not be able to resume matrimonial ties and the matter was adjourned on request to enable the parties to work out ways and means to amicably part ways. Today, learned counsel for the petitioner submits that his client is not ready for any kind of settlement except resumption of matrimonial ties and there is no question of parting company with his wife. Be that as it may, it is noticed that there are specific allegations levelled by the complainant against the petitioner. Moreover, the petitioner's conduct disentitles him from the relief of anticipatory bail.

Keeping in view the facts and circumstances of the case, particularly the conduct of the petitioner, I do not find any ground whatsoever to afford the concession of anticipatory bail to the petitioner.

This petition is accordingly dismissed.

March 27 , 2018.
'om'

(LISA GILL)
JUDGE

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