

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.579 of 2017

Arising Out of PS. Case No.-55 Year-2013 Thana- DIGHA District- Patna

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Vijay Kumar son of Sri Badhu Ram resident of Hamidapur Kurji, Police
Station - Digha, District - Patna.

... .. Petitioner

Versus

1. The State of Bihar through Director General of Police, Patna
2. The Senior Superintendent of Police, Patna.
3. The City Superintendent of Police, Patna Central.
4. The Deputy Superintendent of Police, Kotwali, District - Patna.
5. The Officer Incharge, P.S. - Digha, Patna.
6. The Investigation Officer, P.S.- Digha, Patna.

... .. Respondents

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Appearance :

For the Petitioner : Mr.Uday Shankar Choudhary

For the Respondent-State: Ms. Prachi Pallavi, AC to AAG

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 06-08-2019

In the instant writ petition, the prayer of the petitioner
is to direct the respondents to recover his wife.

2. It has been submitted by the learned counsel
for the petitioner that a similar prayer was made in CrWJC No.
289 of 2016, which was disposed of by this court vide order dated
19.07.2016.



3. The operative part of the order dated 19.07.2016 reads as under :-

“Having considered the averments made in the writ petition and materials on record and upon hearing the parties, it is hereby directed that respondent no. 2, namely, the Senior Superintendent of Police, Patna shall enquire into the grievances raised in the writ petition, do the needful in accordance with law and complete the investigation of Digha P. S. Case No. 55 of 2013 expeditiously, within a period of six months, ensuring proper, fair and effective investigation in such a way that no innocent person is harassed. “

4. Learned counsel for the petitioner submitted that after passing of the aforesaid order in CrWJC No.289 of 2016, on 16.08.2016, the petitioner filed an application before respondent no. 2, the Senior Superintendent of Police, Patna along with a copy of the order of this Court, but, till now, his wife has not been recovered. He submitted the petitioner, a father of three children, has got no other remedy than to approach this Court once again for the recovery of his wife.

5. On the other hand, learned counsel appearing for the State submitted that from the averments made in the FIR itself, it would be evident that the wife of the petitioner out of her



own sweet will left her matrimonial home and eloped with a friend of the petitioner, Pramod Kumar, who was living together with him as a tenant in the house of one Raju Rai. She submitted that the written report submitted by the petitioner would reveal that no cognizable offence much less an offence of kidnapping is made out. The wife of the petitioner being mother of three children is a grownup lady and out of her own sweet will, if she has chosen not to live with the petitioner and has gone together with another person, namely, Pramod Rai, the police cannot compel her to live together with the petitioner. She contended that though an FIR has been instituted, it is extremely difficult for the police to take any coercive step against any one, especially when this Court itself has directed in its order dated 19.07.2016 that the investigation should be completed in such a way that no innocent person is harassed.

6. I have heard learned counsel for the parties.

7. I find force in the submission of learned counsel for the State. In absence of any ingredients of a cognizable offence, if a wife, who is major, willfully takes a decision to stay with another person, a friend of her husband and leaves her matrimonial home, a case of illegal or forced detention or abduction against the other man cannot be made out.



8. In absence of the ingredients of abduction or illegal detention of the wife, a writ of any nature cannot be issued against the respondents.

9. In that view of the matter, the application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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