

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1153 of 2014

- =====
1. Sangita W/o Sanjay Kumar 2828, Egypt Road, Apt. K-201, Audubon, PA 19403 USA. Local Address Mohalla Gami Tola, P.S. Katihar Town, District Katihar.
2. Sanjay Kumar S/o Late Sheo Nath Prasad 2828, Egypt Road, Apt. K-201, Audubon, PA 19403 USA. Local Address Mohalla Gami Tola, P.S. Katihar Town, District Katihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Director General (Police), Government of Bihar, Patna.
3. Senior Superintendent of Police, Patna.
4. Superintendent of Police (City), Patna.
5. S.H.O. of Mahila Thana, Gandhi Maidan, Patna.
6. Khusbu Priya, aged not mentioned in the F.I.R. years D/o Sri Jayant Kumar Resident of Mohalla Ashiana Khajpura, near Shiv Mandir, A-30, Ashokpuri Kotwali Thana Rajiv Nagar, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s :
For the Respondent/s :

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL ORDER

2 17-07-2015

Heard learned counsel for the petitioners, learned A.C. to S.C.-4 for the State and learned counsel for the respondent no. 6, who has suo motu appeared.

The present application, under Articles 226 and 227 of the Constitution of India, seeks quashing of the F.I.R. of Patna Mahila P.S. Case No. 15 of 2014 dated 22.04.2014 registered against the petitioners and six others for offences punishable under Sections 376/504/34 of the Indian Penal Code. As per the allegation made in the F.I.R., the informant, respondent no. 6, alleged that the brother of petitioner no. 1 (Saurabh) had initially committed rape and thereafter had agreed to marry the informant but later on went back on his assurance. The only allegation in the entire F.I.R. against the petitioners is that on 07.04.2014 they have called up and threatened her to forget Saurabh.

Learned counsel for the petitioners submits that the petitioners, being the sister and brother-in-law of the accused Saurabh Kumar and living in the United States of America, have no concern with the affairs or the activities of Saurabh in India much less with regard to his relationship which he might have had with the informant. Learned counsel submits that the statement of



intimidation of threat on telephone in a single instance on 07.04.2014 followed by the advise to forget Saurabh is not supported by any other circumstantial or secondary evidence and *per se* appears to be with the intention of implicating the entire family so as to either create pressure on Saurabh or for other oblique reasons. Learned counsel submits that as far as Section 376 of the Indian Penal Code is concerned, the same is not applicable in the case of the petitioners. Coming to Section 504 of the Indian Penal Code, the said is the punishing section and the defining section is 503 which deals with criminal intimidation. It is submitted that a plain reading of the section makes it clear that when the accused threatens a person with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, he commits criminal intimidation. Learned counsel submits that in the present case there is not even a whisper as to what was the threat and against whom the threat was intended so as to cause injury to the person, reputation or property of that person and as to what the act intended to achieve. Learned counsel



submits that it is a classic case of malady in the society today where, to settle scores especially in personal and matrimonial relationships, the entire family members who may not even be party to or even aware of the situation, are made accused and due to the stringent nature of penal laws and the working of the criminal justice system the entire family not only suffers loss of reputation in the eyes of the society but is also put to unnecessary harassment and clearly the same is nothing short of abuse of the process of the Court. It is submitted that by no stretch of imagination a mere allegation of threatening and asking to forget somebody can be construed to be an offence under the penal laws of the country much less a one time call which is the sole basis of the entire allegation.

Learned State Counsel refers to the counter affidavit filed on behalf of the respondents no. 3 to 5 and draws the attention of this Court to paragraph-7 in which it has been stated that after thorough investigation the case was found to be true only against the main accused Saurabh Kumar and no involvement of other accused was found in the case and further in paragraph-8 it has been stated that police has also opined that since the petitioners are residing abroad, their involvement in the case is doubted.



Learned counsel appearing for the informant (respondent no. 6) submits that the law prescribes severe punishment under Section 504 of the Indian Penal Code and if the Court interferes at the present moment, then the right of the informant during trial to adduce evidence explaining the threat given to her on telephone shall be taken away which should be avoided as she has a constitutional right to present her side of the story and such stage will come only at the time of trial when the informant shall disclose before the Court as to what the threat was and then give evidence in support of the same. It is further submitted that the F.I.R. is not supposed to be a detailed document giving the entire narration of all the facts and is only supposed to be instrumental to set the criminal justice system into motion as the informant has only to inform the authorities with regard to a cognizable offence having taken place. It is submitted that in case a final form is submitted against the petitioners by the police the informant shall also lose her right to file a protest petition for proper consideration of her case.

Upon considering the facts and circumstances of the case and submissions of learned counsel for the parties, this Court is of the considered opinion that the petitioners have been able to make out a case for interference. From the nature of the allegation



and even a plain reading of the F.I.R. itself it is apparent that the limited allegation against the petitioners is that they had rung up on 07.04.2014 and on telephone threatened the informant and asked her to forget Saurabh. This Court is also of the considered opinion that on such a bald allegation of threat on telephone followed by a dictate to forget somebody can in no way be construed as a circumstance or instance to justify criminal prosecution by lodging an F.I.R. and making the accused face trial. The petitioners, by the admitted facts of the case, living in the United States of America and on the said date calling on phone from abroad, even if it is assumed that they may have used some threatening language can very well be justified in the background of the facts narrated in the F.I.R. and may be a reaction from somebody who is related to the main accused venting frustration and anger. Further it is also obvious that the petitioners living in the United States of America cannot be expected to get the threats executed on Indian territory thereby jeopardizing not only their future but also their stay abroad. Thus, the basic ingredient of possessing *mens rea* by the petitioners appears to be lacking in the present case.

Accordingly, for reasons discussed hereinabove, the application stands allowed. The F.I.R., as far as it relates to the

petitioners, of Patna Mahila P.S. Case No. 15 of 2014, stands
quashed.

(Ahsanuddin Amanullah, J)

Anjani/-

U		T	
---	--	---	--

