

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.88827 of 2024

In
Criminal Writ Jurisdiction Case No.1294 of 2023

Arising Out of PS. Case No.-88 Year-2021 Thana- ISLAMPUR District- Nalanda

Upendra Kumar, S/o Sri Jodhi Thakur, Resident of Village- Makraut, P.S.-
Chiksaura, District-Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Nalanda at Biharsharif, Distt.- Nalanda, Bihar
3. Then Child Protection Home, Gaya (BAL Grih, Gaya), Bihar
4. The Superintendent of Police, Nalanda at Biharsharif, Bihar
5. The Officer-In-Charge, Islampur Police Station, Distt.- Nalanda, Bihar
6. Mithilesh Ram, Son of Ramdhani Ram Resident of Village- Brahmgawan,
P.S.- Islampur, Distt.- Nalanda
7. The Principal Utkaramit Madhyamik Vidyalaya, Brahmgawan, Anchal-
Islampur, Distt.- Nalanda, Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Veena Kumari Jaiswal, Advocate
For the Opposite Party/s : Mr. Abhay Kumar Roy, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 10-01-2025 1. The petitioner has filed an application for modification of the judgement, dated 19th of March, 2024, passed in Cr. W.J.C. No. 1294 of 2023. The petitioner of the said writ petition claims to be the husband of one Rani Kumari. The said Rani Kumari is in protective home under the Juvenile Justice (Care and Protection) Act, 2015, on the ground that she allegedly was a minor at the point of time. This Court, considering Section 94 of the said Act and the decision of the



Hon'ble Supreme Court rendered in *Ashwani Kumar Saxena vs. State of M.P.*, reported in (2012) 9 SCC 750, dismissed the writ petition.

2. The learned Advocate on behalf of the petitioner has approached this Court by filing the instant Cr. Misc. Case praying for modification of the aforesaid judgement passed in Cr. W.J.C. No. 1294 of 2023 on the ground that the alleged wife of the petitioner has attained the age of majority in the meantime and she should be released under the custody of her husband.

3. This Court is in serious doubt as to whether a Cr. Misc. Case under Section 482 of the Cr.P.C. is maintainable for modification of a judgement passed under constitutional writ jurisdiction. Article 226 of the Constitution of India is a plenary power of the Constitutional Court to protect fundamental and/or legal right of a person. Section 482 of the Cr.P.C., on the other hand, operates completely in different field and modification of an order of the Writ Court cannot lie by introducing a provision under Section 482 of the Cr.P.C. The petitioner is ofcourse entitled to pray for review of the order of the Writ Court applying the principle of Section 114 of the Code of Civil Procedure.



4. Thus, this Court finds that the instant Cr. Misc. Case is not maintainable and the same is dismissed.

5. However, the petitioner is at liberty to take appropriate steps before the jurisdictional Juvenile Justice Board for her wife’s release under the custody of her husband. It is made clear that in the said petition, the petitioner shall make the parents of his wife opposite parties so that all interested parties may come forward before the Board and appropriate order can be passed hearing all the parties, interested, for custody of the lady.

6. With the above direction, the instant Cr. Misc. Case is disposed of.

(Bibek Chaudhuri, J)

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