

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL MISCELLANEOUS No. 78352 of 2019**

Arising Out of PS. Case No.-201 Year-2019 Thana- DUMRAON District-Buxar

- =====
1. Jai Kishun Yadav (M) aged about 60 years old, son of Garjan Yadav
  2. Phool Kumari Devi @ Phool Kumari (F), aged about 55 years old, wife of Jai Kishun Yadav.

Both resident of Village-Safakhana Road, Dumraon, P.S. Dumraon, District-Buxar

... .. Petitioner/s

Versus

1. The State of Bihar
2. Anju Kumari, wife of Vinod Yadav, resident of Village-Umedpur, Brahmpur, District-Buxar.

At present Village- Safakhana Road Dumraon, P.S.-Dumraon, District-Buxar.

... .. Opposite Party/s

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**Appearance :**

|                              |   |                                   |
|------------------------------|---|-----------------------------------|
| For the Petitioner/s         | : | Mr. Digvijay Kumar Ojha, Advocate |
| For the State                | : | Mr. Suresh Prasad Singh, APP      |
| For the Opposite Party No. 2 | : | Ms. Priyadarshini Sinha, Advocate |

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**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. Digvijay Kumar Ojha, learned counsel for the petitioners; Mr. Suresh Prasad Singh, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the



State and Ms. Priyadarshini Sinha, learned counsel for the opposite party no. 2.

3. The petitioners apprehend arrest in connection with Dumraon PS Case No. 201 of 2019 dated 08.06.2019, instituted under Sections 341/323/498A/307/34 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, 1961.

4. The petitioners are father-in-law and mother-in-law of the opposite party no. 2.

5. On 03.09.2020, the Court had recorded the following:

“XXXX

*5. After hearing the parties at length, there is consensus that the petitioners and their son is ready to keep the informant in the matrimonial home with all love and affection and the petitioners have no objection. A categorical statement has also been made in paragraph no. 12 of the application.*

*6. The Court is informed that now even the informant is ready to live with her husband.*

*7. In view of the aforesaid, it has been agreed between the parties that the petitioners and their son shall get in touch with the informant and work out the modalities of the husband and wife resuming their matrimonial life in a peaceful and congenial environment.*

*8. Accordingly, as jointly prayed, the matter*



*be listed on 15<sup>th</sup> October, 2020, among the top five cases, when affidavit shall be filed by both the sides bringing on record details of such arrangement.*

*xxxx"*

6. Today, learned counsel for the petitioners submitted that their son has filed a divorce case at Bhopal against the informant on 31.08.2020. Initially, learned counsel had stated before the Court that divorce case was filed on 09.10.2020.

7. The Court does not find any difference whether the divorce case has been filed on 31.08.2020 or 09.10.2020 for the reason that in the present petition filed by the parents of the boy who has married the informant, the categorical stand in the pleadings is that their son was ready to keep his wife with all love and affection. The Court deems it appropriate to reproduce paragraphs no. 12 and 13 of the application which read as under:

*"12. The son of petitioner is till date ready to keep his wife with all love and affection. On which these petitioners have no objection upon their matrimonial life.*

*13. That the petitioners' son has already filed restitution U/S 9 of the Hindu Marriage Act for restitution of conjugal rights but the informant is not interested to appear in that case."*

8. From the aforesaid, it is clear that the parents had



stated that their son was ready to keep the wife with all love and affection and in this connection, he had already filed a case for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955.

9. Learned counsel for the petitioners submitted that the restitution case, filed at Bhopal, has been allowed *ex parte* in favour of the son of the petitioners and thereafter the divorce case was filed.

10. The Court is unable to understand the conduct of the petitioners and their son. When already before the Court they had filed an application, may be for grant of anticipatory bail, and without waiting for some time or taking appropriate steps, if the suit for restitution was allowed in favour of the son of the petitioners, then filing a divorce suit, more so, keeping in mind the situation on the ground in view of the COVID-19 pandemic, appears to be just a ploy to get over the stand taken before the Court to keep the wife. Thus, the Court is constrained to observe that it gets the feeling that as a matter of strategy, the petitioners and their son have conducted themselves; by first filing an application for restitution of conjugal rights and taking a stand before the Court in the present proceeding that their son was ready to keep the wife with all love and affection and they



had no objection to their matrimonial life and in support thereof, showing that he has filed an petition for restitution of conjugal rights, and then getting the same decreed *ex parte*, knowing fully well that the petition filed at Bhopal would be difficult to be contested by the opposite party no. 2, who is living at Dumraon in the district of Buxar, especially in the present times and then getting *ex parte* decree and then filing a petition for divorce, raises grave misgivings about the conduct of the parents and their son. The Court is constrained to observe that in fact the Court seems to have been deliberately mislead due to such categorical pleadings in the application which was reiterated by learned counsel for the petitioners on 03.09.2020, persuading the Court to give a chance so that things could be worked out between the parties, especially when the opposite party no. 2 had also shown her willingness to go and live with the son of the petitioners.

11. Having regard to the aforesaid, the Court finds that the conduct of the petitioners, especially before the Court, both in the pleadings on oath as well as the submissions and stand taken on behalf of them by learned counsel on 03.09.2020, which now turns out to be totally unfounded, clearly the Court has been mislead into believing that the stand and conduct of the



petitioners and their son was *bona fide*.

12. At this stage, the Court may observe that mere filing of a divorce case has no impediment in the parties resuming their matrimonial relationship and if the petitioners and their son were sincerely desirous of the same, the opposite party no. 2, who, before the Court, in the present proceeding, has taken stand that she is ready to go and live in the matrimonial home, the exercise as directed in order dated 03.09.2020, should have been taken to its logical conclusion. The same not being done, for which there is no valid reason forthcoming, at the cost of repetition, the Court finds that the conduct, especially the stand, both in the pleadings and before the Court, lacks *bona fide* and was only with a view to creating a ground for the Court to interfere and grant indulgence to them. Thus, it would not be incorrect to say that the indulgence of the Court has been availed by the petitioners on a totally wrong stand taken both in the pleadings and orally before the Court on their behalf. Even otherwise, learned APP, from the case diary, has submitted that independent witnesses have supported the allegation of there being demand of dowry right after the marriage.

13. Thus, taking an overall view in the matter, the



Court is not inclined to grant pre-arrest bail to the petitioners.

14. For reasons aforesaid, the application stands dismissed.

**(Ahsanuddin Amanullah, J)**

Anjani/-

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