

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2451 of 2025
In
Criminal Writ Jurisdiction Case No.1760 of 2025

Arising Out of PS. Case No.-55 Year-2025 Thana- PARWALPUR District- Nalanda

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Sitbiya Devi W/o Late Mohan Chouhan R/o vill - Mohinuddinpur, P.O. -
Pesaur, P.S.- Biharsharif, Distt.- Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, the Deptt. of Home, Govt. of Bihar, Patna
2. The Principal Secretary, The Deptt. of Home, Govt. of Bihar, Patna
3. The District Magistrate, Nalanda at Biharsharif Bihar
4. The Chairman, Child welfare Committee, Nalanda at Biharsharif Bihar
5. The Superintendent, child Welfare Committee, Nalanda at Biharsharif Bihar
6. The District Magistrate, Nawada Bihar
7. The Chairman, Child Welfare Committee, Nawada Bihar
8. The Superintendent, Child Welfare Committee, Nawada Bihar
9. The Station House Officer, Parwalpur Police Station, Distt.- Nalanda Bihar
10. The Investigating Officer, Parwalpur P.s. case no. 55/2025, Distt- Nalanda Bihar
11. Rekha Devi W/o Sanjeev Prasad R/o vill - Fatehpur, P.S.- Parwalpur, Distt.- Nalanda

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Niranjan Kumar, Adv. Mr. Abhijeet Kumar, Adv.
For the State	:	Mr. Prabhu Narayan Sharma, AC to AG
For the Respondent no.11:	:	Mr. Amrendra Kumar Singh No. 1, Adv. Mr. Shilendra Kr. Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 28-01-2026

The petitioner has filed the present writ seeking the
following reliefs:-

(I) For issuance of writ in the nature of 'Certiorari' or any other appropriate writ for release of the daughter-in-law of the petitioner namely, Shweta Kumari forthwith, who has illegally and erroneously been detained in the Child Welfare Committee (C.W.C.), Biharsharif, Nalanda since 27.05.2025 (now shifted to C.W.C., Nawada) by the order dated 27.05.2025 passed in Parwalpur P.S. Case No. 55/2025 passed by the Learned court of Sri Divyesh Kumar, J.M.-V 1st Class, Hilsa, Nalanda by reviewing his own order



dated 30.04.2025 having without authority of law and the same is not permissible in the entire provisions of B.N.S.S., 2023 and by quashing the order dated 27.05.2025 passed in Parwalpur P.S. Case No. 55/2025 by reviewing its own order although the Hon'ble Supreme Court of India has clarified in catena of judgements that there is no provision in the Criminal Procedure Code, 1973 (now B.N.S.S., 2023) that empowers a Magistrate to review or recall an order passed by him.

ii) For issuance of writ in the nature of mandamus or any other appropriate writ for payment of adequate compensation to the petitioner/victim woman for illegal detention and also take punitive action against the police authorities/personnel, who are in connivance with private respondent no.-11, in the interest of justice.

iii) For issuance of any other order or orders which your Lordships may deem fit and proper in the facts and circumstances of the case.

02. Briefly stated facts leading to the institution of the present writ are one FIR was lodged by respondent no. 11 against the FIR named accused persons and others for forcibly taking away of her minor daughter and Parwalpur P.S. Case No. 55 of 2025 has been registered under Section 96 of the Bharatiya Nyaya Sanhita (in short 'BNS'). Subsequently, the victim girl was produced before the learned Judicial Magistrate and her statement under Section 183 of the BNSS was recorded. It appears the age of the victim was assessed to be 19 years and she also disclosed her age to be 19 years before the learned Judicial Magistrate. In her statement recorded under Section 183 BNSS she stated that her father and one friend of his father has been pressurizing her to marry somewhere else whereas she has



already solemnized marriage and on 06.04.2025 she reached her matrimonial home and started living in her matrimonial home. On coming to know about lodging of the present case, she reached the police station. She further deposed that she was not kidnapped and she also showed her willingness to return to her matrimonial home. It further transpires that on 30.04.2025, the learned Judicial Magistrate-V took note of the statement of the victim girl recorded under Section 183 BNSS and made query from the victim girl as to where she wanted to go. Before the learned Judicial Magistrate, the victim girl stated that she wanted to go to her matrimonial home with her mother-in-law Sitbiya Devi, the petitioner herein. The petitioner was present before the court and she was allowed to take the victim girl with her to her house. It is pertinent to note here that the victim girl is claimed to have solemnized marriage with the son of the petitioner namely Vikash Kumar on 13.07.2024 and a certificate to this effect has been issued by Vedic Samaj Kalyan Samiti, Ghaziabad. Further the marriage has been registered on 15.07.2024 in accordance with Uttar Pradesh Marriage Registration Rules, 2017. It also transpires that earlier the mother of the victim girl had lodged Parwalpur P.S. Case No. 91 of 2024 on 17.06.2024 under Section 366A of the IPC and



Section 4, 8 of the POCSO Act and the husband of the victim girl was taken into custody. Subsequent to the order passed on 30.04.2025 allowing the victim girl to go to her matrimonial home, an application has been filed by the mother of the victim girl through the learned public prosecutor mentioning therein that victim is minor and lodging of earlier Parwalpur PS. Case No. 91 of 2024. Learned Judicial Magistrate-V taking note of the application filed by the mother of the victim and going through the education certificates found the victim girl to be minor, and considering her safety and security, ordered her to be kept in the custody of Child Welfare Committee, Bihar Sharif. This order has been challenged before this Court.

03. Learned counsel for the petitioner submitted that the impugned order is completely illegal as after passing the order dated 30.04.2025, the learned Judicial Magistrate was not competent to recall/review the said order and reviewing its order is against the provision of Section 362 of CrPC/ 403 of the BNSS. The Hon'ble Supreme Court, in a number of decisions, has held that once the Court has passed the orders, it has got no power to recall the said order. Therefore, order dated 27.05.2025 is bad in law and against the provisions of BNSS. The order dated 27.05.2025 passed in Parwalpur P.S. Case No. 55 of 2025



is in complete violation of principles laid down in a catena of decisions by the Hon'ble Supreme Court.

04. Learned counsel further submitted that the age of the victim girl was assessed to be 19 years by the learned Judicial Magistrate. The medical board constituted under the Chairmanship of Civil Surgeon/CMO Nalanda gave its opinion that the age of victim girl was 18-19 years. The victim girl also stated her age to be 19 years before the learned Judicial Magistrate and showed her willingness to lead her life according to her wishes. The victim girl is competent to take any decision for herself being able to understand the consequences of her acts. Therefore, her rights could not be curtailed on saying of her mother or any of her family members. The victim has categorically expressed her desire to go to her matrimonial home and exercise her fundamental right of life and liberty and freedom of movement and the said freedom has been curtailed by the illegal order of the learned Judicial Magistrate. Learned counsel further submits that the victim girl is pregnant and she has been kept confined in the custody of the Child Welfare Committee, Nalanda whereas the petitioner who is her mother-in-law is ready to take her back to her home to take care of her but due to orders of the Court, this piquant situation has arisen.



05. Learned counsel also submitted that even though judicial orders of Civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution, the manifest illegality in the impugned order needs interference by this Court. Such order could be considered and set aside by this Court under writ jurisdiction. Such illegal orders should not be allowed to remain on record. In this regard the learned counsel referred to the decision of the Division Bench of this Court in the case of ***Rikhab Chand Jain Vs. State of Bihar, 1979 PLJR***

5. Learned counsel also referred to the case of ***Sweta Kumari Vs. State of Bihar and Ors., Cr. WJC No. 253 of 2008*** wherein the Hon'ble Division Bench of this Court allowed the petitioner to live with her husband and further allowed her to go with the family members of her husband finding that petitioner was major and intelligent enough to appreciate her future. Learned counsel also referred to the case of ***Rahul Kr. Singh & Anr. Vs. State of U.P. and Ors., 2015 SCC OnLine All 8557*** in support of his contention.

Learned counsel further submitted that the victim girl is not an accused and she is not a victim as being alleged. She has voluntarily left her house and solemnized marriage with the son of the petitioner but instead of honouring her wishes, her



life and liberty has been curtailed by a judicial order which is illegal in itself. Therefore, after setting aside the impugned order the victim girl be released and be allowed to go to her matrimonial home.

06. Learned counsel appearing on behalf of the informant, at the outset, submitted that the petitioner has no locus. Her son Vikash Kumar is already married and is also having a child. There is no question of reviewing or recalling its order by the learned Judicial Magistrate as no determination of age was made and the order dated 30.04.2025 was passed considering the mere statement of the victim girl under Section 183 of the BNSS. But the victim girl is minor and her educational certificate showed her date of birth to be 10.09.2010 and therefore, she is still a minor. It is the duty of the Court to protect the child victim and pass orders for such protection keeping in mind the interest of the child. Therefore, when the documents were produced before the learned Judicial Magistrate it went on to pass orders handing over the custody of the victim to Child Welfare Committee as her parents were not present before the Court.

07. Learned counsel appearing on behalf of the State/respondents submitted that the victim in this case is a child



in need of care and protection. Further Section 27(1) of the Juvenile Justice (Care and Protection of Children) Act (in short 'the JJ Act') prescribes that the State Government shall constitute for every district one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committee in respect of children in need of care and protection. Thereafter, Section 36 of the JJ Act provides that on production of a child, the Committee shall hold an inquiry and may pass an order to send the child to the children home or shelter home or a fit facility or a fit person. Further, it is the Child Welfare Committee which is competent to determine the age of the child in need of care and protection under Section 94 of the JJ Act. Therefore, the order of learned Judicial Magistrate allowing the victim girl to go to her matrimonial home with the petitioner was only a temporary order and no finality was attached to it as there was no determination of age of the victim girl. Therefore, passing of further order dated 27.05.2025 is not hit by Section 362 of the CrPC/403 of the BNSS and the impugned order is perfectly legal and does not need any interference by this court.

08. I have given my thoughtful consideration to the rival submission of the parties.



09. The issue before this Court is whether the learned Judicial Magistrate-V, Nalanda was justified in passing the order dated 27.05.2025 once he passed the order dated 30.04.2025 and allowed the victim of Parwalpur P.S. Case No. 55 of 2025 to go to her matrimonial home with her mother-in-law.

10. Section 403 of the BNSS (erstwhile Section 362 of the CrPC) provides as under:-

403. Court not to alter judgment.

Save as otherwise provided by this Sanhita or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

11. So it is clear that once a Court has delivered a judgment or passed a final order, it cannot subsequently alter or recall this order by passing a subsequent order. It has been vehemently contended on behalf of the respondents that no final orders were passed by the learned Judicial Magistrate and the learned Judicial Magistrate has rightly proceeded in the matter and entrusted the custody of the victim to Child Welfare Committee which in turn has kept her in shelter home.

12. But I am not convinced with such argument. Once the learned Judicial Magistrate has taken a view that the victim girl was major and solicited her wishes and she showed her



desire to go with the petitioner to her matrimonial home, it was a final order. The subsequent order does not show for a moment that the previous order was passed temporarily or was a transient order and final orders were yet to be passed. Therefore, however erroneous might be the previous order, no Court is allowed to alter or withdraw it in contravention of the provision under Section 362 of the CrPC/Section 403 of the BNSS. Hon'ble Supreme Court in the case of *Mohammed Zakir Vs. Shabana & Ors., 2018 (15) SCC 316* and in the case of *Rambali Sahni Vs. State of Bihar, SLP No. 357 of 2026* observed that Section 362 of the CrPC clearly mandates that once the judgment or order is signed, no alteration or review of the same is permissible except to correct a clerical or arithmetical error.

13. There is another aspect of the matter. Once the victim girl was held to be a minor and allowed to go to her matrimonial home with the petitioner, overturning the said order and allowing her custody, now to the Child Welfare Committee without serving any notice to the victim girl or the petitioner is against the principles of natural justice. If the Court was inclined to pass orders against the petitioner or the victim girl, it was duty bound to serve a notice to them and not serving such



notice makes the order of the learned Judicial Magistrate bad in the eyes of law and therefore unsustainable even on this ground. Therefore, the impugned order is not sustainable due to manifest illegality.

14. Having regard to the aforesaid discussion, and considering the manifest illegality in the proceeding before the learned trial court, I have no hesitation in interfering in the matter under extraordinary jurisdiction of this Court to set aside this wrong perpetrated by a judicial order. Therefore, the order dated 27.05.2025 is set aside and order dated 30.04.2025 is restored.

15. If the court concerned feels that there needs to be proper adjudication with regard to determination of age, it can pass appropriate orders but only after giving opportunity of hearing to the victim.

16. Accordingly, the present writ petition stands allowed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	09.01.2026
Uploading Date	28.01.2026
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