

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.431 of 2019

Arising Out of PS. Case No.-61 Year-2018 Thana- PUWAKHALI District- Kishanganj

Basanti Kumari Daughter of Kiran Lal Singh, wife of Vinay Vikash Resident of Village- Rasiyahat, P.S.- Pouwakhali, District- Kishanganj, at present residing at Mohalla- Rajendranagar, P.S.-Siwan Town, District- Siwan.

... .. Petitioner/s

Versus

1. State of Bihar through the Principal Secretary, Home(Police) Deptt., Govt. of Bihar, Patna
2. The Director General of Police, Bihar Patna. Patna.
3. The Superintendent of Police, Kishanganj. Kishanganj.
4. The S.H.O. Pauwakhali Police Station District- Kishanganj.
5. Shri Kiran Lal Singh Son of Late Darplal Resident of Village- Rasiyahat, Police Station- Pouwakhi, District- Kishanganj.
6. Sri Vinay Vikash Son of Vinay Kumar Resident of Mohalla- Rajendranagar, Police Station- Siwan Town, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh, Adv. Mr. Ajay Kumar Tiwary, Adv.
For the State	:	Mr. Apurva Kumar, A.C. to G.P.5
For the Respondent No.5:	:	Mr. Amal Kumar Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 17-05-2019

Heard Mr. Ajay Kumar Tiwary, learned advocate for the petitioner, Mr. Apurva Kumar, learned assistant counsel to Government Advocate No.4 for the State and Mr. Amal Kumar Sinha, learned advocate for the informant (respondent no.5).

2. This application under Article 226 of the Constitution of India has been filed by the petitioner for quashing the first information report of Pauwakhali P.S.Case No. 61 of 2018 dated



29.12.2018 registered under Section 363 of the Indian Penal Code (for short 'IPC').

3. Mr. Sanjay Singh, learned counsel appearing for the petitioner submitted that even if the entire allegations made in the written report given by the informant (respondent no.5) are accepted to be true at their face value, none of the ingredients of the offence under Section 363 of the IPC would be attracted. In the written report itself, the informant has disclosed the age of the petitioner to be 22 years, who was found missing from her house in the morning on 28.12.2018. The said information, by no stretch of imagination, would have attracted the offence punishable under Section 363 of the IPC. The police maliciously instituted the case and started harassing the respondent no.6 with whom the petitioner has already solemnized her marriage in a temple. He pleaded that allowing the investigation to continue any more would amount to an abuse of the process of the court. He has further pleaded that even the informant (respondent no.5) is not interested in prosecuting any one in connection with this case.

4. Mr. Apurva Kumar, learned counsel for the State submitted that in view of the statements made by the petitioner and respondent nos. 5 and 6, as recorded by this Court in its order dated 14.05.2019, no useful purpose would be served by allowing



the prosecution to continue. He has further contended that even if the entire prosecution case is accepted to be true none of the ingredients of any cognizable offence would be attracted.

5. Mr. Amal Kumar Sinha, learned counsel appearing for the respondent no.5 also agreed that since the apprehension in the mind of the informant regarding the well being of his daughter has been removed after appearance of the petitioner and the respondent no.6 before the Court on 14.05.2019, it would be in the interest of the parties that the further investigation and the first information report of the case be quashed.

6. The moot question, which arise for consideration in this application, is whether the police were justified in instituting the first information report on the basis of the written report submitted by the informant.

7. The first information report of the instant case registered under Section 363 of the IPC is based on the written report submitted by the respondent no.5.

8. In his written report submitted to the Officer-in-Charge of Pauwakhali Police Station, the respondent no.5 has stated that his daughter aged 22 years went to sleep along with her sister-in-law on 27.12.2018 at about 10.00 p.m. In the morning, on 28.12.2018, at about 6.00 a.m., she was found missing from her



room. She had left the house along with her purse, aadhar card, bank passbook, certificates and jewellery without disclosing anything to anyone. Her mobile no. 8084607278 is also switched off.

9. While submitting the said written report, the respondent no.5 had requested the Officer-in-Charge of the Police Station to find out the whereabouts of his daughter.

10. On receipt of the written report, on 29.12.2018, a police case was registered under Section 363 of the IPC and investigation was taken up.

11. Section 363 of the IPC prescribes punishment for the offence of kidnapping. It reads as under :-

“363. Punishment for kidnapping.—Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

12. Section 359 of the IPC deals with the offence of kidnapping, which reads as under :-

“359. Kidnapping.—Kidnapping is of two kinds: kidnapping from India, and kidnapping from lawful guardianship.”



13. In order to attract punishment for the offence of kidnapping, the prosecution must prove kidnapping of a person from India and kidnapping from lawful guardianship.

14. Though Section 359 of the IPC does not define kidnapping, it divides kidnapping into two classes- (i) kidnapping from India; and, (ii) kidnapping from lawful guardianship.

15. Section 360 of the IPC deals with the offence of kidnapping from India. It reads as under :-

“360. Kidnapping from India.—Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from India.”

16. Section 361 of the IPC deals with kidnapping from lawful guardianship. It reads as under :-

“361. Kidnapping from lawful guardianship

Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful Guardianship.”



17. From a reading of the Sections 360 and 361 of the IPC, it would be manifest that unless a person is taken beyond the limits of India without consent of that person or takes or entices a minor under sixteen years of age if a male, or eighteen years of age if a female or any person of unsound mind out of the keeping of the lawful guardian, the ingredients of Section 363 of the IPC would not be attracted.

18. From a reading of the written report submitted by the informant, it would be evident that it was a pure and simple missing person report made to the Officer-in-Charge of the Police Station. There is no allegation that the person missing was kidnapped by anyone. There is also no report that the person missing was under the age of 18 years or is of unsound mind. On the contrary, the age of the person missing is reported to be 22 years. Under the said circumstance, neither of the offences defined in Section 360 or Section 361 of the IPC was attracted. In absence of any allegation of kidnapping, the police could not have instituted a case under Section 363 of the IPC and commenced investigation.

19. That apart, in order to satisfy myself, as the victim was traceless, by order dated 08.05.2019, I had directed the parties to appear in person in Chambers.



20. On 14.05.2019, the petitioner, the informant and respondent no.6 had appeared in person along with their advocates in Chambers. They had personally been heard and after hearing them, I had passed the order as under :-

“The informant Kiran Lal Singh and the petitioner Basanti Kumari along with their respective advocates are present in person. The respondent no.6 has also appeared in person.

2. The petitioner stated before me that out of her own sweet will she left her house in the night of 27.12.2018 and has married respondent no.6 on 29.12.2018 in Sitla Mata Mandir, Patna. She has further stated that she is happily living with her husband in her matrimonial home and has no complain against anyone.

3. The informant (respondent no.5) has stated that he is not interested in prosecuting anyone. He had informed the Officer-in-charge, Pauwakhali Police Station on 28.12.2018, as he found his daughter missing from the room in which she was sleeping. He contended that he is only interested in the well being of his daughter and nothing else.

4. Respondent No.6, Vinay Vikash has stated that he is an advocate and is practicing in Civil Court, Siwan. Since the date of marriage, he is keeping the petitioner in his house with full dignity and honour. He undertakes that in future also she will be looked after properly.



5. Let this matter be listed tomorrow in the Court under the heading “For Admission”

6. The parties shall be required to file a joint affidavit in respect of the statements made by them by 10:30 a.m. tomorrow.

7. The personal appearance of the petitioner and respondent no.5 is dispensed with.”

21. Pursuant to the aforesaid order dated 14.05.2019, an affidavit duly signed by the informant the respondent no.6 and the petitioner has been filed.

22. In paras 3 to 5 of the affidavit, following averments have been made :-

“3. That the petitioner has left the house on her own sweet will and without any pressure by any one, she got married with the Respondent No.6 Vinay Vikash on account of her own choice.

4. That the Respondent No.5 i.e. the father of the petitioner as well as the informant of the criminal case instituted bearing Pauwakhali P.S. Case No. 61 of 2018 undertakes that he will not interfere with the conjugal life of the petitioner and Respondent No.6.

5. That at the same hand the Respondent No.6 who has solemnized love marriage with the petitioner has also undertakes that he will take care of the wife petitioner with full dignity and honour as wife forever of his life.”



23. Keeping in mind the discussions made above, I am of the opinion that even if the entire allegations made in the first information report are accepted to be true at their face value, no offence whatsoever is made out. In that view of the matter, the police were not justified in instituting an FIR and taking up investigation. That apart, since the parties have amicably settled the dispute and they have also filed joint affidavit in this regard, I am of the opinion that allowing the investigation to continue any more would be a gross abuse of the process of law.

24. Accordingly, the application is allowed. The first information report of Pauwakhali P.S. Case No. 61 of 2018 and the entire investigation conducted so far in connection with the said case are hereby quashed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.05.2019
Transmission Date	24.05.2019

