

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.729 of 2021

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

=====

SARWESHWAR TIWARY Son of Late Brij Bhushan Tiwari Resident of
Mohalla - E-62, P.C. Colony, P.S. - Kankarbagh, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Old Secretariat, Patna. Bihar
3. The Senior Superintendent of Police, Patna. Bihar
4. The Station House Officer, Kankarbagh, District - Patna. Bihar
5. The Mahila Station House officer, Gandhi Maidan, District - patna. Bihar
6. Smt. Kamna Tiwari Daughter of S.N. Mishra, Wife of Sarweshwar Tiwari
Resident of Raj Kumari Sunder Sadan Apartment, Flat No. 103, Road No. 5,
Ashok Nagar, Kankarbagh, Patna.
7. Sri S.N. Mishra Father of Kamna Tiwari, Son of Not Known to the
Petitioner. Resident of Raj Kumari Sunder Sadan Apartment Flat No. 103,
Road No. 5, Ashok Nagar, Kankarbagh, District - Patna.
8. Smt. Dheera Mishra Wife of S.N. Mishra Resident of Raj Kumari Sunder
Sadan Apartment Flat No. 103, Road No. 5, Ashok Nagar, Kankarbagh,
District - Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Kripa Nand Jha
For the Respondent/s : Mr.A.G

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 3 17-07-2023 The petitioner has filed the present writ application

for a direction to the official respondents to protect life and

property of the petitioner as well as his 71-years old mother, as

they are being ousted from their residential house, situated at E-

92, P. C. Colony, Kankarbagh (Gulzari Bhawan), by respondent

nos. 6 to 8, i.e. wife and parents-in-law of the petitioner, who

have fully occupied the house of the petitioner in the garb of the



order, dated 03.12.2019, passed by the Judicial Magistrate, 1st Class, Patna, in Domestic Violence Case No. 56 of 2018.

The petitioner is working as an Officer, in the Indian Overseas Bank and at present he is posted at Ludhiana, Punjab. His marriage with respondent no. 6 was solemnized on 20.04.2007, as per Hindu rites and rituals. From their wedlock, one female child has been born. The relationship between the petitioner and the respondent no. 6 got disturbed after sometime, leading to lodging of series of cases by both the parties and the petitioner has filed divorce case, being Matrimonial Case No. 704 of 2017. The mother of the petitioner also filed a complaint for alleged assault before the Station House Officer, Kankarbagh Police Station against respondent no. 6 on 06.05.2017.

The respondent no. 6 lodged First Information Report, being Mahila Police Station Case No. 58 of 2017, on 05.09.2017, under Sections 498-A/313/34 of the Indian Penal Code and on 24.04.2018, filed Maintenance Case No. 75 of 2018. On 14.06.2018, Domestic Violence Case No. 56 of 2018 was also filed by the respondent no. 6 against the petitioner and his old mother.

Learned Counsel for the petitioner submits that filing of Domestic Violence Case No. 56 of 2018 and other cases by



respondent no. 6 against the petitioner and his mother is a clear threatening that she will ruin the petitioner and his mother.

The learned Magistrate, on 03.12.2019, allowed the Domestic Violence Case No. 56 of 2018 filed by respondent no. 6 and directed the petitioner to provide shared residence to the respondent no. 6 in the matrimonial home and restrained the petitioner and his mother from dispossessing her in any other manner and not to disturb the possession of the respondent no. 6 in her matrimonial home. At the same time, the learned Magistrate directed the petitioner to pay a sum of Rs. 5,000/- per month to his wife-respondent no. 6 and Rs. 18,000/- per month to his daughter by way of maintenance.

The respondent no. 6, after the order of maintenance and shared residence became emboldened and taking advantage of the same, the respondent no. 6 transferred the household articles and jewellery of the petitioner's mother to the house of her parents-respondent nos. 7 and 8, and also called them to reside with her in the house of the petitioner. The respondent nos. 7 and 8, after putting their house on rent, has started living with their daughter-respondent no. 6 in the shared residence. While the petitioner was on his job, at Ludhiana, he was informed by his neighbours that respondent no. 6 to 8 have



broken the lock of the house of the petitioner and when the petitioner reached his house, he found the household articles and jewellery of his mother missing from there. When the petitioner made enquiry from respondent no. 6 to 8 regarding the missing articles, he was brutally abused and assaulted by fists and slaps by them and pushed the petitioner from his house, telling him that the Court has ordered them right to reside in the house.

In this way, the respondent nos. 6 to 8 have taken control over the entire house, which is beyond the permission of the shared residence granted by the Court, in the order, dated 03.12.2019, in Domestic Violence Case No. 56 of 2018.

In the circumstances, the petitioner filed a complaint before the respondent no. 4, the Station House Officer, Kankarbagh Police Station, on 10.01.2020, but no action has been taken by the police on the complaint of the petitioner. He also submits that the respondent nos. 6 to 8 are not allowing any residential accommodation to the petitioner in his house at Patna and whenever he comes to Patna, he stays in hotel as he is having life threat at the hands of the respondent no. 6 to 8, but no action has been taken by the official respondents. The maintenance and other expenses granted by the learned District Court is being deducted from the salary of the petitioner and the



same is being paid to the respondent no. 6.

I have heard learned Counsel for the petitioner and after going through the material facts of this case, it appears that there is a matrimonial dispute between the petitioner and the respondent no. 6. Several cases having been filed between them, including the divorce case filed by the petitioner and in the Domestic Violence Case No. 56 of 2018 filed by the respondent no. 6-wife, the learned Magistrate has directed the petitioner to provide shared residence to his wife-respondent no. 6 and by virtue of the said order, the respondent no. 6 is residing in her matrimonial home. Admittedly, the order of shared residence has not been challenged by the petitioner. This Court has gathered the impression that it is family dispute between the parties and it goes without saying that if any cognizable offence is committed by anybody, the police is duty bound to take action in accordance with law.

Regards being had to the fact that both the parties are on inimical terms, in my opinion, no direction is needed at this stage by this Court in its extra-ordinary writ jurisdiction.

This application is, accordingly, dismissed.

It goes without saying that if any party commits any cognizable offence in future and the police, after preliminary



enquiry is satisfied that any of the parties has committed a cognizable offence, the police is duty bound to act against the erring person in accordance with law.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

U	√		
---	---	--	--

