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**(2018) 09 PAT CK 0003**

**In the Patna High Court**

**Case No :** Criminal Writ Jurisdiction Case No.1463 of 2018

Sunita Kumari

APPELLANT

Vs

State Of Bihar & Ors

RESPONDENT

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**Date of Decision :** 05-09-2018

**Acts Referred:**

Indian Penal Code, 1860 — Section 147, 148, 149, 286, 302, 307

Explosive Substances Act, 1883 — Section 3, 4

Code Of Criminal Procedure, 1973 — Section 41, 41A, 42, 43, 44, 45, 46, 47, 70, 72, 74, 79, 79(1), 79(2), 100

**Citation :** (2018) 09 PAT CK 0003

**Hon'ble Judges :** RAJEEV RANJAN PRASAD, J

**Bench :** Single Bench

**Advocate :** Indeshwari Prasad Mandal, Anjani Kumar

**Final Decision :** Disposed off

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## **Judgement**

1. This writ application has been instituted taking note of a letter dated 28.05.2018 written by this petitioner to the Honâ??ble Chief Justice of this

Honâ??ble Court.

2. A perusal of the written complaint would show that according to the petitioner on 26.05.2018 when her husband who is an advocate was not in the

house situated at village-Dhanaut, P.S.-Rupaspur, District-Patna at about 5.30 PM two labourers deployed by the petitioner were working in carrying

on sand from the front side of the house, all of a sudden a police vehicle on which â??police station Rupaspurâ?? was inscribed together with one

Scorpio in which some persons in civil dress were sitting stopped at her house, they started asking the labourers as to whether any person from

Bhagalpur had come to the house of the advocate for purpose of bail.

3. The petitioner alleged that when she opened the door and asked them about the matter, they did not reply and all of them entered in the house and chamber of the advocate, they started searching out the files and asked them to talk to the advocate on the mobile but they did not stop. It is further alleged that some persons in police dress and some in civil dress entered in other rooms of the house they despoiled the beds and searched the Almiras. Some persons took the labourers on the upper floor of the house and started searching for someone, they also indulged in beating the two labourers namely Anil and Rikki. On the asking of the office in-charge Ramesh Chandra they stopped beating. It is alleged that Ramesh Chandra was saying that the advocate was obtaining bails for the criminals.

4. The petitioner was further told that one Dharmendra Mandal who was a criminal from Bhagalpur had come to the advocate for purpose of bail. It is alleged that the police personnel were talking in a bad manner and because of that children in the house were also threatened. They were speaking bad language and for about one hour they continuously kept on doing their misdeeds. The petitioner alleged that police personnel had taken photograph of the two labourers and they had sent it on WhatsApp somebody in order to enquire whether or not they are the persons for whom the police was looking for. It is stated that the police personnel, in the pretext of search of a person entered in the house of petitioner, pushed the petitioner and forcibly entered in her house, they also assaulted the labourers and thereby they have brought down the reputation of the family of petitioner. The facts stated herein also reveals that the husband of the petitioner is a lawyer practicing in this Court and is attached as junior advocate to a learned government advocate.

5. After registration of the criminal writ petition, pursuant to the directions issued by this Court, counter affidavits have been filed on behalf of respondent no.3 (the Senior Superintendent of Police, Patna), respondent no.5 ( the officer in-charge, Rupaspur police station), the Superintendent of Police, Bhagalpur, the S.H.O., Babarganj Police Station, Bhagalpur and the investigating officer, Babarganj Police Station, Bhagalpur. The petitioner has filed reply to the counter affidavit in order to contest the stand of these respondents.

6. From the counter affidavit of respondent no.3 it appears that according to the

respondent, the investigating officer of Babarganj police station in connection with Mauzahidpur (Babarganj) P.S. Case No.115/15 dated 15.06.2015 under Sections 147, 148, 149, 302, 286 and 307 of the Indian Penal Code and Section 3 and 4 of the Explosive Substances Act came to the Station House Officer, Rupaspur police station on 26.05.2018, he was carrying a non-bailable warrant of arrest dated 4.2.2016 issued by the learned Chief Judicial Magistrate, Bhagalpur against accused Dharmendra Mandal, son of Sri Bindeshwari Mandal. The investigating officer sought assistance of Rupaspur police station in order to execute the warrant of arrest, according to the investigating officer the accused was residing within the jurisdiction of Rupaspur Police Station in Dhanaut in the house of this petitioner. It is stated that the Station House Officer deputed one Shri Ashok Kumar Jha, ASI, of Rupaspur police station who was on patrolling duty to accompany Mr. Ramesh Chandra, the I.O. of Mauzahidpur (Babarganj) P.S. Case No.115 of 2015. The counter affidavit further states that there was a report that the accused Dharmendra Mandal, son of Shri Bindeshwari Mandal was presently residing in the house of his own uncle, namely, Sri Indeshwari Prasad Mandal at Dhanaut under Rupaspur police station in his three storied building and was presently engaged in supervision of tiles installation in the newly constructed house and when the police arrived there, one lady (the petitioner herein) and her daughter/son were present at the house along with some labourers and they were watching the police force from the terrace.

7. It is further stated that the petitioner was shown the warrant of arrest from the outside of the house and she was requested to open the door to execute the warrant of arrest, but the door was not opened and in the meantime an unknown person was found leaving from the terrace towards terrace of nearby building by jumping who ultimately fled away through a lane and could not be apprehended. It is stated that when the petitioner opened the door accused Dharmendra Mandal was not found inside the house. The allegations made in the written complaint against the police officials have been denied. It is stated that the accused is own nephew of the husband of the petitioner and, therefore, the house in question was searched not because it was house of an advocate but because there were information to the police force that the accused is concealing in the house of his uncle who is of course a lawyer practicing in this Court. It is stated that the

petitioner has portrayed a picture that the police was attacking on her husband's profession and reputation which is not correct. It is stated that the provisions of Section 47 Cr.P.C. has been duly complied with besides other statutory provisions in the matter of execution of warrant of arrest.

8. In the counter affidavit filed on behalf of the respondent no.5 the same stand, which has been taken on behalf of the respondent no.3, has been reiterated. In paragraph 18 of the counter affidavit, the respondent no.5 has admitted the fact to the extent that the house of the petitioner was searched for finding the accused in order to execute the warrant of arrest by the investigating officer concerned with the assistance of Rupaspur police station. The allegation of beating the workers and/or hurting any person present in the house have been denied. It is stated that the job of the police was confined to search the person concerned and only broad questions with respect to the absconder were asked, but there too the petitioner did not divulge that the accused Dharmendra Mandal was her husband's own nephew. In paragraph 24 even though it has been denied that for one hour police was present in the house, but it is stated that incident did not long for more than thirty minutes. Annexure-A to the counter affidavit of respondent no.5 is the written request of the investigating officer of Babarganj police station to the officer in-charge of Rupaspur police station to assist in course of execution of warrant of arrest. Annexure-B with the counter affidavit is a copy of the non-bailable warrant of arrest dated 4.2.2016. There is also attached an execution report of Sub-Inspector of Police dated 14.07.2017 showing that the warrant of arrest issued against Dharmendra Mandal was returned without execution earlier on 14.07.2017 showing that he was absconding from his house. The said report dated 14.07.2014 is that of the Sub-Inspector of Police, Rajaun police station, District-Banka.

9. A counter affidavit has also been filed on behalf of the Superintendent of Police, Bhagalpur which has been sworn by Deputy Superintendent of Police (Headquarter-1), Bhagalpur. He has also taken a stand that on the basis of a confidential information received by police of Babarganj O.P. that the accused Dharmendra Mandal is presently living at Patna in the house of uncle Indeshwari Prasad Mandal, S.I. Ramesh Chandra along with Arms guard proceeded to Rupaspur police station. A photocopy of Station Diary Entry

has been enclosed as Annexure-F, F/1 and F/2 respectively.

Attention of this Court has been drawn towards Station Diary Entry No.517/18.

10. By filing a supplementary counter affidavit, the officer in-charge, Rupaspur police station (respondent no.5) has attempted to respond to the

queries made by this Court vide its order dated 24.07.2018. As regards the query no.(i) whether warrant in question was directed to the police officer

who had come from Bhagalpur to execute the same, the stand is that the copy of the requisition letter of the investigating officer who had come from

Bhagalpur district was already enclosed at Annexure-B to the counter affidavit. There is no other document in possession of the answering

respondent. Regarding query no.(ii) whether the said warrant of arrest was endorsed by the officer in-charge of Rupaspur police station before

deputing the A.S.I. of Rupaspur police station to accompany the police officer visiting from Bhagalpur, it is stated that on the request of Sri Ramesh

Chandra, Investigating Officer, the answering respondent endorsed the matter to ASI Shri A.K. Jha. Finally as against query no.(iii) whether the

procedures prescribed under Section 100 of the Code of Criminal Procedure was complied with before going for search inside the house of petitioner

and what measures were taken to comply with the provisions of the Code when the police officers found that female member of the family was there

inside the house, the stand of respondent no.5 is that the search was made by Sri Ramesh Chandra i.e. the investigating officer who came with

warrant to execute the same and, therefore, on this aspect the necessary facts can be placed by him.

11. There is also a counter affidavit of the S.H.O., Babarganj police station who has supported the investigating officer stating that the A.S.I.,

Babarganj Police Station had proceeded to Rupaspur police station as per direction of the then Dy.S.P. City Md. Saharyar Akhtar. The Investigating

Officer has himself filed a counter affidavit in which he has stated that on 8.3.2017 he took charge of the investigation of this case along with warrant

of arrest available with the records. After receiving the confidential information regarding presence of accused Dharmendra Mandal he had

proceeded for Patna along with police force and reached Rupaspur police station at 16 Hrs. on 26.05.2018 and handed over an application enclosing

Photocopies of warrant of arrest, F.I.R. Supervision note, report-2 report to the

S.H.O., Rupaspur police station. The A.S.I. Ashok Kumar Jha along with police force of Rupaspur Police Station had proceeded for Dhanaut in the house of petitioner. He has taken the same plea as have been taken in the counter affidavit filed on behalf of the S.H.O., Rupaspur police station and the Senior Superintendent of Police, Patna.

12. In her reply to the counter affidavit, petitioner has stated that there are material contradictions in the statement of respondent no.5 and the I.O.

Babarganj police station. It is stated that the respondent no.5 in his counter affidavit has appended Annexure-A, the request letter and warrant of arrest dated 4.2.2016, Annexure-B and other documents and has claimed that warrant of arrest dated 4.2.2016 was surrendered/returned back on

14.07.2017 itself vide D R-1523 and since then no fresh warrant of arrest appears to have been received in Rupaspur police station. It is submitted

that for conducting the search in the house of petitioner no legal step was taken by S.H.O., Babarganj, I.O., Babarganj and S.H.O. Rupaspur police

station. She has stated that when the police party reached and entered in the house of petitioner there was no lady police officer/constable as a

member of the raiding party. The case of the petitioner is that the police force forcibly entered in the house and attached office of the advocate and

then humiliated the petitioner and her family. It is submitted that the police party forcibly entered in the house of the petitioner without having a lady

member in the squad, the police officer forcibly searched the entire house where in certain gold articles of the petitioner is found missing.

13. By filing another supplementary counter affidavit, the Superintendent of Police, Bhagalpur has brought on record the Station Diary Entries of

26.05.2018 and 27.05.2018.

14. Having heard learned counsel for the parties and on perusal of the records what has come out as an admitted fact in the present case is that one

Dharmendra Mandal is an accused of Babarganj P.S. Case No.115/15 under various provisions of the Indian Penal Code and the Explosive

Substances Act. There is also a warrant of arrest against him which was issued on 4.2.2016 by the learned Chief Judicial Magistrate in whose

jurisdiction the case is pending at Bhagalpur. It is also admitted position that the accused Dharmendra Mandal happens to be the nephew of the

husband of the petitioner and husband of the petitioner is an Advocate practicing

in this Court. On 26.05.2018 the husband of the petitioner was not in the house and village Dhanaut.

15. In the aforementioned background, the Sub-Inspector of Police, Babarganj Police Station is said to have received an information on 26.05.2018

that the accused Dharmendra Mandal is living in the house of his uncle and looking after the work of the house. On this information it is stated that by

informing the senior police officer whose name has not been disclosed in the Station Diary Entry by the S.H.O. of Babarganj Police Station, a team of

police force under the command of Ramesh Chandra, A.S.I., Babarpur police station proceeded on the same day at 10.30 A.M. The said team of

police officer led by A.S.I. Ramesh Chandra reached Rupaspur Police Station at 4.00 P.M. (within five and half hours) from Bhagalpur. Neither the

Station Diary Entry nor the affidavits brought on record reveal the mode of communication from Bhagalpur to Patna. The allegation is that along with

the police jeep of Rupaspur police station some persons in civil dress were there in the Scorpio who had reached at the house of the petitioner at 5.30

P.M.

This fact has not been denied in any of the affidavits and, therefore, this Court would believe that along with the police jeep of Rupaspur Police Station

some persons in civil dress had been there in the Scorpio and they reached together in the house of the petitioner. Since the mode of communication

from Bhagalpur to Patna has not been disclosed in the Station Diary or in the affidavits filed on behalf of the S.H.O. and Sub-Inspector of Police of

Babarganj police station, this Court has reasons to believe that the mode of communication has purposely not been disclosed. The S.H.O., Babarganj

police station has recorded in the Station Diary on 26.05.2018 at 9.00 A.M. that after giving information to the senior officers a team is being sent to

Patna, in the counter affidavit he has disclosed the name of officer i.e. the Dy.S.P. Md. Saharyar Akhtar but in the counter affidavit it is stated that on

the order of the Deputy Superintendent of Police, S.I. was sent. Superintendent of Police, Bhagalpur in the affidavit has not supported the version of

the S.H.O. and in fact the affidavit of the Superintendent of Police, Bhagalpur is totally silent on this aspect of the matter. This Court while hearing the

matter was given to understand on behalf of the State that S.I. of Babarganj police station had visited the Patna after seeking permission from the

senior police officers and the order of the competent authority who is said to have passed order directing the police officer of Babarganj police station

shall be placed on record, but in the affidavit filed on 31.08.2018 no whisper at all has been made about any such order of a competent authority.

16. The affidavit has only enclosed a copy of the Station Diary Entry which is already available on the record along with the counter affidavit of

respondent no.5. This Court would thus also believe that the S.I. of Babarganj police station had proceeded to Patna to execute the warrant dated

4.2.2016, reached Rupaspur police station, sought assistance of officer in-charge of Rupaspur police station and then reached at the house of the

petitioner where he led the search inside the house of the petitioner to find out the accused Dharmendra Mandal.

17. So far as the provisions contained under the Code of Criminal Procedure are concerned, Chapter V of the Cr.P.C. deals with the arrest of

persons. Section 41 lays down the circumstances under which any police officer may without an order from a Magistrate and without a warrant,

arrest any person. Section 41-A talks of notice of appearance before the police officer, 41-B provides the procedures of arrest and duties of officer

making arrest. 41-D incorporates the right of arrested person to meet an advocate of his choice during interrogation. Section 42 is about arrest on

refusal to give name and residence, Section 43 lays down the procedures to be followed in case of arrest by private person, Section 44 is a provision

relating to arrest by Magistrate, Section 45 laid down the protection of members of the Armed Forces from arrest, Section 46 provides the methods

and methodology as to how the arrest is to be made. Section 47 is important from the point of view of the present case. Section 47 reads as under:-

47. Search of place entered by person sought to be arrested. (1) If any person acting under a warrant of arrest, or any police officer

having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being

in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto, and afford all

reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained under subsection (1), it shall be lawful in any case for a person acting under a warrant and in any case

in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter

such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or

place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance

duly made, he cannot otherwise obtain admittance:

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom,

does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to

withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

(3) Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order

to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.â??

18. Chapter VI Cr.P.C. deals with the provisions of processes to compel appearance of an accused. Part B under Chapter VI deals with warrant of

arrest. Sections 70 to 79 of the Code of Criminal Procedure would be relevant to be taken note of for the purpose of present case as under:-

â??70. Form of warrant of arrest and duration.â?"(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the

presiding officer of such Court and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

71. Power to direct security to be taken.â?"(1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement

on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until

otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall stateâ?

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is

issued, are to be respectively bound;

(c) the time at which he is to attend before the Court.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

72. Warrants to whom directed.â?"(1) A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them.

73. Warrant may be directed to any person.â?"(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71.

74. Warrant directed to police officer.â?"A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

75. Notification of substance of warrant.â?"The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

76. Person arrested to be brought before Court without delay.â?"The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person:

Provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

77. Where warrant may be executed.â?"A warrant of arrest may be executed at any place in India.

78. Warrant forwarded for execution outside jurisdiction.â?"(1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it,

such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate

or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive

Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner

hereinbefore provided.

(2) The Court issuing a warrant under sub-section (1) shall forward, along with the warrant, the substance of the information against the person to be

arrested together with such documents, if any, as may be sufficient to enable the Court acting under section 81 to decide whether bail should or should

not be granted to the person.

79. Warrant directed to police officer for execution outside jurisdiction.â?"(1) When a warrant directed to a police officer is to be executed beyond

the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a police officer

not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom

the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local

jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such

endorsement in any place beyond the local jurisdiction of the Court which issued it.â?"

19. From the reading of the aforementioned provisions of the Code of Criminal Procedure one thing is crystal clear that every warrant in the form

prescribed under Section 70 of the Cr.P.C. remains in force until it is cancelled by the Court which issued it, or until it is executed. According to

Section 72 a warrant of arrest shall ordinarily be directed to one or more police officers and Section 74 provides that a warrant directed to any police

officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

20. In the present case Annexure-A to the counter affidavit of respondent no.5 is a copy of the warrant issued by the court of learned C.J.M.,

Bhagalpur. The endorsement made on the warrant nowhere shows that it is directed to any police officer or to any person, however, as a matter of

practice and in the facts of the case it is not in dispute that the warrant of arrest was directed to the investigating officer of the case who was earlier

investigating the matter and from whom the present investigating officer Sri Ramesh Chandra had taken the charge only on 8.3.2017. From Annexure-

B to the counter affidavit of respondent no.5 it further appears that warrant as contained in Annexure-B was sent for execution to the Sub-Inspector

of Police, Rajaun Police Station under whose jurisdiction the warrant Dharmendra Mandal has his native place. The warrant of arrest was returned

by Rajaun police station saying that the accused is absconding and hence the warrant could not be executed, hence, the same is being returned for

further action. In these conditions, the warrant dated 4.2.2016 remained unexecuted, but there is nothing on record to show that it was ever cancelled

by the learned C.J.M., Bhagalpur. If it was not cancelled as is evident from the records, in the opinion of this Court, the warrant of arrest remained

valid and was fit to be executed by Sub-Inspector of police, S.I. Ramesh Chandra who had taken charge from the previous investigating officer.

21. So far as the validity and executability of the warrant of arrest and the competence of Sri Ramesh Chandra, S.I. of Babarganj police station to

execute the warrant are concerned, this Court finds the same in favour of the S.I. Ramesh Chandra. The only question which now remains for the

consideration is as to whether Sub-Inspector of Police while executing the warrant outside the jurisdiction had followed the procedures prescribed

under the Code of Criminal Procedure. In the present case, the warrant was in the hand of a police officer who was in-charge of the case in question

(investigating officer of the case Ramesh Chandra), he had confidential information that accused Dharmendra Mandal is residing in the house of Sri

Indeshwari Prasad Mandal in the village Dhanaut under Rupaspur police station, therefore, in terms of Section 79 (1), he was required to execute the

warrant beyond the local jurisdiction of the court issuing the same. He went to the officer in-charge of Rupaspur Police Station and requested him in

writing to assist him in arrest of the accused. According to sub-section (2) of Section 79 when the police officer of the police station within the local

limits of whose jurisdiction the warrant is to be executed shall endorse his name thereon, such endorsement shall be sufficient authority to the police

officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant. In

the present case, it is true that there is no endorsement on the warrant but Annexure A is the written request of the S.I. to the Officer-in-

Charge, Rupaspur Police Station. Annexure B bears the endorsement of Rupaspur Police Station, therefore, in the opinion of this Court,

mandate of Section 79 (2) Cr.P.C. is also satisfied.

22. In the opinion of this Court, the Sub-Inspector of Police, Babarganj police station was competent to execute the warrant of arrest dated 4.2.2016

and he had substantially followed the mandatory provision of Section 79 (1) and (2) in the matter of executing the warrant of arrest outside the

jurisdiction of the court who had issued the said warrant.

23. No doubt husband of the petitioner is a practicing advocate of this Court, here the stand of the respondents is that police had gone to the house

only to execute the warrant against Dharmendra Mandal who is own nephew of the husband of the petitioner. It was not a case of search of the

house for seizure of any document or material. It was a coincidence that the husband of the petitioner is an advocate, this Court finds that in the given

circumstance where the own nephew of the advocate is an accused and there was an information that he was residing in the house of the Advocate,

it cannot be said that the police could not have gone to the house in search of the accused. The only thing as regards the procedural aspect which goes

against the Investigating Officer, Babarganj Police Station is that he had gone there in a civil dress in a Scorpio. Since this allegation of the petitioner

has not been denied by the S.I. Babarganj or the Officer-in-Charge of the

Rupaspur Police Station this Court would believe the same. For this reason, the Superintendent of Police, Bhagalpur, is directed to seek explanation from the S.I. Babarganj Police Station and pass appropriate orders in accordance with law after hearing the S.I.

24. So far as allegations of the petitioner that she was pushed, the labourers were beaten and the office and bedroom in the house were disturbed/despoiled etc. these allegations have been denied by the respondents. In its writ jurisdiction, this Court cannot act as a fact finding court. The fact finding exercise may require recording of evidence etc., in accordance with law. In the opinion of this Court, the writ application may be disposed of giving liberty to the petitioner to seek her remedy against the aforesaid alleged acts of respondent in an appropriate jurisdiction in accordance with law. Such allegations need to be adjudicated on the basis of evidences independently and no part of the observations of this Court shall prejudice either parties in the contest.

25. This writ application stands disposed off accordingly.