

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

**Criminal Writ Jurisdiction Case No.831 of 2014**

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Madan Kumar Das @ Mahant Madan Kumar Das son of Late Mahant  
Poncham Das , resident of Mohalla Madhubani , Police Station  
Khajanchi Hat , District Purnea .

.... .... Petitioner/s

Versus

1. The State of Bihar
2. The Superintendent of Police , Katihar .
3. The Station House Officer , Town Police Station ,Katihar .
4. The Investigation Officer , Town Police Station, Katihar .
5. Suresh Kumar Singh, son of Ambika Prasad Singh, resident of Mohalla  
Gami Tola, P.S. Nagar Thana, District Katihar.

.... .... Respondent/s

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**Appearance :**

For the Petitioner : Mr. Syed Firoz Raza with  
Mr. Khatim Raza, Advocates

For the State : Mr. Rajiv Roy, G.P. 5

For Respondent No 5 : Mr. Ramesh Kumar Chaudhary, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

**ORAL JUDGMENT**

8      28-07-2015      Heard Mr. Syed Firoz Raza, learned counsel for the  
petitioner, Mr. Rajiv Roy, learned G.P. 5 for the State and Mr.  
Ramesh Kumar Chaudhary, learned counsel for the respondent  
no. 5.

The application seeks quashing of the F.I.R. of Katihar Town P.S. Case No. 292 of 2014 dated 22.05.2014 registered for offences punishable under Sections 465/468/471/420 of the Indian Penal Code.

As per the allegation, the petitioner is said to have interpolated his name on the land revenue rent receipt, copy of which was filed before the High Court in C.W.J.C. No. 22297 of 2012.

Learned counsel for the petitioner submits that he has not forged any public record and rather even from the admitted position the allegation is that in the rent receipt granted to him he had added his name whereas originally the same was only in the name of "*Ati Prachin Udasin Bari Sangat*". It is submitted that the institution of the F.I.R. is bad in law as there is no jurisdiction of any person save and except the Court before which such document has been produced, to file a complaint. It is submitted that even going a step further, for the sake of argument only, without admitting to the same, if it is accepted that such a document was filed before the Court; at the very initial stage after some argument, the writ petition stood withdrawn without the petitioner having taken any advantage of such document to obtain any order of the Court. It is submitted that *per se* any insertion in



any receipt given to the petitioner is not an offence inasmuch as any copy or certified copy or copy obtained of any Government record even if mutilated or defaced either by adding or subtracting or by whatever means, being the property of the person who has obtained it, only when the same is used in any proceeding to take advantage and obtain a favourable order, can it be said that an offence has been committed and more importantly for initiating action under the Indian Penal Code for such offence, it is the Court before which the same has been filed and used which can maintain a complaint in this regard. It is submitted that admittedly the said document has not been used by the petitioner till date and thus the lodging of the F.I.R. is not permissible in the eyes of law. For such proposition, learned counsel has relied on the decision of the Hon'ble Supreme Court in the case of **Iqbal Singh Marwah v. Meenakshi Marwah** reported in **2005(2) Supreme 549**, the relevant being at paragraph 12. Learned counsel has also relied on the decision of the Hon'ble Supreme Court in the case of **State of Maharashtra v. Mohd. Yakub** reported in **AIR 1980 Supreme Court 1111**, the relevant being at paragraph 30.

Learned counsel for the State, relying on the counter affidavit, submits that the investigation of the case is going on.

Learned counsel for the respondent no. 5 i.e., the



informant has filed counter affidavit and also supplementary counter affidavit and has brought on record the order dated 04.07.2013 in C.W.J.C. No. 22297 of 2012 by which the writ application stood withdrawn. Learned counsel has also annexed copy of the said writ application. Learned counsel submits that once a complaint is made disclosing cognizable offence, it is the duty of the police to investigate and it has been held by judicial pronouncements that the right of the police to investigate into a complaint relating to cognizable offence should not be scuttled or stopped by the Courts in exercise of powers either under Section 482 of the Code or Articles 226 and 227 of the Constitution of India. For such proposition, learned counsel has relied on the decisions of the Hon'ble Supreme Court in the case of **Navinchandra N. Majithia v. State of Maharashtra** reported in **2000(4) PLJR (SC) 200** and **Satvinder Kaur v. State** reported in **2000(1) PLJR (SC) 1**. It is submitted that in the present case, the petitioner by adding his name in the rent receipt issued in favour of the '*Sangat*' and filing a copy of the same before the High Court has committed an offence for which lodging of the F.I.R. is *bona fide* and in accordance with law.

Upon considering the facts and circumstances of the case and submissions of learned counsel for the parties, this Court



at the very outset, would like to make it clear that main thrust of attack of the petitioner is against the very institution of the F.I.R. and with regard to whether the same should be allowed to be investigated by the police. He has challenged the lodging of the F.I.R. itself for offences relating to filing of a document which may be tampered in a court proceeding, as per bar of Section 195 of the Code which is not permissible in law as it is only that Court, before which such document has been filed and relied upon for the purposes of obtaining any order, which is competent to lodge a formal complaint for initiation of criminal proceeding against the accused. In the present case, this is a major lacuna in lodging of the F.I.R. which has been done on the basis of a complaint of the informant, who is the private person. This Court would not like to go into the factual aspect whether the document which is the subject matter of the F.I.R. has been tampered with by the petitioner by adding his name to the same since even if such fact is taken to be true, the prosecution for such an offence should have been lodged at the instance of written complaint by or on behalf of the court concerned before which such document had been produced and utilized. In the instant case, the following relief was sought for in C.W.J.C. No. 22297 of 2012:

“ (II) Issuance of writ in the

nature of certiorari, quashing the order dated 12.05.1993/19.06.1993 in respect of letter no. 1921 passed by Addl. Collector, Katihar who has imposed stay to sale the land Khata no. 205, Plot no. 41, 42, 43K. Kha, G. 44, 45, 46, 47, 48, 100, 107, 108 and 214 Total area 02.51.35 acre (Annexure-14).

(II) Issuance of writ in the nature of Mandamus, order of direction, directing and commanding the respondent not to interfere with land of petitioner in Khata no. 205 no. 41, 42, 43K., Kha G. 44, 45, 46, 47, 48, 100, 107, 108 and 214 are land of the petitioner.”

Thereafter on 07.02.2013 a co-ordinate Bench had passed the following order in the said writ petition:

“After some argument, Sri Surendra Kumar, learned counsel for the petitioner, in presence of Mr. Eqbal Asif Neyazi, learned A.C. to Government Pleader No. 4, seeks permission to withdraw this writ petition with liberty to approach the competent authority.

The prayer is allowed.

The writ petitions stands dismissed as withdrawn with liberty as indicated above.”

From the above, it is clear that besides there being no



reference to the so called ‘fabricated’ document in the order dated 07.02.2013, there is also no indication that when the manipulation in the document in question was detected, the application was withdrawn, which would further be obvious from the fact that the informant was neither party in the writ nor appearing at the relevant time before the Court when the application was withdrawn with liberty to approach the competent authority. Moreover, the Court allowing the application to be withdrawn with such liberty is indicative of the fact that had such fraud been committed before the High Court due to which the petitioner was forced to withdraw the application, the Court would not have shut its eyes and further would also not have given liberty to the petitioner to approach the competent authority. Thus, it is obvious that the issue of whether the document in question was tampered/forged/fabricated was never even discussed before the High Court when the writ petition was withdrawn on 07.02.2013. The proposition laid down in the decisions relied upon by the respondent no. 5 that the Courts ought to be reluctant in interfering with the investigation relating to a complaint made regarding cognizable offence, cannot be questioned. However, this is the general rule with regard to the investigation being made by the police on the basis of complaint disclosing such cognizable



offence whereas in the particular facts and circumstances of the present case, the issue is whether the F.I.R. could have been lodged by the person who has done so being a private person since as per the embargo of Section 195 of the Code the complaint has to be by the court concerned. This Court thus finds that on the basis of the basic and settled principles of law as well as on facts, the decisions relied upon by the learned counsel for the respondent no. 5, do not come to his aid.

Upon further consideration of the matter, this Court finds that the petitioner has been able to make out a case for interference especially in view of the fact that before pressing the writ application, he chose to withdraw the same and thus, he is supported by the law laid down by the Hon'ble Supreme Court in the case of **State of Maharashtra v. Mohd. Yakub** (*supra*) and paragraph 30 of the said judgment, being relevant is quoted hereinbelow for ready reference:

“**30.** In *Malkiat Singh v. State of Punjab*, (1969) 2 SCA 663 at p. 667, a truck which was carrying paddy, was stopped at Samalkha 32 miles from Delhi and about 15 miles from the Delhi-Punjab boundary. The question was whether the accused were attempting to export paddy from Punjab to Delhi. It was held that on the facts of the

case, the offence of attempt had not been committed. Ramaswamy, J. observed:

“The test for determining whether the act of the appellants constituted an attempt or preparation is whether the overt acts already done are such that if the offender changes his mind and does not proceed further in its progress, the acts already done would be completely harmless. In the present case it is quite possible that the appellants may have been warned that they had no licence to carry the paddy and they may have changed their mind at any place between Samalkha Barrier and the Delhi-Punjab boundary and not have proceeded further in their journey”.

We think that the test propounded by the first sentence should be understood with reference to the facts of the case. The offence alleged to be contemplated was so far removed from completion in that case that the offender had yet ample time and opportunity to change his mind and proceed no further, his earlier acts being completely harmless. That was what the Court meant, and the reference to ‘the appellants’ in the sentence where the test is propounded makes it clear that the test is propounded with reference to the particular facts of the case and not as a general rule. Otherwise, in every case where an accused is

interrupted at the last minute from completing the offence, he may always say that when he was interrupted he was about to change his mind.”

Similarly, the Court finds that the decision of the Hon’ble Supreme Court in the case of **Iqbal Singh Marwah** (*supra*) also supports the case of the petitioner.

In view of the discussions made hereinabove, the application stands allowed. The F.I.R. of Katihar Nagar P.S. Case No. 292 of 2014, being impermissible in law, cannot be sustained and accordingly stands quashed.

**(Ahsanuddin Amanullah, J)**

Anjani/-

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