

**(2023) 11 PAT CK 0057**

**In the Patna High Court**

**Case No :** Criminal Writ Jurisdiction Case No. 1379 Of 2022

Priyanka Rani @ Neha Gupta

APPELLANT

Vs

State Of Bihar

RESPONDENT

**Date of Decision :** 29-11-2023

**Acts Referred:**

Indian Penal Code, 1860 — Section 34, 120B, 188, 191, 193, 203, 204, 211, 219, 313, 323, 341, 342, 353, 370, 370(a), 374, 498A, 504  
Code of Criminal Procedure, 1973 — Section 164, 173(8)  
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 75, 79  
Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 — Section 14(a)  
Dowry Prohibition Act, 1961 — Section 3, 4  
Information Technology Act, 2000 — Section 65B

**Citation :** (2023) 11 PAT CK 0057

**Hon'ble Judges :** Anil Kumar Sinha, J

**Bench :** Single Bench

**Advocate :** Mithilesh Kr. Arya, Manish Kumar, Rana Vikram Singh, Sanjeev Kumar, Arun Kumar No. 1, S. Sinha, Deepak Kumar

**Final Decision :** Dismissed

## **Judgement**

1. The petitioner has filed the present writ application for the following reliefs:

i) For direction to the Respondent No. 2 to appoint an independent agency i.e. C.B.I. in view of law laid down by Hon'ble Supreme Court in the case of 1995 Cri.L.J.3612 for the purpose of registration of prosecution against the Respondents No. 6 to 11 for the offences punishable under Section 188, 191, 193, 203, 204, 211, 219 of I.P.C. read with Sections 120B and 34 of the I.P.C. and to proceed against them in accordance with law.

ii) For direction to the Respondent No. 2 for initiating enquiry against the Respondent No. 6 to 8 in the matter of violation of provisions of law, and to take action against them.

iii) For direction to the Respondent No. 1 to file and initiate contempt

proceedings against the respondents police officers for disobeying the law laid down by the Hon'ble Supreme Court of India and this Hon'ble Court from time to time in the matter.

iv) For direction to the Respondent No. 2 to immediately suspend the Respondents No. 6 to 8 for not performing their duties in the manner required;

v) Pass appropriate directions to the Home Ministry / Respondent No. 1 to frame rules so as to avoid such false implications of citizens at the hands of corrupt criminal minded police personnels.

2. The brief facts giving rise to the present writ application as brought by the petitioner is that on 09.12.2015 the petitioner was married as per Hindu rites and rituals to one Gaurav Kumar, who is the son of respondent nos. 9 & 10. The petitioner alleges that at the matrimonial home she was subjected to torture, humiliation and harassment mentally and physically at the hands of her husband, who was involved in gambling, drinking liquor and having illicit relation with other woman, which would be evident from the complaint filed by the respondent no. 9 against her son. In the hope of reform of the conduct and behaviour of her husband, the petitioner tried her best to stay in her matrimonial home and during the course of her stay she gave birth to a female child on 13.10.2017. After birth of female child torture, harassment and humiliation upon the petitioner by her in-laws aggravated and the life of the petitioner became hell. She stated that at the instance of the respondent no. 6 (Nandoi of the petitioner), who is posted as A.S.P. (Vigilance Department, Patna) some police personnel without any lady constable and without following the procedure of law on 03.09.2019 at about 11:00 P.M. broke open the door where the petitioner along with her minor daughter was residing (matrimonial home). The Kotwali Police forcibly took away one 09 year old boy namely, Dheeraj Kumar, who is the son of the maid working in the matrimonial home namely Shakuntala Devi. Accordingly, an F.I.R. bearing Kotwali P.S. Case No. 406 of 2019 under Sections 342 / 323 / 370 / 370 (a) / 374 / 353 of the I.P.C., Section 75 / 79 of the J.J. Act and Section 14 (a) of the Child and Adolescent Labour Act was lodged against the petitioner.

3. The petitioner contends that in order to compel her to withdraw all cases filed by her against her in-laws, the respondent nos. 6 to 11 hatched a conspiracy and in execution of the same the boy Dheeraj was abducted by Kotwali Police so that petitioner and her family members can be dragged in a false and frivolous case. The petitioner relies upon Annexure P-4 i.e. conversation between local Kotwali Police and the respondent no. 6 in support of her allegation. The mother of the abducted child moved an application for custody of her son before the C.J.M., Gaya in Kotwali P.S. Case No. 406 of 2019 wherein the court on 04.10.2019 directed the I.O. to release the child in favour of the mother. The petitioner had made an application on 09.10.2019 regarding the said incident to S.S.P., Gaya. She filed several representations and complaints before various authorities which are annexed at Annexures-12 to 19 of this writ application. There are series of

litigations between the petitioner and private respondents, which are mentioned hereinbelow:-

(i) Petitioner on 24.10.2018 filed D.V. Case No. 21 of 2018 before the A.C.J.M., Patna City alleging torture and harassment against her in-laws.

(ii) Petitioner on 15.12.2018 lodged an F.I.R. bearing Kotwali P.S. Case No. 573 of 2018 under Section 498A, 341, 323, 504, 313 & 34 of the I.P.C. and Section 3 / 4 of the D.P. Act against her in laws.

(iii) S.D.M., Sadar Gaya issued letter bearing no. 1316 / legal dated 20.12.2018 with regard to incident dated 18.12.2018 when the petitioner went to her matrimonial home but same was locked from outside. With the help of Kotwali Police she was facilitated entry.

(iv) Respondent no. 9, who is the father-in-law of the petitioner filed Cr.W.J.C. No. 3297 / 2018 in order to get the petitioner evicted from the matrimonial home, which was dismissed vide order dated 08.01.2020.

(v) Petitioner on 30th March 2019 filed one Cr.W.J.C. No. 576 of 2019 which was allowed and S.H.O. of Kotwali Police Station Gaya was directed to provide protection to the petitioner and her daughter so that her in-laws may not forcibly evict them from the house where they are presently living.

4. Learned counsel for the petitioner submits that when the respondent nos. 6 to 11 could not succeed in their objective to get the petitioner evicted from matrimonial home, they hatched another conspiracy for implicating the petitioner in a false frivolous case in order to get her evicted from matrimonial home and also to pressurize her to withdraw all the cases which would be evident from the conversation (Annexure P-7) along with the transcript. He further submits that the respondent no. 7 i.e. A.S.I. Rekha Kumari along with some police personnel visited the shop of the father of the petitioner in connection with Kotwali P.S. Case No. 406 / 2019 and abused her brother in public view in order to degrade and lower down the dignity and reputation of the family members of the petitioner. The in-laws of the petitioner falsely implicated her in another F.I.R. bearing Kotwali P.S. Case No. 179 of 2020 registered under Sections 342, 323, 370, 370(a), 374 of the I.P.C. and Section 75 / 79 of the Juvenile Justice Act in conspiracy with local police of Kotwali Police Station at the instance of the respondent no. 6 by managing and manipulating a poor girl namely Nahida, who had leveled derogatory and defamatory allegation against the petitioner. Charge sheet in the said F.I.R. has been filed on the basis of perfunctory investigation at the behest of the respondent no. 6. The C.C.T.V. footage installed at the house of the petitioner and nearby house has not been taken into consideration before submission of charge sheet. It has further been submitted that the respondent no. 11 in order to harass and humiliate the petitioner made a complaint before the District Grievance Redressal Officer, Gaya for cancelling the drug license of the petitioner, which was the only source of her income and the drug license of the petitioner has been cancelled vide order dated 04.07.2022 by the Assistant

Drug Controller, Gaya. The petitioner is having a daughter aged about 05 years who goes to school but her studies are being affected because the petitioner has to attend court cases accompanying her daughter. The future and career of her daughter are at stake because the in-laws of the petitioner are influential persons of the society and are successfully managing Police Department and also able to manage the lower judiciary.

5. On the other hand, learned counsel appearing for the private respondents argued that present writ application has been filed by suppressing vital and material facts from this court. This court vide its order dated 06.12.2022 directed the S.S.P., Gaya to review all the cases after giving opportunity of hearing to the petitioner and to take appropriate view of the matter. He further submits that a quashing application was filed by the respondent nos. 9, 10 & 11 bearing Cr. Misc. No. 59895 / 2021 for quashing of the order of cognizance passed by C.J.M., Gaya under Sections 341, 323, 504, 498A I.P.C. and Section 34 of the Dowry Prohibition Act. By order dated 13.10.2022 a Bench of this court stayed further proceedings of Kotwali P.S. Case No. 573 of 2018. The opposite party no. 2 therein i.e. the petitioner filed "vakalatnama" on 07.11.2022 and counter affidavit on 17.11.2022 in the quashing application filed by the private respondents. On 06.12.2022 when the present writ application was taken up for hearing, the petitioner had the knowledge about the stay order dated 13.10.2022 passed by this court in Cr. Misc. No. 59895 / 2021 but this court was not informed about the same. This amounts to deliberate suppression of vital information from the court.

6. The petitioner is in the habit of harassing the respondents in one way or the other. She has already filed Domestic Violence Case No. 21 of 2018, which is pending before learned A.C.J.M., Patna City. Miscellaneous Case No. 25 of 2019 for maintenance has also been filed by the petitioner, which is pending before the learned Family Court, Gaya. In the said Miscellaneous Case interim maintenance of Rs. 18,000/-per month has been awarded. Defamation Case No. 1261 of 2022 has also been filed by the petitioner and is pending before learned Judicial Magistrate, 1st Class, Gaya. The husband of the petitioner, who has surprisingly not been made respondent in the present writ application has filed Matrimonial (Divorce) Case No. 1405 of 2019 in which the petitioner has appeared and proceeding is going on.

7. Learned counsel further submits that the audio is not a trustworthy evidence. The petitioner has not submitted certificate under Section 65B of the I.T.Act. Therefore, unless authenticity and veracity of the alleged audio is tested, the same cannot be a ground for proceeding against the private respondents. Even the transcript of the said audio does not prima facie show the complicity of the respondent nos. 6 in any manner. Hence, the allegation is baseless and mala fide act of the petitioner. He also submits that the principle of natural justice provides for hearing of both the parties i.e. petitioner and private respondents in order to ascertain the veracity and truthfulness of the contents of the transcript of the

alleged audio but the petitioner has misrepresented before the Police and the Police has committed illegality by not noticing the private respondents while considering the fake script of the alleged audio. All the matters were before the learned court below, but the learned court below did not take cognizance of offences and did not summon the respondent no. 6. Being infuriated by non summoning of the private respondent no. 6, the petitioner has devised a new ploy to implicate the private respondents including the respondent no. 6. The petitioner has not made out a case for exercise of writ jurisdiction of this court. The private respondents are made party malafidely in order to extract personnel gains. The writ petitioner is filing many frivolous cases against the private respondents on one pretext or the other. The present case is an example of raking up issues which are more than three years old and all matters are pending consideration before different learned courts below. In the name of review as per order dated 06.12.2022 the police authority is harassing the private respondents. Accordingly, the Police authorities may be directed not to harass the private respondents.

8. Learned counsel for the State referring to the counter affidavit submits that pursuant to the order dated 06.12.2022 police reviewed the cases i.e. Kotwali P.S. Case No. 573 / 2018, Kotwali P.S. Case No. 406 / 2019 and Kotwali P.S. Case No. 179 of 2020. In course of review of Kotwali P.S. Case No. 573 of 2018 the informant and her brother were called and detailed statement of the informant was taken. Since the investigation of this case was closed, directions have been given to conduct further investigation under Section 173 (8) Cr.P.C. Further the S.H.O., Kotwali Police Station has been directed to conduct detailed investigation from the concerned doctor on the allegation of the informant that abortion was done without her consent and submit a report in this regard. Regarding Kotwali P.S. Case No. 406 of 2019 instituted by the Labour Enforcement Officer, City Gaya against the petitioner under Sections 342, 323, 370(A), 374 , 353 I.P.C. and Section 14(A) of the Child Labour Act and Section 75 / 19 of the Juvenile Justice Act, it has been submitted that upon investigation and supervision, the S.P., Gaya found the case true (report- R/3) and subsequently I.G., Magadh Range, Gaya directed to submit charge sheet against the petitioner -Neha Gupta, Manorma Devi and Shekhar Kumar Sah. In course of review direction has been given to get the statement of Dheeraj Kumar [victim] and her mother recorded under Section 164 Cr.P.C. and also to obtain complete injury report of the victim.

9. With regard to the status of Kotwali P.S. Case No. 179 of 2020 directions have been given to conduct further investigation under Section 173 (8) of the Cr.P.C. On 22.01.2023 statement of the writ petitioner was recorded through video conferencing during which she claimed to have some call recordings and C.C.T.V. footage. Accordingly, she has been advised to submit all such evidences on which she relied. S.H.O., Kotwali Police Station has been directed to seize audio and video clip in accordance with law and get the same examined by Forensic Science Laboratory, Patna. Learned counsel further submits that latest status of Kotwali P.S. Case No. 573 of 2018 , Kotwali P.S. Case No. 406 of 2019 and Kotwali P.S.

Case No. 179 of 2020 have been brought on record by way of counter affidavit of the respondent no. 4.

10. I have heard learned counsel for the parties and have gone through the materials produced by them. The petitioner has prayed for a direction to the D.G.P., Patna to appoint an independent agency i.e. C.B.I. for initiating prosecution against the respondent nos. 6 to 11 for their act of omission and commission and take action against them. Admittedly both the parties are family members making allegations and counter allegations. Several cases have been lodged by both the parties against each other. This court on 06.12.2022 directed the S.S.P., Gaya to review all the pending cases and in pursuance thereof report has been submitted by S.S.P., Gaya who after hearing the petitioner and her brother issued necessary direction for further investigation in the matter and also to get the audio / video clip examined by the Forensic Science Laboratory, Patna.

11. Taking into consideration the attending facts and the fact that higher Police authority is supervising the case and has issued necessary directions for further investigation, in my opinion, the petitioner is not entitled to be given the reliefs as prayed for in the writ application.

12. Accordingly, the writ application stands dismissed.