

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.293 of 2014

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

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1. Abdul Latif Son Of Late Haji Abdul Hai Resident Of Village Majheli, P.S-
Pranpur, District- Katihar.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Director General Of Police, Government Of Bihar, Patna.
3. The D.I.G. Purnea Range At Purnea.
4. The Superintendent Of Police Katihar, District- Katihar.
5. The Deputy Superintendent Of Police Sadar, District- Katihar.
6. The Station House Officer (S.H.O) Of Dandkhora Police Station District
Katihar.
7. Raju Bishwas Son Of Raghu Bishwas Resident Of Bhamrauli, P.S- Dandkhora,
District- Katihar.
8. Pintu Mandal Son Of Bhagwan Master Resident Of Village Duwashay P.S-
Dankhkhora, District- Katihar.
9. Sudhir Kumar Son Of Not Known Presently Working As Teacher In Harijan
High School, Sonauli, P.S- Kadwa, District- Katihar.
10. Amir Hussain Son Of Abdul Sattar Resident Of Majheli, P.S- Pranpur, District-
Katihar.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Anis Akhtar

For the Respondent/s : Mr. A.C. to G.P.8

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 27-01-2015

In the present application, filed under Articles 226 and 227 of the Constitution of India, the prayer of the petitioner in paragraph no.1 is as under:

“ 1. That the present writ application is being filed for grant of following reliefs:-

(A) For issuance of an appropriate writ, order or direction commanding the respondent authorities for reinvestigation of the Dandkhora P.S. Case No. 43 of 2013 either by Central Bureau of Investigation or Criminal Investigation Department or any other independent investigating agency as the Investigation Officer of Dandkhora P.S. Case No. 43 of 2013 has closed the investigation arriving at a conclusion of road accident as a matter of fact close and proximate observation shows that this is case of murder and later on the same was shown as road accident.

(B) For any other relief and reliefs
for which petitioners are entitled in the
opinion of this Hon'ble Court.”

One Choukidar, namely, Doman Rai, gave his fardbeyan before the A.S.I. Dandkhora police station on 11th March, 2013 alleging, inter alia, that while he was on duty to control law and order on the occasion of Mahashivratri as well as Bharidih fair, he got information at around 10.40 A.M. that a Safari vehicle was overturned and several persons sustained injuries in that incident. On such information he reached at the place of occurrence and found that an unnumbered white color Safari vehicle was overturned and one person was dead and two others were seriously injured. The injured persons were immediately taken to Dandkhora Health Center on tempo. The deceased was identified as Shamim Akhtar, son of the petitioner and other two injured were identified as Amir Hussain and Raju Biswas. It was further alleged that due to negligent driving of the driver of the un-numbered Safari vehicle, son of the petitioner Shamin Akhtar had died and two others were injured. On the basis of the said information Dhandkhora P.S. Case No.29 of 2013 was registered on 12th March, 2013 for the offences punishable under sections 279, 337, 338 and 304A of the Indian Penal Code against the driver of the vehicle and investigation was taken up. While the matter was still pending for investigation, the petitioner filed a complaint under sections 190 and 200 of the Code of Criminal Procedure in the court of Chief Judicial Magistrate, Katihar—vide Complaint Case No. 645 of 2013. The learned Chief Judicial Magistrate, Katihar, referred the said complaint to the police under section 156(3) of the Code of Criminal Procedure for investigation, pursuant to which another F.I.R.—vide Dandkhora P.S. Case No. 43 of 2013 was registered under sections 302,

201 read with sections 34 and 120(B) of the Indian Penal Code against four named accused persons. The police investigated both the cases. In the first case i.e., Dhankhora P.S. Case No. 29 of 2013 a report under section 173 of the Code of Criminal Procedure was filed on 10th June, 2013-vide Final Report No. 54 of 2013 under sections 279, 337, 338 and 304A of the Indian Penal Code. In the final report the police have held that the aforesaid vehicle in question was being driven by the son of the petitioner Shamim Akhtar who is already dead. In the second case i.e., Dhankhora P.S. Case No. 43 of 2013 the police have submitted Final Report No. 53 of 2013 on 10th June, 2013 and held the case to be a mistake of fact.

Learned counsel for the petitioner has submitted that the police have not investigated the case properly, and the final report holding the case to be a mistake of fact had been submitted in Dhankhora P.S. Case No. 43 of 2013 in a mechanical manner and hence the entire case needs to be reinvestigated.

Learned counsel for the State has contested the matter. He has submitted that the investigation of the case has been carried out in a fair and impartial manner. In course of investigation it transpired that the deceased Shamim Akhtar was the driver of the vehicle and it was due to his rash and negligent act, the vehicle had overturned.

Be that as it may, in my view the application is misconceived. Learned counsel for the petitioner has fairly conceded that the final report submitted in connection with Dhankhora P.S. Case No. 43 of 2013 is still pending before Magistrate concerned and the petitioner has already filed a complaint in the court in the form of protest. In that view of the matter, in case the court accepts the final report submitted by the police, the petitioner may proceed with his complaint filed in terms of sections 190 and 200 of the Code

of Criminal Procedure. It is further open to the Magistrate concerned either to accept the police report or to take a different view of the matter on appreciation of materials collected in course of investigation.

In such circumstances, noted above, no direction for reinvestigation or further investigation can be issued by this Court in exercise of power conferred under Article 226 of the Constitution of India. In case the concerned Magistrate finds fault with the investigation, he is empowered in law under section 173 , clause(8) of the Code of Criminal Procedure to direct for further investigation.

For the reasons stated above, I do not find any merit in this application. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

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