

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79104 of 2019

Arising out of PS. Case No.-667 Year-2018 Thana- COMPLAINT CASE District- Araria

Md. Afasar, (Male) aged about 36 years, Son of Md. Ainul @ Md. Ainul Haque Resident of Village- Pachaily, Ward No.-4, P.S.- Palasi, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Bibi Sajida @ Kari, (Female), aged about 31 years, W/o Md. Afasar, D/o Abdul Rahim, Resident of Village- Pachaily, Ward No.4, P.S.- Palasi, District- Araria. At present resident of Village- Jogindra, Ward No.8, P.S.- Mahalgaon, District- Araria.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Gopal Kumar Jha, Advocate
For the State	:	Mr. Sanjay Kumar Sharma, APP
For the opposite party no. 2	:	Mr. Manish Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 19-10-2020

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

2. Heard Mr. Gopal Kumar Jha, learned counsel for the petitioner; Mr. Sanjay Kumar Sharma, learned APP for the State and Mr. Manish Kumar, learned counsel for the opposite party no.

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3. On 21.09. 2020, the Court had directed for an exercise in the following terms:

“4. As the matter relates to a matrimonial dispute where the petitioner



is the husband of the opposite party no. 2, on a direct query of the Court to learned counsel for the petitioner with regard to what he proposed to do, he submitted that he is ready to keep the opposite party no. 2 with him in the matrimonial home with full dignity, honour and security. Learned counsel further submitted that he has not remarried as has been stated in the petition filed by him for restitution of conjugal rights before the Principal Judge, Family Court, Araria. On a query of the Court as to when the petitioner would go to the house of the opposite party no. 2 and bring her to the matrimonial home along with child, learned counsel submitted that within two weeks he shall do it.

5. Learned counsel for the opposite party no. 2 submitted that she is ready to go with him and the Court may safeguard her and her child's interest.

6. In view thereof, as jointly prayed for, the matter be listed on 14th October, 2020, among the top five cases.

7. In the meantime, the petitioner shall coordinate with the opposite party no. 2 and work out the modalities of bringing her and the child to the matrimonial home. On the agreed date, the petitioner shall go the house of the opposite party no. 2 and bring



her to the matrimonial home along with the child. He shall ensure that the opposite party no. 2 and the child are kept in the matrimonial home with full dignity, honour and security and are also provided with all their needs including fooding, clothing, medical etc. The opposite party no. 2 shall be free to call, meet and visit whomsoever she may desire without any let or hindrance, either by the petitioner or his family members. It has shall be the responsibility of the petitioner to ensure that the exercise, as directed above, is completed. The opposite party no. 2 and her guardians should also cooperate in the same.

8. On the next date, affidavit shall be filed, both by the petitioner as well as the opposite party no. 2, with regard to the exercise, as directed above, as also the position of the relationship between the parties.”

4. Though a supplementary affidavit has been filed on behalf of the petitioner, the Court is constrained to observe that the same is totally perfunctory, with bald and vague statements made in paragraph number 2, which reads as under:

“2 That it is submitted that the petitioner went to the matrimonial home of the O.P. No.



2 along with his father on 07.10.2020 but the O.P. No. 2 is not ready to live with him.”

5. On a query of the Court to learned counsel for the petitioner, as to how he had gone straightaway to the house of the opposite party no. 2 on 07.10.2020 before first working out the modality and agreeing on a date, learned counsel could not give any reply. The Court is surprised at the conduct of the petitioner. It cannot be expected that a person would straightaway go to house of his wife and expect that she would be ready waiting, without any prior information, much less any agreement. Further, the order was passed on 21.09.2020 and the next date was fixed for 14th October, 2020 and the petitioner waited for almost 17 days and straightaway going to her house on 07.10.2020 clearly reflects lack of *bona fide* on the part of the petitioner.

6. In the aforesaid background, the Court has proceeded to hear the matter on merits.

7. The petitioner apprehends arrest in connection with Complaint Case No. 667C of 2018 dated 04.04.2018, instituted under Section 498(A) of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

8. The allegation against the petitioner is that he had married the opposite party no. 2 from whom there is a child and



despite the impression being created that he is ready to go and bring the opposite party no. 2 with him, the manner in which he has conducted himself, the exercise has not been successful. It has been alleged that the petitioner who is her husband and her family members were demanding dowry of Rs. 1,00,000/- and one motorcycle and because of non-fulfilment she was subjected to harassment and also assault and then she was driven out of house. It has also been stated in the complaint that the accused wanted to get the petitioner married to another lady.

9. Learned counsel for the petitioner submitted that the allegations are false and he never demanded dowry. It was further submitted that he is ready to keep the opposite party no. 2 with him but she does not want to go. However, he did not controvert that he had not remarried.

10. Learned counsel for the opposite party no. 2 submitted that the petitioner has remarried and there is absolutely no occasion for the opposite party no. 2 to file a false case, especially when there is a minor child as the opposite party no. 2 is in a pitiable position without any support as now she has to live at the maternal house at the mercy of others and furthermore, the petitioner is not paying anything, either to her or the child.



11. Having considered 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.

12. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J)

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