

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.3297 of 2018

Arising Out of PS. Case No.- Year- Thana- District-

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Baiju Prasad Gupta S/o Late Funnun Lal, R/o A.N. Road, Murarpur, P.S.-
Kotwali, Gaya, District- Gaya.

... .. Petitioner

Versus

1. The State Of Bihar through Chief Secretary, Government Of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Home Secretary, Government of Bihar, Patna.
4. The Director General of Police, Government of Bihar, Patna.
5. The Inspector General of Police, Government of Bihar, Patna.
6. The Deputy Inspector General of Police , Government of Bihar, Magadh Range, Gaya.
7. Mr. Vinay Kumar, the Deputy Inspector General of Police, Government of Bihar, Magadh Range, Gaya.
8. The Senior Superintendent of Police, Gaya.
9. The Superintendent of Police, Gaya.
10. The Sub-Divisional Officer, Sadar Gaya, Gaya.
11. The S.H.O. Kotwali P.S., Gaya.
12. Mr. Ajay Kumar, the S.H.O. Kotwali P.S., Gaya.
13. Mr. Shekhar Sah, S/o unknown, R/o Kila Road, Patna City, P.S.- Chowk, Patna.
14. Priyanka Rani @ Neha Gupta, D/o Shekhar Sah, S/o unknown, R/o Kila Raod , Patna City, P.S.- Chowk, Patna.

... .. Respondents

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with

Criminal Writ Jurisdiction Case No. 576 of 2019

Arising Out of PS. Case No.-573 Year-2018 Thana- GAYA KOTWALI District- Gaya

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Priyanka Rani @ Neha Gupta Wife of Gaurav Kumar, Daughter of Shekhar Kumar, Resident of Mohalla-Kaila Road, Patna City-Patna. At present residing at Anurudh Narayan Road, Near Dr. Vijay Jain, P.S-Kotwali, District- Gaya, Pin-823001



... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Bihar, Patna Patna
2. The Director General of Police, Old Secretariat, Patna.
3. The Inspector General of Police, Patna, Bihar.
4. The Senior Superintendent of Police, District-Gaya.
5. The S.H.O., Kotwali Police Station, District-Gaya.
6. Gayatri Devi Wife of Baiju Prasad @ Baiju Prasad Gupta (Mother-in-law of petitioner) Resident of Anugrah Narayan Road, P.S-Kotwali, District-Gaya. At present residing at Baiju Prasad Sona Chandi Dukhan, Baiju Bhushnalai Chowk, Sarafa Road, Gaya.
7. Baiju Prasad @ Baiju Prasad Gupta Son of Late Funni Lal (Father-in-law of petitioner). Resident of Anugrah Narayan Road, P.S-Kotwali, District-Gaya. At present residing at Baiju Prasad Sona Chandi Dukhan, Baiju Bhushnalai Chowk, Sarafa Road, Gaya.
8. Barun Kumar Son of Baiju Prasad @ Baiju Prasad Gupta (Dever of the petitioner). Resident of Anugrah Narayan Road, P.S-Kotwali, District-Gaya. At present residing at Baiju Prasad Sona Chandi Dukhan, Baiju Bhushnalai Chowk, Sarafa Road, Gaya.

... .. Respondents

Appearance :

(In Criminal Writ Jurisdiction Case No. 3297 of 2018)

For the Petitioner	:	Mr. Y. V. Giri, Sr. Advocate Mr. Sanjeev Kumar, Advocate Mr. Rajeev Shekhar, Advocate
For the Respondent/State:		Mr. Md. Iqbal Asif Niazi, AC to GP-5
For private respondent	:	Mr. Anand Kumar @ Bipin Kumar @ Deo, Advocate

(In Criminal Writ Jurisdiction Case No. 576 of 2019)

For the Petitioner	:	Mr. Dr. Anand Kumar, Advocate
For State	:	Mr. Md. Iqbal Asif Niazi, AC to GP-5
For Private respondent	:	Mr. Y. V. Giri, Sr. Advocate Mr. Rajeev Shekhar, Advocate

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
CAV JUDGMENT**

Date : 08-01-2020



Both the cases have common set of facts with claim and counter claims. Hence, they are being heard together and are being disposed of by a common order.

2. There exists a dispute between the father-in-law Baiju Prasad Gupta (petitioner in CrWJC No.3297 of 2018) and the daughter-in-law Priyanka Rani (petitioner in CrWJC No.576 of 2019).

3. The contention of the father-in-law is that his elder son, namely, Gaurav Kumar had married Priyanka Rani @ Neha Gupta in the year 2015. His son and daughter-in-law used to live in his house. Later on, his son got involved in bad company. He took loan from others in his name. He persuaded his son Gaurav Kumar to improve his actions but his misdeed kept on increasing. Being infuriated by such misdeed, he partitioned the properties amongst his sons and wife and himself in the year 2017. From then onwards, his son Gaurav Kumar and his wife used to live separately and they had no connection with his house. Later on, his son abandoned his wife also and his wife used to live with her parents in Patna City. When he along with his family members came to Patna for medical checkup, Kotwali Police Station Case No. 573 of 2018 dated 15.12.2018 was registered against them by his daughter-in-law.



His further case is that on 18.12.2018, the DIG, Magadh Range, Gaya, who is relative of his daughter-in-law directed the SHO to break his house and the SHO along with SDO and local goons broke his house and allowed his daughter-in-law to enter inside the house in his absence in the name of providing justice to his daughter-in-law.

4. On the other hand, the daughter-in-law submitted a written report to the Officer-in-Charge, Kotwali Police Station, Gaya on 15.12.2018 alleging therein that her marriage was solemnized with Gaurav Kumar on 9th December, 2015 as per Hindu rites and rituals at Mahabodhi Restaurant, Bodh Gaya. At the time of marriage, her father had given bullet motorcycle and several other articles in gift. She was blessed with a daughter out of the wedlock aged one year. She was being subjected to cruelty since the date of her marriage by her husband and in-laws. On 15.12.2018, when she came with her daughter to Gaya from her Maik, her father-in-law misbehaved with her and pushed her out of the matrimonial home. He said that unless she brings Rs.3 crores, she would not be allowed to enter inside the house. She has further alleged that her brother-in-law wanted to establish physical relationship with her. He always used to say that since her husband has neglected



her, she should establish physical relation with him. She has further alleged that her husband was maintaining extra marital relation with another girl, namely, Soni Kumari and on protest he used to assault her. She also alleged that on 16.09.2016, her husband and in-laws got her seven months old pregnancy terminated without her consent.

5. On the basis of the aforesaid written report, Gaya (Kotwali) P. S. Case No. 573 of 2018 dated 15.12.2018 was registered *inter alia* under Sections 313 and 498A of the Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act against Gaurav Kumar, Baiju Prasad Gupta and others and investigation was taken up.

6. In the background of facts stated above, the father-in-law Baiju Prasad Gupta filed CrWJC No.3297 of 2018 seeking the following reliefs:-

“(a) To issue a writ in the nature of direction commanding the respondents to restrain from perpetuating illegality by breaking the house and inflicting harms on the property of the petitioner and after issuance of such restraint order, issuance of directions directing the respondents to evacuate the house from persons who have forcibly entered into the house with the aid and help of respondent nos. 6, 7, 10, 11 and



12 and local goons.

(b) Consequent upon issuance of the above direction, issuance of direction to set up an inquiry preferably by CBI into the action of the respondents nos.6, 7, 10, 11 & 12 and payment of compensation to the petitioner for losses suffered on account of illegalities perpetrated by respondent nos. 6, 7, 10, 11 and 12.

(c) To any other relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case.”

7. Similarly, the daughter-in-law Priyanka Rani @ Neha Gupta has also filed a writ petition vide CrWJC No.576 of 2019 seeking the following reliefs:-

“(i) For direction to the respondent Authority to restrain the respondent no. 6 to 8 not to evict the petitioner forcibly and to provide protection to the petitioner as well as her children as threatening is being given by the accused persons (respondent no.6 to 8) to oust them from in law’s house or to kill her.

(ii) To allow others suitable reliefs(s) in facts and circumstances of the case.”

8. For the sake of convenience, the father-in-law will be referred to hereinafter as ‘the petitioner’ and the



daughter-in-law will be referred to hereinafter as 'the respondent'.

9. The issues for consideration before this Court in these cases are :

(I) Whether or not this Court can issue direction to the daughter-in-law and grand daughter of the petitioner to evacuate the house of the petitioner under criminal writ jurisdiction ?

(II) Whether or not direction can be issued to the State and the police authorities for payment of compensation to the petitioner for loss suffered by the petitioner?

(III) Whether or not a direction can be issued to the State authorities to restrain the petitioner and his family members not to evict the respondent forcibly and provide her and her daughter police protection?

10. A submission has been advanced by Mr. Y.V. Giri, learned senior advocate for the petitioner that the petitioner had partitioned his property and provided a home to his daughter-in-law and his son. He had discharged his duties.



His son and the respondent used to live separately and he does not maintain any relation with the household of his son and the respondent. He has contended that subsequently, the petitioner's son had abandoned his wife also and his wife used to live with her parents at Patna City. The house in question belongs to the petitioner and the forcible entry of the respondent was facilitated by the police by forcible unfastening of the lock of the house. The action of the police was wholly arbitrary, illegal and unjust. They have committed a culpable offence by breaking open the house.

11. Per contra, an argument has been advanced by Dr. Anand Kumar, learned advocate for the respondent that the respondent being the daughter-in-law of the petitioner has all the rights to reside in the shared household of her husband. The claim of partition of the family property by the petitioner is fake. He has submitted that the mother-in-law of the respondent has filed Title Suit No.841 of 2018 before the learned Sub-Judge-1st, Gaya to declare that the plaintiff has valid and legal title to the land and property described in Schedule-1 (अनुच्छेद-ख). The respondent and her daughter has filed intervention petition in the said title suit, which is pending. The respondent and her daughter have also filed a Title Partition Suit No. 101 of



2019 in the court of Civil Judge, Senior Division 1st, Gaya for partition of the joint Hindu property which too is pending.

12. He submitted that on 18.12.2018, when the respondent went to her matrimonial home with one year old baby in her lap, the same was locked from outside. She filed an application in the Kotwali Police Station Gaya requesting the police to help her to get inside the house. Since she was carrying a one year old child in her lap and exposure to extreme cold in the month of December could have life threatening to an infant, the police officials helped her and her daughter to get inside the house.

13. The petitioner has pleaded that he has suffered loss on account of breaking of his house. He has prayed that he should be compensated for the loss caused by vandalism by the police officials in collusion with the respondent.

14. The Senior Superintendent of Police, Gaya has stated in his counter affidavit that the police did not enter into the house, but only helped a lady with a one-year child in her lap to get inside the house in pick winter and extreme cold.

15. Having heard respective parties and carefully perused the record, I find that the writ petition bearing CrWJC



No.3297 of 2018 filed by the petitioner involves disputed questions of fact.

16. By now, it is well settled that a writ petition which involves serious disputed questions of facts, which would require consideration of evidence, which are not on record should not normally be entertained.

17. In the case of **Harnath Rathi vs. State of Hyderabad [AIR 1958 AP 222]**, the High Court of Andhra Pradesh took a view that where complicated questions of fact have to be determined, the High Court will not turn itself into a trial court and determine those questions of fact. It observed :

“Although very large powers are conferred on the High Courts under Article 226, the exercise of those powers is not without limitations, because the courts themselves have laid down certain principles limiting the exercise of that power in certain cases such as that the High Court will not convert itself into a court of appeal on merits unless the decision is erroneous on the face of the record, and in matters involving the use of discretion and judgment entrusted to an authority by law, it will not direct that authority to pass orders or itself pass orders on merits, or where complicated questions of fact have to be determined, it will not turn



itself into a trial Court and determine those questions of fact or investigate title, nor will it issue ineffective writs.”

18. In the case of **State of Orissa vs. Dr.(Miss.) Binapani Dei & Ors. [AIR 1967 SC 1269]**, the Supreme Court took a similar view and did not interfere with exercise of discretion of Orissa High Court where the High Court refused to delve into questions of fact.

19. In the case of **Mahant Moti Das vs. S.P. Sahi [AIR 1959 SC 942]**, the Supreme Court observed :

“... whether the trusts are public or private trusts or the properties are private or trust properties are questions which involve investigation of complicated facts and recording of evidence and such investigation could not be done on writ proceedings....”

20. In the matter of **Union of India vs. T. R. Varma [1958 SCR 499]**, the Supreme Court observed that where there is a serious dispute, which cannot be satisfactorily decided without taking evidence, it is not the practice of Courts to decide such questions in a writ petition.

21. Whether this Court in exercise of extra-ordinary jurisdiction under Article 226 can issue direction to the



respondent and her daughter to evacuate the house would depend on the question of fact that whether or not, they have a right to live in the house. This question of fact has to be decided by an appropriate court after taking evidence of both sides. A title suit and a title partition suit relating to property in question are already pending before the subordinate court. Unless the issue is decided on the basis of evidence, no order can be issued to disturb the status quo.

22. The respondent has argued that she being the daughter-in-law and her daughter have all the rights to live in the shared household of her husband.

23. In the opinion of this Court, the question of fact, being disputed and complex in nature, the action of the police in helping the respondent with one year old child in her lap in getting inside the house in the month of December when the exposure of cold could have proved fatal to the infant cannot be held to be illegal, arbitrary or unjust.

24. Whether or not, the petitioner has suffered any loss is also a question of fact and would mainly depend on the question whether the respondent and her daughter have right in the household or not, which is yet to be decided in the court where the suit for partition is pending.



25. Moreover, the allegation of vandalism is not admitted and has not been substantiated with any evidence.

26. Therefore, before the above questions of fact are decided by the court of competent jurisdiction where the suits are pending, there is no ground for allowing the petition filed by the petitioner.

27. Accordingly, CrWJC No. 3297 of 2018 filed by the petitioner is dismissed.

28. As far as the relief prayed for by the respondent in her writ petition vide CrWJC No.576 of 2019 is concerned, it would be relevant to note that in the Domestic Violence Act, the wife acquires a right of residence.

29. In the case of **Vimlaben Ajitbhai Patel vs. Vatslaben Ashokbhai Patel & Ors. [(2008) 4 SCC 649]**, the Supreme Court held :

“The Domestic Violence Act provides for a higher right in favour of a wife. She not only acquires a right to be maintained but also thereunder acquires a right of residence. The right of residence is a higher right. The said right as per the legislation extends to joint properties in which the husband has a share.”

30. Also, in the case of **S.R. Batra & Anr. vs.**



Taruna Batra (Smt) [(2007) 3 SCC 169], the Supreme Court held :

“As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member.”

31. Keeping in mind the facts and circumstances of the case, as discussed hereinabove, as it stands admitted by the petitioner Baiju Prasad Gupta that the respondent daughter-in-law Priyanka Rani @ Neha Gupta with her one year old child is living in the house since 18.12.2018, the Senior Superintendent of Police, Gaya and the SHO, Kotwali Police Station Gaya are directed to provide protection to the respondent and her daughter so that the petitioner or his relatives may not forcibly evict them from the house wherein they are presently living with the petitioner.

32. With the aforesaid observation, CrWJC No. 576 of 2019 stands disposed of.

33. Before parting, it is made clear that this Court has not decided right or title of the parties in respect of



the property in question, which is to be determined by the court of competent jurisdiction in accordance with law in an appropriate proceeding. Any observation made by this Court in these writ petitions shall not prejudice the court below in any proceeding pending between the parties.

34. Registry is directed to transmit a copy of the order to the Senior Superintendent of Police, Gaya.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	06.01.2020
Uploading Date	09.01.2020
Transmission Date	09.01.2020

