

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.253 of 2014

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

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Rajeshwar Prasad Singh son of Late Ram Japan Singh, Resident of Mohalla- Jangli Road, Lane, P.O.- Patna City, P.S.- Patna City, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, office situated at Main Secretariat, P.S.- Sachivalaya, District- Patna.
2. The Officer-in-Charge, Chakai Police Station, Doman Paswan son of Late Raghubir Paswan, proprietor Jumrao Hotel Near Chakai Petrol Pump, P.S.- Chakai, District- Jamui.
3. The Dy. Superintendent of Police, Jhajha.
4. The Superintendent of Police, Jamui
5. The Inspector General of Police, Patna office situated at Main Secretariat, P.S.- Sachivalaya, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajiv Ranjan Singh, Advocate

For the Respondent/s : Mr. Pankaj Kumar Singh, A.C. to S.C.-28

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 22-01-2015

The grievance of the petitioner is that despite having given written report dated 11th September, 2003 to the Officer-in- charge, Chakai Police Station regarding commission of cognizable offence, the FIR has not been registered.

By filing the present application under Articles 226 and 227 of the Constitution of India, the petitioner seeks a direction to be issued to the respondents to register an FIR pursuant to the aforesaid written complaint of the petitioner and investigate the same.

In Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others since reported in (2004) 7 SCC 768, the Apex 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

since reported in (2008) 2 S.C.C. 409, the Apex 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.”

In view of the law laid down by the Hon’ble Supreme Court and in view of availability of alternative remedy to the petitioner, I am not inclined to entertain the present application. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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