

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12307 of 2023

Arising Out of PS. Case No.-336 Year-2022 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

Dr. Vikash Jha @ Vikas Kumar Jha Son of Dr. Sachidanand Jha @ Dr. S.N.
Jha R/o Mohalla- G.M. Road Police Station- Lalbagh Dist- Darbhanga

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dr. Sawati Sandiliya Wife of Dr. Vikash Jha, D/o Dr. Bijendra Mishra R/o
Mohalla- Saifulaganj, Rajkumar Ganj, P.S.- Town, Dist- Darbhanga

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Shirendra Kumar Sinha, Advocate Mr. Ranjeet Patel Mr. Prashant Kumar Choudhary, Advocate
For the State	:	Mr. Dilip Kumar No. 1
For the Complainant	:	Mr. Rana Vikram Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 25-05-2023 Heard learned counsel appearing on behalf of the

petitioner, learned APP appearing on behalf of the State and

learned counsel appearing on behalf of the complainant.

The accused/petitioner is named in the complaint
petition as husband, who apprehending his arrest in Complaint
Case no. 336 of 2022, where cognizance was taken by learned
Jurisdictional Magistrate under Sections 498(A), 312, 323, 377,
504 and 506/34 of the Indian Penal Code (in short 'I.P.C.') and
under Section 04 of the Dowry Prohibition Act, 1961, against
petitioner.

It is submitted by learned counsel while arguing on



behalf of the petitioner that no such occurrence took place as alleged and implication of petitioner is the outcome of routine matrimonial discord and ego of the parties concerned. It is submitted that the father of complainant is also a doctor posted in Darbhanga Medical College & Hospital (in short 'D.M.C.H.'), therefore, it cannot be ruled out that the injury report of complainant may be obtained under his office influence. It is further submitted that the allegation as regard to demand of dowry, as raised for a flat in Delhi, is also false against this petitioner, who himself is a post-graduate student and working as a doctor, having sufficient earning. It is submitted that petitioner is desirous to lead conjugal life with complainant subject to her cooperation. Learned counsel also denied the allegation of miscarriage and allegation of carnal intercourse, where it is submitted that same appears to be alleged only to aggravate the allegation. While travelling over the argument it is submitted that alleged occurrence took place on 19th of February 2022 at Mumbai residence of sister of this petitioner, whereas soon before the alleged occurrence petitioner alongwith complainant and other family members attended a dinner party in a five-star hotel of Mumbai and immediately, as they arrived at residence, the occurrence took place which only



signifies a normal routine matrimonial discord. While further arguing over the matter the learned counsel relied upon Annexure-4 series of the present bail petition, which is a medical prescription issued by Dr. Seema Prasad of Prasad Poly-clinic, suggesting complainant to consult with psychiatrist, which implies that the complainant is suffering from some psychological disorder, which ended with present false implication. Learned counsel further submitted that as marriage was never consummated, therefore, allegation of miscarriage is out of question. It is also submitted that medical prescription of complainant as to visit D.M.C.H. on 21.02.2022, is not showing that she was examined by gynaecologist but conceded that back of the said prescription suggesting bleeding P/V (polycythemia vera). While concluding argument it is submitted by learned counsel that matter is purely out of routine matrimonial discord and, as such, same be viewed as per legal ratio settled through *Arnesh Kumar v. State of Bihar, reported in 2014 (8) SCC 273*.

Learned APP duly assisted by learned counsel, Mr. Rana Vikram Singh appearing on behalf of the complainant, while opening the argument pointed out order dated 20.04.2023 of this Court and submitted that though no reason expressed



thereof while granting 'no coercive action' in favour of petitioner but it was observed by this Court that a space of time be given to parties to reconcile the issues, where despite of the best effort on the part of complainant due to reluctant approach of petitioner the dispute was not reconciled. It is submitted that occurrence is of 19th of February 2022, which took place at the sister's residence of the petitioner at Mumbai where after knowing the fact that the complainant conceived and carrying her pregnancy of one month, firstly, she was persuaded to terminate but on refusal, she was assaulted brutally which ultimately caused her miscarriage. It is submitted that the complainant is also an ANB (Avascular Necrosis of Bone) doctor doing her post-graduation like petitioner, facing such cruel behaviour of petitioner, *qua*, physical assault, immediately reported this occurrence to her brother at U.S.A., who managed her air ticket to facilitate her exit for Dharbhanga, Bihar, where her parents reside. Complainant arrived at Dharbhanga on 20.02.2022, where she was examined by the doctor of D.M.C.H. on next day i.e., 21.02.2022, where after examination, doctor found her case was of "apparent physical assault" (APA), where altogether five injuries were found i.e., on face, forearm, upper back, lower abdomen and right lower chest, though all five



injuries reported as simple in nature. It is submitted that on the same very day complainant was examined by gynaecologist where profused bleeding was noticed from her private part suggesting and supporting the allegation of miscarriage and therefore, the allegation as marriage was never consummated with petitioner appearing *prima facie*, not convincing and it further amount to character assassination. It is submitted that the petitioner just for better carrier caused termination of pregnancy of complainant against her will by causing physical assault. While travelling over the argument it is submitted that the complainant was subjected for un-natural sex on different occasions which in itself sufficient to suggest the brutal approach of petitioner towards complainant and further that how the dignity of complainant was compromised. While concluding the argument it is submitted that the legal ratio as relied upon by learned counsel appearing on behalf of the petitioner as held in the matter of *Arnesh Kumar (Supra)* is for the offence where maximum punishment is up to seven years, whereas the allegation which petitioner is facing, the maximum punishment would be life imprisonment or for ten years on conviction. It is submitted that this case is not a normal routine matrimonial discord rather reflecting a cruel and brutal behaviour of



petitioner, which ruined all happiness of complainant as a newly wedded wife under imagination that her pregnancy may put a barrier against his career and martial happiness. Learned counsel appearing on behalf of the complainant relied upon the report of *Nimesh Bharat Bhai Desai v. State of Gujarat, reported in 2018 SCC online Guj. 732*, where it has been held that a wife can initiate proceedings against the husband under Section 377 of the I.P.C.

By taking note as advanced by the learned counsel appearing on behalf of the parties on previous occasion, both parties were directed vide order dated 23.05.2023 of this Court to appear in person and in furtherance of said direction, both parties appeared today before the Court.

Before passing this order, considering the fact as both parties are newly wedded, highly educated and doing their post-graduation in medical science they have been spared for an hour to discuss their issues as to find mutual solution before hearing this matter on merit. Both parties after discussing their issues for an hour appeared in person before the Court, where the opposite party no. 2/ complainant submitted that even during the course of discussion, the persuasion was for withdrawal of present complaint case without any discussion which may reconcile the



issue, whereas the petitioner submitted that he want to lead his conjugal life with complainant with all her dignity.

Having no option left, matter was decided on merit, considering submission of parties and available set of fact and circumstances.

As, it appears, *prima facie*, that complainant was assaulted by petitioner at her sister's residence in Mumbai on 19.02.2022, causing five injuries on the different parts of her body as per her injury report, which also suggests profused bleeding from her private part supporting the allegation, *prima facie*, as raised for miscarriage, where occurrence took place in the background of demand of dowry for a flat in Delhi with allegation of carnal intercourse, accordingly, the prayer of anticipatory bail of petitioner is rejected herewith.

However, if the petitioner surrender before the Court below, learned Trial Court is directed to consider the prayer of regular bail of this petitioner without being prejudiced by this order.

(Chandra Shekhar Jha, J)

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