

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71250 of 2019

Arising Out of PS. Case No.-4197 Year-2017 Thana- PATNA COMPLAINT CASE District-
Patna

=====

Kaushal Kumar, S/o Suraj Chaudhary, native village-Chaksikandar, P.S.- Bidupur, District- Vaishali, settled at House No. 627, Sector- 10, Fardiabd (Hariyana), Presently Posted H.S.K.- 1 Y No. 109163, C. No.65 M.Y.U. Department Naval, Dakyard, Mumbai, 400023, I-24 Neval, Dakyard, Mumbai Lanjur Marg, Mumbai- 400078

... .. Petitioner

Versus

1. The State of Bihar
2. Pooja Bharti, W/o Kausal Kumar, S/o Suraj Chaudhary Native village-Chaksikandar, P.S.- Bidupur, District- Vaishali, Settled at House No. 627, Sector-10, Faridabad (Hariyana), Presently Posted H.S.K.- 1 Y No. 109163, C.No. 65 M.Y.U. Department Naval, Dakyard, Mumbai, 400023, I-24 Neval, Dakyard, Mumbai Lanjur Marg, Mumbai- 400078. Presently she is residing with her father namely Ramanand Rajak, permanent Resident Sultanpur, P.S.- Mokama, District- Patna at presently Tenant of Sanjay Kumar, West Lohanipur, P.S.- Kadamkuan, District- Patna

... .. Opposite Parties

=====

Appearance :

For the Petitioner	:	Mr. Niraj Kumar Singh, Advocate
		Mr. Radha Krishna, Advocate
For the State	:	Mr. Mohammed Arif, APP
For the O.P. No.2	:	Mr. Bhaskar Shankar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 15-03-2024

The present application has been filed for quashing the order dated 13.06.2019 passed by the learned Additional Sessions Judge-XII, Patna in Criminal Misc. Bail Cancellation Case No.55 of 2019 arising out of Complaint Case No.4197(C) of 2017, whereby the order



dated 18.02.2019 passed in A.B.P. No.9219 of 2019 by which the petitioner has been granted anticipatory bail has been cancelled and a direction has been issued to the petitioner to surrender before the learned court within fifteen days from the date of receiving the order.

2. The brief facts of the case is that the opposite party no.2 has filed complaint case No.4197(c) of 2017 before the learned Chief Judicial Magistrate, Patna on 26.07.2017, alleging therein that her marriage was solemnized with petitioner on 26.02.2009 in Faridabad after settlement made at Patna. It is further alleged that at the time of marriage, the parents of the complainant had gifted Rs.8,00,000/- in cash and ornaments and other house-hold articles. It is further alleged that after the marriage, complainant went to her matrimonial house, where she was subjected to torture and lastly, she was ousted from her matrimonial house. It is further alleged that opposite party no.2 took all steps to resolve the issue but, the petitioner/husband



has denied to return back without payment of rest of the amount. Thereafter, the complainant/O.P. No. 2 has filed complaint case.

3. It is submitted by learned counsel appearing on behalf of the petitioner that initially petitioner was granted anticipatory bail by learned Additional Sessions Judge-XII, Patna on 18.02.2019 through Anticipatory Bail Petition No.9219 of 2019 where both parties shown their willingness to live together by putting their differences away but, after obtaining the bail, the petitioner has refused to take opposite party no.2 alongwith him to join her matrimonial home in terms of compromise. Consequently, a petition for cancellation of bail was filed, which has been numbered as Cr. Misc. Bail Cancellation Case No.55 of 2019 and same was allowed and accordingly bail bond as furnished by petitioner was ordered to be cancelled. It is submitted that in meantime, petitioner has tried his best to persuade the



opposite party no.2 to join matrimonial home but, she refused to join her matrimonial home with petitioner. It is also submitted by learned counsel that opposite party no.2 has filed maintenance case before the learned Principal Judge, Family Court, Patna bearing Maintenance Case No.331 of 2017, where proceeding is pending. However, as a matter of good gesture, the petitioner is ready to pay Rs. 30,000/- an *ad-interim* maintenance out of his monthly salary of Rs.1,01,000/-. It is submitted that the petitioner is working in Indian Navy, Naval Dockyard on the post of Operator.

4. It would be apposite to reproduce Para-13 and 14 of the legal report of Hon'ble Supreme Court rendered in the matter of **Kahkashan Kausar alias Sonam and others vs. State of Bihar and others** reported in **(2022) 6 SCC 599**, which is as under:-

"13. Previously, in the landmark judgment of this Court in *Arnesh Kumar v. State of Bihar* [(2014) 8 SCC 273], it was also observed :

"4. There is a phenomenal increase in



matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In quite a number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested.

14. Further in *Preeti Gupta v. State of Jharkhand* [(2010) 7 SCC 667], it has also been observed:

"32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are



filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time



of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinised with great care



and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful."

5. It would also be apposite to reproduce para-102 of legal report of Hon'ble Supreme Court rendered in the case of **State of Haryana vs. Bhajan Lal [1992 Supp. (1) SCC 335]**, which is as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the



process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence



collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or



the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

6. In view of aforesaid factual and legal submissions, as petitioner is desirous to pay an ad-interim maintenance of Rs. 30,000/- to the complainant/opposite party no.2/wife till outcome of the Maintenance Case No.331 of 2017, sending this petitioner to jail shall not serve any judicial purpose, as the dispute arises out of matrimonial discord, in terms of aforesaid discussed legal ratio, accordingly, the order dated 13.06.2019 passed by the learned Additional Sessions Judge-XII, Patna in Criminal Misc. Bail Cancellation Case No.55 of 2019 arising out of Complaint Case No.4197(C) of 2017 is,



hereby, quashed and set aside with a direction that the petitioner shall be released on bail on furnishing fresh bail bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the concerned jurisdictional Magistrate/learned Trial Court, Patna in connection with Complaint Case No.4197(c) of 2017, subject to the following conditions:-

(i) Petitioner shall pay Rs. 30,000/- as an *ad-interim* maintenance amount to O.P. No. 2/wife on or before 7th day of English calendar month. Payment for the month of **March** be made in cash at the time of furnishing bail bond, whereas maintenance amount from the month of **April** onwards be paid through bank account of O.P. No. 2/wife, if not available same be opened by petitioner on his expenditure, if any.

(ii) If petitioner fails to pay *ad-interim* maintenance for two consecutive



months, the bail bond of petitioner shall be cancelled by the learned Trial Court, itself, if pressed by O.P. No. 2/wife.

(iii) Aforesaid conditions shall remain operational till finding of Family Court in Maintenance Case No. 331 of 2017. Amount paid under this order shall be adjusted accordingly.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.03.2024
Transmission Date	22.03.2024

