

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.6696 of 2016

Arising Out of PS.Case No. -288 Year- 2013 Thana -MADHUBANI TOWN District-
MADHUBANI

- =====
1. Soniya Gupta, wife of Aswani Gupta @ Ashwani Kumar Gupta
 2. Aswani Gupta @ Ashwani Kumar Gupta, son of Ashok Kumar Gupta, both residents of Mohalla-Salimpur, P.S.-Salempur, District-Deoria(Uttar Pradesh)
 3. Jay Prakash Gupta
 4. Rajesh Gupta, both sons of Chunilal Gupta, resident of Swarnrekha Apartment, Ground Floor, Flat No. 16, Mohalla-Near Lok Gram Public School, Thana Kalyan(East), District- Thane(Maharashtra)

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Anjani Kumar Singh, Adv Mr. Krishna Chandra
For the Opposite Party/s	:	Rajesh Singh, Adv
For the State	:	Mr. A.A.Khan(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

7 26-09-2016

Heard learned counsels for the petitioners,
informant and the State.

The petitioners being sister, brother-in-law
and uncles of the late husband of the informant are
apprehending their arrest in a case registered for the offences
punishable under Sections 341, 323, 369, 387, 389, 498A, 506
of the Indian Penal Code and Section 66(A) of the IT Act.

The prosecution case as per the written
report of the informant Geeta Gupta addressed to the officer-in-
charge, Madhubani police station is to the effect that the
husband of the informant, namely Sidharth Gupta committed

suicide on 02.09.2013. The informant informed his brother Vinod Kumar Gupta at Madhubani who reached Mumbai, at the place of the informant, on 04.09.2013 as she, after death of her husband, took shelter in the house of one of her relatives as the relationship between the informant and her parents-in-law and other in-laws family were strained from before. The informant used to reside with her husband and the infant child separately in Gitanjali Building, Gita Nagar, Mira Road East, Thane, Mumbai. The husband of the informant used to do separate business. For getting the statement recorded with regard to the death of her husband, on 06.09.2013, the informant went to Nyai Nagar police station, Mira Road, Thane along with her brother but in-laws family did not allow her to enter into the police station and snatched her minor son Vansh Gupta. Since the informant was carrying pregnancy of about eight months, hence the informant was admitted to Umraon Hospital and ultimately the informant's brother brought her to Madhubani on 11.09.2013. The informant transmitted the information regarding the incident through fax to the Superintendent of Police, Thane, Director General of Police, Maharashtra and other senior officials on 07.09.2013, 19.09.2013, 21.09.2013 and 25.09.2013. It is further alleged that on 06.10.2013 at 11:35 A.M on the mobile phone of the brother of the informant petitioner No. 3 Jay Prakash Gupta rang up and asked the brother of the informant to get the informant on phone, when she was asked to come to Mumbai



for relinquishing her claim to LIC policy and sign on some documents with regard to the property but when the informant refused to do so then she was threatened that her son would be killed and she would be implicated in false case with regard to the killing of her husband. Thereafter petitioner No. 4 Rajesh Gupta, other uncle of the late husband of the informant came on phone and threatened the informant. Subsequently at 12:02 P.M on the same day, on the mobile of the brother of the informant, the sister-in-law(Nanad) of the informant namely Soniya Gupta rang up and requested the brother of the informant to let the informant talk then the informant started talking to her. Initially she talked very nicely but thereafter she also abused the informant and told her to come to Mumbai to relinquish her claim of the LIC policy and sign some documents with regard to the property otherwise threat was given to the effect that her son will be either killed or made disable by injecting some poisonous substances. Thereafter the informant's sister-in-law switched on the speaker of the mobile when the informant heard crying of her child and felt that her minor child is being assaulted. Thereafter through the mobile, the other in-laws also gave similar threat to the informant.

It is submitted by learned counsel for the petitioner that the informant was married with Sidharth Gupta on 15.12.2010. Subsequently a baby boy was born but the relationship between the informant and her husband did not remain compatible, as a result, on 24.01.2013 the father-in-law



of the informant namely Ram Chandra Gupta lodged a written complain before Sr. Inspector of Police, Samta Nagar Police Station, Kandivali (East), Mumbai alleging therein that informant publicly assaulted her husband and used to give threat to the entire in-laws family. Similar complaint was also lodged by the mother-in-law of the informant, Mrs. Ansuia Ram Chandra Gupta, on 09.03.2013. Ultimately the informant and her husband started residing in Gitanjali Building, Gita Nagar, Mira Road East, Thane, Mumbai separately from her parents-in-law but informant continued torturing her husband, as a result, he committed suicide on 02.09.2013 at Gitanjali Building where he was residing alone with the informant. Thereafter the informant left Mumbai in the company of her brother and came to Madhubani. Consequently Mira Road P.S. Case No. I-370/2013 was registered on 19.09.2013 at the behest of the father-in-law of the informant, Ram Chandra Gupta against the informant with accusation under Sections 306, 506/34 of the Indian Penal Code. The informant also lodged a complaint before the Women's Commission on 12.09.2013, levelling accusation against the petitioners and others and ultimately the present F.I.R being Madhubani(Town) P.S. Case No. 288 of 2013 was registered on 07.10.2013 by the informant levelling accusations against petitioners and other in-laws family members for offences punishable under Sections 341, 323, 369, 387, 389, 498A, 506 of the Indian Penal Code and Section 66(A) of the I.T Act. There is no plausible



explanation for such a delayed lodging of the F.I.R. Moreover, even assuming the accusation, no offence under Sections 369, 389 I.P.C is made out and subsequent to the registration of the F.I.R, Section 66(A) of the I.T Act has been declared ultra virus by the Apex Court. During investigation the exact conversation between the informant and the petitioners were not been verified nor the investigating agency ever visited Mumbai. Moreover making phone call by in laws of the informant, in the background of death of her husband, is not unreasonable. The malicious accusation of the informant gets reflected from the fact that Madhubani 00/14 F.I.R was registered on 11.03.2014 levelling accusations for the offences punishable under Sections 304, 313, 341, 364A, 379, 498A, 120B/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act which on transfer has been registered on 15.05.2014 as Mira Road P.S. Case No. I 242 of 2014 under Section 306 of the Indian Penal Code. But again there is no explanation with regard to such delayed lodging of the First Information Report.

Learned Sessions Judge has also committed an error of record by recording that petitioners were on transit bail and they failed to appear in pursuance to the order of transit bail and the said order of transit bail was under challenge in Cr. Misc. No. 8856 of 2014, Cr. Misc. No. 10445 of 2014 and Cr. Misc. No. 8936 of 2014 before this Court. It is specifically stated in para 18 of the petition that petitioners were never granted transit bail which reads as follows:-

“That it is stated that while rejecting the bail application of this petitioner, the learned court has wrongly observed that the transit bail was allowed to these petitioners and thereafter, they have not appeared/surrendered as per the order of the learned court whereas the fact is that these petitioners have never been arrested or allowed transit bail by any court as transit bail was allowed to other co-accused who are not party in the present application”

It is further submitted that petitioners reside at different places. The child of the informant is not in their custody. The child in question is in custody of the parents-in-law of the informant. Hence, the petitioners have maliciously been implicated in the present case since they are related to parents in law of the informant with whom she had been hostile. Though the F.I.R was registered on 07.10.2013 but the petitioners were not aware about their implication in the case and as soon as they came to know they preferred the bail application before learned Sessions Judge in March, 2014 which was ultimately disposed of by the impugned order dated 03.11.2015 and thereafter the present criminal miscellaneous application has been preferred.

It is submitted by learned counsel for the informant that informant is still ready to settle the issue provided her son is being released by the in-laws including the petitioners. The accusation of giving threat through mobile is

specific against the petitioners. The mobile details have been verified by the police during the investigation and ultimately the petitioners have been charge-sheeted.

Considering the rival submissions of the parties, it is not in dispute that husband of the informant committed suicide on 02.09.2013 while living separately with the informant. Moreover, no information was given to the police by the informant when it is admitted fact that the informant was alone with her husband on the date of incident i.e. 02.09.2013 rather she chose to return to Madhubani from Mumbai on 11.09.2013 and for the first time the present F.I.R was registered, at Madhubani, on 07.10.2013 with a delay of more than a month, whereas at the behest of the father-in-law of the informant Mira Road P.S. Case No. I-370/2013 was registered on 19.09.2013 against the informant with accusation under Sections 306, 506/34 of the Indian Penal Code. So far as custody of child is concerned, web copy of the order, passed in Cr. W.J.C No. 1133 of 2014, has been produced wherein a Division Bench of this Court disposed of the claim of the release of the child in favour of the informant on the ground that informant has already filed a petition under Section 26 of the Hindu Marriage Act. Thereafter, in the writ application being C.W.J.C No. 5819 of 2016 preferred by the father-in-law and mother-in-law of the informant, a coordinate Bench of this Court stayed the proceeding of guardianship case No. 01 of 2014 preferred by the informant on the ground that the said

case is barred under Section 9 of the Guardians and Wards Act, 1890 and notices were issued to the informant. There is nothing on the record to suggest that the informant has still appeared in C.W.J.C No. 5819 of 2016. Moreover, this Court, in the present proceeding, can not decide the issue of guardianship or entitlement of custody of the child.

Hence, in view of the F.I.R being lodged with inordinate delay without any explanation, the case lodged against the informant at earlier point of time by the accused side and the investigation being concluded, let the petitioners, above named, in the event of their arrest or surrender before the Court below within a period of 12 weeks from today, be released on anticipatory bail on furnishing bail bond of Rs. 10,000/-(ten thousand) each with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Madhubani in connection with Madhubani(Town) P.S. Case No. 288 of 2013, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

Learned Court below will be at liberty to cancel the bail bonds of the petitioners in the eventuality of three consecutive defaults by the petitioners during trial.

(Dinesh Kumar Singh, J)

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