

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.482 of 2014

Arising Out of PS.Case No. -273 Year- 2013 Thana –Budha Colony District- PATNA

1. Sanjeet Kumar Sharma S/o Surendra Kumar Sharma Resident of Village Anandpur, P.S. Bihta, District Patna at present residing at Flat No. 303 Taluka Apartment, P.S. Budha Colony, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Superintendent of Police (City), Patna.
5. The Deputy Superintendent of Police, Kotwali, Patna.
6. The Officer-in-Charge of the Budha Colony Police Station, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Mukesh Kumar-I, Adv.
Mr. Atul Kumar, Adv.

For the Respondent/s : Mr. Anil Kumar, A.C. to SC-10

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-02-2015

The petitioner of the instant case is informant of Budha Colony P.S.Case No.273 of 2013 dated 15th November, 2013 registered for the offense punishable under sections 465, 467, 468, 470, 471 and 120-B of the Indian Penal Code. The said case is under investigation.

In the present application, the prayers made by the petitioner in paragraph 1 are as under :-

“1. That this application is being filed for issuance of writ especially in nature of Mandamus directing to the Respondents concern for Following effect :-

- I) To add the various sections of Information Technology Act (Cyber Crime) in the F.I.R. which is registered in connection with Budha P.S.Case

No.-273/13 in view of the allegation made by the informant/petitioner against the accused persons in the written Report, and on the basis of the documents which is filed by the petitioner in support of his averments along with the written Report, because the officer-in-charge of the Budha Police station had not made the said documents as part of the F.I.R. and F.I.R. was registered simply for the offences under sections of Indian Penal Code.

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- II) To hand over the investigation of Budha P.S. Case No.-273/13 to any other officers who are expert of the Cyber Crime and direct him to take over the all documents from the present I.O. and investigate the case in accordance with law.
 - III) To arrest the accused persons forthwith as they are still giving threatening to the Informant/Petitioner and try to influence the respondents concerned and still misusing the digital signature of the Informant/Petitioner and misappropriating the movable or immovable properties of the company in question.
 - IV) To direct the respondents concerned to receive the necessary documents from the petitioner so that the investigation may proceed in accordance with law and come to logical end.
 - V) To issue any other appropriate writ/writs, direction/directions, order/orders for which the petitioner is legally entitled.”

Learned counsel for the petitioner has submitted that though the allegations made in the F.I.R. attract the ingredients of the offences punishable under the Information and Technology Act but the police have registered the case only for the offences punishable under the Indian Penal Code. He has submitted that the officers of

Budha Colony Police Station are not expert of the Cyber Crime and thus they are not competent to hold investigation of the case. He has further submitted that the Investigating Officer of the case has not taken any step to arrest the accused persons named in the F.I.R.

On the other hand, learned counsel for the State has contested the matter. He has submitted that the investigation of the case is being carried out in a fair and impartial manner. The Investigating Officer is competent enough to hold investigation of the case and, in case, in course of investigation, offences under some other Act apart from Indian Penal Code would be found to be true, the police would submit report in that regard before the Magistrate after conclusion of investigation. He has also submitted that simply because some one is named in the F.I.R., it would not be incumbent upon the police to arrest him.

Be that as it may, having regard to the facts and circumstances of the case, I find no merit in the present application. There is nothing on record on the basis of which it can be held that the investigation of the case is not being carried out in proper manner. To hold investigation into a cognizable offence is the statutory duty of the police. After institution of a criminal case into a cognizable offence the police commence investigation. In course of investigation, it is for the police to collect material in order to find out



correctness of allegations made in the F.I.R. On conclusion of investigation it is the duty on the part of the police to submit their report in the court. At the stage of investigation, the Court has no role to play. On conclusion of investigation and after submission of police report under section 173(2) of the Code of Criminal Procedure, it would be upon the Magistrate concerned either to accept the police report or to differ with the police report. At that stage, the Magistrate concerned would be empowered to take cognizance of the offence/offences for which materials would be available in the case diary. Thereafter, at the stage of framing of charge, once again it is incumbent upon the court to look into the materials available on record and form an opinion in respect of the offences disclosed for which charges are to be framed. Even in course of trial, the trial court has jurisdiction to add or alter charge at any stage before judgment.

In view of the discussion made hereinabove, I am of the opinion that at this stage it would not be proper for this Court to direct the police to add any particular section of any particular Act in the F.I.R.

Similarly, Section 41 of the Code of Criminal Procedure gives power to the police to arrest a person, who is suspected to be involved in connection with some cognizable offence in course of investigation. However, the police are not expected to act

mechanically in each and every case to arrest the accused immediately after the F.I.R. is instituted. The police may refrain from arrest of an accused on the basis of evidence collected in course of investigation. If the offence alleged is not found true, the police may even submit final report holding the accusation to be false.

Hence, I am of the view that it would not be proper for this Court at this stage to direct the police to arrest anyone named in the F.I.R. Moreover, I do not find any material on record on the basis of which it can be said that the investigation of the case is not being conducted in a fair and impartial manner.

For the reasons assigned herein above, I do not find any merit in the present application. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

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