

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Writ Jurisdiction Case No.383 of 2014**

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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Arun Kumar Son of Late Ram Gopal Mahensaria, Resident of E- 107, Rajkishori  
Complex Mulchand Path, Chitragupta Nagar, Kankarbagh, Patna

.... .... Petitioner

Versus

1. The State of Bihar through the Home Secretary, Bihar, Patna.
  2. The Director General of Police, Bihar, Patna.
  3. The District Magistrate, Gopalganj.
  4. The Superintendent of Police, Gopalganj.
  5. The Officer in Charge town thana Gopalganj.
  6. M.M. Raju S/o Mohamad Sagir Resident of Jangalia, Ward no. 18, P.S-  
Gopalganj
  7. Rayaz Ahamad, S/o Mohamad Sagir, Resident of Jangalia, Ward no. 18, P.S-  
Gopalganj, District- Gopalganj.
  8. Suresh Kumar Agarwal, S/o Late Srilal Agarwal Resident of Marwari Mohalla,  
Ward no. 16, P.S- Gopalganj, District- Gopalganj.
  9. Ramgopal Sharma, S/o Durmal Sharma, resident of Chandra Gokul Road,  
Gopalganj Ward no. 8, P.S-Gopalganj, District- Gopalganj.
  10. Pappu Sharma S/o of Chanjila Sharma resident of Chandragokul Road,  
Gopalganj, Ward no. 8, P.S- Gopalganj, District- Gopalganj.
  11. Alimas Mikel S/o M.M.Raju, Resident of Jangalia, Ward no. 18 P.S.-  
Gopalganj, District-Gopalganj.
- .... .... Respondents
- =====

**Appearance :**

For the Petitioner/s : Mr. Rajesh Dayal, Advocate

For the Respondent/s : Mr. Pankaj Kumar Singh, AC to SC-28

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 02-03-2015**

On 29.01.2015, at the request of the counsel for the  
State, this case was adjourned for four weeks. Today, when the case  
has been taken up, learned counsel for the State has stated that till

date he has received no instructions from the Respondents.

In that view of the matter, the application has been heard on merits in absence of any counter affidavit.

In this application filed under Articles 226 and 227 of the Constitution of India, the prayer of the petitioner in para 1 is as under:-

“1. That the petitioner prays for the following reliefs through this writ petition:

(i) For Issuance of writ in the nature of Mandamus directing the Respondent no. 1 to 5 to institute the F.I.R. against the Respondent no. 6 to 11 and to take proper legal action for demand of Rangdari who also gives regular threatening to kill the petitioner, his family members, staff and worker at the construction site at Gopalganj town.

(ii) For direction to the Respondent no. 2 to 5 who is police authorities to provide and ensure the proper security to the petitioner, his family members, staff and workers who are engaged in construction work at the site detail address as given Ward no. 7, Main Road, Marwari Mohalla, Gopalganj District at Gopalganj.

(iii) For Issuance of any other writ/writs/order/orders to which the petitioner may be found entitled to.”

It has been contended that in the year 1998, the father of the petitioner Ram Gopal Mahensaria had purchased three kathas 2 dhur of land from one Sulochna Devi w/o Late Onkar Mal, and her sons. The petitioner applied for mutation with municipal authority and he is getting rent receipt in respect of the aforesaid property. There was an old building in dilapidated condition on the aforesaid land. It has become dangerous and needed immediate reconstruction.

After having permission of the municipality, the petitioner demolished the old building and started new construction work in February, 2010. Since then, respondent nos. 6 to 11 are harassing the petitioner and they are demanding Rs. 1 lakh as *rangdari*.

It has further been contended that the petitioner has also purchased a land near B.N. College, Patna and while he had started construction at the sight, the respondent no. 6, namely, M.M. Raju misbehaved with him and his staff and demanded *rangdari* of Rs. 1 lakh. The petitioner has sent a written complaint on 10.12.2010 to the Superintendent of Police, Gopalganj and a copy of the same was forwarded to the senior police officers but no action has been taken in this regard. In respect of the incident which took place at Patna, an informatory petition has been filed before the learned Chief Judicial Magistrate, Patna but no action has been taken against the respondents. Learned counsel for the petitioner has submitted that the petitioner is receiving constant threat from the private respondents on telephone and they are demanding *rangdari* from him.

On the other hand, learned counsel for the State has submitted that in case any cognizable offence has taken place, the petitioner ought to have approached the Officer-in-charge of the police station. Referring to the writ petition, he has submitted that there is no averment that the petitioner has ever approached the Officer-in-charge of the police station.

Having heard the parties, I am of the view that this application is misconceived. Every information relating to the commission of cognizable offence has to be given by the person making it to the Officer-in-charge of the police station in terms of Section 154(1) of the Code of Criminal Procedure. Admittedly, the petitioner has not filed any written/oral report before the Officer-in-charge of the police station. In case, any person is aggrieved by



refusal on the part of an Officer-in-charge of police station to record the information referred to in Sub-section (1) of Section 154, he may send the substance of such information, in writing and by post, to the Superintendent of Police concerned under Sub-section (3) of Section 154 but such information has not to be given directly to the Superintendent of Police without approaching the officer-in-charge of the police station. Despite all the steps taken under Section 154 of the Code of Criminal Procedure, if the FIR is not registered and investigation is not taken up, the person aggrieved has an alternative remedy to file a complaint under Section 190 read with Section 200 of the Code of Criminal Procedure before the Magistrate concerned, who may either inquire into the complaint given or direct the police to investigate the case in terms of Section 156(3) of the Code of Criminal Procedure.

In *Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others* since reported in (2004) 7 SCC 768, the Hon'ble Supreme Court in paragraph 13 held as under:-

***“13. When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to inquire into the complaint as provided in Chapter XV of the Code.***

***In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by***

*this Court in All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India. It was specifically observed that a writ petition in such cases is not to be entertained”.*

In *Sakiri Vasu Vs. State of Uttar Pradesh and others* reported in (2008) 2 S.C.C. 409, the Hon'ble Supreme Court in paragraph 24 to 28 held as under:-

*“24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) CrPC to order registration of a criminal offence and/or to direct the officer in charge of the police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) CrPC, we are of the opinion that they are implied in the above provision.*

*25. We have elaborated on the above matter because we often find that when someone has a grievance that his F.I.R. has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 CrPC. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, first under Section 154(3) and Section 36 CrPC. before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned under Section 156(3).*

*26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a*

*criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies? 27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.*

*28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.”*

For the reasons discussed hereinabove and the law laid down by the Apex Court, in my view, for the relief prayed in the present application, a writ petition is not an appropriate remedy.

In that view of the matter, I find no merit in this application. Accordingly, the application is dismissed.

**(Ashwani Kumar Singh, J.)**

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