

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45158 of 2014

Arising Out of Case No.-2003 Year-2012 Thana- GAYA COMPLAINT CASE District- Gaya

Sudhir Kumar Son of Sri Visheshwar Mahato @ Visheshwar Prasad resident
of village- Khiriawan, P.S.- Magadh Medical, District- Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Mamta Kumari @ Mamta Devi Daughter of Late Ratan Mahato resident of
village- Koiribari Nadarganj, P.S.- Civil Line, Dist.- Gaya

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Sakshena, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O.P. No. 2	:	Mr. Anil Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 13-02-2019

Heard learned counsel for the petitioner, learned A.P.P.
for the State and learned counsel for the Opposite Party No. 2.

2. Despite order dated 29.01.2019 requiring the
petitioner and the Opposite Party No. 2 to appear before the Court
on 12th January, 2019, they had not appeared yesterday. However,
today they are present.

3. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 for the following relief:

*“That this is an application for quashing the half
part of the order dated 26.05.14 and 20.06.14 for
execution of the bail bond with condition of the*



above named petitioner for offence alleged under section 498,A, of the I.P.C. and $\frac{3}{4}$ D.P. Act in connection with Complain case no-2003/12 dated 15-10-12 under Gaya district and case is pending in the court of C.J.M. Gaya.”

4. The petitioner wants modification of the condition imposed while granting bail to him by the Sessions Judge, Gaya on 26.05.2014 in A.B.P. No. 2252 of 2013. By the said, the anticipatory bail was granted on the condition that he would surrender before the Court along with the Opposite Party No. 2 and on her saying that she is being kept well by him and on giving undertaking by the petitioner that he shall keep and maintain her with children well with full dignity. The same was not complied with and the petitioner filed an application on 19.06.2014 for some modification. However, copy of the application has not been brought on record. On such application, by order dated 20.06.2014, the Sessions Judge, Gaya extended the period of surrender by a further period of one month.

5. Learned counsel for the petitioner submitted that the Opposite Party No. 2 is living in the matrimonial home but does not want to admit the fact. At this stage, on a query to Opposite Party No. 2, she submitted that she is living in her parents' place and not in the matrimonial home. This was confirmed by the petitioner who was present in Court who said that he wants to keep



the Opposite Party No. 2 and the children at his village home as he is working in Patna.

6. From the aforesaid, it is clear that the petitioner has not come to Court with clean hands as the assertion that the Opposite Party No. 2 is staying in her matrimonial home is not only falsified but the position is admitted by the parties before the Court today. The Court would only observe that it is the duty of the husband not only to keep the wife and the children with full dignity, honour and security but it is equally important that he keeps them with him as that is also an essential part of family life, unless there are some compelling reasons, that too, if accepted by the spouse. He cannot take a unilateral decision to leave the spouse and the children at some other place and that he shall live somewhere else. This, in the absence of mutual consent and agreement, would negate the very foundation of marriage and concept of a married life. As, even upon this Court calling upon learned counsel for the petitioner to produce copy of the petition dated 19.06.2014 and the same not having been shown to the Court, as the fact has been noted in the order dated 20.06.2014, it appears that the same was for passing necessary orders which the Sessions Judge, Gaya has passed by extending the period to



surrender by a further period of one month. The Court finds no error in the order impugned.

7. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J)

Anjani/-

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