

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1069 of 2014

Arising Out of PS.Case No. -14 Year- 2014 Thana -Kaler District- Arwal

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1. Sona Devi Wife of Late Surya Deo Mahto Resident of Village-Jalalpur, Police Station-Goh, District-Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Superintendent of Police, Arwal.
3. The Deputy Superintendent of Police, Arwal.
4. Md. Shahid Ashraf, The Officer In-charge of Kaler Police Station, District-Arwal.
5. Dhanmati Devi Wife of Jang Bahadur Mahto
6. Mantosh Kumar Son of Jung Bahadur Mahto Both resident of Village-Kajpa, Post Office-Jakhim, Police Station-Rafiganj, District-Aurangabad.
7. Prakash Kumar Son of Janardan Mahto
8. Jai Prakash Kumar Son of Chandraman Mehta Both resident of Village-Chauri, Police Station-Daudnagar, District-Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kamalendra Prasad Singh, Adv.
For the Respondent/s : Mr. Lalan Kumar, A.C. to GP-23

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 02-04-2015

The instant criminal writ petition has been filed for initiation of process against the respondents under the appropriate sections of Indian Penal Code and for imposition of heavy cost and further for a direction to the respondents to pay rupees five lacs as compensation for their deeds and misdeeds against the son of the petitioner, namely, Uday Mahto by which they caused physical as well as mental torture to him.

According to the petitioner, the daughter of one Jung



Bahadur Singh, namely, Kushum Kumari was married to the son of the petitioner, namely, Subhash Kumar, who, on 8th March, 2014 went to attend the nature's call but she did not return. It has been contended that though necessary informations were given to the parents of Kushum Kumari as well as to Goh Police Station but no case was lodged for her missing by the police. On 13th March, 2014 one bullet ridden dead body of a young woman was found by the Chaukidar of Kaler Police Station and for that Kaler P.S. Case No. 14 of 2014 was lodged under sections 302, 201 read with 34 of the Indian Penal Code as well as 27 of the Arms Act and investigation was taken up. On 14th March, 2014, respondent nos. 5 to 8 appeared before the Kaler Police Station and identified the dead body as of their daughter, namely, Kushum Kumari and also leveled allegation that, due to illicit relation between the husband of the so called deceased with his bhabhi Renu Kumari, the family members of the petitioner committed murder of their daughter. The inquest report of the dead body was also prepared and it was sent for post-mortem on 15th March, 2014. Respondent nos. 5 to 8 procured the dead body and also cremated the same. In course of investigation, the police arrested son of the petitioner, namely, Uday Mahto and his wife Renu Kumari, who were produced before the Magistrate and remanded to judicial custody. However, on 6th May, 2014, the so called deceased wife of



son of the petitioner was found alive and she was produced before the Magistrate for her statement under section 164 of the Code of Criminal Procedure and on the same day on the direction of the Superintendent of Police, Arwal, a final form showing “mistake of fact” was submitted by the police in court. Accepting the final report submitted by the police, learned Magistrate ordered for release of the son and daughter-in-law of the petitioner from jail on 14th May, 2014.

It has been contended that due to malicious prosecution launched by respondent nos.5 to 8, the family members of the petitioner were put in mental agony and two of them had to undergo even imprisonment for almost nine days for none of their fault. In that view of the matter, the aforesaid reliefs have been claimed by the petitioner.

On the other hand, learned counsel for the State has submitted that no motive can be attributed against the police, There is no dispute that pursuant to the recovery of an unidentified bullet ridden dead body, the Chaukidar had instituted Kaler P.S.Case No.14 of 2014 on 13th March, 2014 against unknown accused persons. The police were conducting investigation into that case. In the meantime, the daughter-in-law of the petitioner went missing on 8th May, 2014. There was no report with the police in this regard. It is an admitted position that no information was given either to the Goh Police



Station or to the Kaler Police Station by the petitioner or any of her family members in this regard. In course of investigation when the family members of the so called deceased daughter-in-law of the petitioner claimed to identify the dead body, they acted under bonafide belief and apprehended some of the persons against whom suspicion was raised. They were immediately produced before the Magistrate concerned, who remanded them to judicial custody. The moment the alleged victim was found alive, the police produced her in the court for recording her statement under section 164 of the Code of Criminal Procedure and pursuant to the direction of the Supervising Officer, a report under section 173(2) of the Code of Criminal Procedure was filed in respect of arrested accused persons showing them to have been booked in the case on the basis of “mistake of fact”. Immediately thereafter, the court released them from custody. Learned counsel for the State has submitted that in the given facts and circumstances of the case, the police were discharging their duty with due care and caution but certainly in the process some mental agony and harassment has been caused to the family members of the petitioner.

Regard being had to the facts and circumstances of the case, I find that the persons, who were actually detained into custody, have not come to this Court to file the application. They are all adult

citizens and hence an appropriate application ought to have been filed by them. In any view of the matter, no motive for false implication can be attributed against the police in the facts and circumstances of the case. In case the arrested accused persons are aggrieved, they have a right to prosecute the persons responsible for launching a false prosecution in accordance with law.

So far as award of compensation is concerned, the aggrieved party may approach the civil court in this regard as it would involve several disputed questions, which may require leading of evidence by the parties.

In view of the availability of equally efficacious statutory remedy to the aggrieved person/persons for redressal of his/their grievance, I am not inclined to entertain this application under writ jurisdiction. Accordingly, the application is disposed of.

(Ashwani Kumar Singh, J)

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