

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Writ Jurisdiction Case No.1984 of 2017**

Arising Out of PS.Case No. -468 Year- 2017 Thana –Patrakar Nagar District- PATNA

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1. Sheel Isser, Wife of Air Marshal Rajesh Issar, Resident of O-89, Doctors Colony, Kankarbagh, P.S. - Patrakar Nagar, District - Patna at present residing at House No. 158/2, Air Head Quarter, Central Air Command, Bamrauli Airport, Indian Air Force, P.S. Allahabad, Dist- Allahabad (U.P).
2. Rajesh Issar, Son of Late Ganesh Prasad Issar, Resident of House No. 158/2, Air Head Quarter, Central Air Command, Bamrauli Airport, Indian Air Force, P.S. - Allahabad, Dist - Allahabad (U.P.)

.... .... Petitioner/s

Versus

1. The State of Bihar, through the Director General of Police, Bihar.
2. The Senior Superintendent of Police, Patna.
3. The Officer In Charge, Patrakar Nagar Police Station, Patna.
4. Renu Sharma Wife of Late Chandrashekhar Sharma Resident of O - 89, Doctors Colony, Kankarbagh, P.S. - Patrakar Nagar, District - Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Ajit Kumar, Adv.

For the Respondent/s : Mr. Ajay Thakur, Adv.

Mr. Nilesch Kumar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

**ORAL JUDGMENT**

**Date: 22-06-2018**

The present writ application has been preferred for quashing of the First Information Report being Patrakar Nagar P.S.Case No.468 of 2017 registered under Sections 341, 323 and 385 of Indian Penal Code. Petitioners are the wife and husband respectively.

2. Learned counsel for the petitioners submits that the First Information Report has been lodged by the stepmother of petitioner no.1 who has alleged that even though she is willing to give



the due share of property to the petitioner no.1, the petitioner no.1 wanted to grab the property of the other three daughters and son. Learned counsel submits that the allegations against the petitioner no.1 are that on 03.09.2017 at about 06:00 P.M the petitioner no.1 came to the residence of the informant and started talking about the properties. Informant alleged that the petitioner no.1 wanted to get registered the entire share of the others and for that she was pressurizing the informant. The informant alleged that even though she tried to convince the petitioner no.1 but the petitioner no.1 became agitated, she pushed the informant on her bed and started giving fist and slap blow. It is also alleged that petitioner no.1 attempted to throttle the neck of the informant. The informant has further stated that she suffers from spinal cord problem and because of the slap and fist blow given by the petitioner no.1, the informant started getting pain in the spinal cord and was crying. It is further alleged that the nephew of the informant came in the meantime and tried to save her but he was also abused and threatened.

3. As regards petitioner no.2, it is alleged that at about 07:30 P.M, he gave a call on the informant's Mobile No.0990550366 and while threatening the informant he told her to execute the entire properties in favour of petitioner no.1 failing which there will be serious consequences.



4. Immediately after the matter was being heard, learned counsel for the petitioners submitted that he would not press the present application on behalf of petitioner no.1 at this stage. Learned counsel submits that the application insofar as, it relates to petitioner no.1 may be treated as not pressed giving him liberty to raise all such issues which are available on behalf of petitioner no.1 at appropriate stage.

5. After confining the writ application with respect to petitioner no.2 alone, learned counsel submits that so far as petitioner no.2 is concerned, he has only been falsely implicated as it is apparent from the statements made in the First Information Report itself that he was not present at the place of occurrence. It is submitted that admittedly the informant is the stepmother of petitioner no.1 (wife of petitioner no.2) and they are stepsisters and stepbrothers of the petitioner no.1.

6. Dispute with regard to the land/house in question is going on vide Title Partition Suit No.189 of 2017 in the Court of learned Sub-Judge-I, Patna. The petition has been admitted and notice has been issued to the informant and other defendants. A copy of the plaint of the Title Suit has been brought on record as Annexure-2 to the present application.

7. Learned counsel submits that on 03.09.2017 the



petitioner no.1 has lodged Patrakar Nagar P.S.Case No.467 of 2017 under Sections 323, 154, 448, 506 and 427 of the Indian Penal Code against one Dr. Setu Bandhu Tiwari and Mayank Shekhar. The accused persons of the said case had broken up the lock of the one shop and Mayank Shekhar threatened the petitioner no.1 to leave the house and pushed her. A copy of the First Information Report lodged by petitioner no.1 has been enclosed as Annexure-3 to the present application.

8. It is submitted that because of the disputes which are going on over the land/house in question, after lodging of the First Information Report by petitioner no.1 on 03.09.2017, the present case has been fabricated and lodged on 04.09.2017 against petitioner no.1 and at the same time with a totally mala fide intention to harass petitioner no.2, his name has been incorporated in the First Information Report by making a vague kind of allegation of threatening over telephone.

9. Learned counsel for the petitioners submits that the informant has not even disclosed the mobile number or any other telephone number belonging to the petitioner no.2 from which the alleged call was received by the informant. It is his further submission that the petitioner no.2 is in service and resides at House No. 158/2, Air Head Quarter, Central Air Command, Bamrauli Airport, Indian



Air Force, P.S. Allahabad, Dist- Allahabad (U.P), and had never made any call to the informant.

10. Learned counsel for the State appears and submits that presently the investigation in the matter seems to be going on.

11. A counter affidavit has been filed on behalf of the informant (respondent no.4). It is stated that petitioner no.1 is one of the four daughters who is mostly residing outside along with her husband who is presently posted at Allahabad. The allegations are that petitioner no.1 has caused injuries to the informant. As regards petitioner no.2, the allegations as stated in the First Information Report alleging that he had given a telephone call and had threatened and asking the informant to transfer the entire property in the name of the petitioner no.1 has been reiterated. No one however appears on behalf of respondent no.4.

12. This Court has taken note of the submissions made in the counter affidavit on behalf of respondent no.4 while considering the present application.

13. Learned counsel for the petitioners submits that even though he has not pressed the application on behalf of petitioner no.1, however, in order to submit that the entire case as against the petitioner no.2 has been fabricated only in order to harass him, he would point out from Annexure-R4/A, which is the injury report



enclosed by the informant, that in order to fabricate the case the informant directly went to P.M.C.H on 04.09.2017 without any reference slip by police and complained of pain and tenderness at the right side of her forehead and low back pain and tenderness. It is his submission that a bare perusal of the First Information Report would show that so far as petitioner no.2 is concerned, no case is made out against him and his implication is based on a totally vague allegation and the whole purpose behind it is to harass him in a case of purely civil dispute. It is submitted that because of the pendency of the present First Information Report petitioner no.2 is likely to suffer in his service career and is apprehending loss of promotion etc.

14. Having heard learned counsel for the petitioners and learned counsel for the State as also upon taking into consideration the stand of respondent no.4, this Court finds that there is a land dispute between the informant and petitioner no.1, in the First Information Report the entire allegations of entering into the residence of the informant and then indulging in assault are leveled against petitioner no.1 only. Even the informant has stated in her counter affidavit that petitioner no.2 is posted at Allahabad and is residing there. The informant has not even disclosed the telephone number or mobile number from which the petitioner no.2 had allegedly given her call on her mobile number 0990550366. In the counter affidavit also the



informant has not come out with any statement regarding the telephone number from which she received the alleged threatening call. The First Information Report has been lodged on 04.09.2017 i.e., after lodging of F.I.R by petitioner no.1 on 03.09.2017 (Annexure-2) but no material has been placed before this Court to satisfy even prima facie that the involvement of petitioner no.2 seems to be there. By not providing the telephone number from which the informant received the call and then not disclosing it again in the counter affidavit as also in absence of any material brought before this Court against petitioner no.2 in course of investigation during last about 9 months the submissions of learned counsel for the petitioner no.2 that petitioner no.2 has been implicated in the present case only with a mala fide intention and to harass him get strengthened and this Court would accept the same to invoke its extraordinary writ jurisdiction to protect petitioner no.2 from his continuous harassment due to his having been named in the F.I.R on a totally vague allegation keeping in mind that the informant is the stepmother-in-law of petitioner no.2 who is having property disputes with her stepdaughter (petitioner no.1).

15. In result, the First Information Report as regards Rajesh Issar (petitioner no.2) is hereby quashed. The prayer of the petitioner no.1 to quash the F.I.R stands rejected in view of the



withdrawal of the writ application on her behalf with liberty to take such plea which may be available to petitioner no.1 at appropriate stage.

16. The application stands disposed off as partly allowed.

**(Rajeev Ranjan Prasad, J)**

Arvind/R.R.Ojha

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