

(2023) 04 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : Others Writ Petition No. 30 Of 2017

Rabiya Bashir

APPELLANT

Vs

State Of J&K & Ors

RESPONDENT

Date of Decision : 07-04-2023

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 406, 498A
Code Of Criminal Procedure, 1989 — Section 488
Code Of Criminal Procedure, 1973 — Section 107, 117(3)

Citation : (2023) 04 J&K CK 0006

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : S. H. Thakur, Numan, Mohsin Qadiri, M. S. Reshi

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) The petitioner has invoked the writ jurisdiction of this Court seeking a direction upon the respondents to ensure her safety and that of her family members including their property. A further direction has been sought upon the respondents to produce the status report of the investigation in FIR No.27/2016 for offences under Section 498-A and 406 RPC registered with Women's Police Station, Rambagh, Srinagar. The petitioner has also challenged Nikah Nama dated 09.09.2015 and marriage agreement dated 10.09.2015 executed by her and respondent No.8, which, according to the petitioner, is based upon fraud, deception and exploitation.

2) It is case of the petitioner that she was forced to enter into a wedlock with respondent No.8, who had already contracted three marriages. It is further submitted that respondent No.8 is a notorious militant and he forced the petitioner to sign Nikah Nama and marriage agreement whereafter she was kidnapped and kept in illegal confinement till 15.12.2016. It is submitted that respondent No.8 has sexually exploited the petitioner on the strength of a sham

Nikah Nama and marriage agreement. It has been submitted that the petitioner was thrown out by respondent No.8 from his house after he had satisfied his lust and she was exposed to immoral acts by the said respondent. It has also been submitted that the petitioner has given birth to a child and even that child was taken away by respondent No.8 on different excuses. According to the petitioner, she has lodged FIR No.27/2016 for offences under Section 498-A and 406 RPC against the private respondents but no concrete action is being taken against them by the police. It is further submitted that the petitioner and her family members are being threatened by the private respondents and the police is not taking any action in the matter.

3) Respondents No.8 to 13 have filed their objections to the writ petition in which it has been submitted that the Nikah Nama was executed by the petitioner and respondent No.8 out of voluntary consent of the parties in accordance with Muslim Law and out of the said wedlock, a male issue was born on 15.12.2016. It has been submitted that the petitioner has implicated respondent No.8 in a false and frivolous case and he has been granted bail by the learned trial court in the said case. According to private respondents, after marriage, attitude of the petitioner remained hostile towards respondent No.8 and his family members which resulted in a matrimonial dispute. It has been further submitted that the petitioner has filed a petition under Section 488 of the J&K Cr. P. C before the competent court of law. It is further submitted that after marriage, the petitioner continued to serve in the Health Department and has even pursued higher studies to which respondent No.8 did not object at all. It has been contended that the petitioner has raised disputed questions of fact which cannot be determined in these proceedings.

4) The official respondents in their reply have submitted that on the basis of the complaint made by the petitioner, FIR No.27/2016 for offences under Section 498-A and 406 RPC was registered by Women's Police Station, Rambagh, Srinagar. After completion of investigation a charge sheet has been laid against respondent No.8 before the competent court for judicial determination. It is also submitted that on the basis of the complaint made by the petitioner with Police Station, Parimpora, proceedings under Sections 107 and 117(3) Cr. P. C were initiated against respondents No.8 to 13 and in this regard a complaint was filed before the Executive Magistrate, Central West, Srinagar, so as to ensure safety of the petitioner and her family members.

5) I have heard learned counsel for parties and perused the pleadings.

6) The grievance of the petitioner is that respondent No.8 and other private respondents are highhanded persons and they are threatening her as well as her family members. According to the petitioner, she was thrown out of her matrimonial house by respondent No.8 and she is not being maintained by him. In this regard it is to be noted that on the basis of the complaint filed by the petitioner, already FIR stands registered which, after investigation, has culminated into a challan against respondent No.8. The same is awaiting judicial

determination by the concerned Magistrate. Any order that may be passed by this Court with regard to the proceedings pending before the learned Magistrate would amount to usurping his powers and prejudging the issue, which is impermissible in law.

7) So far as the maintenance part is concerned, the petitioner has already moved the Magistrate and the proceedings in this regard are pending before the Magistrate. A Division Bench of this Court, while deciding an appeal filed against interim order dated 29th January, 2020, passed by this Court, has noted that the execution petition regarding execution of maintenance order is pending before the Court of Judicial Magistrate, 1st Class (Judge Small Causes), Srinagar, and liberty has been given to the executing court to proceed with the execution and to bring it to a logical conclusion within a period of four weeks. So, even the maintenance part of the petitioner has also been taken care of and no directions are required to be passed in this regard by this Court in these proceedings.

8) The petitioner has thrown challenge the Nikah Nama and the marriage agreement by terming the said documents as fake and based upon fraud. According to respondent No.8, these documents were executed by the petitioner with her voluntary consent. The question whether or not these documents are result of a fraud or deception, becomes a disputed question of fact which cannot be gone into by this Court in these proceedings. It is open to the petitioner to challenge the said documents by way of a civil suit before the appropriate forum.

9) Another prayer which has been sought by the petitioner is with regard to her protection and the protection of her family members. In this regard it would be open to the petitioner to approach to concerned police authorities and if there is any necessity for grant of police protection, the police can, after assessing of threat perception of petitioner, provide adequate security to her and her family members.

10) For what has been discussed hereinbefore, I do not find any merit in this petition. The same is dismissed. However, it is provided that in case the petitioner feels any insecurity from the private respondents, she is at liberty to approach the police authorities who shall, upon assessing the threat perception, provide adequate security to the petitioner and her family members.