

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.661 of 2014

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

Ram Kishun Prasad, S/o Late Mahadev Prasad, Resident of Mohalla - Makhanpur
Idgah, P.S. - Alamganj, District – Patna

.... Petitioner

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna
3. The Inspector General of Police, Patna
4. The District Magistrate, Patna
5. The Senior Superintendent of Police, Patna
6. The Deputy Superintendent of Police, Patna
7. The S.H.O., Alamganj, Police Station, Patna
8. The Investigating Officer of Alamganj, P.S. Case No. 280/12, P.S. - Alamganj, Patna
9. Krishna Prasad Tatwa
10. Ramjee Prasad Tatwa, both Sons of Sukhu Ram
11. Dharmendra Kumar, S/o Krishna Prasad
12. Karu Chaudhary
13. Jaipal @ Chamri Both sons of Late Ganga Chaudhary
14. Jai Prakash @ Pakauri S/o Late Ram Babu Mistry
15. Pappu Sharma S/o Loha Singh
16. Tribhuwan @ Manish S/o Late Devi Lal Respondent no. 9 to 15 are resident of mohalla - Makhanpura Idgah, P.S. - Alamganj, District - Patna
17. Bajrangi S/o Vishnu Mistry, Resident of Mohalla - Kunj Gali, Makhanpur, Idgah, P.S. - Alamganj, District - Patna

.... Respondents

Appearance :

For the Petitioner/s : Mr. Kamod Kumar Bidyarthi, Advocate

For the Respondent/s : Mr. Irshad, AC to SC-18

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 13-02-2015

Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner is informant of Alamganj P.S. Case No. 280 of 2012 registered for the offence punishable under Section 302 and 120B of the Indian Penal Code.

The first information report is based on the fardbeyan recorded by S.I., Rabindra Prasad of Alamganj Police Station on 25th October, 2012 at 5.15 a.m. In the alleged incident, son of the petitioner was killed in the night of 24th October, 2012. The petitioner has raised suspicion against two persons namely, Ramjee Prasad Tatwa and Krishna Tatwa. The police have investigated the case and submitted charge sheet against both of them.

The petitioner being not satisfied with the police investigation has filed a representation before the Superintendent of Police in which he has alleged that apart from these two persons, some other accused were also involved in the case.

The case of the petitioner is that since the police have not investigated the case properly, the case should be handed over to the CBI or CID for further investigation. Learned counsel for the petitioner has submitted that Respondent Nos. 11 to 17 were also involved in the case and the police ought to have submitted charge sheet against them too.

In my view, the application is misconceived. To hold investigation into a cognizable offence is the statutory right of police. Neither the accused nor the informant has a right to dictate the manner in which the investigation of a cognizable case is to be carried out. A person cannot be made accused merely on suspicion raised by an informant of the case.

In Sakiri Vasu Vs. State of Uttar Pradesh and others

since reported in (2008) 2 SCC 409, the Apex Court in paragraph 27 held as under:

“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 section 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.”

In **T.C. Thangaraj v. V.Engammal & Ors.** since reported in **A.I.R. 2011 SC 3010** two appeals had been preferred before the Hon'ble Apex Court against the order by which the High Court had entrusted the investigation of the case to the Central Bureau of Investigation. The Hon'ble Apex Court after discussing the facts of the case in detail and taking into consideration the previous judgment rendered by the Constitution Bench of the Apex Court in **State of West Bengal & Ors. v. Committee for Protection of Democratic Rights, West Bengal & Ors.** since reported in **A.I.R. 2010 SC 1476** held in paragraph nos.9 and 10 as under:

“9. The decision of the two-Judge Bench of this Court in Ramesh Kumari v. State (NCT of Delhi) & Ors. (supra) will have to be now read in the light of the principles laid down by the Constitution Bench of this Court in State of West Bengal & Ors. v. Committee for Protection of Democratic Rights,



West Bengal & Ors. (supra). The Constitution Bench has considered at length the power of the High Court to direct investigation by the CBI into a cognizable offence alleged to have been committed within the territorial jurisdiction of a State and while taking the view that the High Court has wide powers under Article 226 of the Constitution cautioned that the courts must bear in mind certain self-imposed limitations. Para 70 of the opinion of the Constitution Bench in State of West Bengal & Ors. v. Committee for Protection of Democratic Rights, West Bengal & Ors (AIR 2010 SC 1476:2010 AIR SCW 1829)(supra) is extracted hereinbelow:

“Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”
(emphasis supplied)

“10. It will be clear from the opinion of the



Constitution Bench quoted above that the power of the High Court under Article 226 of the Constitution to direct investigation by the CBI is to be exercised only sparingly, cautiously and in exceptional situations and an order directing to CBI is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. In the impugned order, the High Court has not exercised its constitutional powers under Article 226 of the Constitution and directed the CBI to investigate into the complaint with a view to protect her personal liberty under Article 21 of the Constitution or to enforce her fundamental right guaranteed by Part III of the Constitution. The High Court has exercised its power under Section 482 CrPC on a grievance made by the complainant that her complaint that she was cheated in a loan transaction of Rs 3 lakhs by the three accused persons, was not being investigated properly because one of the accused persons is an Inspector of Police. In our considered view, this was not one of those exceptional situations calling for exercise of extraordinary power of the High Court to direct investigation into the complaint by CBI. If the High Court found that the investigation was not being completed because P. Kalaikathiravan, an Inspector of Police, was one of the accused persons, the High Court should have directed the Superintendent of Police to entrust the investigation to an officer senior in rank to the Inspector of Police under Section 154(3) CrPC and not to CBI. It should also be noted that Section 156(3) of the Code of Criminal Procedure provides for a check by the Magistrate on the police performing their duties and where the Magistrate finds that the police have not done their duty or not investigated satisfactorily, he can direct the police to carry out the investigation properly, and can monitor the same. (See Sakiri Vasu v. State of U.P. & ors. (2008) 2 SCC 409 : (AIR 2008 SC 907 : 2008 AIR SCW 309)).”

Taking into consideration the facts of the present case and the law laid down by the Hon’ble Apex Court in respect of

an investigation to be handed over to the Central Bureau of Investigation, I find that there is nothing exceptional in the present case for which the investigation or further investigation should be handed over to any other independent agency. The informant cannot choose the Investigating Agency of his choice for the purposes of investigation of a case brought at his instance. There is absolutely no merit in this case. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

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