

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 78853 of 2019**

Arising Out of Complaint Case No.-1507 Year-2017 Thana- COMPLAINT CASE District-
Banka

=====

Vikesh Kumar, Male, aged about 36 years, Son of Ramcharitra Singh @
Ram Charitr Singh, Resident of Village- Jhirwa (Manjhgany), P.O.- Chutia,
P.S.- Amarpur, District- Banka.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Manisha Kumari @ Khushbu Kumari, female, aged about 34 years, Wife of
Vikesh Kumar and Daughter of Late Ramrup Baidya, Resident of Village-
Asarganj, Saraswati Asthan, P.S.- Asarganj, District- Munger.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Arjun Prasad, Advocate
For the State	:	Dr. Kumar Uday Pratap, APP
For the Opposite Party No. 2	:	Mr. Shambhu Sharan Singh, Advocate

=====

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

ORAL JUDGMENT

Date : 14-12-2020

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

2. Heard Mr. Arjun Prasad, learned counsel for the
petitioner; Dr. Kumar Uday Pratap, learned Additional Public
Prosecutor (hereinafter referred to as the 'APP') for the State and
Mr. Shambhu Sharan Singh, learned counsel for the opposite party
no. 2-complainant.

3. The petitioner apprehends arrest in connection with
Complaint Case No. 1507 of 2017 dated 07.11.2017, instituted



under Sections 323, 341, 379, 380, 498A of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, 1961.

4. The allegation against the petitioner is that after having married the opposite party no. 2 on 22.04.2015, for the initial six months, everything was fine and then the petitioner and his family members started demanding motorcycle and Rs. 2,00,000/- and two Jersey cows as dowry and started torturing her and thereafter, on 24.08.2017, after assaulting and snatching her belongings, she was ousted from the matrimonial home.

5. Learned counsel for the petitioner submitted that the opposite party no. 2 is a lady of questionable character and that she was already married from before to one Sanjeev Sah from whom she also had a daughter but she had suppressed such fact. It was submitted that as per his instructions, the opposite party no. 2 was living with another person. Learned counsel submitted that even prior to filing of the present case, the petitioner and his parents were threatened by the opposite party no. 2 and her friends for which Sanha No. 199 of 2016 and 2540 of 2017, were also filed. It was submitted that the petitioner was also suffering from mental disease and, thus, could not live with the opposite party no. 2. Learned counsel submitted that actually it is the opposite party



no. 2, who does not want to live with him and has voluntarily deserted the matrimonial home.

6. At this juncture, when the Court called upon learned counsel to indicate that because of indulgence shown by this Court earlier, an exercise with regard to mutual agreement for one-time settlement was initiated and the petitioner had agreed to pay a certain amount but because on the last date, the Court was informed that the petitioner had put conditions with regard to the money being given to the opposite party no. 2, on the stand taken by learned counsel for the petitioner, who had submitted that there may have been some misconception on the part of the petitioner and by way of indulgence, had prayed for time of two weeks so that the petitioner may clarify his stand before the Court below so that the opposite party no. 2 is given the draft. The Court, to safeguard the interest of the petitioner had clarified that opposite party no. 2 was also required to cooperate, whenever needed, which learned counsel for the opposite party no. 2 had agreed to. Thus, the Court had adjourned the matter for three weeks directing them to appear before the Court below on 3rd December, 2020, and thereafter file affidavit with regard to the exercise being completed, learned counsel for the petitioner was not in a position to make any submissions as to why the affidavit was not filed.



7. However, learned counsel for the opposite party no. 2 submitted that he has the certified copy of the proceeding before the Court below on 3rd December, 2020 where the petitioner has again objected to the opposite party no. 2 being given the amount. On merits, he reiterated that the allegations levelled are true and believable.

8. The Court finds the position to be unfortunate as none of the parties have complied with the order of the Court and filed affidavit, as whatever they had to say was to be brought on affidavit as per the specific direction of the Court in its order dated 10.11.2020. In the present case, the Court finds that though learned counsel for the opposite party no. 2 has the certified copy with him but did not bring it on record by way of an affidavit.

9. Be that as it may, the Court would not dwell on this aspect as it is for learned counsel to understand their responsibility.

10. Learned APP submitted that the Court may finally decide the matter as no useful purpose is being served by keeping it pending.

11. At this juncture, the Court deems it appropriate to reproduce the order dated 10.11.2020 which records the conduct of the petitioner and reads as under:



“3. At the very outset, learned counsel for the opposite party no. 2 submitted that though the petitioner had undertaken to pay Rs. 6,00,000/-to the opposite party no. 2 by way of bank draft in her name in the Court below, the same has been deposited but the petitioner has put the condition that unless all the cases between the mare concluded, the same be not paid to the opposite party no. 2. It was submitted that such condition is totally mala fide as before this Court it was undertaken that the amount will be paid to the opposite party no. 2 and further that the opposite party no. 2 can only cooperate by signing the compromise petition and agreeing not to pursue the present matter and even in the divorce case filed by the petitioner, she has already signed on the petition for mutual divorce and, thus, from her part nothing further remains to be done.

4. At this juncture, Mr. Arjun Prasad, learned counsel for the petitioner submitted that there may have been some misconception on the part of the petitioner but by way of indulgence, he prayed that the matter may come after two weeks and the petitioner shall clarify his stand before the Court below so that the opposite party no. 2 is given the draft. However, he submitted that the Court may safeguard his interest by directing the opposite party no. 2 to cooperate whenever required in the pending proceedings between the parties.

5. On this, learned counsel for the opposite party no. 2 submitted that she is ready to cooperate in the matter as may be required in law and with regard to which she has also filed an affidavit before the Court below.

6. Learned counsel for the opposite party no. 2 further submitted that the petition for restitution of conjugal rights has been filed at Ramgarh in the State of Jharkhand which has now become infructuous and has to be withdrawn by the petitioner in which the opposite party no. 2 has no role. However, he submitted that if petitioner files an application for divorce in the



local Court at Munger; the opposite party no. 2 shall cooperate in the same. It was further submitted that the opposite party no. 2 would also not pursue the present complaint case.

7. Leaned counsel for the petitioner submitted that the matter be adjourned for three weeks to enable the parties to appear before the Court below on 3rd December, 2020.

8. Let the same be done. Upon doing so, the Court below would pass appropriate orders after recording the statement of the petitioner and the opposite party no. 2.

9. The matter be listed on 14th December, 2020, among the top five cases, when affidavit shall be filed on behalf of the petitioner as well as the opposite party no. 2 with regard to the exercise having been completed.”

12. To the Court it appears that, had the opposite party no. 2, been trying to force herself as the wife and live with the petitioner, then there was no reason for her to file a case on the one hand and live with someone else on the other hand. If what she wanted was not to be with the petitioner, she would not have married him in the first case and the fact that she married him and then has filed this case clearly indicates that she wants to get her matrimonial status restored, which the petitioner is denying on some ground or the other, including the allegation of infidelity. The Court would pause here to indicate that in the larger public interest, it had directed for an exercise so that once and for all, the parties could settle the matter between themselves and close the chapter; but the Court is constrained to observe that the petitioner



has also not been able to inspire confidence by his conduct, especially before the Court below, and despite the Court taking care of his apprehensions, as ultimately, the opposite party no. 2 can do no more than take a stand in favour of the petitioner before the Courts concerned, but in how much time it takes and what order is passed, she has no role. Moreover, she had undertaken not to pursue the matter and in fact had also agreed for divorce and had already signed the petition for mutual divorce and nothing further remained to be done on her part.

13. Thus, taking an overall view in the matter after considering the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to grant pre-arrest bail to the petitioner.

14. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar/Anand Kr.

AFR/NAFR	
U	
T	

