

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.954 of 2019

Arising Out of PS. Case No.-35 Year-2018 Thana- MAHILA P.S District- Supaul

SAUDAGAR PASWAN @ SAUDAGAR KUMAR Son of Ramkhelawan
Paswan @ Ram Lochan Paswan Resident of Village-Madhura, Police Station-
Kishanpur, District-Supaul.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Director General Of Police, Patna.
2. The Inspector General of Police, Darbhanga.
3. The Superintendent of Police, Supaul.
4. The Sub-Divisional Police Officer, Supaul.
5. The Officer-in-Charge Supaul Mahila Police Station, Supaul.
6. The Investigating Officer of Supaul Mahila P.S Case No.35/2018. Supaul

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Amar Nath Yadav
For the Respondent/s : Mr. M. Nasrul Huda Khan

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 04-04-2023 Heard learned counsel for the parties.

This application is filed for quashing of the FIR vide
Supaul Mahila P.S. Case No. 35/2018 dated 16.03.2018
registered under section 493 of the Indian Penal Code and all
the consequential proceeding arising out of the aforesaid F.I.R.

As per the F.I.R. the informant is a widow and the
petitioner is her brother-in-law (*devar*). It is alleged that three
years ago the husband of the informant had died and thereafter
the informant started living with her in-laws. It is also alleged
that the accused persons along with petitioner assured her that



her marriage would be solemnized with petitioner and thereafter the petitioner established physical relationship with the informant and the same is continued till one year. It is also alleged that when the informant pressurized for marriage the petitioner refused and threatened him of dire consequence.

This case was taken up for hearing on 19.06.2019 before a co-ordinate Bench of this Court. After hearing the parties, the following order was passed:-

“ It is submitted by the learned counsel for the petitioner that the entire criminal prosecution is bad in law in view of the fact that the first information report was instituted under Section 493 of the Indian Penal Code without the order of a Magistrate. He has contended that the only offence under which the first information report was instituted is a non-cognizable offence. Hence, in view of sub-section (2) of Section 155 of the Code of Criminal Procedure, the police had no authority to investigate the case without the order of a Magistrate having power to try such case or commit the case for trial.

Learned counsel for the State prays for four weeks' time in order to enable him to seek instructions and file counter affidavit in the matter.



As prayed for, put up on 17.07.2019.

In the meantime, further proceedings in connection with Supaul Mahila P.S. Case No.35 of 2018 pending in the court of S.D.J.M. Supaul shall remain stayed.”

Thereafter, a counter affidavit has been filed by respondent no. 3 (Superintendent of Police, Supaul) wherein the submission of petitioner is not disputed in view of the fact that the F.I.R. could not have been filed in this case. Paragraph no.6 of the counter affidavit is reproduced hereinbelow:-

“6. That, contents made in Paragraph No. 1 of the present writ petition are relief(s) claimed by the petitioner before the Hon’ble Court, for which no specific answer is required from the respondent named above, except that the cognizance of offence has been taken by the Ld. Court below against the petitioner and trial of the case is still pending before the learned Court below, however no doubt, negligence has been committed by the then S.H.O. Supaul Mahila P.S. in the course of lodging the F.I.R. as well as to arrest the petitioner in connection with Supaul Mahila P.S. Case No.



35/2018, for which the respondent named above tenders unconditional and unqualified apology for the act or omission, on the part of then S.H.O., Supal Mahila P.S.- and further, it is being submitted that an explanation has been called for from then S.H.O. Supaul Mahila P.S. for her such act & omission vide Memo No.- 1730 dated 23/03/2023.”

In view of the above statement made in the counter affidavit, the F.I.R. lodged against the petitioner is an abuse of the process of law. Accordingly, this application is allowed and the F.I.R. vide Supaul Mahila P.S. Case No. 35/2018 dated 16.03.2018 registered under section 493 of the Indian Penal Code and all the consequential proceeding arising out of the aforesaid F.I.R. are hereby quashed in the interest of justice.

(Sandeep Kumar, J)

Ranjeet/-

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