

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21653 of 2020

Arising Out of PS. Case No.- Year-0 Thana- GOPALGANJ COMPLAINT CASE District-
Gopalganj

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ZAHOOR ANSARI @ JAHUR ALAM Son of Shan Mohammad Resident of
Pararia Malikana (Dumariya Ghat), P.S.- Mahamadpur, District- Gopalganj.
... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Nasima Khatoon W/o Zahoor Alam R/o- Pararia Malikana (Dumariya hat),
P.S.- Mahamadpur, District- Gopalganj, Daughter of Sakoor Miyan,
Presently residing at Mokadma Sher Bakhraur Balua Tola, P.S.- Sidhwalia,
District- Gopalganj.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Krishna Kant Singh
For the Opposite Party/s : Mr.A.G.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

3 27-08-2020 The present petition has been filed for

quashing the order dated 01.03.2019 passed in

Trial No. 1937 of 2019 by the learned Judicial

Magistrate, 1st Class, Gopalganj whereby and

whereunder the learned Magistrate has been

pleased to cancel the bail bond of the petitioner in

view of non-compliance of the conditions imposed

by the learned Sessions Judge while granting bail

to the petitioner vide order dated 13.03.2018.

The brief facts of the case are that the

opposite party no. 2 i.e. the complainant herein

had filed a complaint before the learned court of

Chief Judicial Magistrate, Gopalganj on



19.09.2015 inter alia stating therein that her marriage was performed with the petitioner herein on 20.04.2005 as per the Muslim rites and rituals and huge amount of gifts and ornaments were given to the accused persons, however, subsequently, the accused persons including the petitioner herein used to harass and inflict cruelty upon the complainant on account of non-fulfillment of the demand for a motorcycle and finally, she was ousted from the house by the accused persons, after snatching all her belongings.

It appears that on the basis of the aforesaid complaint of the opposite party no. 2, a complaint case was instituted, whereafter the learned Magistrate, upon inquiry, took cognizance of the offences punishable under Sections 498A and 406 of the Indian Penal Code against the accused persons including the petitioner herein on 28.10.2016. Thereafter, the petitioner had filed a bail petition bearing B.P.No. 191 of 2018 and the learned Sessions Judge, Gopalganj by an order



dated 13.03.2018 had been pleased to direct for release of the petitioner on bail, in view of the fact that the petitioner had expressed his willingness to keep his legally wedded wife i.e. the complainant of the present case with due honour and dignity, subject to the following conditions:-

(i) Petitioner-husband will file affidavit to the effect that he will keep and maintain his wife-complainant with full honour and dignity.

(ii) If the aforesaid condition is not fulfilled by the petitioner, complainant-wife will be entitled to get Rs. 6,000/- for her livelihood on every month to save her from starvation and vagrancy.

(iii) If the above mentioned condition on account of which, the prayer of bail has been considered, husband-petitioner will not suppose to avail the privilege of bail and in



that circumstances, the law will take its own motion accordingly.

(iv) The acceptance of bail bond of petitioner will be conditions precedent after making payment of Rs. 6,000/- for aggrieved wife-complainant for the purpose to secure her livelihood."

The learned counsel for the petitioner has submitted that in compliance of the aforesaid order dated 13.03.2018, the petitioner herein had filed an affidavit before the learned court of Judicial Magistrate, 1st Class, Gopalganj, pertaining to Trial No. 2164 of 2018 to the effect that he would keep and maintain his wife i.e. the complainant herein with full honour and dignity. The learned counsel for the petitioner has further submitted that though the petitioner has fulfilled the aforesaid condition no. (i) by filing an affidavit dated 16.03.2018, whereafter he was released on bail, however subsequently, by an order dated 01.03.2019, the learned court below has illegally



cancelled the bail bond on a wrong presumption that the conditions, upon which the bail was granted to the petitioner herein, had not been fulfilled. It is submitted that subsequently, the mediation in between the husband and the wife has also failed and moreover, in a criminal proceeding, the quantum of amount to be paid to the complainant-wife by the petitioner-husband cannot be fixed. Thus, it is submitted that the order passed by the learned court below dated 01.03.2019 is perverse and fit to be set aside.

At this juncture, this Court had inquired from the learned counsel for the petitioner as to whether he has been keeping his wife and maintaining her with due honour and dignity and as to whether in default thereof, he has been paying a sum of Rs. 6,000/- per month to the complainant-wife, to which the answer of the learned counsel for the petitioner is in the negative and it is stated that admittedly, neither the wife is staying with the petitioner nor the petitioner has paid the aforesaid sum of Rs.



6,000/-.

Having regard to the facts and circumstances of this case and upon perusal of the materials on record, it is apparent that the petitioner has not challenged the order dated 13.03.2018 whereby and whereunder the petitioner was granted bail, subject to fulfillment of four conditions, meaning thereby that the petitioner was satisfied with the aforesaid order dated 13.03.2018 and therefore, in the event of not keeping and maintaining his wife with due honour and dignity, the petitioner had impliedly agreed to pay a sum of Rs. 6,000/- per month for her livelihood. In such view of matter, this Court finds that the subsequent order dated 01.03.2019 passed by the learned Judicial Magistrate, 1st Class, Gopalganj whereby and whereunder the bail bond of the petitioner has been cancelled on account of non-fulfillment of the aforesaid conditions mentioned in the order dated 13.03.2018 cannot, by any stretch of imagination, be said to be perverse or illegal or unreasonable and on the contrary, this Court finds



that the learned court below has passed the said order dated 01.03.2019 in a legal, valid and prudent manner.

Considering the facts and circumstances of the case and for the grounds mentioned hereinabove, the present petition stands dismissed, however, with a direction to the learned court below to ensure arrest of the petitioner herein. Nonetheless, in case, the petitioner is willing to pay to the complainant a sum of Rs. 6,000/- per month with effect from 13.03.2018, then, in that case, the learned court below shall consider grant of the privilege of bail to the petitioner herein.

(Mohit Kumar Shah, J)

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