

(2012) 07 JH CK 0103

Jharkhand High Court

Case No: Writ Petition (Cr.) No. 233 of 2010

Saraswati Devi

APPELLANT

Vs

The State of Jharkhand and
Lakshman Singh

RESPONDENT

Date of Decision: July 20, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164, 173, 210, 319
- Penal Code, 1860 (IPC) - Section 323, 364(A), 366A, 368, 482

Citation: (2013) 1 JLR 9

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Advocate: S.S. Choudhary, for the Appellant; A.K. Mishra, S.C. III and Manoj Kr. Choubey, J.C. to S.C. III For the State and Mr. H.P. Singh, Advocate, for the Respondent

Judgement

Alok Singh

1. Petitioner has invoked Article 226 of the Constitution of India for quashing the order 18.02.2010 passed by Judicial Magistrate, 1st Class, Sahibganj, in P.C.R. Case No. 10 of 2010 corresponding to T.R. No. 267 of 2010 under Sections 323 / 368 of the Indian Penal Code. Few undisputed facts need to be narrated.

(A) Respondent No. 2- Lakshman Singh S/o of Raj Kumar Singh, is an employee in the Civil Court, Sahibganj, and is working as Assistant. His daughter-Anupama Kumari was staying with her maternal grand-father (Nana) at Ranchi. Anupama Kumari went missing on 21.12.2009. Shri Haribansh Singh, Nana of victim- Anupama Kumari and father-in-law of Shri Lakshman Singh- Respondent No. 2, lodged an F.I.R. with Sukhdeo Nagar Police Station, Ranchi, which was registered as P.S. Case No. 897 of 2009 u/s 364(A) I.P.C. In the F.I.R.; Shri Haribansh Singh has stated that Anupama Kumari, while coming back from the Women's College, Ranchi, has

phoned him at about 5 p.m. informing him that she was near the Metro Gali; thereafter, when she did not reach home, Haribansh Singh started searching her; meanwhile, on his mobile phone No. 9931583054, a call came from mobile No. 9955599245; Caller has disclosed his name as Samarjeet Roshan and asked him to pay Rs. 5 lacs as ransom, if he wants back Anupama Kumari; Caller has further told that Anupama Kumari is kidnapped by him; Meanwhile, mother of the victim- Anupama Kumari, who was at Sahibganj also received the phone calls demanding ransom from the same phone number.

(B) Haribansh Singh has also filed W.P.(Cr.) No. 162 of 2010 before this Court saying police is not investigating the case properly, therefore, police be directed to recover the girl. In W.P.(Cr.) No. 162 of 2010, victim- Anupama Kumari has moved an application being LA. No. 2305 of 2010, seeking intervention in the writ petition. This Court vide order dated 13.02.2010, passed in W.P.(Cr.) No. 162 of 2010 has added Anupama Kumari as one of the party respondent. However, learned single Judge of this Court, vide order dated 13.02.2012 has directed the victim Anupama Kumari to appear before the Investigating Officer of Sukhdeo Nagar Police Station in connection with Kotwali Sukhdeo Nagar P.S. Case No. 897 of 2009 corresponding to G.R. No. 5329 of 2009 for her statement u/s 161 Cr.P.C, if it is not yet recorded; further, the Investigating Officer shall be at liberty to get victim Anupama Kumari examined u/s 164 Cr.P.C, if it is needed.

(C) On 24.11.2010, Police has filed charge sheet against Samarjeet Roshan only for an offence punishable u/s 366A I.P.C. It is mentioned by the Investigating Officer in the charge sheet that on 13.08.2010, accused Samarjeet Roshan and victim Anupama Kumari had appeared before the Chief Judicial Magistrate, Sahibganj. C.J.M., Sahibganj has sent the accused in the judicial custody to the jail while Anupama Kumari has returned from the court. Thereafter, she could not be traced, therefore, further investigation is still on. In the charge sheet Respondent No. 2 is cited as witness No. 2.

(D) On 14.06.2011, Anupama Kumari appeared in the witness box before the trial court in S.T. No. 73 of 2011 and has stated on oath that she was never kidnapped. She has married to the accused Samarjeet Roshan and their marriage was registered in Munger, Bihar. She is having seven months old child out of their wedlock.

(E) In W.P.(Cr.) No. 162 of 2010, too, Anupama Kumari did appear and has made statement before the Bench hearing W.P.(Cr.) No. 162 of 2010 to the effect she has happily married with Samarjeet Roshan and they have one male child from the wedlock. On 20.04.2012, learned single Judge of this Court has disposed of W.P.(Cr.) No. 162 of 2010.

Order dated 20.04.2012 is being reproduced herein as under :-

At the outset, learned counsel for the petitioner pointed out that in the order dated 5.4.2012 the name of petitioner has been wrongly typed as Hardeo Prasad Singh in place of Haribansh Singh. Let it be read accordingly.

As per the direction given by this Court vide, order dated 5.4.2012, missing girl Anupama has appeared before the Court and the I.O. is also present. It is pointed out that the statement of the girl has already been recorded by the I.O. The father of the girl is also present and he identified his daughter Anupama.

The victim girl Anupama, her husband and child may be provided proper protection for their return to their place of stay at Katihar, if needed.

Since the missing girl has appeared, learned counsel does not want to proceed further with the present writ petition and accordingly he seeks permission to withdraw this writ application.

Prayer is allowed.

Accordingly, this writ application is dismissed as withdrawn.

(F) Meanwhile, Respondent No. 2, who is working as Assistant in Civil Court, Sahibganj, has filed one private complaint in the court of C.J.M., Sahibganj, being P.C.R. Case No. 10 of 2010 against the present petitioner and five others on 11.01.2010. Respondent No. 2- complainant has stated in the criminal complaint that her daughter was kidnapped by Samarjeet Roshan on 21.12.2009 from Ranchi, wherein she was staying with her maternal grand-father (Nana). Samarjeet Roshan has demanded Rs. Five lacs as ransom from the Nana of Anupama Kumari. Haribansh Singh, Father-in-law of the Complainant has narrated him (Respondent No. 2) on phone the entire incident of kidnapping of Anupama Kumari and demand of ransom by Samarjeet Roshan from him (Haribansh Singh). It has further been alleged that on 26.12.2009, Samarjeet Roshan, main accused has kept his daughter in the house of accused Nos. 2, 3 and 4 in Sahibganj and when he went to the house of the accused persons, he was thrashed and sent back. Vide order dated 18.02.2010, learned Judicial Magistrate, 1st Class, Sahibganj has directed to issue summons against the petitioner as well as against five other accused for the offences punishable under Sections 323 and 368 I.P.C.

2. Feeling aggrieved, present petitioner has moved this Court for quashing the entire criminal proceeding pursuant to complaint filed by Respondent No. 2 herein, being P.C.R. Case no. 10 of 2010 and order taking cognizance dated 18.02.2010 passed by learned Judicial Magistrate, 1st Class, Sahibganj.

3. I have heard learned counsel for the parties and have perused the record carefully.

4. Undisputedly, main accused, namely, Samarjeet Roshan, who is said to have kidnapped Anupama Kumari, is facing trial before the session court, Ranchi, wherein

victim Anupama Kumari has appeared in a witness box and has stated, that she has gone at her own sweet will with Samarjeet Roshan and both of them are now married and are leading a happy married life and are having one male child out of the wedlock.

5. In W.P.(Cr.) No. 162 of 2010, Mr. Anuranjan. Kispotta, Dy.S.P. (City), Ranchi has filed an affidavit on 11.05.2010. In paragraph- 11, he has stated as under: -

That it is stated and submitted that in this case, the City S.P., Ranchi got a letter of one Saraswati Devi, who told that she is an In-Charge Headmistress at a Middle School at Sahebganj. The named accused is the son of her brother, she told that she has given every information in relation to the accused Samarjeet Roshan to the Investigation Officer and other Police Officers, but inspite of that Police Officers of Sahebganj are harassing her. One Laxman Singh is the tenant in her neighbourhood, who is an employee at civil court, Sahebganj. On 24.12.2009, he came with 4-5 other people and threatened that they have already lodged a case at Ranchi and will lodge the case at civil court, Sahebganj and sent them behind the Bar. He will destroy their houses. When she went to give a written application, with regard to atrocities against her, then S.P., Sahebganj refused to receive the same. She further told that Laxman Singh has lodged a P.C.R. Case at civil court at Sahebganj, where warrant of arrest has been issued against her relatives. She has further alleged that the daughter of Laxman Singh has fled away with his relative's son.

6. Mr. Anuranjan Kispotta, Dy.S.P. (City), Ranchi has filed another supplementary counter affidavit in W.P.(Cr.) No. 162 of 2010 on 07.09.2010. In paragraph Nos. 5 to 8, he has stated as under; -

5. That it is stated and submitted that the named accused Samarjeet Roshan under compelling circumstances has surrendered on 13.08.2010 before the learned Chief Judicial Magistrate, Sahebganj in P.C.R. Case No. 10 of 2010 which has been filed by the father of the girl namely Laxman Singh against the named accused Samarjeet Roshan u/s 368 of the Indian Penal Code. The learned Chief Judicial Magistrate, Sahebganj has sent the accused in Judicial custody. It would be pertinent to mention here that the girl in question namely Anupama Kumari was also present at the time of surrender before the Chief Judicial Magistrate. Sahebganj but she has not been taken into custody rather she has been left to return from the Court below.

6. That it is stated and submitted that the Investigating Officer of the Kotwali (Sukhdeo Nagar) P.S. Case No. 897 of 2009 has applied for taking remand of the named accused Samarjeet Roshan, before the Chief Judicial Magistrate. Ranchi and informed that the named accused of Kotwali (Sukhdeo Nagar) P.S. Case No. 897 of 2009 i.e. Samarjeet Roshan has surrendered before the learned Chief Judicial Magistrate, Sahebganj. He further intimated that he had requested for the remand of the named accused Samarjeet Roshan but the learned Chief Judicial Magistrate.

Sahebganj denied and directed him to move before the learned Chief Judicial Magistrate, Ranchi for getting the remand order.

7. That it is stated and submitted that it would, also be pertinent to mention here that the Advocate of the accused Samarjeet Roshan has intimated to the I.O. that the girl Anupma Kumari was present before the learned Chief Judicial Magistrate, Sahebganj and father of the girl Laxman Singh has prayed for sending her to remand home. But, whereabouts of the girl was not disclosed by them. The Learned Advocate has given in writing that girl was present before the learned Chief Judicial Magistrate. Sahebganj but she has been allowed to return from there. This certificate has been handed over to I.O. by Nawal Kishore Paswan, who is a relative of the accused Samarjeet Roshan.

8. That it is stated and submitted that pursuant to the request made by the I.O. of the Kotwali (Sukhdeo Nagar) P.S. Case No. 897 of 2009. the learned Chief Judicial Magistrate. Ranchi has ordered for the remand of the named accused Samarjeet Roshan through Sahebganj Jail to Central Jail Ranchi.

7. From the perusal of affidavit filed by Dy.S.P. (City), Ranchi before this Court in W.P.(Cr.) No. 162 of 2010, it is, thus, clear that Respondent No. 2, who is working as Assistant (Reader) in the district court, Sahibganj, was having knowledge that F.I.R., registered at Ranchi about the kidnapping of her daughter- Anupama Kumari, is being investigated by the Ranchi Police.

8. Despite knowledge of registration of F.I.R. at Ranchi and investigation by the Ranchi police, he did not make any statement to the Ranchi Police about the story, he has narrated in the private complaint filed before the C.J.M., Sahibganj. In normal course, Respondent No. 2 would have informed the I.O., investigating the main kidnapping case about the whereabouts of the kidnapped girl that Anupama Kumari is being confined at Sahibganj, as narrated in the private complaint. On his information, Ranchi police could have added Section 368 I.P.C. and would have investigated this aspect also.

9. Otherwise also, since trial is pending before the sessions court at Ranchi, therefore, in normal course, Respondent No. 2, who is Assistant (Reader) in the court could have moved an application before the trial court at Ranchi u/s 319 Cr.P.C. for summoning the accused of the private complaint as additional accused, who are guilty of an offence punishable u/s 368 I.P.C, pertaining to same kidnapping for which trial is being held at Ranchi.

10. Section 210 Cr.P.C. reads as under: -

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.- (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that

an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer u/s 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

11. From perusal of Section 210 Cr.P.C, it is, thus, clear that if it is made to appear to the Magistrate, hearing the private complaint, that an investigation by the police is in progress in relation to the offence which is subject matter of the enquiry or trial by him, Magistrate shall stay the proceeding of such enquiry or trial and shall call for a report from the police conducting the investigation.

12. In the present case, it is specifically mentioned in the complaint that Anupama Kumari was kidnapped from Ranch. Obviously, Magistrate should have asked the Complainant as to whether any F.I.R. was lodged pertaining to the kidnapping of Anupama Kumari at Ranchi and, if yes, he should have called the report from the police investigating the main case of kidnapping before proceeding further on the complaint. Moreover, main accused has surrendered before the C.J.M. at Sahibganj, on 13.08.2010 along with the victim Anupama Kumari. Remand of the main accused was sought by the Ranchi Police from the C.J.M., Sahibganj, then also, it would have come in the knowledge of the Magistrate at Sahibganj that case of kidnapping is being investigated by the Ranchi police. Therefore, Magistrate should have stayed the proceeding of the private complaint and should have asked for the investigation report. Not only this, this was also the duty of the Respondent No. 2, who is well conversant of the court proceedings being Assistant (Reader) of the court, to inform the Magistrate that investigation in the main kidnapping case is being carried out at Ranchi.

13. From perusal of paragraph 11 of the affidavit filed by the Dy.S.P. (City), Ranchi in W.P.(Cr.) No. 162 of 2010, it is, thus, clear that Respondent No. 2 has extended threat to the present petitioner to implicate her and other relatives in a false criminal case at Sahibganj.

14. It seems that the Respondent No. 2, by misusing his position, has put the criminal machinery in motion just to victimize the petitioner and oilier accused summoned by the learned Magistrate. Therefore, proceedings pending before the

learned Magistrate would amount to abuse of the process" of law. Moreover, as per the statement of Anupama Kumari recorded in the trial court as well as in W.P.(Cr.) No. 162 of 2010, no offence u/s 368 I.P.C. is made out. Otherwise also, story set up by the Complainant (Respondent No. 2) seems to be after thought and highly improbable. In my opinion, no useful purpose shall be served in keeping the proceedings alive, in the peculiar facts and circumstances that victim Anupama Kumari has married to Samarjeet Roshan and they are having child out of wedlock.

15. In view of the assertions made in the affidavit filed by Dy.S.P. in W.P. (Cr.) No. 162 of 2010, which have already been reproduced herein before and in view of the discussion made herein before, it seems that learned Magistrate has exceeded in his jurisdiction while proceeding with criminal proceedings initiated by the Respondent No. 2.

16. Therefore, in the peculiar facts and circumstances of the case, by invoking jurisdiction u/s 482 read with Article 226 of the Constitution of India, I hereby quash the entire criminal proceedings pending before the learned Judicial Magistrate, 1st Class, Sahibganj, in P.C.R. Case No. 10 of 2010 corresponding to T.R. No. 267 of 2010.

17. In the opinion of this Court, a thorough enquiry is required to find out the role of learned Magistrate and Respondent No. 2 by the Registrar (Vigilance) of this Court. Let Registrar (Vigilance) hold enquiry in the light of the observations made herein above and in the light of affidavits filed by Dy.S.P. in W.P.(Cr.) No. 162 of 2010. Enquiry Report shall be placed before the Hon"ble Zonal (Inspecting) Judge for his lordship"s perusal and further orders.