

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.246 of 2019

Arising Out of PS. Case No.-440 Year-2018 Thana- RAMPUR District- Gaya

1. Md. Badiuzzaman Khan Son of Late Mohammad Subajan Khan
2. Nayeema Khanam @ Nayeema Wife of Md. Badiuzzaman Khan
3. Md. Omer Abdullah Khan @ Omer Abdulleh Khan Son of Md. Badiuzzaman Khan,

All three residents of Rabbani Monument, Khelafat Bagh, Mehsoul Chowk, P.S.- Sitamarhi, District- Sitamarhi

4. Saba Fatima @ Saba Fatima Khan Wife of Rafe Ejaz Hussain Resident of Flat No. 301, Royal Retreat Mansion, Road no.1F, Behind Lotus Apartment, New Patliputra Colony, P.S.- Patliputra, Distt.- Patna, wrongly described in the FIR as resident of Rabbani Monument, Khelafat Bagh, Mehsoul Chowk, P.S.- Sitamarhi, Distt.- Sitamarhi
5. Dr. Imteyaz Khan @ Imteaz Ashruff khan Son of Ishteaque Ahmad Khan
6. Sabiha @ Sabiha Fatima @ Dr. Sabiha Fatima Khan Wife of Dr. Imteaz Ashruff khan

Both R/o 354-U, Digvijaay Nagar Colony, Jogeshwar Pasi Chowk, Humayunpur North, P.S.- Gorakhanth , Distt.- Gorakpur, wrongly described in the FIR as residents of Rabbani Monument, Khelafat Bagh, Mehsoul Chowk, District- Sitamarhi

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Govt. of Bihar, Patna
2. The Director General of Police, Govt. of Bihar, Patna



3. The Additional Director General of Police, Crime Investigation Department
Govt. of Bihar, Patna
4. The Inspector General of Police, Magadh Division, Gaya
5. The Deputy Inspector General of Police, Magadh Division, Gaya
6. The Superintendent of Police, Gaya
7. The Deputy Superintendent of Police (Town), Gaya
8. The Deputy Superintendent of Police, Police line, Gaya
9. The Station House Officer, Rampur P.S., Gaya
10. The Investigating Officer, Rampur P.S., Gaya

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashhar Mustafa, Advocate
	:	Mr. Falakyar Askari, Advocate
For the Respondent/s	:	Mr. Saroj Kumar Sharma, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 01-02-2019

The sole defect, as pointed out by the registry,
is ignored.

2. Heard learned counsel for the petitioners and
learned counsel for the State.

3. The petitioners have been made accused in
Rampur P.S. Case No. 440 of 2018 dated 27.11.2018 registered
under Sections 498A, 420, 406, 331, 323, 504 and 506 read with
34 of the Indian Penal Code as also Sections 3 and 4 of the
Dowry Prohibition Act.

4. The contention of the learned counsel for the



petitioners is that the informant Hena Firdaus has falsely implicated the petitioners in the aforesaid case. She was married to petitioner no.3 (Md. Omer Abdullah Khan @ Omer Abdulleh Khan) on 19.11.2017 as per the Muslim rites and rituals. All through, she led a respectable life at her matrimonial home. It was really strange that of late, she registered the present FIR. The petitioners are respectable persons of the society. Petitioner no.1 is a retired Professor aged about 75 years, petitioner no.2 is his wife aged about sixty five years, petitioner no.3 is their only son, petitioners no.4 and 6 are their daughters, who were married over a decade ago and petitioner no. 5 is the husband of petitioner no.6. Petitioner no.6 and her husband (petitioner no.5) are doctors by profession and they are practicing at Gorakhpur. His further contention is that the father of the informant is a Deputy Superintendent of Police. Due to his influence, the investigation of the case is not being carried out properly. In this regard, an application under Section 156(3) of the Code of Criminal Procedure has also been filed in the court below seeking necessary intervention for proper investigation in the case, but no order has been passed on that petition.

5. On the basis of the aforestated contentions, the petitioners have prayed for issuance of direction to the



respondents to transfer the investigation of Rampur P.S. Case No.440 of 2018 to Crime Investigation Department, Government of Bihar, Patna or any other impartial senior officer or any independent investigating agency to ensure free and fair investigation of the Case.

6. Per contra, learned counsel appearing for the State submitted that since a cognizable offence was reported to the police, an FIR was instituted and investigation has been taken up. The investigation is not yet complete. Every investigation is supposed to be confidential in nature. The apprehension of the petitioners that the investigation is not being conducted in a fair and impartial manner is not supported by any reason. The hypothetical presumption and wild suspicion cannot be made a basis for change of an investigating agency or for handing over investigation to any other senior officer. He further contended that Section 156(3) of the Code of Criminal Procedure does not confer any jurisdiction upon the court to issue any direction for supervision of an investigation. The said provision simply empowers a court to transmit a complaint lodged under Sections 190 and 200 of the Code of Criminal Procedure for investigation to the police. Here is a case in which no complaint has been instituted and admittedly a police case is



being investigated. He submitted that the writ petition is totally misconceived and is fit to be dismissed.

7. I have heard learned counsel for the parties and carefully perused the record.

8. The informant has alleged in her written report dated 27.11.2018 that she was married to one Md. Omer Abdullah Khan (Petitioner No.3) on 19.11.2017 as per the Muslim rites and rituals. Her father Md. Sabir Hassan Khan gifted articles, cash etc. worth rupees ten lacs in the marriage. This was besides a Ford Figo Car. After marriage petitioner no.3 returned back to Delhi on 25.11.2017. He worked with ADOBE at Delhi. On 26.11.2017, petitioner no.3 left for Jaisalmer with one Sakchi Kumar. He forwarded his photograph with one Sakchi Kumar to the informant through what's app. The photograph was followed by a message that "I am dating this girl". When she called her husband back, he turned furious and asked her not to interfere in his matter. She then shared this with her mother-in-law Nayeema Khanam (petitioner no.2), father-in-law Badiuzzaman Khan (petitioner no. 1), sisters-in-law Sabiha Fatima (petitioner no.6), Saba Fatima (petitioner no.4) and brother-in-law (Nandosi) Dr. Imteyaz Khan (petitioner no.5). However, they said that the informant was none to object even if



petitioner was having affair with some other girl. Thereafter, they started torturing her. They even abused her many a times. When she enquired about the girl from petitioner no.3 on his return to Sitamarhi after two months of marriage, he assaulted her. Other family members named above also joined him in assaulting her. They threatened her that if she wanted to continue staying at her matrimonial home, she must bring rupees fifteen lacs cash for purchase of a flat at Delhi. She was again assaulted when she refused to ask money from her father. The informant finally conveyed to her father, whereafter her maternal uncle Shahjahan Khan came to Sitamarhi and took her back to her father's place at Police Line, Gaya. While leaving Sitamarhi, accused persons had reiterated that she would not be allowed to return unless the demand of rupees fifteen lacs is fulfilled. She has further alleged that petitioner no.3 had prior illicit relation with Sakchi Kumar, which was in full knowledge of his family members. However, this fact was designedly withheld at the time of marriage under a well knit conspiracy to extract money and when she did not fulfill the demand of rupees fifteen lacs, she was assaulted by her in-laws. She has further alleged that on 25.11.2018, the petitioners no.1 to 4 and 6 visited Police Line, Gaya. When her father requested them to



take her back and keep her well, they insisted that being a Deputy Superintendent of Police, he had earned huge amount and unless the demand of rupees fifteen lacs is met, they would not take her back to her matrimonial home and sooner they will arrange marriage of Md. Omer Abdullah Khan (Petitioner No.3) with another girl.

9. The allegations made above attract ingredients of a cognizable offence. In case, a cognizable offence is reported to the police, it is their bounden duty to institute an FIR and investigate the same. At this stage, the court has no role to play. Admittedly, the case is still under investigation. It has rightly been submitted by the learned counsel for the State that an investigation into a cognizable offence is supposed to be confidential.

10. The petitioners have argued that investigation is proceeding at a very fast pace and that is the only reason on the basis of which it has been argued that the investigation is being conducted under the influence of father of the informant, a Deputy Superintendent of Police.

11. In this regard, it would be apt to note that Section 2(h) of the Code of Criminal Procedure (for short 'Cr.P.C.') defines "investigation" and it includes all the



proceedings under the Code for the collection of evidence conducted by a police officer or by any other person (other than Magistrate), who is authorized by a Magistrate in this behalf. The investigating process is a progression of steps moving from tasks of gathering evidence, to information analysis, to forming reasonable ground to believe. It is for the investigating agency to consider the issues under the matter of investigation, plan how the investigation will be conducted, decide in what other evidence will be collected, collect all relevant evidence and consider what the evidence shows and report their findings to the court.

12. Section 167 of the Cr.P.C. lays down the procedure to be adopted when the investigation against an accused person can not be completed within 24 hours and there are grounds for believing that the accusations against him are well founded. An expeditious investigation of offences and trial is a facet of rule of law and a component of Article 21 of the Constitution of India. Not only the Cr.P.C but even the constitution mandates for promptness in investigation and trial.

13. Hence, no doubt over fairness of investigation can be raised on the basis of promptness in investigation made by the investigating agency. No other ground



has been taken by the petitioners to assail the bona fide of investigation.

14. Moreover, an investigation into a cognizable offence is the exclusive domain of police. Any interference by the court at this stage is not permissible in law.

15. Furthermore, the accused persons have no right to choose investigating agency of their own choice.

16. That apart, it is well settled position in law that, even the High Court in its exercise of extra ordinary jurisdiction under Article 226 of the Constitution would not lightly pass order for change of investigating agency.

17. In view of the discussions made above, I see no merit in this writ petition. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
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