

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35721 of 2016

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Md. Nawab Alam @ Md. Nawab son of Late Md. Salim resident of Village-
Mahsai, P.S.- Rajauli, District- Nawada

... .. Petitioner/s

Versus

1. State of Bihar and Anr
2. Marjeena Khatoon, Daughter of Late Md. Kasim Resident of -
Pakribarawan, P.S.- Pakribarawan, District- Nawada

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Deepak Kumar, Advocate

For the Opposite Party/s : Mr. Ataur Rahman, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

3 06-11-2023 The present petition under Section 482 Cr. P.C. has

been preferred against the order dated 26.11.2014 passed by Ld.
S.D.J.M., Nawada in Miscellaneous Case No. 1 of 2014,
whereby Ld. S.D.J.M found in the inquiry that there is no
divorce between the Petitioner and his wife-Marjeena Khatoon.

2. The aforesaid inquiry was conducted by Ld.
S.D.J.M. in the light of direction of this court in anticipatory
bail petition bearing Cr. Misc. No. 2681 of 2014 vide order
dated 21.03.2014, whereby this court had enlarged the Petitioner
on provisional bail and confirmation was subject to finding
regarding factum of divorce between the Petitioner and his wife
because in the bail petition, the Petitioner had taken plea that he



has already divorced his wife.

3. In the inquiry, Ld. S.D.J.M. found that no divorce has been effected between the Petitioner and his wife. Hence, the provisional bail of the Petitioner was not confirmed according to the direction of this Court and subsequently the Petitioner surrendered before Court and got regular bail.

4. As such, the present petition has become infructuous in view of the development that the Petitioner has already got bail.

5. However, Ld. counsel for the Petitioner submits that the finding regarding the factum of divorce between the Petitioner and his wife in the record of Ld. S.D.J.M. may prejudice his criminal case filed by his wife against him under Section 498A of the Indian Penal Code.

6. In my considered view, the submission of Ld. Counsel for the Petitioner that such finding regarding the factum of divorce will prejudice his criminal case filed by wife under Section 498A of the Indian Penal Code is misconceived because that inquiry was conducted for limited purpose for confirmation of bail on the direction of this Court. This finding of Ld. S.D.J.M. in the inquiry is not judgment in rem and it cannot be referred to in any other proceeding because it is the



Family Court which has the jurisdiction to declare regarding divorce and only finding of Ld. Family Court in regard to claimed divorce by the party is binding against everybody, because such judgment is in rem. As such, the Petitioner is at liberty to go to the Family Court and get declaration that he has already divorced his wife as per law and the finding of Ld. S.D.J.M. is not going to prejudice in any proceeding. The effect of that finding is confined only to bail matters in regard to which this Court had directed to conduct inquiry for confirmation of the Petitioner's bail.

7. As such, the petition has become infructuous and is accordingly dismissed as infructuous.

(Jitendra Kumar, J)

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