

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 32861 of 2020

Arising Out of Complaint Case No.-576 C Year-2019 Thana- WEST CHAMPARAN
COMPLAINT District- West Champaran

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Sameer Khan @ Sami @ Sami Khan, aged about 25 years, Male Son of Babu Jan Khan, Resident of Village-Lauriya, PS-Lauriya and District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Gulnaz Khatoon, Daughter of Akhtar Khan, Wife of Samir Khan, Resident of Village-Lauriya, PS and PO-Lauriya and District-West Champaran at present Haji Tola, PS and PO-Ram Nagar and District-West Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Mohammed Abu Haidar, Advocate
For the State	:	Mr. Nand Kishore Prasad, APP
For the Opposite Party No. 2	:	Mr. Umesh Kumar Gupta, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 12-07-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Mohammed Abu Haidar, learned counsel for the petitioner; Mr. Nand Kishore Prasad, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State and Mr. Umesh Kumar Gupta, learned counsel for the complainant-opposite party no. 2.

3. The petitioner apprehends arrest in connection with Complaint Case 576 (C) of 2019 dated 23.07.2019, instituted under Sections 323, 341, 504, 506, 494, 498A and 406 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, 1961.



4. The allegation against the petitioner, who is the husband of the opposite party no. 2 is of torture, due to non-fulfillment of demand of dowry of Rs. 1 lakh, Hero Honda motorcycle, washing machine and attempt to kill her by the accused persons and snatching of her belongings and finally ousting her from the matrimonial home.

5. Learned counsel for the petitioner submitted that the allegations are totally false and it is the opposite party no. 2 herself who was not willing to live in the matrimonial home right from the beginning and was pressurizing the petitioner to live with the parents of the opposite party no. 2 and also sending all his money to the opposite party no. 2. Learned counsel submitted that prior to filing of the present case, the petitioner and his family members had filed an informatory petition before the Sub Divisional Officer, Bettiah, West Champaran on 16.12.2014, in which it has been alleged that the opposite party no. 2 was threatening the petitioner and his family members that she would commit suicide and harass the family of the petitioner. It was further submitted that the petitioner was working in Gulf and used to send money to the opposite party no. 2, in support of which he drew the attention of the Court to part Annexure 2, which shows that at one point of time, Rs. 5,000/- was sent in the name of the



father of the opposite party no. 2. Learned counsel submitted that finally when the opposite party no. 2, along with her son had left the matrimonial home, he had married again. It was submitted that the petitioner is ready to give Rs. 60,000/- to the opposite party no. 2, but she has refused for any such settlement. It was further submitted that the petitioner has come back to India due to the pandemic and is now earning a meager amount doing private job. It was submitted that the opposite party no. 2 had herself left the matrimonial home and her father has given in writing that his complaint to the police be not acted upon and that he was taking back the opposite party no. 2 with him and had no grievance on which, the opposite party no. 2 and her sister had signed on 03.10.2018 and the same has been given to the Officer In-charge, Lauria PS. Learned counsel submitted that on 03.10.2018, the petitioner's father had also signed on a document stating that the petitioner was leaving his house to live separately with the opposite party no. 2 and shall have no claim over the property and money of the father.

6. Learned APP submitted that the petitioner and his family have very cleverly engineered and planned the whole thing with the intention to oust the opposite party no. 2 and not accept her as his wife. It was submitted that in the note of the father of



the opposite party no. 2 dated 03.10.2018, before the Officer In-charge, Lauria PS, it was written that there was a complaint which he had lodged and, thus, taking back the opposite party no. 2 with him and saying that he has no grievance clearly indicates it was under duress as there was no occasion for him to give such an undertaking before the police and such conduct is highly unnatural and further that if there was no complaint, there was no occasion for him to take back his daughter. It was submitted that the falsity of such settlement and having no complaint would also be obvious and clear from the fact that on the same day, it is claimed that the father of the petitioner also gave in writing that the petitioner wanted to live separately with his wife and that he shall have no claim on the property or money of the father on which the signature of the petitioner and the opposite party no. 2 is said to have been made. It was submitted that if that was true, there was no occasion for the father of the opposite party no. 2 to give in writing before the Officer In-charge that he was taking his daughter to his house when the petitioner had already separated from his father with the intention to live separately with the opposite party no. 2. Thus, it was submitted that from such conduct, it is obvious that under duress, the father of the petitioner had to give such undertaking before the Officer In-charge, Lauria



PS which is fully incorrect. As far as the informatory petition is concerned, it was submitted that the same is before the Sub Divisional Magistrate, Bettiah and not before the Court and further that neither it has been numbered nor any steps have been taken and it is a common ploy to file such petition for creating a record for future as no other party is aware of what has been done and only later, as a surprise, it is shown and taken use by the party who has made such complaint. Learned counsel submitted that had the petitioner been serious in keeping his wife and the minor son with him, the first course of action should have been to file a case for Restitution of Conjugal Rights and not straightaway go and marry someone else. It was submitted that even the father of the petitioner getting a document signed in which it is said that the petitioner shall have no claim over the property or money of the father clearly show that all the time the petitioner and his family members were trying to create record and were preparing to somehow ensure that the opposite party no. 2 neither is able to come back to the matrimonial home nor is able to get her due from the petitioner.

7. Learned counsel for the opposite party no. 2 submitted that the offer is very meager and the petitioner and his family has sufficient means whereas, she does not have any means



of livelihood and has to support her son also for whom no provision has been made by the petitioner till date despite the son having a right to being fully provided for and also over the petitioner's property. It was further submitted that the allegations are very natural and it cannot be said that it is a counter blast for the reason that there was no occasion for the opposite party no 2 not to live in the matrimonial home knowing fully well that she was the mother of a minor boy and that all other avenues and options were closed for her except to live with her husband who was the father of her child.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the contention of learned APP and learned counsel for the opposite party no. 2. At least, for the present, it cannot be said that the allegations made in the complaint are totally untrue and further the Court finds substance in the contention of learned APP with regard to both the informatory petition as well as the undertaking given by the father of the opposite party no. 2 before the Officer In-charge of Lauria PS read with the document to show that the petitioner had undertaken to live separately and would have no claim over the property or money of his father, that too, on the same day, when the father of



the opposite party no. 2 is giving a written undertaking before the police that he is taking away the opposite party no. 2 with him.

9. For reasons aforesaid, the Court is not inclined to grant pre-arrest bail to the petitioner and accordingly, the petition stands dismissed.

10. The interim protection granted to the petitioner earlier under order dated 17.03.2021, stands vacated.

(Ahsanuddin Amanullah, J.)

P. Kumar

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