

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.125 of 2016

Arising Out of PS.Case No. - Year- Thana - District- VAISHALI(HAJIPUR)

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Kailash Rai son of Sri Rajendra Rai resident of village - Belka, P.S. - Vaishali,
District - Vaishali.

.... Petitioner

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Collector, Vaishali.
4. The Superintendent of Police, Vaishali.
5. The Officer-in-Charge of Bhagwanpur Police Station, Vaishali.
6. The Investigating Officer of Bhagwanpur P.S. Case no. 52/15.
7. Rajkumar Singh son of Sohan Singh resident of village - Satpura Kasim, P.S. -
Lalganj, District - Vaishali.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajeev Ranjan, Advocate

For the Respondents : Mr. Praveen Kumar Verma, A.C. to S.C.-26

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

CAV JUDGMENT

Date: 08-04-2016

With the help of this writ petition, made under Article 226 of the Constitution of India, the petitioner, Kailash Rai, has sought for, *inter alia*, quashing of the First Informant Report (for short 'FIR'), which has given rise to Bhagwanpur P.S. Case No.52 of 2015, under Sections 363/365/366A/120B of the Indian Penal Code, wherein not only the petitioner, Kailash Rai, but three others, namely, Madan Rai, Rajendra Rai and Dharmendra Rai, have been made accused.

2. We have heard Mr. Rajeev Ranjan, learned Counsel, for the petitioner, and Mr. Pravin Kumar Verma, learned Assistant Counsel to Standing Counsel No. 26, for the

respondent Nos.1 to 6.

3. The informant's case, as unfolded by the First Information Report, based on his *fardbeyan*, dated 01.04.2015, is that informant's daughter, aged about 17 years, had gone to her maternal grandfather's house, at village-Rasulpur Turki, and she was kidnapped from there on the night of 15.03.2015. It is also alleged in the First Information Report that calls, trying to entice and threaten, were received on the informant's mobile phone from Mobile Nos. 9006666990 and 9835271999 and, during the course of search, it transpired that the said mobile phones were used by accused Kailash Rai. In the First Information Report, it is further alleged that pursuant to a criminal conspiracy, accused Kailash Rai, Madan Rai, Rajendra Rai and Dharmendra Rai kidnapped the informant's daughter with ill- intention.

4. Treating the said *fardbeyan* as First Information Report, Bhagwanpur P.S. Case No.52 of 2015, under Sections 363/365/366A/120B of the Indian Penal Code, was registered against the accused aforementioned.

5. The petitioner seeks quashing of the First Information Report on the ground that whole case against him is a result of conspiracy hatched by the informant himself inasmuch as informant's daughter and the petitioner had been in love with each other. However, while the petitioner is a *Yadav* by caste, informant's daughter is *Rajput*. It is the



petitioner's case when the informant came to learn that his daughter was going to marry the petitioner, she was badly tortured and assaulted by her parents, who also attempted to kill her. Consequently, claims the petitioner, the informant's daughter, who is major, voluntarily left her house and performed her marriage in a temple as well as before the Marriage officer, East Singhbhum, Jamshedpur, Jharkhand, on 14.07.2015, and since then, the couple had been living as husband and wife. Thus, the case, which has been lodged by the informant against the petitioner and others as co-accused, is wholly false. In this regard, apprehending threat to her life, the informant's daughter has already informed respondent No.6, who is the Investigating Officer of the case aforementioned, seeking protection, but the local police, with the connivance of the informant, is not taking any action.

6. In effect, thus, the petitioner has approached this Court to get the First Information Report quashed on the ground that this Court should hold the contents of the First Information Report as false and concocted and this, in turn, would mean that this Court should not only to hold the informant and the contents of information, lodged with the police as unreliable, but also unworthy of trust. Is this permissible in law?

7. Before entering into the merit of the petitioner's case, it is necessary to point out that the law, with regard to



the quashing of criminal complaint or First Information Report, is no longer *res integra*. A catena of judicial decisions has settled the position of law on this aspect of the matter. I may refer to the case of ***R.P. Kapoor v. State of Punjab, AIR 1960 SC 866***, wherein the question, which arose for consideration, was whether a *First Information Report* can be quashed under Section 561A of the Code of Criminal Procedure, 1898. The Court held, on the facts before it, that no case for quashing of the proceeding was made out; Gajendragadkar, J. speaking for the Court, however, observed that though, ordinarily, criminal proceedings, instituted against an accused, must be tried under the provisions of the Code, there are some categories of cases, where the inherent jurisdiction of the Court can and should be exercised for quashing the proceedings. One such category, according to the Court, consists of cases, where the allegations in complaint or the First Information Report, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases, no question of appreciating evidence arises and it is a matter merely of looking at the complaint or the First Information Report in order to decide whether the offence alleged is disclosed or not. In such cases, observed the Court, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused.



8. From the case of **R.P. Kapoor** (supra), it becomes abundantly clear that when a mere look into the contents of a complaint or First Information Report shows that the contents thereof, even if taken at their face value and accepted to be true in their entirety, do not disclose commission of offence, the complaint or the First Information Report, as the case may be, shall be quashed.

9. As a corollary to what has been discussed above, it is also clear that if the contents of a complaint or an First Information Report constitute offence, such a complaint or First Information Report cannot be quashed except where the complaint or the First Information Report is, otherwise also, not sustainable in law.

10. Laying down the scope of interference by the High Court in matters of quashing of First Information Report or complaint, the Supreme Court, in the leading case of **State of Haryana and Ors. v. Bhajanlal and Ors.**, reported in, **1992 Supp (1) SCC 335**, observed as follows:

"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 of 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 the 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 of 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 made 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 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 allegation 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 concerned act (under which 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 concerned Act 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 of the accused and with a view to spite him due to private and personal private grudge."

(Emphasis is added).

11. In the case of **Bhajanlal** (supra), the Supreme Court gave a note of caution on the powers of quashing of criminal proceeding in the following words:

"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or

genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”

(Emphasis is added).

12. It is clear from a close reading of the principles laid down in the case of **R.P. Kapoor** (supra) and **Bhajanlal** (supra) that broadly speaking, quashing of a First Information Report or a complaint is possible (a) when the allegations made in the First Information Report or the complaint, even if taken at their face value and accepted in their entirety as true, do not *prima facie* constitute any offence or make out a case against the accused; (b) when the uncontroverted allegations, made in the First Information Report or complaint and evidence collected in support of the same, do not disclose the commission of any offence and/or make out a case against the accused; and (c) when the allegations, made in the First Information Report or complaint, are so absurd and inherently improbable that on the basis of such absurd and inherently improbable allegations, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

13. It is, thus, apparent that in a quashing proceeding, it is, ordinarily, not, within the ambit of the powers

of the High Court, under Section 482 of the Code of Criminal Procedure and/or Article 226 of the Constitution of India, to determine the truth, veracity, correctness or otherwise of the accusations made in the First Information Report or a complaint.

14. In the case at hand, too, therefore, this Court has to proceed on the assumption that the allegations, made in the complaint, are true and, then, determine whether the contents of the complaint, if assumed to be true, disclose commission of any offence or whether the allegations, made in the First Information Report, are so absurd or inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

15. In the light of the position of law, as discussed above, namely, that an First Information Report cannot be quashed if the allegations made therein, when assumed to be true, make out a cognizable offence except when the allegations made therein are so absurd or inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

16. In the present case, if the First Information Report is read, as a whole, it becomes clear that, according to

what the informant alleges, the informant's daughter is minor and the accused has kidnapped her; whereas the petitioner's case is that the informant's daughter is major and she has married the petitioner out of her own will and accord.

17. In a proceeding of present nature, it is not permissible for this Court to determine as to who, between the two, namely, the informant, on the one hand, and the petitioner, on the other hand, is telling the truth, for, the truth and/or falsity of the contents of the allegations, made in the First Information Report, can be determined only on investigation of the case. It was in rarest of rare cases that quashing of First Information Report would be permissible. When the First Information Report, read as a whole, does not make out commission of an offence or the allegations made in the First Information Report are so absurd or inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

18. On reading the First Information Report as a whole, when it cannot be said that no case of criminal offence can be said to have been made out, the registration of the case is not contrary to law and cannot, therefore, be interfered with. Whether the informant's daughter is minor or not? Whether she has on her own will and accord married the

accused or not are questions, which can be determined only by means of investigation or at the trial if such a trial takes place.

19. In the circumstances, as indicated above, this Court is not in a position to hold, far less confidently, that the allegations, levelled in the First Information Report, are false and/or that the contents of the First Information Report, when read as a whole, make out no case of commission of any offence under the Indian Penal Code or that the allegations are so absurd or inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. This Court, therefore, sees no reason to interfere with the First Information Report.

20. For the reasons discussed above, the prayer of the petitioner for quashing of the First Information Report does not succeed and is accordingly rejected.

21. With the help of this writ petition, the petitioner has also sought for protection of lives and properties of the petitioner, his family members and of the informant's daughter. Even if the petitioner is an accused and even if the informant's daughter is minor, the fact of the matter remains that it is the duty of the State to ensure that the lives and properties of the petitioner, his family members and of the informant's daughter are protected.



22. While considering the petitioner's prayer that a direction may be given to the police to get the statement of the informant's daughter recorded under Section 164 of the Code of Criminal Procedure, the question, which naturally arises, is, I must hasten to point out, that it is the contention of Mr. Rajeev Ranjan, learned Counsel, that a Magistrate is competent, under the law, to record statement of any person as a witness under Section 164 of the Code of Criminal Procedure and, in order to enable a Magistrate to record statement of a person as a witness under Section 164 of the Code of Criminal Procedure, it is not necessary that the investigating agency must seek recording of statement of such a person under Section 164 of the Code of Criminal Procedure. In other words, what Mr. Rajeev Ranjan, learned Counsel, contends is that a Magistrate is competent to record statement of any person, during the course of investigation, if such a person opts to get himself examined as a witness, under Section 164 of the Code of Criminal Procedure, on the ground that he (she) is acquainted with the facts of a case, which is under investigation. Such a prayer, according to Mr. Rajeev Ranjan, learned Counsel, can be made by such a person irrespective of the fact whether or not, the investigating agency seeks such a person's statement to be recorded, as a witness of fact, under Section 164 of the Code of Criminal

Procedure, or not.

23. In order to correctly appreciate the controversy involved in the present case, let us take note of the provisions of Sub-section (1) of Section 164(4) of the Code of Criminal Procedure, which reads as under:

"164. Recording of confessions and statements. - (1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial."

24. Coupled with the above, Section 164(4) of the Code of Criminal Procedure reads as under:

"164. Recording of confessions and statements -

- 1) xxx xxx xxx
- 2) xxx xxx xxx
- 3) xxx xxx xxx

(4) Any such confession shall be recorded in the manner provided in Section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the



Magistrate shall make a memorandum at the foot of such record to the following effect -"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed)

A.B.,Magistrate."

25. On a careful reading of the provisions contained in Sub-sections (1) and (4) of Section 164 of the Code of Criminal Procedure, it would clearly transpire that an accused is a definite person against whom there would be an accusation. This apart, even a Magistrate can ascertain whether or not the person, who opts to get his confession recorded, is or is not an accused person. Such a confession can be used against the maker of the confession. If it is a confessional statement, prosecution can rely on it against the accused. Therefore, a confession may, perhaps, be recorded by a Magistrate on the accused opting to get his confession recorded. Such is, however, not the case of a person, who is not an accused, but claims to be acquainted with the facts of a case, for, such a person does not make any incriminating



statement against himself if he claims to be a mere witness of fact. His statement, in a given case, may not be relied upon by the prosecution. In other words, prosecution has the option of not placing any reliance on such a person's statement as a witness of fact or as a person acquainted with the facts of a given case. Consequently, no such person can go to a Magistrate and require him to record his statement, which the person proposes to make, particularly, because, by making statement, such a person may derail the entire investigation; whereas an investigation has to be, ordinarily, under the control of the investigating agency and, in rare cases, may be supervised by court of competent jurisdiction.

26. Coupled with the above, independence of investigating agency cannot be taken away by permitting a person, who claims to be a witness to get his statement recorded under Section 164 of the Code of Criminal Procedure and thereby deflect the whole course of investigation. No doubt, Section 160 read with Section 161 of the Code of Criminal Procedure empower a police officer and cast, correspondingly, a duty upon him, to examine persons acquainted with the facts of a given case. Such an examination would, obviously, include interrogation of persons, who are acquainted with the facts and circumstances of a case and use of such a statement at the trial. It is during the course of investigation, as envisaged by the Code of Criminal Procedure,

that the provisions with regard to recording of confessional statement have been incorporated in Section 164 of the Code of Criminal Procedure.

27. In the scheme of the Code relating to investigation and trial, there is no specific stage at which a Magistrate can take note of a person approaching him directly with an application to get his or her statement recorded in connection with any criminal offence by claiming that he is acquainted with the facts of the case. If such a power is acceded to a Magistrate, the possibility of witnesses being propped up by the accused to deflect attention from him cannot be ruled out.

28. It has been pointed out, on behalf of the petitioner, that though may not be, ordinarily, yet, in exceptional circumstances, the power to record statement of a person, under Section 164 of the Code of Criminal Procedure, by the Magistrate on the witness opting to get his/her statement recorded, as a witness of fact, cannot be ruled out. If the power to record statement under Section 164 of the Code of Criminal Procedure, at the option of a person, as a witness of fact is conceded to the Magistrate, it would be impossible to draw a firm line between the witness, whose statement deserves to be recorded by a Magistrate, when he or she approaches the Magistrate to get his or her statement recorded under Section 164 of the Code of Criminal Procedure,



and the case, where no such power shall be exercised. Either the court permits, in each and every case, recording of statement by a Magistrate of any person, as contended on behalf of the petitioner, whenever such a person opts to get his statement recorded as a witness of fact under Section 164 of the Code of Criminal Procedure, or such a power is not conceded to at all. This apart, a person, who is acquainted with the facts of a case, can be examined by the court during trial by invoking its power under Section 311, Code of Criminal Procedure, No wonder, therefore, that the Supreme Court, in **Jogendra Nahak and Ors. v. State of Orissa and Ors.**, **AIR 1999 SC 2565**, held,

"24. On the other hand, if door is opened to such persons to get in and if the Magistrates are put under the obligation to record their statements, then too many persons sponsored by culprits might throng before the portals of the Magistrate courts for the purpose of creating record in advance for the purpose of helping the cuprites. In the present case, one of the arguments advanced by the accused for grant of bail to them was based on the statements of the four Appellants recorded by the Magistrate under Section 164 of the Code. It is not part of the investigation to open up such a vista nor can such step be deemed necessary for the administration of justice."

(Emphasis is added)



29. In fact, the contention that in exceptional circumstances, the power to record statement of a person (who moves a Magistrate to get his statement recorded as a witness of fact), shall be conceded to the Magistrate was raised earlier also in re **CW Cases AIR 1948 Mad. 489**. It was held, in re **CW cases** (supra), that in order that the statement of a witness may get recorded under Section 164 of the Code of Criminal Procedure, there may be situation, where the police may not desire to get the statement of a witness recorded under Section 164 of the Code of Criminal Procedure, and, in such circumstances, there is nothing in the law preventing the witness to go to the Magistrate and get his statement recorded. While so taking the view, the learned Judge did sound a note of caution by observing that such a situation would be rare inasmuch as a Magistrate has the discretion to record or not to record such a statement. Similar views were expressed in **State of Orissa v. Amitava Prasad Das, (1979) 47 C LT. 298**.

30. Pointing out, however, that it would not be possible to draw a dividing line between a witness, whose statement deserves to be recorded by a Magistrate under Section 164 of the Code of Criminal Procedure if the witness approaches the Magistrate, and a case, where the witness's statement does not deserve to be recorded, the Supreme Court, in **Jogendra Nahak** (supra), pointed out as under:



"23. If a Magistrate has power to record statement of any person under Section 164 of the Code, even without the investigating officer moving for it, then there is no good reason to limit the power to exceptional cases. We are unable to draw up a dividing line between witnesses whose statements are liable to be recorded by the Magistrate on being approached for that purpose and that those not be recorded. The contention that there may be instances, when the investigating officer would be disinclined to record statements of willing witnesses and, therefore, such witnesses must have a remedy to have their version regarding a case put on record, is no answer to the question whether any intending witness can straightaway approach a Magistrate for recording his statement under Section 164 of the Code. Even for such witnesses, provisions are available in law, e.g. the accused can cite them as defence witnesses during trial or the court can be requested to summon them under Section 311 of the Code. When such remedies are available to witnesses (who may be sidelined by the investigating officers), we do not find an special reason why the Magistrate should be burdened with the additional task of recording the statements of all and sundry, who may knock at the door of the court with a

request to record their statements under Section 164 of the Code.”

(Emphasis is supplied)

31. Having examined the scheme of the Code with special reference to the provisions of Section 164(1) of the Code of Criminal Procedure, the Supreme Court concluded, at para 25, in **Jogendra Nahak** (supra), thus:

“25. Thus, on a consideration of various aspects, **we are disinclined to interpret Section 164(1) of the Code as empowering a magistrate to record the statement of a person unsponsored by the investigating agency.** The High Court has rightly disallowed the statements of the four appellants to remain on record in this case. Of course, the said course will be without prejudice to their evidence being adduced during trial, if any of the parties requires it.”

(Emphasis is added)

32. From what has been held, in **Jogendra Nahak** (supra), it becomes clear that a person, who may be acquainted with the facts of a given case, cannot, on his own, choose to apply to a Magistrate to get his/her statement recorded under Section 164 of the Code of Criminal Procedure. Such power may, however, be exercised by a court, at the

trial, by invoking its power under Section 311 of the Code of Criminal Procedure provided that the trial has commenced.

33. In the case at hand, however, since the informant's daughter, in the light of the contents of the First Information Report, in question, is not an accused, her statement needs to be recorded in terms of Section 161 of the Code of Criminal Procedure, which empowers a police officer investigating a case, to examine orally a person, who may be acquainted with the facts and circumstances of the case. Such a person shall be bound to answer truly all questions relating to such case put to him by such officer, other than the answers, which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. The police officer may reduce into writing any statement so made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person, whose statement he records.

34. There is, however, an embargo on a male police officer recording the statement of a woman inasmuch as the second proviso to sub-section (3) of Section 161 of the Code of Criminal procedure, which has come to be inserted with effect from 03.02.2013, makes it clear that the statement of a woman, who may be victim of an attempt or commission of an offence under Sections 354, 354A, 354B, 354C, 354D,

376, 376A, 376B, 376C, 376D, 376E or Section 509 of the Indian Penal Code, shall be recorded by a woman police officer or any woman officer.

35. Reverting to Section 164 of the Code of Criminal Procedure, which provides for recording of confessions and statements, which may or may not amount to confession, it needs to be pointed that sub-section (5) of Section 164 of the Code of Criminal Procedure, which has been inserted, by virtue of the amendment carried out by the Act of 2013, with effect from 03.02.2013, reads as under:

"(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case and the magistrate shall have power to administer oath to the person whose statement is so recorded.

{(5A)(a) In cases punishable under section 354, Section 354A, section 354B, section 354C, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed, in the manner prescribed in sub-section (5), as soon as the commission of the

offence is brought to the notice of the police;

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement;

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be video graphed.

(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial."

36. From a minute and cautious reading of the provisions embodied in Sub-section (5) and (5A) of Section 164 of the Code of Criminal Procedure, it becomes clear that it is the bounden duty of a police officer to get a woman, who becomes victim of an attempt or commission of an offence under Sections 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or Section 509 of the Indian Penal Code, to get her statement recorded under Section 164 of the

Code of Criminal Procedure.



37. In the case at hand, though the informant has not made any allegation of rape having been committed by the petitioner on the informant's daughter, the fact of the matter remains that if the informant's daughter is minor, then, the statement, made in this petition by the petitioner himself, would show that when the informant's daughter and the petitioner have been enjoying their conjugal life, their physical relation falls, if the informant's daughter is a minor, within the ambit of rape punishable under Section 376(2)(i).

38. In such circumstances, as mentioned hereinabove, it is the duty of the Investigating Officer, namely, respondent No.6, to get the statement of the informant's daughter recorded under Section 164 of the Code of Criminal Procedure and, then, take necessary consequential action in accordance with law.

39. It is also imperative that the informant's daughter is given protection, both from the end of the informant and also from the end of the petitioner, until it is determined whether or not she is a minor and whether or not she has voluntarily left her house as a major person.

40. Because of what have been discussed and pointed out above, this Court is clearly of the view that as far



as the First Informant Report, in question, is concerned, it cannot, at this stage, be quashed in the light of the facts, which have come on record. It is, however, not only desirable, but warranted by law that the statement of the informant's daughter is recorded under Section 164 of the Code of Criminal Procedure in terms of the provisions of sub-Section (5) read with Section 5A of Section 164 of the Code of Criminal Procedure, and respondent No.6 shall, therefore, take necessary action in this regard. This apart, the police officer is also required to ensure safety and security of not only the informant's daughter, but also of the petitioner and members of his family. This will, however, not absolve the petitioner and/or the members of his family from being arrested, if the situation so warrants, unless the petitioner and/or his family members granted *pre-arrest* bail by a court of competent jurisdiction.

41. With the observations and directions aforementioned, this writ petition stands disposed of.

(I. A. Ansari, ACJ)

N.A.F.R.
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