

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1150 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

Pinki Devi, Wife of Late Avorik Rai, resident of Bhagwat Nagar, P.S. Agamkuan, District- Patna, presently residing at House No.- 20, Montesouri lane, Opposite Marauti Show room, Borinh Road, P.S.- S.K. Puri, District- Patna.

.... Petitioner.

Versus

1. The State of Bihar through Home Secretary, Govt. of Bihar, Patna.
2. The Chief Secretary Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The DIG, Patna Range, District- Patna.
5. The Senior Superintendent of Police, District- Patna.
6. The Town Superintendent of Police, Patna, District- Patna.
7. Pashuram Rai, S/o Late Pratap Rai, presently residing at Bhagwat Nagar, Kumhrar, South of Community Hall P.S. Agamkuan, Patna.
8. Amarjeet Rai, S/o Late Pratap Rai, presently residing at Bhagwat Nagar, Kumhrar, South of Community Hall P.S. Agamkuan, Patna.

.... Respondents.

Appearance :

For the Petitioner : Mr. Rakesh Kumar, Adv.
For the Respondent Nos.7 & 8 : Mr. Rajeev Ranjan Sinha, Adv.
For the State : Mr. Sheo Shankar Prasad, SC-8.

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 22-11-2016

By the present writ petition, the writ petitioner has sought restoration of custody of her two minor children aged about 10 years and 8 years, who are allegedly being kept in

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confinement of respondent nos.7 and 8, being brothers of late husband of the petitioner.

2. Considering the cry of the mother for her children, by order dated 15.11.2016, we had directed the Superintendent of Police, Patna to ensure the production of respondent nos.7 and 8 as also the minor children of the petitioner before this Court on 17th of November, 2016. Let it be noted that in the aforesaid order, due to typographical mistake, it is noted that the children are living with the mother. The matter was, accordingly, listed on 17th of November, 2016 in our Chambers and, apart from respondent nos.7 and 8, the petitioner along with her mother was present. Respondent nos.7 and 8 had also produced the two children.

3. We first talked to the two children alone after making them comfortable. They both pointed out that when their mother was arrested for allegedly having conspired and killed their father, they were left alone and their uncles took them in their custody. They were happy with their uncles and their families. They were going to school regularly. There were no reasons to complain. Asked, if they wanted to go and live with their mother, they expressed their desire to continue to stay with their uncles rather than their mother, for the reason that their

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mother had conspired and killed their father. The last part was obviously said because, being of impressionable age and in the company of their uncles for almost a year, they could have been tutored to think so. We then asked separately the writ petitioner who showed her anxiety to have the children with her. She obviously denied having anything to do with the murder of her husband. We asked her, whether she had an earlier marriage as well, she denied initially but then accepted the fact. She alleged that only to grab her husband's property and to deny her the right to the same, after the unfortunate death of her husband, her brother-in-laws got her falsely implicated in connivance with the police. We then talked to the uncles of the children, respondent nos.7 and 8, who disclosed that the writ petitioner in fact was initially married to one Sunil Kumar Singh in the year 1999 but the marriage did not last. She then married to Avorik Rai in the year 2002, from which second wedlock the two children were born. They alleged that recently the said Sunil Kumar Singh, petitioner's first husband, came back into her life and the two conspired and, allegedly, eliminated her present husband so that she could settle with her property with Sunil Kumar Singh. The police, upon investigation, unearthed this plot. She and the Sunil Kumar Singh are facing trial for the murder of Avorik Rai. She

was in custody for over nine months and the children having left behind were looked after by the children's uncle, who wanted to bring up the children as their own children and keep them away from their mother's bad influence.

4. We then heard all the parties together. Learned counsel for the State had got instructions from the police which revealed the fact that the petitioner was first married to Sunil Kumar Singh in the year 1999. Without the first marriage being annulled, she then married to Avorik Rai in the year 2002, out of which this second wedlock the two children a boy and a girl were born. On 31.12.2015 she filed a report with the Agamkuan police station alleging that on a day prior her husband had gone to fair to purchase a cow but had not returned. His mobile was switched off. On basis of this report, Agamkuan P.S. Case No.565 of 2015 dated 31.12.2015 was registered under Section 365 of the Indian Penal Code.

5. It appears that police, upon investigation, immediately found that the location of the petitioner's mobile and that of her husband's mobile and that of Sunil Kumar Singh, with whom she was in touch, showed that they were together, allegedly, near Lakhisarai from where the body of petitioner's husband was recovered. Pursuant to investigation Sunil Kumar

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Singh and the petitioner had been charge-sheeted for having conspired and killed the husband of the petitioner. It is in respect of this that the petitioner and Sunil Kumar Singh were taken into custody. The petitioner was released on bail after about nine months, though Sunil Kumar Singh continues to be in judicial custody. It is in this period the children were left uncared for were taken into care by their uncles, respondent nos.7 and 8 and, now upon release, she seeks her custody.

6. We have considered the matter. The allegations against the petitioner are very serious. She has been charge-sheeted for murder of her second husband along with Sunil Kumar Singh, her first husband. The trial is pending. Her own personal position is quite precarious. She herself is now dependent upon her mother with whom she is staying with hardly any source of livelihood. Her late husband used to support the family as a milkman.

7. In such a situation, to us, the interest of well being of the children being of paramount importance, we think, it would not be proper to give the custody or to restore the custody of the children to their mother. They are being reasonably looked after by their uncles and they seem to be happy. They were not under any fear rather they feared the company of their mother.

8. We would, accordingly, dismiss this application, though we would permit the mother the visitation rights twice a month on days when the children are not going to school but she would have no right to take the children away with her beyond the sight of respondent nos.7 and 8. Once the petitioner clears herself from the allegation of murder, she would then be entitled to the custody of her children, if the children so desire.

9. With these observations and directions, this writ petition is dismissed.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.) I agree.

(Jitendra Mohan Sharma, J.)

Trivedi/-

AFR/NAFR	AFR
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