

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38010 of 2019

Arising Out of PS. Case No.-3825 Year-2018 Thana- PATNA COMPLAINT CASE District-
Patna

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PRASHANT CHANDRA OJHA Son of Pratap Ojha At present Address-810, Street No.52, Mabelle Avenue City, Toronto, Country-Canada, Province Ontario, Postal Code-M9a4X9, District Code of Toronto, Permanent Address- Resident of 4C, Sopan Niketan, 28/1 Viren Rai Road, West Behala, P.S.- Parnashree, District-Kolkata, State-West Bengal.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Isha Tiwary Wife of Prashant Chandra Ojha D/o Madan Mohan Tiwary Resident of G-145, Kalkaji, P.S.-Kalkaji, District-South Est State-New Delhi-110019

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Shri D.K. Sinha, Sr. Advocate Shri Om Prakash Upadhyay
For the Opposite Party/s :		Shri Anand Kumar Ojha Shri Jagdhar Prasad

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

7 10-01-2020 Heard Shri D.K. Sinha, learned senior counsel for the petitioner, Shri Anand Kumar Ojha, learned counsel for the complainant - opposite party no. 2 and the learned A.P.P. for the State.

The petitioner apprehends his arrest in connection with Complaint Case No. 3825(C) of 2018 for the offence registered under Sections 323, 406, 420, 498(A)/34 of the Indian Penal Code.

The case of the complainant in brief as per the complaint petition bearing Complaint Case No. 3825(C) of 2018



is that the accused persons including the petitioner herein, who happens to be the husband of the petitioner herein, have been engaging in torturing the complainant-opposite party no. 2 on account of non-fulfilment of the demand for dowry and have not only ensured that the complainant is not granted Visa to travel to Canada to live with her husband i.e. the petitioner herein but have also thrown her out of the matrimonial home. It has been alleged by the complainant in the complaint petition that the marriage in between the complainant and the petitioner herein took place on 20.01.2016 as per the Hindu rites and customs at Rajhans Hotel, Surajkund, Haryana and at the time of marriage a sum of Rs. 10,00,000/- in cash and jewellery worth Rs. 10,00,000/- were given to the accused persons apart from the father of the complainant having met all the marriage expenses. It is further alleged that several costly gifts were also given to the accused persons. It is also the case of the complainant that on the day of marriage, the accused persons started demanding money and costly car by way of dowry, failing which they threatened to cancel the marriage, however, with the intervention of the family and friends, the marriage was solemnized. After marriage, the complainant is said to have been taken to Kolkata where again a demand of Rs. 10,00,000/-



and a costly car was made and in default thereof, the accused persons had threatened that the petitioner would not take the complainant to Canada with him. It is also stated that on 27.01.2016, the marriage of the sister of the petitioner was solemnized and the entire jewellery, costly clothes and other gifts belonging to the complainant was given during the course of said marriage of the sister of the petitioner and when the complainant had opposed, she was assaulted by the petitioner and other accused persons. It is further alleged that on 01.02.2016, the petitioner had gone to Canada, leaving behind the complainant and had told her to serve his parents and the arrangement of Visa for her would be made later on. Thereafter, the complainant started living with the parents of the petitioner, however, their behaviour towards her became worse from day to day, in absence of fulfilment of the demand for dowry and they started torturing the complainant both physically as well as mentally and used to stop giving her food from time to time. It is further alleged by the complainant that in the meantime she had visited her matrimonial grandmother house at Patna and started living there, however, not a single penny was given by way of expenditure by the petitioner herein and thereafter, the parents of the petitioner refused to keep the complainant despite



several request made by the parents and family members of the complainant. Subsequently, the complainant came to know that the petitioner had taken back the Visa application form of the complainant and when the father of the complainant had proposed to send the complainant to Canada to live with the petitioner on a tourist Visa, the accused persons flatly refused to do so. It is also alleged that when the complainant had herself filled the application form for grant of tourist Visa, the petitioner herein refused to submit the necessary documents resulting in rejection of the case of the complainant for grant of tourist Visa. It is also alleged that in the month of May, 2017, the petitioner herein had come to India but he did not make any efforts to meet the complainant and upon being asked as to why he did not intend to meet the complainant, he categorically stated that any talks would progress only when the demand for money and motor car is fulfilled. The complainant is stated to have filed a petition for restitution of conjugal rights bearing Matrimonial Case No. 1173 of 2017 before the learned Court of Principal Judge (Family Court), Patna on 02.11.2017, however, the petitioner failed to appear before the said Court. In nutshell, the allegation of the complainant is that the petitioner and other accused persons have not only grabbed all the jewellery and



articles of the petitioner, brought after marriage to her matrimonial home but the petitioner and the other accused persons have also tortured the petitioner physically and mentally by demanding dowry on the pretext of arranging Visa to enable her to travel Canada to live with the petitioner.

The learned Court of Chief Judicial Magistrate, Patna by an order dated 26.09.2018 passed in the aforesaid Complaint Case No. 3825(C) of 2018, has been pleased to take cognizance under Sections 323, 406, 420, 498A/34 of the Indian Penal Code against the petitioner and other accused persons, finding that prima facie sufficient grounds are on record to proceed with the case, after having recorded the statement of the complainant on solemn affirmation as also the statement of the witnesses.

The learned senior counsel for the petitioner has submitted that the petitioner is innocent and has been falsely implicated in the present case as also the allegations levelled in the complaint petition are general and omnibus. It is further submitted that the filing of the case before the learned C.J.M., Patna itself is illegal and the same suffers from jurisdictional error. Lastly, it is submitted that the petitioner is employed in a private firm in Canada, hence is living abroad, thus the allegation levelled against the petitioner by the complainant-



opposite party no. 2 herein are incorrect and do not have any legs to stand, as such the petitioner is liable to be granted the privilege of pre-arrest bail.

On the earlier occasion, when the case was taken up by this Court, the learned senior counsel for the petitioner had submitted that the petitioner was ready and willing to keep his wife i.e. the opposite party no. 2 herein with due honour and dignity, however, the said statement made by the learned senior counsel was confronted by the learned counsel appearing for the opposite party no. 2, Shri Anand Kumar Ojha, who submitted that the opposite party no. 2 has received a notice from the Canadian Court, at the behest of the petitioner, for the purposes of dissolution of marriage, hence the petitioner is making false assurance before this Court and he has got no intention to keep the opposite party no. 2 with due honour and dignity with him. Thereafter, a copy of the said notice of process for dissolution of marriage, initiated by the petitioner before the Superior Court of Justice, Toronto, Canada, has been brought on record of the case as Annexure-A to the supplementary counter affidavit filed on behalf of the opposite party no. 2 on 10.12.2019. It is submitted that the said notice has been issued pursuant to an application for divorce filed on behalf of the petitioner against the



complainant. It is thus submitted that the said notice demonstrates the unfair conduct of the petitioner and his intention to mislead this Hon'ble Court as also the learned court below inasmuch as the real intent of the petitioner is to buy time from the Indian Courts so as to enable him to get the marriage in question dissolved. In such view of the matter, when the case was taken up for hearing on 10.12.2019, the learned senior counsel for the petitioner was confronted with the issue as to whether the petitioner intends to withdraw the divorce case, filed by the petitioner in Canada, whereupon the learned senior counsel for the petitioner submitted that the petitioner undertakes to withdraw the divorce case filed by him at Canada and appear before this Court in the first week of January, 2020.

Today, when the case has been taken up for hearing, though the petitioner is present before this Court, however, the learned senior counsel for the petitioner has failed to demonstrate before this Court that the petitioner has withdrawn the divorce case, hence this Court is of the view that the petitioner has defaulted and failed to honour the undertaking tendered by the learned senior counsel, on his behalf, before this Court on 10.12.2019. This Court has further put a query to the learned senior counsel to take instructions from the petitioner,



who is present in the Court, as to whether the petitioner is ready to settle the matrimonial dispute by reference of the present case to the learned Mediator, Patna High Court Mediation Cell, Patna, to which the learned senior counsel has submitted that the petitioner is not ready for any sort of mediation. Next, this Court has asked the learned senior counsel as to whether the petitioner is ready to give some amount of maintenance for sustenance and providing succour to his wife i.e. the opposite party no. 2, who has been left in lurch immediately after the marriage and has been suffering since past almost four years, the learned senior counsel for the petitioner on instructions, has submitted that the petitioner is not ready and willing to give any maintenance amount to the opposite party no. 2.

At this juncture, the learned counsel appearing for the opposite party no. 2 has submitted that the conduct of the petitioner is apparently deplorable and he has left no stone unturned to mislead this Hon'ble Court as also the learned court below. It is further submitted that it is also apparent from the materials on record that the petitioner has deliberately abandoned the opposite party no. 2 on account of non-fulfilment of the demand for dowry, and has also defrauded the complainant and her parents by devouring the jewellery, cash



and gifts given by the parents of the petitioner at the time of marriage. It is also submitted that the petitioner has been tortured both mentally and physically and she has been living in distress. The learned counsel for the complainant has contended that it is a well settled law that the provisions contained in Section 498A of the Indian Penal Code undisputedly encompasses both mental as well as physical well being of the wife and even the silence of the wife may have an underlying element of distress and mental agony. It is also submitted that the complainant is an unemployed lady and has been forced to live at the mercy of her relatives and her life has been wrecked during the past few years of her marriage with no certainty in sight. At this juncture, the learned counsel for the complainant has also referred to the sequence of events enumerated in paragraph no. 7 of the supplementary counter affidavit, which is reproduced herein below, to show the overall conduct of the petitioner herein:-

20.01.2016 Marriage between petitioner and the complainant solemnized as destination wedding at Hotel Rajhans, Surajkund, Haryana.

27.01.2016 Marriage of the sister of the petitioner.

01.02.2016 Petitioner husband left for Canada



without the complainant.

02.11.2017 Application for restitution of conjugal rights (S. 9) preferred by the complainant.

07.09.2018 Complaint Case No. 3825(C) /2018 filed before CJM, Patna.

12.12.2018 Reply to S. 9 application filed by the petitioner.

13.02.2019 ABP filed on behalf of the petitioner before Ld. Court below.

14.02.2019 Conditional relief of “no coercive steps” granted to the petitioner.

23.04.2019 ABP on behalf of the petitioner was rejected by the Ld. Court below.

15.05.2019 Cr. Misc. 38010/2019 preferred on behalf of the petitioner before this Hon’ble Court after preferring an application for dissolution of marriage in Canada on 08.05.2019.

14.08.2019 Relief of “no coercive steps” granted to the petitioner and the matter was referred to mediation centre.

15.10.2019 Both the parties appeared before Mediation Centre.

07.11.2019 Petitioner failed to appear before



mediation centre. Complainant was present..

21.11.2019 Petitioner failed to appear before mediation centre. Complainant was present. Mediation failed due to non-cooperation of the petitioner.

27.11.2019 A notice of process for dissolution of marriage initiated by the petitioner before Superior Court of Justice, Toronto Canada, received at the residence of the mother of the complainant. The said application was signed by the petitioner on 08.05.2019.

The learned counsel for the complainant has thus submitted that no case has been made out by the petitioner for grant of the privilege of pre-arrest bail, hence the present petition should be dismissed.

I have heard the learned senior counsel for the petitioner, learned counsel for the opposite party no. 2 and the learned A.P.P. for the State and gone through the materials on record.

This Court finds that the allegations levelled by the opposite party no. 2 in the complaint petition, prima facie do constitute the offences as alleged and that is why the learned



court below has taken cognizance vide order dated 26.09.2018 for the offences punishable under Sections 323, 406, 420, 498A/34 of the Indian Penal Code against the petitioner and the other accused persons. No material has been brought on record to suggest that the petitioner has challenged the said order dated 26.09.2018. This Court is further of the view that the petitioner has not only tried to hoodwink this Court but also the learned court below and has been deluding the learned Courts in India with malafide intentions and in the meantime, has not only filed a divorce case before the learned Court at Canada, as aforesaid, but has further tried to buy times from this Court, may be for the purposes of sealing the fate of the divorce case by ensuring dissolution of marriage by lingering the present case and keeping it pending. In fact the impugned order dated 23.04.2019, passed by the learned Court of Additional Sessions Judge-VII, Patna, rejecting the prayer of the petitioner for grant of anticipatory bail would show that despite directions by the learned court below to the petitioner to appear on each and every date fixed by the Court, the petitioner failed to appear despite grant of interim protection to the effect that no punitive action/coercive steps shall be taken against the petitioner, notwithstanding the fact that the learned Advocate for the



petitioner had taken time on several occasions to make the petitioner appear before the learned court below. This Court further finds that the sequence of events reproduced herein above reflects the conduct of the petitioner in poor light and moreover the entire materials on record and the orders passed by this Court from time to time including the orders passed by the learned court below definitely demonstrates that the petitioner has got no regard for the process of law and he has engaged in dilatory tactics as also has abused the process of the Court by misleading this Court as also the learned court below.

Nevertheless, bereft of the conduct of the petitioner, this Court further finds that a prima facie case is definitely made out against the petitioner herein for the offences as alleged and discussed herein above and it is apparent from the materials on record that the petitioner has abandoned the opposite party no. 2 almost since the very inception of the marriage as also has failed to maintain her with due dignity and honour and today also, neither the petitioner is ready to settle the matrimonial dispute by the process of mediation nor he is ready to pay any amount of maintenance whereas on the contrary, the petitioner and his family members have not only usurped the jewellery, cash and various costly articles and gifts given by the parents of



the complainant to the petitioner and his family but have also mentally and physically tortured the opposite party no. 2 resulting in her condition having become pitiable and her life having been wrecked, thus this Court is of the view that the petitioner does not deserve the privilege of anticipatory bail, hence the present petition stands dismissed, especially considering the nature and gravity of the circumstances and the offence alleged, the position and status of the petitioner vis-à-vis the complainant and the obdurate attitude of the petitioner.

(Mohit Kumar Shah, J)

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