

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1402 of 2019

Arising Out of PS. Case No.-288 Year-2016 Thana- KOTWALI District- Patna

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1. Sanjeev Kumar Mishra S/o Ram Lakhan Mishra Resident of Paschim Bazar, P.S.- Mohiuddin, District- Samastipur, Bihar
 2. Ram Lakhan Mishra S/o Late Ram Naresh Mishra Resident of Paschim Bazar, P.S.- Mohiuddin, District- Samastipur, Bihar
 3. Rajeev Mishra @ Rajeev Kr. Mishra S/o Ram Lakhan Mishra Resident of Paschim Bazar, P.S.- Mohiuddin, District- Samastipur, Bihar
 4. Ranjeet Mishra @ Ranjeet Kumar Mishra S/o Ram Lakhan Mishra Resident of Paschim Bazar, P.S.- Mohiuddin, District- Samastipur, Bihar
 5. Bharti Devi W/o Ram Lakhan Mishra Resident of Paschim Bazar, P.S.- Mohiuddin, District- Samastipur, Bihar

... .. Petitioners

Versus

1. The State of Bihar through the principal Secretary Home Dept. Govt. of Bihar
2. The Superintendent of Police, Patna Bihar
3. The Deputy Superintendent of Police, Patna Bihar
4. The SHO, Sadar Kotwali, Patna Bihar
5. The I.O, of Sadar Kotwali, P.S. Case No. 288/2016 Bihar
6. Shreya Raj @ Shreya D/o Mithlesh Paswan, W/o Satyam Raj Sharma R/o village- A.I.O of Polo Road, P.S.- Gardanibagh, District- Patna

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. S.N.P. Sinha, Sr. Adv. Miss Rashmi Bharti, Adv.
For the Respondent/s	:	Mr. Md. Irshad, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 15-10-2019

This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioners seeking quashing of the first information report (for short 'FIR') of Kotwali Sadar P.S. Case No. 288 of 2016 registered under Sections 498-A, 304, 341, 342, 323 read with 34 of the Indian Penal Code



and Sections 3(ix) and 3(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

2. Mr. S.N.P. Sinha, learned senior advocate appearing for the petitioners submitted that the FIR in question is bad in law and wrong on facts. The continuation of the investigation of the present case is nothing but an abuse of the process of law. According to him, the petitioner no.1 was never married to the informant of the case and, thus, he cannot be prosecuted for the offence punishable under Section 498-A of the Indian Penal Code.

3. The FIR in question has been brought on record as Annexure-1 to the present application. On perusal of the same, I find that one Shreya Raj has alleged in her oral statement recorded by the Sub-Inspector of Police on 18.06.2016 at 5.45 p.m. that she was married with the petitioner about three years back and was living in Patna in a house taken on rent. The petitioner no.1 never took her to the matrimonial house in Samastipur. Once she went there out of her own sweet-will where the in-laws i.e. petitioner nos. 2 to 5 subjected her to cruelty as she is Paswan by caste and they are Brahmins. They ousted her from the matrimonial home whereafter she took sleeping pills, but the police took her to Patna Medical College & Hospital where she was provided treatment. Subsequently, her husband assaulted her near Patna Junction for



which she lodged a complaint in the Kotwali Police Station, Patna. However, her husband threatened her in various ways to compromise the case and under threat and coercion she withdrew her complaint.

4. The aforesaid oral statement of the informant was recorded in the Patna Medical College & Hospital by one Punam Chaudhary, a Sub-Inspector of Kotwali Police Station.

5. The allegations made in the FIR do attract the ingredients of a cognizable offence.

6. To hold investigation into a cognizable offence is the statutory duty of the police.

7. In that view of the matter, I see no illegality either in institution of the FIR or its investigation.

8. The defence of the petitioner cannot be made basis for quashing the FIR specially when the oral statement of the informant recorded by the police attracts ingredient of a cognizable offence.

9. The truth or falsity of the allegation would be examined by the police during investigation of the case.

10. Once the investigation would be over, the investigating officer would be required to file report under Section



173(2) of the Code of Criminal Procedure before the court on the basis of the outcome of investigation.

11. It is only after the receipt of the police report, the jurisdictional Magistrate would apply his mind and pass appropriate order in accordance with law.

12. At this stage, the defence of the petitioner cannot be made the basis for interdicting the FIR.

13. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	17.10.2019
Transmission Date	17.10.2019

