

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.542 of 2022

Arising Out of PS. Case No.-138 Year-2021 Thana- MAHILA P.S. District- Patna

1. Swopnajeet Mohapatra, Son of Shri Sushil Kumar Mahapatra, Occ.- Services, Residing at A-404, Reverscape CHS, Casa Rio Palava City, Kalyan Shil Road, Dombivli East- 421 204, Maharashtra.
2. Shri Sushil Kumar Mohapatra, S/o Late Ramkrishna Mohapatra, Occ.- Retired, Residing at A-404, Reverscape CHS, Casa Rio Palava City, Kalyan Shil Road Dombivli East- 421 204, Maharashtra.
3. Smt. Harpriya Das, W/o Shri Sushil Kumar Mahapatra, Occ.- Retired, Residing at A-404, Reverscape CHS, Casa Rio Palava City, Kalyan Shil Road Dombivli East- 421 204, Maharashtra

... .. Petitioners

Versus

1. The State of Bihar through the Secretary, Home Department, New Secretariat, Patna, Bihar at the instance of Mahila Police Thana, Gardanibaug, P.S.- Patna, Bihar.
2. The City SP, Gandhi Maidan Road, Muradpur, Patna, Bihar- 800001.
3. The Inspector of Mahila Police Thana @ IO Smt. Usha Sinha, Gardani Baug, Patna.
4. Smt. Neetu Prasad, Address in Dombivli- Flat No. 202, Utopia B, Casa Bella Gold, Kayan Shil Road, Dombivli East- 421201, Address in Patna- 4031, Sunny Towers Mohalla, Buddha Colony Hospito India K. South, District- Patna, Mob.- 9987091360, 8433985041

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Pravashankar Mishra, Advocate
For the State	:	Ms. Divya Verma, AC to AAG-3
For the Resp No. 4	:	Mr. Arun Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 29-01-2024

This writ application has been preferred invoking the extraordinary writ jurisdiction of this Court to quash and cancel the first information report being Mahila P.S. Case No. 138 of 2021 registered for the offences alleged under Sections 323, 498A read with 34 of the Indian Penal Code and Section 3/4 of the Dowry

Prohibition Act. The petitioners also prayed for providing protection as they have imminent threat to their life and liberty.

Brief facts of the case

2. The writ application was initially filed on behalf of three petitioners. The petitioner no. 1 is the husband of the respondent no. 4. According to the statements made in the writ application, he is having a brilliant academic and professional career throughout his life. He is currently the Organization Head designated as Vice President (Head of Strategy, CEO's Office), Nayara Energy Limited at Mumbai.

3. The petitioner no. 2 is a Retired District & Session Judge, Bhubaneswar who has served in various districts of Orissa as a Judicial Officer for thirty-five long years having a very successful and unblemished career record throughout. He is the father of petitioner no. 1 and father-in-law of respondent no. 4. Petitioner no. 3 is a retired School Teacher of Government Girls High School, Badasankha, Puri, Orissa. She is the mother of petitioner no. 1 and mother-in-law of respondent no. 4.

4. It is the case of the petitioners that there was a love-cum-arranged marriage of petitioner no. 1 with respondent no. 4 according to the Hindu Rites and Customs. The respondent no. 4 came to Mumbai after spending two weeks' time in Bhubaneshwar and started living together in a rented house. They got a baby born

out of the wedlock. It is stated that petitioner no. 1 and respondent no. 4 together purchased a flat at Mumbai with a booking amount of Rs.27,000/-. The petitioner no. 1 was traveling to various countries for business, hence, he used to transfer the money to the informant so that she can arrange for the builder's payments directly. The interior of the flat was completed in the year 2016 thereafter they shifted to new house in March, 2016. At this stage, petitioner nos. 2 and 3 were invited to attend the house warming ceremony.

5. It seems that over the period, the petitioner no. 1 and respondent no. 4 fell apart. At this stage, this Court need not take note of each and every detail furnished by the petitioners in the writ application. Suffice is to say that petitioner no. 1 filed a petition in the learned Principal Judge, Family Court, Bhubaneswar, Orissa for dissolution of marriage and according to him, two summons were served upon respondent no. 4 but she did not appear in the court, instead she went to Patna, Bihar to her father's place and lodged a complaint with Mahila Police Station with her ulterior motive of merely harassing the petitioners and bring disrepute by lowering the relation.

Contents of the complaint

6. It is stated in the FIR that respondent no. 4 is employed on the post of General Manager in Reliance Industries Limited since the year 2007 and at the time of lodging of the FIR, she was residing

at Patna in the residence of her father, it was Covid-19 period and she was working from home. According to her complaint, the marriage between the petitioner no. 1 and the informant was solemnized on 19.08.2008 at Patna whereafter the informant went to her husband's place at Bhubaneswar and lived with him for few days. It is stated that thereafter she came to her work place at Mumbai and was living with her husband.

It is alleged that over the period, since the father-in-law and mother-in-law of the informant had retired from service, they were called at Mumbai and they started living together. It is alleged that during their stay, the mother-in-law and father-in-law started interfering with day-to-day affairs of the informant which led to domestic disturbances. At this stage, it is alleged by way of an example that the informant purchased a flat at Mumbai from her own earning and she paid consideration money from her bank account but her father-in-law got the name of her husband entered in the sale deed as first purchaser and name of the informant as second purchaser. Then, it is alleged that the mother-in-law and father-in-law took control of all the ornaments worth Rs.8,00,000/- which she had received from her parents. It is further alleged that during the period 2008-2017, her mother-in-law and father-in-law took about Rs.36,00,000/- from her and all these amounts were given to them through bank account. On demand allegedly made by the informant,

her husband, father-in-law and mother-in-law started torturing her to the extent of giving her beating and since last four years, they were pressurizing her to get her name expunged from the sale deed of the flat in question and when the informant did not agree for the same, all the three left the flat, started living in a rented flat. While leaving the flat, they also took away the daughter of the informant and they were not allowing her to meet her daughter.

Efforts to settle the dispute through mediation

7. At this stage, let it be recorded that when this writ application was taken up for consideration, learned counsel for the petitioners and learned counsel for the informant as also petitioner no. 1 requested this Court to send the records to the Mediation Center attached to this Court for taking efforts for amicable settlement. Learned counsel for the informant submitted that the informant may visit the Mediation Center after twenty days, therefore, they made a request to fix the case after 26th of September, 2022. This Court agreed with the request of the parties and fixed 10th of October, 2022 at 12:30 pm for the informant and petitioner no. 1 to appear before the Mediator.

8. Subsequently, when this case was taken up on 29.11.2022, this Court was informed that the mediation could not take place but considering the best interest of the girl child, this Court requested Ms. Nivedita Nirvikar, learned Senior Counsel for

the petitioners and Ms. Soni Srivastava, learned counsel for the respondent no. 4 to take their time in talking to the girl child so as to make her understand her interest in being in touch with her mother also.

9. Both learned counsel assured this Court that they will try their best to talk to the girl child in this regard and apprise this Court. The record would show that the case was adjourned on some more days on the request of the parties. In the meantime, the police submitted a charge-sheet and this Court has been informed that learned court below has passed an order taking cognizance.

Petitioner no.1 withdraws

10. When this writ application was taken up for consideration on 02.01.2024, at the outset, learned counsel for the petitioners submitted that he would not press this application on behalf of the petitioner no. 1 at this stage and would reserve his right to seek his remedy in accordance with law at appropriate stage. Petition was argued on behalf of petitioner nos. 2 and 3 only. This Court permitted learned counsel for the petitioners to withdraw this application on behalf of petitioner no. 1 with liberty as prayed for.

Submissions on behalf of petitioner nos. 2 and 3

11. In course of submissions, learned counsel for the petitioners would submit that on a bare reading of the first

information report, it would appear that both the husband and wife are highly educated and well-placed in career as a professional.

12. Learned counsel for the petitioner nos. 2 and 3 submits that these two petitioners are 77 years and 73 years old respectively who live at Bhubaneswar. The marriage between the petitioner no. 1 and respondent no. 4 was a love marriage. They were fully grown up and well-placed in life, the petitioner nos. 2 and 3 simply endorsed their proposal of marriage. There is no allegation that at the time of marriage, there was any demand of dowry.

13. Learned counsel submits that although in the FIR, a false and flimsy allegation has been made that between the year 2008 and 2017, the respondent no. 4 had transferred Rs.36,00,000/- in the account of the petitioner nos. 2 and 3, the fact is that for purpose of purchase of flat at Mumbai, certain transactions had taken place. Jewelries of the respondent no. 4 are kept in the Bank locker with her consent and the allegation that those were taken control by the petitioner nos. 2 and 3 is a mere concocted story. They are not in control of her jewelries.

14. Learned counsel submits that the kind of allegations made in the FIR would not be believable as the petitioner nos. 2 and 3 who are old aged people living at Bhubaneswar after their retirement cannot be said to be involved in torturing the respondent no. 4 and giving her a beating. The respondent no. 4 is spending most

of her time abroad and she earns a handsome yearly salary in crores. She has no interest in her daughter and the daughter is willingly living with her father.

15. Learned counsel submits that it is one of those cases in which the old aged parents of the husband have been made accused just to harass them and torture the husband as well as her near kith and kin.

16. Learned counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court in the case of **Kahkashan Kausar alias Sonam and Others Vs. The State of Bihar and Others** reported in **(2022) 6 SCC 599** wherein the Hon'ble Supreme Court has held that the Court should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths and must keep in mind that the relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out. In the F.I.R. itself it is stated that all the three had left the flat and started living in a rented accommodation, therefore much before lodging of this case at Patna admittedly her husband was living separately. Prior to lodging of this F.I.R. no complaint was ever lodged at Mumbai or Bhubaneshwar.

17. Learned counsel has further relied upon the judgment of the Hon'ble Supreme Court in the case of **Preeti Gupta and**

Another Vs. State of Jharkhand and Another reported in (2010) 7 SCC 667.

18. It is submitted that in this case, the marriage was solemnized in the year 2008 and a daughter was born out of the said marriage to the parties in the year 2011. The flat in question was purchased in joint name and both the parties are claiming that they have contributed to the purchase of the flat from their respective accounts. The FIR in this case has been lodged in the year 2021 after about fourteen years of the marriage making completely baseless allegations, hence, it would be appropriate to exercise extraordinary power of this Court to quash the FIR and charge-sheet so as to stop the abuse of the process of the Court and harassment of the petitioners.

Stand of Respondent No. 4

19. On the other hand, learned counsel for respondent no. 4 has opposed the writ application. It is submitted that on 03.11.2022, in the third sitting of the Mediation, considering that the possibility of restoration of matrimonial relationship was a remote possibility, one time settlement of the issues was also discussed but once again, owing to the arrogant stand of the petitioner, amicable settlement of the dispute could not materialize. The petitioner no.1 and respondent no.4 had participated in the mediation.

20. Learned counsel for the respondent no. 4 submits that there being allegations against petitioner nos. 2 and 3 and now that a charge-sheet has already been filed against them, this Court need not interfere with the criminal proceeding and the petitioner nos. 2 and 3 must face the trial. A copy of the charge-sheet has been placed on the record with the counter affidavit of respondent no. 2.

Consideration

21. Having heard learned counsel for the parties and on perusal of the records, this Court finds that in this case, the marriage between the petitioner no. 1 and respondent no. 4 had been a love marriage out of their own will and volition. Both of them were employed in reputed organizations at senior positions and had independent source of income. There is no allegation that for the purpose of marriage or thereafter, there was any demand of dowry, though it is alleged after fourteen years of marriage that the petitioner nos. 2 and 3 had received Rs.36,00,000/- in their accounts from the respondent no. 4 and her father.

22. Given the kind of transactions done between the parties in which a flat was also purchased at Mumbai in joint name and this allegation is being made after 14 years of marriage after the petitioner no.1 had already moved a competent court of law at Mumbai seeking dissolution of marriage by a decree of divorce, this

Court is of the opinion that the allegations levelled against them are mere pretext to rope them in the present case.

23. From the FIR itself, it appears that the petitioner no. 1 and respondent no. 4 were living together at Mumbai, they had purchased a flat in the year 2011 and had a daughter out of the marriage born in the year 2011. The tone and tenor of the first information report lodged in the year 2021 clearly demonstrate that the parents of the petitioner no. 1 have been implicated in this case only because they are the kith and kin of the husband of respondent no. 4. The allegations made in the FIR are highly improbable, the petitioner nos. 2 and 3 are old aged people who have been living separately at Bhubaneswar after their retirement from service. Petitioner no. 2 has served as Judicial Officer for thirty five years in the State of Orissa whereas petitioner no. 3 is a retired Teacher from a Government School.

24. In the case of **State of Haryana and Others Vs. Bhajan Lal and Others** reported in **1992 Supp (1) SCC 335**, the Hon'ble Supreme Court has laid down the principles which are required to be taken care of for the purpose of quashing of the first information report. Paragraph '102' from the said judgment is quoted hereunder for a ready reference:-

“**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a

series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

25. In the given facts of this case, this Court has no iota of doubt that the petitioner nos. 2 and 3 have been involved in this case only with a malafide intention to harass them, allegations are flimsy and are coming after fourteen years of marriage. On the basis of such allegations, the petitioner nos. 2 and 3 are being sought to be prosecuted at their old age and evening of their life. This Court is, therefore, of the considered opinion that it is a case of malafide prosecution and is liable to be quashed to stop the abuse of the process of the Court as well as in the interest of justice.

26. This Court is, therefore, quashing the first information report of Mahila P.S. Case No. 138 of 2021 as well as charge-sheet

filed in this case as regards petitioner nos. 2 and 3. Consequent upon this, the further proceeding shall stand vitiated.

27. This writ application stands allowed in respect of petitioner nos. 2 and 3.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
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Uploading Date	29.01.2024
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