

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 78987 of 2019

Arising Out of PS Case No.-10 Year-2019 Thana- MAHILA PS District- Khagaria

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Abhishek Kumar @ Pawan Kumar, aged about 30 years Gender-Male, Son of
Sikandar Sah, Resident of Village - North Marar, P.S.- Morwahi, District -
Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Puja Kumari, Wife of Abhishek Kumar @ Pawan Kumar Daughter of Sri
Pramod Sah, Resident of Village - Gaura Shakti, P.S.- Mufassil, District -
Khagaria.

... .. Opposite Party/s

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with
CRIMINAL MISCELLANEOUS No. 9422 of 2020

Arising Out of PS Case No.-149 Year-2019 Thana- MORKAHI District- Khagaria

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Abhishek Kumar @ Pawan Kumar, aged about 30 years, Gender-Male, Son of
Sikandar Sah, Resident of Village - North Marar, P.S. - Morkahi, District -
Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Puja Kumari, Wife of Abhishek Kumar @ Pawan Kumar, Daughter of Sri
Pramod Sah, Resident of Village - Gaura Shakti, P.S. - Mufassil, District -
Khagaria.

... .. Opposite Party/s

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Appearance :
(In CRIMINAL MISCELLANEOUS No. 78987 of 2019)

For the Petitioner/s	:	Mr. Pawan Kumar, Advocate
For the State	:	Mr. Tapeswar Sharma, APP



For the Opposite Party No. 2 : Mr. Radhe Shyam Singh, Advocate
(In CRIMINAL MISCELLANEOUS No. 9422 of 2020)
For the Petitioner/s : Mr. Pawan Kumar, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP
For the Opposite Party No. 2 : Mr. Radhe Shyam Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 25-11-2020

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Pawan Kumar, learned counsel for the petitioner in both the cases; Mr. Tapeshwar Sharma, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State in Cr. Misc. No. 78987 of 2019; Mr. Jharkhandi Upadhyay, learned APP for the State in Cr. Misc. No. 9422 of 2020 and Mr. Radhe Shyam Singh, learned counsel for the opposite party no. 2, in both the cases.

3. As the parties and learned counsel for the petitioner and opposite party no. 2 are the same in both the cases, both have been taken up together for hearing.

4. In Cr. Misc. No. 78987 of 2019, the petitioner apprehends arrest in connection with Khagaria (Mahila) PS Case No. 10 of 2019 dated 11.02.2019, instituted under Sections 498A,



494 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, 1961.

5. In Cr. Misc. No. 9422 of 2020, the petitioner apprehends arrest in connection with Morkahi PS Case No. 149 of 2019 dated 20.11.2019, instituted under Sections 498A, 494, 341, 323, 504, 506/34 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, 1961.

6. The allegation against the petitioner in Cr. Misc. No. 78987 of 2019, is that there was demand of dowry due to which the opposite party no. 2 was assaulted by the petitioner under the influence of liquor and had started physical torture even though there was a four year old son born to her and despite the fact that pursuant to the earlier complaint she had given to the Mahila Police Station, upon reconciliation, she had returned to the matrimonial home. It was further alleged that the petitioner was in extra-marital relationship with another girl and that he used to appear in the examination for other examinees for which Patliputra PS Case No. 482 of 2018 was instituted. Lastly, it has been stated that on 11.02.2019, the accused persons, who are the petitioner and his family members, tried to put her on fire after sprinkling kerosene oil forcing her to leave the matrimonial home.



7. In Cr. Misc. No. 9422 of 2020, the allegation is demand of motorcycle by the petitioner and his family members and because of non-fulfillment, she was assaulted and ousted from the matrimonial home. It has further been alleged that the petitioner had solemnized second marriage. It has also been alleged that the parents of the petitioner abused and slapped her and also tried to kill her.

8. Learned counsel for the petitioner submitted that he is innocent and all the allegations made against him are false. It was submitted that the opposite party no. 2 does not want to live with the petitioner and is trying to find reasons and make false allegations. It was further submitted that pursuant to the order of the Court, the petitioner had got the opposite party no. 2 to the matrimonial home but she had stated that she would return once the case was over and only for the present case, she had come to the matrimonial home. It was further submitted that the opposite party no. 2 was putting pressure on the petitioner for living at Patna but because he was not in a good financial condition as he was studying there, he could not keep her. Learned counsel further submitted that he has categorically stated that he has not solemnized second marriage and also reiterated the same in his



submissions, as has also been done during the previous hearings in the matter.

9. Earlier, the Court had called for a report from the Superintendent of Police, Khagaria with regard to whether the petitioner had remarried as has been alleged, specifically with Ms. Rani Kumari. Mr. Jharkhandi Upadhyay, learned APP has forwarded the report to the Court Master through e-mode. From the same, it transpires that the allegation of the opposite party no. 2 against the petitioner is correct that he had again performed marriage with Ms. Rani Kumari in the year 2018 itself, as has been disclosed during the enquiry and the statement of the co-villagers.

10. Learned counsel for the opposite party no. 2 submitted that the petitioner is trying to find excuses for his bad conduct. It was submitted that the opposite party no. 2 having a five year old son cannot be expected not to want to live with the husband because for all practical purposes, she has no other future. It was further submitted that the petitioner should in fact be prosecuted for falsely stating on oath in his application that he has not solemnized second marriage and the same was filed in February, 2020, when in 2018 itself, he had remarried. It was submitted that besides making such false statement, a categorical



stand was also repeatedly taken before the Court with regard to the petitioner not having remarried which shows the courage with which the petitioner is making false statements and reiterating them. Learned counsel submitted that the allegation that the opposite party no. 2 had told the petitioner that she had come to the matrimonial home only till the case was pending is totally falsified by the fact that if the opposite party no. 2 wanted to harass the petitioner then she would not have come, for coming and living in the matrimonial home would have gone in favour of the petitioner that now the parties were living and would have been a ground for showing indulgence to the petitioner. Thus, it was submitted that the said stand is self-contradictory. Learned counsel submitted that even the conduct of the petitioner is dubious as though he is studying law, but indulging in totally illegal activities, appearing for other persons in examinations for which a substantive criminal case has also been filed against him.

11. Having considered the facts and circumstances of the case in totality and submissions of learned counsel for the parties, the Court is not inclined to grant pre-arrest bail to the petitioner in both the cases.

12. Accordingly, both the applications stand dismissed.



13. Before parting, the Court would record that because of a categorical wrong statement on oath having been made by the petitioner that he has not solemnized second marriage in the year 2020 in Cr. Misc. No. 9422 of 2020, the Court was inclined to take suitable action as the same has been found to be false on the basis of an enquiry made by the police and on the basis of statements recorded by the co-villagers, that in the year 2018 itself, he had remarried, but the Court refrains from doing so, for the present. However, for such conduct, the opposite party no. 2 is at liberty to institute appropriate proceeding against the petitioner.

14. Interim orders granting protection to the petitioner, passed earlier, automatically stand withdrawn.

(Ahsanuddin Amanullah, J.)

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