

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.136 of 2017

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1. Krishna Bihari Prasad Sinha, Son of Late Nageshwar Prasad, resident of Plot No. 11, Bisheshwaraya Nagar, Bailey Road, Patna, P.S.- Rupaspur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Director General of Police, Bihar, Patna.
2. Director General of Police, Bihar, Patna.
3. Principal Secretary, Department of Home Affairs, Bihar, Patna.
4. The Inspector General of Police, Weaker Section, Bihar, Patna.
5. The Additional Director General of Police, Patna.
6. The Deputy Superintendent of Police, Patna.
7. Officer Incharge, SC/ST, Patna Police Station, Patna.
8. The Investigating Officer, SC/ST Patna P.S. Case No. 26/2016.

.... Respondent/s

WITH

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Criminal Writ Jurisdiction Case No. 312 of 2017

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1. Nikhil Priyadarshi, son of Shri Krishna Bihari Prasad Sinha, Resident of Plot No.11, Vishweshwaraiya Nagar, Bailey Road, P.S.- Rupaspur, District- Patna.
2. Manish Priyadarshi, son of Shri Krishna Bihari Prasad Sinha, Resident of Plot No.11, Vishweshwaraiya Nagar, Bailey Road, P.S.- Rupaspur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar Through DGP , Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Weaker Section, Bihar, Patna.
4. The Senior Superintendent of Police, Patna.
5. Officer-in-charge, Patna SC/ST Police Station.
6. Investogating Officer, Patna SC/ST Police Station Case No. 26/2016.
7. Surabhi Prasad, D/o Sanjeev Prasad Toni, Resident of 5/6, Shri Krishna Nagar, P.S.- Buddha Colony, District- Patna.

.... Respondent/s

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Appearance :

(In Cr. WJC No.136 of 2017)

For the Petitioner/s : Mr. P.K. Shahi, Sr. Advocate
Mr. Shyameshwar Kumar Singh, Advocate

For the Respondent/s : Mr. Manish Kumar, GP-4

(In Cr. WJC No.312 of 2017)

For the Petitioner/s : Mr. P.K. Shahi, Sr. Advocate
Mr. Vikash Kumar, Advocate



For the Respondent/s : Mr. Satyam Shivam Sundaram, Adv
For respondent No.7 : Mr. S.D. Yadav, AAG-IX
Mr. Ajay Kumar Thakur, Advocate
Mr. Kumar Kaushik, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT
Date: 30-03-2017

Heard learned counsel for the petitioners and learned counsels, appearing on behalf of the respondents.

2. The writ petitioners, above named, are accused in Patna SC/ST Police Station Case No.26 of 2016, registered for the offences under Sections 354/354A(i)(ii)/506/34 of the Indian Penal Code, under Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and under Section 3 of the Protection of Children from Sexual Offences Act, 2012.

3. Petitioner Krishna Bihari Prasad Sinha of Cr.W.J.C No. 136 of 2017 is father of petitioners, namely, Nikhil Priyadarshi and Manish Priyadarshi, of CR.W.J.C. No.312 of 2017.

4. The petitioners have invoked the writ jurisdiction of this Court for quashment of the entire F.I.R. of Patna SC/ST Case No.26 of 2016 and in the alternative have prayed for entrustment of the investigation to the Criminal Investigation Department of the State Government. The second prayer for entrustment of the



investigation to the Criminal Investigation Department has become infructuous now in view of the statement of the petitioners in second supplementary affidavit that the investigation has already been entrusted to the Criminal Investigation Department wing of the police.

5. The F.I.R. in question was lodged by Surbhi Prasad, respondent No.7 stating/alleging therein that initially after talk on mobile phone she got acquainted with petitioner Nikhil Priyadarshi. Since the informant belongs to a respectable and elite family and the petitioner disclosed that he belongs to a very respectful family, hence, the friendship between the two developed. Since the informant was a minor and had no experience, she succumbed to the inducement of Nikhil Priyadarshi and both met and got themselves closure to each other. Nikhil Priyadarshi took her to his house on some occasions where she met with the family members of Nikhil Priyadarshi. Taking advantage of the friendship Nikhil Priyadarshi started attempt to establish physical relation with her and used to send sexual coloured messages on the mobile phone of the informant. In whole episode the co-accused Sanjeet Kumar Sharma, a friend of Nikhil Priyadarshi, was also involved. When the informant went to the house of the petitioners to complain about the conduct of Nikhil Priyadarshi to his father Krishna Bihari Prasad



Sinha and brother Manish Priyadarshi, they abused her in following words:

“Sali nan-jat harijan hokar mere darbaje shikayat karne aaee hai. Mera beta hai jo kiya hai sab sahi kiya, jiyada bologi to nirbhya se bhi bura gat hoga.”

6. The aforesaid fardbeyan was recorded on 22.12.2016 vide Annexure-1 and on 24.12.2016 the statement of the informant under Section 164 Cr.P.C. was recorded by the learned Magistrate vide Annexure-8 wherein she supported the F.I.R. and further alleged that the petitioner Nikhil Priyadarshi developed friendship with the informant and both started moving here and there off and on. Thereafter, Nikhill Priyadarshi established physical relation with her and got video recording of the physical relation and started blackmailing her by showing the video and established physical relation subsequently also. His friend Sanjeet Kumar Sharma and brother Manish Priyadarshi were also supporting Nikhil Priyadarshi. All used to torture her by calling her low caste name and harizan. When the informant forbade Nikhil Priyadarshi, allegation is that after consuming ganja (opium) Nikhil had assaulted her. Thereafter she went to make complaint of the aforesaid act to the father of Nikhil Priyadarshi, he also abused her by taking caste name and committed assault. There is further allegation against Nikhil that he



is still continuing to send sexual coloured messages to the informant.

7. After the statement of the informant under Section 164 Cr.P.C., on the prayer of prosecution, the offence under Section 376 of the Indian Penal Code, offences under sections 3(1)(w),3(2)(v)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and offences under Sections 4,6,8,10,12,17 of the Protection of Children from Sexual Offences, Act, 2012, were added in the F.I.R. on 12.01.2017.

8. Learned counsel for the petitioners submits that a bare perusal of the F.I.R. and the statement of the victim girl under Section 164 Cr.P.C. would reveal that the matter is of love-affairs between the two adults and on breakup of their relation, for whatever the reason may be, just to pressurize, the present false case has been lodged implicating the entire family members. Learned counsel submits that the victim girl was initially a student of Notre Dame School, Patna, and her date of birth in the matriculation certificate is recorded as 17.01.1996 vide Annexure-2. When the informant failed in the examination, she appeared in matriculation exam from another school at Muzaffarpur, wherein her date of birth is recorded as 07.03.1998 vide Annexure-3. Medical report at Annexure-5 would suggest her age in between 19 to 20 years as per



report dated 02.01.2017, as such, she was a major on the date of occurrence. Therefore, the offence under the provisions of POCSO Act is not made out.

9. Learned counsel has drawn the attention of this Court towards photographs and mobile messages between the informant and Nikhil Priyadarshi, to suggest that the love between the two was not one-sided; rather volunteered by the informant. Further, the offence under the provisions of SC/ST (Prevention of Atrocities) Act against petitioners, namely, Manish Priyadarshi and Krishna Bihari Prasad Sinha is not made out on perusal of the F.I.R. as there is no allegation that the alleged act was committed in any place within public view.

It has further been contended, on behalf of the petitioners, that during investigation by the C.I.D. the authorities have found that the informant was not a minor on the alleged date of occurrence. In **State of Haryana V. Bhajan Lal**, the Hon'ble Apex Court has categorically laid down that where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis whereof no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused the F.I.R. requires to be quashed. He further submits that petitioner Krishna Bihari Prasad Sinha is a retired bureaucrat having



unblemished carrier, hence, it is not acceptable to any prudent man that he would commit the alleged offence especially in the factual backgrounds of the case. He further submits that house of the petitioners is a very big house surrounded by a boundary wall, hence, it was certainly not within public view and if two views are possible the view in favour of the accused should be favoured.

10. Respondent No.7 has filed counter affidavit disputing and refuting the claim of the petitioners inter alia on the ground that disputed questions of fact cannot be looked into to quash the F.I.R. It is not necessary that verbatim and entire information should contain in the F.I.R. Therefore, there is no substance in the contention of the petitioner that there is improvement in the allegation in the statement under Section 164 Cr.P.C. than what was stated in the F.I.R. It is further submitted that respondent No.7 passed only once in the matriculation examination and only from Paramount School, Muzaffarpur, wherein her correct date of birth is recorded as 07.03.1998 and any other document placed with the writ application are manufactured and false documents. Reliance has been placed on the case of **Swaran Singh and others v. State through Standing Counsel and another**, reported in **(2008)8 SCC 435**. For the submission that the Hon'ble Apex Court has held that any place which is visible



to the public is a public place within the meaning of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Finally, it has been argued that since the investigation by the CID is going on and prima facie offence is disclosed in the F.I.R., this Court in exercise of power under Article 226 of the Constitution of India should not interfere on the basis of extraneous materials brought on the record by the petitioners.

11. Before considering the rival contention of the parties, it would be apt to look into the law prevailing in the area of consideration for quashment of F.I.R. In **State of Haryana V. Bhajan Lal**, reported in **1992 Supp (1) SCC 335**, the Hon'ble Apex Court in the backdrop of interpretation of the various relevant provisions of the Cr.P.C. under Chapter-XIV and of the principles of law enunciated by the Hon'ble Apex Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C. recorded the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice. Hon'ble Apex Court made it clear that 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. Para-102 of the judgment containing the illustrations are being reproduced below:

“102. (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 F.I.R. 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.”

In Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, reported in **1988(1) SCC 692**, in para-7 of the judgment the Hon’ble Apex Court observed as follows:

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the



court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

In S.M. Datta V. State of Gujarat, reported in AIR 2001 SC 3253, the Apex Court in para 9 of the Judgment held as follows:

“9. We respectfully record our concurrence therewith. Criminal proceedings, in the normal course of events ought not to be scuttled at the initial stage, unless the same amounts to an abuse of the process of law. In the normal course of events thus, quashing of a complaint should rather be an exception and a rarity than an ordinary rule. The genuineness of the averments in the FIR cannot possibly be gone into and the document shall have to be read as a whole so as to decipher the intent of the maker thereof. It is not a document which requires decision with exactitude neither it is a document which requires mathematical accuracy and nicety, but the same should be able to communicate or indicative of disclosure of an offence broadly and in the event the said test stands satisfied, the question relating to the quashing of a complaint



would not arise. It is in this context however one feature ought to be noticed at this juncture that there cannot possibly be any guiding factor as to which investigation ought to be scuttled at the initial stages and investigations which ought not to be so scuttled. The First Information Report needs to be considered and if the answer is found on a perusal thereof which leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police since two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.”

Learned counsel for the petitioners has placed reliance on the case of Harshendra Kumar D. v. Rebatilata Koley and others reported in AIR 2011 SC 1090, para-21 of the judgment is relevant, which reads as follows:

“21. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section [482](#) or for that matter in exercise of revisional jurisdiction under Section [397](#) of the



Code. It is fairly settled now that while exercising inherent jurisdiction under Section [482](#) or revisional jurisdiction under Section [397](#) of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents - which are beyond suspicion or doubt - placed by accused, the accusations against him cannot stand, it would be travesty of justice if accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.”

The aforesaid case of **Harshendra Kumar D.** is not helping in the present facts and circumstances of the case because two public documents i.e., school certificates are there and genuineness of one of them is challenged by the informant and investigation on the point is already going on.

12. No doubt it is settled by various judicial pronouncements that powers of the High Court under Article 226 of the Constitution of India are very wide and the very plentitude of



the powers requires great caution in its exercise. The Court must be careful to see that its decision in exercise of power is based on sound principles. This Court should normally refrain, prima facie, from decision in a case where all the facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved are, factual or legal, of such magnitude that cannot be seen in their true perspective without sufficient material.

13. Keeping the aforesaid principles in mind let this Court examine the factual and legal merit of this case. A perusal of the F.I.R. would reveal that ingredients of some of the offences are made out against some of the petitioners and some other offences are prima facie made against others. The F.I.R. need not be an encyclopedia of all the relevant facts. A conjoint reading of the F.I.R. and the statement of the informant under Section 164 Cr.P.C., recorded within two days of the F.I.R., do disclose the offences against the petitioners. What offences are disclosed against which of the petitioners is to be looked into at the stage of charge as such this Court is not opening its mind so that the trial judge may not be prejudiced. The correctness and trustworthiness of the allegation is subject matter of investigation and trial.

14. Main thrust of the petitioner is that since the



informant was a major girl, which is established by her school certificate at Annexure-2, which is a public document, this Court should, for substantial justice in the case quash the criminal prosecution of petitioner Nikhil Priyadarshi for the offences under the provisions of POCSO Act. The respondent No.7 has denied the genuineness of Annexure-2 and other documents in para-10 of the counter affidavit. In the circumstance, the document (Annexure-2) though a public document is not an uncontroverted document. The investigating agency is looking into the matter (as per the supplementary affidavit of the petitioners). Hence, this Court is not inclined to interfere with the prima facie allegation in the F.I.R., only the basis of the disputed document. However, the petitioners would be at liberty to raise the aforesaid issue at the appropriate stage of the trial.

15. The second point for consideration is whether the offences alleged under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, are, prima facie, disclosed on the basis of the materials in the F.I.R. For better appreciation, the referred offences are being reproduced hereinbelow:

“3(1). Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe-



(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

(w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

(ii) Uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

3(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe-

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine;

[(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a



Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine.]”

16. In Swaran Singh’s case (supra) the fact was that the allegation of commission of abuse by taking caste name was near the car parked outside the house. In the circumstance, the Hon’ble Apex Court held that the said place was within public view.

In the present case it is not clear whether the occurrence took place inside the house as claimed by the petitioners or just outside the gate as claimed by the informant. The principle that when two views are possible the view which favours the accused should be preferred is applicable at the stage of the trial and not at the stage of scuttling the F.I.R. Therefore, for the present purpose, in my view, the F.I.R. discloses, prima facie, cognizable offences under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act also against the accused persons.

17. On careful perusal of the provision of Sections 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and the “schedule” of the Act wherein list of offences of penal code are mentioned, I am of the view that those



offences are also disclosed.

18. In the result, I find that no case of quashment of F.I.R. is there as the F.I.R. prima facie constitutes/discloses offences against the petitioners. It cannot be argued that the allegations are absurd and inherently improbable. If, for the argument sake, it is assumed that two views are possible regarding the probability and improbability of the allegation, the same shall be subject matter of the investigation and trial and not of the present jurisdiction.

19. Consequently, I do not find any merit in any of the two writ applications. Accordingly, both stand dismissed.

Mkr./-

(Birendra Kumar, J)

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