

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.310 of 2023

Arising Out of PS. Case No.-18 Year-2023 Thana- RUPASPUR District- Patna

Sanjeev Hans, son of Shri L.D. Hans, resident of House No.A3/4, 96 officers flats, Rajvanshi Nagar, Nehru Path, P.S.- Shashtri Nagar, Patna – 800023.

... .. Petitioner

Versus

1. The State of Bihar
2. The Director General of Police, Old Secretariat, Patna
3. Senior Superintendent of Police, Patna
4. Station House Officer, Rupaspur Police Station, Patna
5. Gayatri Kumari, D/O Late Rajeshwar Singh, Resident of Village- Kataiya, P.S.- Jamhur, District- Aurangabad.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Rana Vikram Singh, Advocate
For the State	:	Mr. Prabhat Kumar Verma, AAG-3 Mr. Saroj Kumar Sharma, A.C. to AAG-3
For the respondent no.5 :		Mr. Dinu Kumar, Advocate Mrs. Ritika Rani, Advocate Mr. Ritu Raj, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
CAV JUDGMENT
Date : 06-08-2024

This criminal writ petition has been filed for quashing the F.I.R. vide Rupaspur P.S. Case No.18 of 2023 registered for the offence under sections 323, 341, 376, 376-D, 420, 313, 120-B, 504, 506/34 of the Indian Penal Code, 1860 and under section 67 of the Information Technology Act, 2000. Further prayer of the petitioner is to quash the order dated 06.01.2023 passed by the learned Additional Chief Judicial



Magistrate, 1st, Danapur in Complaint Case No.1122 (c) of 2021, whereby the learned Magistrate has passed the order under section 156(3) of the Cr.P.C. for registration of the F.I.R.

2. As per the complaint petition, at present the complainant is a practicing advocate in Allahabad High Court. She was practicing in Patna High Court from 2009 to 2015. In the month of February, 2016 while the complainant was staying at the residence of Senior Advocate Gajendra Prasad Yadav situated at Golden Plaza Apartment, Chitkohra for getting her case mentioned, a junior advocate namely, Shiv Nandan Bharti introduced her to Gulab Yadav, who was an M.L.A. It has also been alleged that said Gulab Yadav lured her by saying that he will get make her member of Women Commission and asked her to come to meet him along with her bio-data at his residence situated at Flat No.401, Bindeshwari Apartment. It is alleged that when the Complainant reached the house of said Gulab Yadav, he raped her at gun point and when the complainant was going to register F.I.R. then Gulab Yadav asked his servant Lalit to bring vermilion and put the same on the forehead of the complainant and said that they were married and they will get their marriage registered and asked for some time to get divorce from his first wife.



2.1. It has also been alleged that Gulab Yadav called the complainant to Pune to show the papers of the Court, by which divorce has been granted. On 08.07.2017 when the complainant reached Hotel Bestil then Gulab Yadav introduced her to Sanjeev Hans (petitioner) and both raped her after mixing some intoxicating substance in her food. When the complainant regained her consciousness, Gulab Yadav showed her the video of her rape and sent the same on her mobile and threatened her to make the video viral. The complainant got scared and started to live in Allahabad and when she missed her periods, she informed Gulab Yadav about the same but Gulab Yadav asked her to take medicine for abortion which she consumed, however, she had to get admitted in hospital due to medical condition. Thereafter, Gulab Yadav got the complainant admitted in Rahul Judicial Classes, Delhi and arranged for her stay in a hostel in Mukhergi Nagar, Delhi.

2.2. It has further been alleged that Gulab Yadav used to call the complainant at different hotels and raped her where Sanjeev Hans (petitioner) also used to accompany Gulab Yadav. It has also been alleged that on 13.02.2018 at Ashoka hotel, on 14.02.2018 at Park Avenue hotel and on 27.03.2018 at Le' Meriden hotel, she was gang raped and resultantly she



conceived and when she informed the accused about this, the accused persons threatened her. Out of fear, the complainant vacated her hostel and started living in Shalimar Bagh, Delhi where she gave birth to a male child on 25.10.2018 and when she informed this fact to Gulab Yadav, he told that it can not be his child as he has undergone vasectomy and said that the child is of Sanjeev Hans. When the complainant tried to contact Sanjeev Hans, he did not speak with her and since then the complainant is hiding from the accused persons as they are quite influential. It has further been alleged that the complainant went to Rupaspur Police Station for registering the F.I.R., but the Police did not register the F.I.R. by saying that the accused persons are quite influential and then the complainant sent the complaint to Superintendent of Police, Patna on 28.10.2021, however no action was taken in this regard.

2.3. Accordingly, the complaint case No.1122 (C) of 2021 was filed by the complainant before the Additional Chief Judicial Magistrate, Danapur, Patna for lodging the F.I.R. The learned Magistrate in his order dated 18.11.2021 has recorded that the complainant has not produced any document in support of her claim of compliance of Section 154(3) of the Cr.P.C. and therefore, called a report from the concerned Police



Station. Despite granting sufficient opportunity, the complainant did not appear for recording her S.A. and resultantly, the Magistrate vide order dated 20.09.2022 dismissed the complaint case under Section 203 of the Cr.P.C. Being aggrieved by the same, the complainant approached this Court by way of filing Cr.W.J.C. No.1271 of 2022. This Court vide order dated 12.12.2022 has disposed of the said petition with certain directions. The relevant part of the order dated 12.12.2022 passed in Cr.W.J.C. No.1271 of 2022 reads as under:-

“Having heard learned counsel for the petitioner and learned counsel for the State, this Court finds that there is no dispute with the submission of the learned counsel for the petitioner that in this case, police was conducting a preliminary enquiry into the matter and a report was required to be sent to the learned ACJM Court at Danapur. The said report has been submitted or not is not within the knowledge of learned counsel for the State.

Be that as it may, this Court is of the considered opinion that once the matter was pending at the stage of preliminary enquiry and the report had been called for from the police, the learned ACJM should not have acted in haste in taking up the enquiry at his level by treating it as a complaint case.

Without going into the merit of the alle-



gations, this Court would, therefore, set aside the part of the order dated 12.05.2022 by which the application of the petitioner was taken as a private complaint on the records of the learned ACJM and then this Court would further set aside the order dated 20.09.2022 by which the same has been dismissed in purported exercise of power under Section 203 Cr.P.C.

As a result of this, let the preliminary enquiry report be submitted in the court of learned ACJM, Danapur within a reasonable time whereupon the learned ACJM shall consider the same and pass an appropriate order in accordance with law.

This application as well as interlocutory application stand disposed of accordingly.”

2.4. Thereafter, the Magistrate vide order dated 06.01.2023 directed for registration of the F.I.R. under section 156(3) of the Cr.P.C. Accordingly, the present F.I.R. has been lodged against the petitioner and other accused persons.

Submissions of the petitioner:-

3. Learned counsel for the petitioner submits that the complainant is a practicing lawyer since 2009 and she has filed the complaint under Section 200 Cr.P.C. for the first time after 5 years of the alleged incident, so it is hard to believe that a criminal lawyer whose standing is of more than 14 years



in the Bar had chosen to file a complaint after 5 years of the alleged incident without annexing any proof and without any satisfactory explanation for the said delay. He further submits that this Court in catena of judgments has held that if delay in lodging FIR is not satisfactorily explained then that delay often results in embellishment, which is a creature of afterthought and such FIR should be quashed.

4. Learned counsel for the petitioner further submits that the learned Magistrate has failed to apply its judicial mind in passing the order dated 06.01.2023, by which he has directed for registration of the F.I.R although he himself in his order dated 18.11.2021 has categorically recorded that the complainant has not produced any documents to support her claim of compliance of Section 154(3) Cr.P.C. and therefore, he called for a report from the Station House Officer of concerned Police Station. Since the report was not submitted by the concerned Police Station, the Magistrate proceeded with the enquiry but despite having been granted sufficient opportunity, the complainant did not appear for recording of her S.A. and as result of the same, the complaint case was dismissed.

5. Against the order of the Magistrate dismissing the complaint case, the complainant filed Cr.W.J.C.



No.1271 of 2022 and this Court vide order dated 12.12. 2022 has quashed the order dated 12.05.2022 by which the application of the petitioner was taken as a private complaint and the order dated 20.09.2022 was passed by which the complaint petition was dismissed. It has also been submitted that on perusal of the order of this Court dated 12.12.2022 it is clear that this Court has directed the learned Magistrate to consider the report submitted by the Police and pass appropriate order but there is no order for registration of the F.I.R. Moreover, in the police report there is no ground for registration of the F.I.R. against the petitioner as no material/evidence has come in course of enquiry to connect the petitioner with any offence whatsoever.

6. Pursuant to the direction of the Magistrate, the Police submitted a report in a sealed cover, which has been made a part of record. The report was opened before the complainant and from the perusal of the said report, it is evident that the Police has already acted upon the complaint and initiated a preliminary enquiry. During enquiry, the Police recorded the statement of the complainant as well as conducted a detailed enquiry in reference to each and every allegation levelled in the complaint petition but, did not find any evidence to connect the petitioner with the alleged offences. It will be



relevant to quote the preliminary enquiry report dated
31.05.2022 submitted by the police, which is as follows:

“ पत्रांक [1328 / 22](#)

प्रेषक,

थानाध्यक्ष,

रूपसपुर थाना।

सेवा में,

अपर मुख्य न्यायिक दण्डाधिकारी, प्रथम,

दानापुर व्यवहार न्यायालय, पटना।

पटना, दिनांक:- 31/05/22

प्रसंग:-भवदीय न्यायालय में दायर परिवाद-पत्र
[सं0-1122सी / 2021](#) तदनुसार वरीय पुलिस अधीक्षक, पटना का
[ज्ञापांक-2573 / गो0](#), दिनांक-28.04.2022 एवं
ज्ञापांक-433 / गो0(परि0), दिन0-30.05.22

विषय:- परिवादिनी गायत्री कुमारी पे0-स्व0 राजेश्वर सिंह
सा0-कतैया थाना-जम्होर जिला-औरंगाबाद का परिवाद-पत्र जाँच
के संबंध में।

महाशय,

उपर्युक्त प्रसंग एवं विषयक संदर्भ में सादर सूचित करना
है कि सुश्री गायत्री कुमारी के द्वारा भवदीय के न्यायालय में दायर
परिवाद-पत्र [सं0-1122सी / 21](#) दायर किया गया है। उक्त
परिवाद-पत्र भवदीय के द्वारा जाँच हेतु रूपसपुर थाना में भेजा
गया था। वरीय पुलिस पुलिस, पटना महोदय के द्वारा अपने
कार्यालय ज्ञापांक-2573 / गो0, दिनांक-28.04.2022 के माध्यम से
पु0अ0नि0 कुमारी अंचला, महिला थाना एवं पु0अ0नि0 राकेश कुमार
रंजन, रूपसपुर थाना को विषयांतर्गत परिवाद-पत्र में वर्णित तथ्यों
के आलोक में जाँच करने का निर्देश दिया गया था। उक्त संदर्भ में
पु0अ0नि0 कुमारी अंचला एवं पु0अ0नि0 राकेश कुमार रंजन के द्व
ारा सभी बिन्दुओं पर जाँच कर संयुक्त जाँच प्रतिवेदन अनुलग्नक
सहित पत्रांक-1394 / महिला थाना, दिनांक-28.05.22 के माध्यम से
समर्पित किया गया है। वरीय पुलिस अधीक्षक, पटना महोदय द्वारा



अपने ज्ञापांक-433/गो0(परि0), दिनांक-30.05.22 के माध्यम से उक्त संयुक्त जॉच प्रतिवेदन(अनुलग्नक सहित) के साथ माननीय न्यायालय में समर्पित करने का निर्देश दिया गया है।

उल्लेखनीय है कि जॉच के क्रम में यह बात प्रकाश में आई है कि परिवादिनी गायत्री देवी को द0प्र0सं0 की धारा-91 के तहत परिवाद में वर्णित आरोपों को प्रमाणित करने हेतु संबंधित अभिलेखीय साक्ष्य उपलब्ध कराने हेतु पु0अ0नि0 कुमारी अंचला, महिला थाना के द्वारा नोटिस दिनांक-02.05.22 को निबंधित डाक के माध्यम से भेजा गया है तथा उक्त नोटिस की प्रति परिवादिनी के व्हाट्स एप्प नंबर-9625117781 पर भी भेजा गया है। परिवादिनी गायत्री देवी को निबंधित डाक से भेजे गए नोटिस से संबंधित प्रमाणक प्रति एवं व्हाट्स एप्प के माध्यम से भेजे गए नोटिस के संबंध में Screenshot की प्रति को जॉच अभिलेख में संधारित किया गया है। परिवादिनी गायत्री देवी के द्वारा पूर्व में पु0अ0नि0 कुमारी अंचला व्हाट्स एप्पा नंबर पर कुछ साक्ष्य/रिकॉर्डिंग भेजा गया है, जिसे पेन ड्राईव में सुरक्षित रखा गया है तथा विधिवत् जप्ती-सूची बनाकर साक्ष्य प्रदर्श के तौर पर साथ संलग्न किया जा रहा है। यहाँ यह भी उल्लेखनीय है कि दि0-02.05.22 को भेजे गए नोटिस के आलोक में परिवादिनी के द्वारा किसी प्रकार का अभिलेखीय साक्ष्य प्रस्तुत नहीं किया गया।

परिवादिनी गायत्री देवी द्वारा अपने परिवाद में आरोप लगाया गया है कि गुलाब यादव के द्वारा अपने फ्लैट नं0-401, बिन्देश्वरी अपार्टमेंट में प्रथम बार बालात्कार करने का आरोप लगाया गया है। पु0अ0नि0 कुमारी अंचला के द्वारा उक्त संदर्भ में जॉच/सत्यापन किया गया जिस क्रम में यह बात प्रकाश में आई है कि श्याम बिन्देश्वरी रेजिडेंसी, रूपसपुर में गुलाब यादव का फ्लैट नं0-402 है। जॉच के क्रम में पु0अ0नि0 कुमारी अंचला के द्वारा कुछ साक्षियों से पूछताछ किया गया तथा गुलाब यादव के यहाँ काम करने वाले ललित के संदर्भ में भी सत्यापन किया गया। परिवादिनी सुश्री गायत्री कुमारी के द्वारा पूर्व में पु0अ0नि0 कुमारी अंचला को ललित का मोबाईल नंबर(9693383419) उपलब्ध कराया गया था। उक्त नंबर पर भी पु0अ0नि0 कुमारी अंचला के द्वारा पूर्व में संपर्क किया गया था। जिसका विस्तृत उल्लेख संयुक्त जॉच



प्रतिवेदन मे किया गया है।

उल्लेखनीय है कि परिवादिनी सुश्री गायत्री कुमारी के द्वारा अपने चिकित्सा कराए जाने से संबंधित कुछ चिकित्सीय जॉच पुर्जा जॉच के क्रम में उलब्ध करवाया गया था। साथ ही परिवादिनी के द्वारा कई होटलों में भी उनके साथ अनैतिक कार्य किए जाने का आरोप लगाया गया है। उक्त संदर्भ में जॉच/सत्यापन के क्रम में यह बात प्रकाश में आई है कि आशा अस्पताल, प्रयागराज में परिवादिनी गायत्री देवी दि०-25.08.17 को सामान्य ओ०पी०डी० में ब्लीडिंग की समस्या को लेकर ईलाज कराने आई थी, किंतु वहाँ भर्ती नहीं हुई। स्वरूपरानी नेहरू चिकित्सालय, प्रयागराज से सत्यापन किया गया। जिस क्रम में आया गया कि गायत्री यादव पत्नी श्री गुलाब यादव उम्र 34 वर्ष निवासी 239/96, माया रोड, राजापुर प्रयागराज जिनका चिकित्सीय ईलाज दि०-30.08.17 से दि०-30.08.17 तक डॉ० अमिता यादव की देखरेख में चला था।

जॉच/सत्यापन के क्रम में “अशोका होटल” “द पार्क” होटल एवं होटल “ली मेरिडेन” नई दिल्ली में परिवादिनी गायत्री देवी, गुलाब यादव एवं संजीव हंस के नाम से रूम बुक रहने/रुकने के संबंध में सत्यापन किया गया तो पाया गया कि होटल “द पार्क” में दि०-07.02.18 से 08.02.18 को उक्त होटल में रूम नं०-821 में गायत्री कुमारी एवं गुलाब यादव रुके थे। “अशोका होटल” एवं होटल “ली मेरिडेन” दिल्ली में परिवाद-पत्र में वर्णित तिथि के अनुरूप इन तीनों के नाम से रूम बुक/रुकने के संदर्भ में कोई प्रमाण नहीं पाया गया है। उल्लेखनीय है कि जॉच के क्रम में उक्त तीनों होटलों के प्रबंधकों से प्राप्त प्रमाण-पत्र को जॉच प्रतिवेदन के साथ साक्ष्य प्रदर्श के रूप में संलग्न किया गया है।

परिवादिनी गायत्री देवी द्वारा “कुमार मेडिकल एण्ड मेटरनिटी सेंटर, ए०एम० 35 शालीमार बाग, दिल्ली” से कराए गए ईलाज से संबंधित चिकित्सीय जॉच अभिलेख का सत्यापन किया गया। जिस क्रम में कुमार मेडिकल एण्ड मेटरनिटी सेंटर के द्वारा प्रमाण-पत्र दिया गया है कि गायत्री देवी पति-गुलाब यादव के द्वारा उनके नर्सिंग होम में दि०-25.12.18 को एक लड़का को जन्म



दी है। सत्यापन के क्रम में कुमार मेडिकल एण्ड मेटरनिटी सेंटर में संधारित जन्म प्रमाण-पत्र रजिस्टर का मोबाईल से फोटो भी लिया गया है। कुमार मेडिकल एण्ड मेटरनिटी सेंटर द्वारा उपलब्ध कराए गए प्रमाण-पत्र एवं रजिस्टर का लिए गए फोटो को साक्ष्य प्रदर्श के रूप में साथ संलग्न किया जा रहा है।

सुलभ संदर्भ हेतु पु0अ0नि0 कुमारी अंचला एवं पु0अ0नि0 राकेश कुमार रंजन द्वारा समर्पित संयुक्त जॉच प्रतिवेदन ज्ञापांक-1394/महिला थाना(अनुलग्नक सहित यथा पेन ड्राईव एवं अन्य अभिलेखीय साक्ष्य) दिनांक-28.05.22 की प्रति साथ संलग्न कर भेजी जा रही है।

सादर सूचनार्थ एवं आवश्यक क्रियार्थ प्रेषित।

अनुलग्नक:- यथोपरि।

(सभी अभिलेखीय साक्ष्य एवं पेन ड्राईव)

विश्वासभाजन

ह0/-

थानाध्यक्ष, रूपसपुर थाना।”

7. Upon the direction of the learned Magistrate, the Police has already conducted an enquiry and submitted its report which shows that the petitioner is not involved in any offence and all the allegations levelled by the complainant against the petitioner has been found false. Therefore, falsity of allegations and inordinate and unexplained delay shows that the complainant has filed the complaint petition with *malafide* intention.

8. It has been argued that in the instant case the complainant has neither filed any affidavit as mandated by the Hon'ble Supreme Court nor produced any document showing



the compliance of section 154(3) of the Cr.P.C. which has also been recorded by the learned Magistrate in his order dated 18.11.20221 and therefore, in view of non-compliance of section 154(3) of the Cr.P.C. the direction of registration of the F.I.R. amounts to gross violation of mandate laid down by the Hon'ble Supreme Court and thus, the whole proceeding is rendered illegal.

9. In support of this submissions, learned counsel for the petitioner has relied upon the following decisions of the Hon'ble Supreme Court:-

(i) *Priyanka Srivastava & Anr. vs. State of U.P. & Ors.* reported as *AIR 2015 SC 1758;*

(ii) *Babu Venkatesh and Ors. vs. State of Karnataka and Ors.* reported as *(2022) 5 SCC 639;*

(iii) *Ramesh Kumar Bung & Ors. vs. State of Telangana & Anr. SLP (Criminal) No.13762 of 2023.*

10. Learned counsel for the petitioner has also relied upon the following decisions of the Hon'ble Supreme Court rendered in support of his case :-



- (i) *Mahmood Ali vs. State of U.P.* reported as
2023 SCC OnLine SC 950;
- (ii) *Prashant Bharti vs. State (NCT of Delhi)*
reported as **(2013) 9 SCC 293;**
- (iii) *Rajiv Thapar and Ors. vs. Madan Lal
Kappor* reported as **(2013) 3 SCC 330.**

11. Lastly, learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court rendered in the case of *State of Haryana and Ors. vs. Ch. Bhajan Lal and Ors.* reported as **AIR 1992 SC 604** wherein the Hon'ble Supreme Court has held that where the criminal proceeding is manifestly attended with *malafide* and/or the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance, the F.I.R. should be quashed.

Submissions of the respondent no.5 (informant)

12. The respondent no.5 (informant) has filed Interlocutory Application No.02 of 2024 on 17.05.2024 under Section 340 of the Cr.P.C. for holding an enquiry against the petitioner as the petitioner has knowingly and deliberately concealed / suppressed about the order dated 22.09.2023 passed by the Hon'ble Supreme Court in S.L.P. (Cr.) No.19079 of 2023 preferred by him, whereby the order dated 12.12.2022 passed by



a coordinate Bench of this Court in Cr.W.J.C. No.1271 of 2022 has been stayed. According to the informant, the only basis for the Police to have submitted the preliminary report and thereafter the learned Magistrate to pass order on 06.01.2023 directing to send the complaint petition to concerned Police Station for registration of the F.I.R is the order of this Court dated 12.12.2022 passed in Cr.W.J.C. No.1271 of 2022 and the aforesaid order dated 12.12.2022 has been stayed by the Hon'ble Supreme Court, but this fact has been suppressed by the petitioner in the present proceeding and therefore, he is guilty of suppressing the material fact in judicial proceeding in order to obtained favourable order from this Court.

13. It has been submitted by learned counsel for the respondent no.5 that on perusal of the order dated 16.11.2021 passed by the learned Magistrate in Complaint Case No. 1122 (C) of 2021, it appears that on 16.11.2021 affidavited complaint petition along with Vakalatnama has been received from judicial service centre, Danapur and thereafter, the Magistrate has passed an order dated 12.05.2022 holding that it is not proper to send the complaint petition to the Police for registration of the F.I.R. as the police is conducting inquiry in the matter. The aforesaid order dated 12.05.2022 came to be



challenged in Cr.W.J.C. No.1271 of 2022 but during the pendency of the case, the learned Magistrate vide order dated 20.09.2022 has dismissed the complaint case and the said order dated 20.09.2022 also came to be challenged in Cr.W.J.C. No.1271 of 2022 by way of filing an interlocutory application and this Court vide order dated 12.12.2022 has quashed the orders dated 12.05.2022 and 20.09.2022 with a direction to the Police to submit its preliminary report in the Court below within a reasonable time and whereupon, the learned Magistrate shall consider the same and pass appropriate order.

14. It has also been submitted that the learned Magistrate vide order dated 06.01.2023 has allowed the prayer of the petitioner to send the complaint petition under section 156(3) of the Cr.P.C. to the Police for registration of the F.I.R. and accordingly, the present F.I.R. has been lodged. The Investigating Officer of the case has filed an application in the Court of learned A.C.J.M.-1, Danapur for deputing a Magistrate so that blood sample of Gulab Yadav, the son of the respondent no.5 and the petitioner be collected for DNA test but the learned Magistrate vide order dated 06.03.2023 has rejected the prayer of the Investigating Officer by holding that he has no jurisdiction to pass an order for DNA test.



15. It has been argued by learned counsel for the respondent no.5 that respondent no.5 is a practicing advocate and Gulab Yadav and present petitioner used to commit rape with her. Since Gulab Yadav has undergone vasectomy, the presumption goes to establish that the petitioner is the biological father of the son of the respondent no.5. Thus, the DNA test of the petitioner and the son of the respondent no.5 is required in order to determine the biological father of the son of the respondent no.5.

16. I have considered the submissions of the parties and also perused the materials on record.

17. Section 482 of the Cr.P.C. reads as under:-

“482. Saving of inherent powers of High Court. - Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

18. The Hon'ble Supreme Court in the case of ***Pramod Suryabhan Pawar vs. State of Maharashtra and Anr.*** reported in ***(2019) 9 SCC 608*** has held in paragraph nos. 6 and



7 as under:-

“6. Section 482 is an overriding section which saves the inherent powers of the court to advance the cause of justice. Under Section 482 the inherent jurisdiction of the court can be exercised (i) to give effect to an order under the Cr.PC; (ii) to prevent the abuse of the process of the court; and (iii) to otherwise secure the ends of justice. The powers of the court under Section 482 are wide and the court is vested with a significant amount of discretion to decide whether or not to exercise them. The court should be guarded in the use of its extraordinary jurisdiction to quash an FIR or criminal proceeding as it denies the prosecution the opportunity to establish its case through investigation and evidence. These principles have been consistently followed and re-iterated by this Court. In Inder Mohan Goswami v State of Uttaranchal, this Court observed: (SCC p.10, paras 23-24)

“23. This Court in a number of cases has laid down the scope and ambit of courts’ powers under Section 482 Cr.P.C. Every High Court has inherent powers to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:



- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of the court, and*
- (iii) to otherwise secure the ends of justice.*

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”

7. Given the varied nature of cases that come before the High Courts, any strict test as to when the court’s extraordinary powers can be exercised is likely to tie the court’s hands in the face of future injustices. This Court in State of Haryana v Bhajan Lal conducted a detailed study of the situations where the court may exercise its extraordinary jurisdiction and laid down a list of illustrative examples of where quashing may be appropriate. It is not necessary to discuss all the examples, but a few bear relevance to the present case. The



court in Bhajan Lal noted that quashing may be appropriate where, (SCC pp.378-79, para 102)

“102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2).

xxxxxx

... (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

19. This Court can consider the quashing of the F.I.R. for preventing the abuse of the process of the Court and otherwise to secure the ends of justice and in my opinion, it is a



fit case for interference in view of glaring facts of the case. This Court finds that it is a *malafide* prosecution because of some dispute and in that view of the matter, the facts of this case are being examined hereinbelow.

20. The submission of learned counsel for the petitioner is that the present complaint / F.I.R. is in complete violation of the provisions of section 154(3) of the Cr.P.C. and therefore, the same is also in violation of the decision of the Hon'ble Supreme Court rendered in the case of ***Priyanka Srivastava & Anr. vs. State of U.P. & Ors.*** (supra).

21. Section 154(3) of the Cr.P.C. reads as under:-

“154(3). Any person aggrieved by a refusal on the part of an officer-in-charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognisable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer-in-charge of the police



station in relation to that offence.”

22. Paragraph nos.29 to 31 of the decision rendered in the case of ***Priyanka Srivastava & Anr. vs. State of U.P. & Ors.*** (supra) read as under:-

“29. At this stage it is seemly to state that power under Section 156 (3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

30. *In our considered opinion, a stage has come in this country where Section 156 (3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons.*



That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. *We have already indicated that there has to be prior applications under Sections 154 (1) and 154 (3) while filing a petition under Section 156 (3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156 (3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156 (3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the*



cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

23. From reading of the complaint petition, I find that the complainant has not filed any affidavit as mandated by the Hon'ble Supreme in the aforesaid case and she has also not filed any document with the complaint petition showing compliance of section 154(3) of the Cr.P.C. Therefore, on account of non-compliance of section 154(3) of the Cr.P.C., the direction for registration of the F.I.R. vide order dated 06.01.2023 is against the law laid down by the Hon'ble Supreme Court. The learned Magistrate though recorded non-compliance of the provisions of section 154(3) of the Cr.P.C. on 18.11.2021 but, has proceeded to pass the order dated 06.01.2023 for registration of the F.I.R. Before the learned Magistrate passed an order for registration of the F.I.R., he had passed an order for preliminary enquiry. On 18.11.2021, the learned Magistrate directed for calling for a report from the concerned Police Station through Senior Superintendent of Police, Patna in light of the complaint petition. On 11.05.2022, the Police submitted an application saying that the Police was directed to submit the report after conducting the enquiry outside the State. Thereafter,



the case was started as a complaint case and because of the non-appearance of the complainant on a number of days, the complaint was dismissed on 20.09.2022. This Court vide order dated 12.12.2022 passed in Cr.W.J.C. No.1271 of 2022 has set aside the orders dated 12.05.2022 and 20.09.2022 passed by the learned Magistrate. Thereafter, on 06.01.2023, the preliminary enquiry report of the police was opened in the Court, which was submitted in a sealed cover, and after considering the same, the learned Magistrate directed for registration of the F.I.R.

24. The moment the enquiry report was opened by the learned Magistrate on 06.01.2023, before directing for registration of the F.I.R., the fact that the complainant/informant claimed herself to be the wife of Gulab Yadav and she gave birth to a child claiming to be the son of Gulab Yadav was well within the knowledge of the Court as well as the complainant / informant. The complainant / informant while filing the complaint / FIR has not disclosed the true facts i.e. she was treating herself to be the wife of Gulab Yadav, whenever she was hospitalized she claimed herself to be the wife of Gulab Yadav and when a boy was born the name of Gulab Yadav was disclosed by the complainant/informant saying that the father of her son is Gulab Yadav. These materials have been collected by



the Police during the enquiry and they have been suppressed by the complainant / informant in her complaint/F.I.R.

25. The Hon'ble Supreme Court in the case of ***Rajiv Thapar and Others. vs. Madaln Lal Kapoor*** (supra) has held in paragraph no.30 as follows:-

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

*(30.1) **Step one**, whether the material relied upon by the accused is sound, reasonable, and indubitable i.e., the material is of sterling and impeccable quality?*

*(30.2) **Step two**, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.*

*(30.3.) **Step three**, whether the material relied upon by the accused, has not*



been refuted by the prosecution/complainant; and / or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

*(30.4.) **Step four**, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?*

(30.5.) If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

26. From reading of the F.I.R., it appears that the complainant / informant has made allegation against two persons i.e. Gulab Yadav and the present petitioner. The date of occurrence mentioned in the complaint/F.I.R. is from February, 2016 to the date of filing of the complaint petition i.e. 16.11.2021. Initially, the allegations are levelled against Gulab



Yadav who is said to have committed rape with the complainant/informant. The name of the petitioner is mentioned for an occurrence which is said to have taken place on 08.07.2017 at a Hotel in Pune alleging that the complainant was sexually assaulted by both the accused persons and Gulab Yadav made a video of the same and thereafter threatened her of making the video viral. Further allegations levelled in the complaint/F.I.R. primarily against Gulab Yadav and the complainant/informant has mentioned the name of the petitioner as an accomplice of Gulab Yadav and has alleged that he also used to commit rape with her. The complainant/informant is admittedly a lawyer practicing since 2009 and the complaint has been filed after about five years of the alleged incident of rape. The complainant has waited for five years to file the complaint and there is no satisfactory explanation for the delayed filing of the complaint petition.

27. Apart from non-compliance of Section 154(3) of the Cr.P.C. it has to be examined as to whether the offence of rape is made out against the petitioner or not.

28. The Hon'ble Supreme Court in the case of *Naim Ahamed vs. State (NCT of Delhi)* reported as **2023 LiveLaw (SC) 55** while dealing with a similar case of a married



grown-up woman, who had made allegation of rape against a person, has held in paragraph no.21 as follows:-

“21. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as ‘rape’ by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was matured and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by



the accused in the year 2011, and she gave birth to a male child through the loin of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313 of Cr.P.C. had stated that she had filed the complaint as he refused to fulfill her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375 of IPC.”

29. In the present case also, the petitioner herself is a grown-up woman, who is practicing Law and as per her own statement she was in a relationship with Gulab Yadav. Though



as per her statement, she was raped by Gulab Yadav in the year 2016 and subsequently also, she was raped by Gulab Yadav and the petitioner but since 2016 to 2021 she did not make any complaint and a child was born to her whose father as per the police report and the Hospital records is Gulab Yadav. The complainant has made a bald statement that she was raped at Pune and Delhi in Hotels by Gulab Yadav and the petitioner. The complainant was matured and intelligent enough to understand the significance and consequences of the acts of which she was a consenting party. She had consented to have sexual intercourse with Gulab Yadav since 2016 and had a child with him but has subsequently filed the present complaint/F.I.R. making the petitioner as an accused and making allegation against the petitioner that he also committed rape with the complainant/informant.

30. Though it has been argued by the petitioner that he has never been involved with the complainant / informant, but even if he had any sexual intercourse with the complainant/informant, it must have been consensual as the complainant / informant has never made any complaint to any authority and after more than five years of the alleged rape, she has filed the present complaint / FIR in which she has made



general allegations against the petitioner without disclosing the details as and when she was raped by the petitioner. Even the allegation of the complainant / informant that Gulab Yadav had called her to make her the Member of the Women Commission and committed rape with her and thereafter promised to marry her, seems to be afterthought as the complainant / informant being a lawyer whose standing is of more than 14 years in the Bar should have filed a case against Gulab Yadav at the very first instance and by not doing so and maintaining relationship with Gulab Yadav knowing fully well that he is a married person having a family, she had a child with Gulab Yadav but, the complainant subsequently, for the reasons best known to her, has made allegations against the petitioner which seems to be afterthought and the delay caused in lodging of the complaint/F.I.R. is damaging as there is no explanation by the complainant / informant about the delay caused in filing of the complaint case.

31. I am of the view that the present case is squarely covered with the guidelines provided by the ***Rajiv Thapar and Others. vs. Madan Lal Kapoor*** (supra) as the material relied upon by the petitioner is sound and reasonable i.e. the material is of sterling and impeccable quality. The



materials is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false. Further, the complainant / informant in her pleadings has not denied the factual aspects which have been found by the Police during enquiry before registration of the F.I.R. and it cannot be justifiably refuted by the complainant/informant. Therefore, I am of the view that further proceeding with the case i.e. F.I.R. will result in an abuse of the process of the Court and will not serve the ends of justice.

32. Considering the entire circumstances, I am of the view that no offence including the offence of rape is made out against the petitioner, inasmuch as, the complaint / F.I.R. has been lodged after a great delay and from reading of the complaint / F.I.R. the story propounded by the complainant / informant appears to be a false and fabricated one.

33. After the hearing was concluded, the learned counsel for the respondent no.5 (informant) has filed an application under section 340 of the Cr.P.C. on 17.05.2024 and has submitted that the proceeding against the petitioner be initiated for suppression of material facts. The main contention of the respondent no.5 (informant) is that against the order dated



12.12.2022 passed in Cr.W.J.C. No.1271 of 2022, the petitioner had moved before the Hon'ble Supreme Court by way of filing an S.L.P. and the Hon'ble Supreme Court vide order dated 22.09.2023 has stayed the order of this Court passed in Cr.W.J.C. No.1271 of 2022, but this fact has not been brought to the notice of this Court in this petition.

34. It has been submitted by learned counsel for the petitioner that the petitioner had moved before the Hon'ble Supreme Court against the order dated 12.12.2022 passed in Cr.W.J.C. No.1271 of 2022 on various grounds. The present application has been filed by the petitioner for quashing the F.I.R. and for quashing the order dated of the learned Magistrate by which the Magistrate has directed for registration of the F.I.R. and therefore, the petitioner has different cause of action and there is no requirement for mentioning the same in this proceeding.

35. In my opinion, no case for initiation of proceeding under section 340 of the Cr.P.C. is made out and therefore, Interlocutory Application no. 02 of 2024 is dismissed.

36. For the reasons as discussed above, this criminal writ petition is allowed. Accordingly, the F.I.R. vide Rupaspur P.S. Case No.18 of 2023 registered for the offence



under sections 323, 341, 376, 376-D, 420, 313, 120-B, 504 and 506/34 of the Indian Penal Code and under section 67 of the Information Technology Act and all the consequential proceedings arising out of the aforesaid F.I.R. including the order dated 06.01.2023 passed by the learned Magistrate are hereby quashed so far as the present petitioner is concerned.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R
CAV DATE	21.06.2024
Uploading Date	06.08.2024
Transmission Date	06.08.2024

