

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.233 of 2015

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

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Nitu Devi wife of Amar Sharma Resident of Village Patori, Ward No. 14, Police Station Bihra, District Saharsa.

.... Petitioner

Versus

1. The State of Bihar, through Principal Secretary, Department of Home, Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Director General of Police, Government of Bihar, Patna.
4. The District Magistrate, Saharsa.
5. The Superintendent of Police, Saharsa.
6. The Station House Officer Police Station Bihra, District Saharsa.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dinesh Maharaj, Advocate

For the Respondent/s : Mrs. Neelam Prasad, A. C. to G.P.-25.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 10-12-2015

In the present writ application under Articles 226 and 227 of the Constitution of India, the prayer of the petitioner as narrated in para-1 is as under:-

“1. That this writ application is being filed for issuance of appropriate writ/writs, order/orders, direction/directions for directing and commanding the respondents to conduct free and fair investigation in the light of the application originally filed before the Station House Officer Bihra Police Station, a



copy of which was immediately sent through registered post but under influence of the accused persons the Station House Officer Bihra Police Station manipulated the application and used another paper on which the police has forcibly taken the signature of the petitioner and her husband, and on that basis made/lodged a totally different case bearing Bihra Police Station Case No. 211/2014, and also for taking proper and appropriate action against the accused persons in Bihra Police Station Case No. 121/2014.”

2. Heard the respective counsel for the parties and perused the record.

3. The case of the petitioner, in brief, is that Anandi Sharma, who is the cousin of the father-in-law of the petitioner, had outraged her modesty on 14th July, 2014 at about 08.30 p.m. while she along with her child was taking rest in the room for which she had instituted Bihra P. S. Case No. 121 of 2014 dated 15th July, 2014 registered under Sections 354 and 504/34 of the Indian Penal Code (for short ‘IPC’). Since the police failed in its duty in investigating the case properly, the aforesaid Anandi Sharma and his family members are regularly harassing the petitioner. The petitioner made a complaint before Janata Darbar of the Superintendent of Police by filing a representation on 20th November, 2014, but no action was taken even on that



representation. As the petitioner was raising her grievance before the authorities, Anandi Sharma, Bholan Sharma and Rahul Sharma along with two unknown miscreants armed with weapons came at the courtyard of the petitioner on 9th October, 2014 at 4.20 p.m., abused, brutally assaulted and looted certain household articles and cash and also threatened her of dire consequences. The petitioner made a complaint before the SHO, Bihra Police Station against the said miscreants, but the police did not entertain her complaint and refused to provide any receipt and the SHO had taken her signature as also her husband's signature on a plain paper.

4. The contention of the petitioner is that since Anandi Sharma and his family members are supporters of the present Mukhiya and muscle men of the locality, the police, in collusion with them, used the said blank-sheet of paper signed by the petitioner and converted the same into an FIR narrating a totally different story bearing Bihra P. S. Case No. 211 of 2014 dated 09.12.2014 under Sections 341, 323, 324, 354, 506 read with 34 of the IPC against Anandi Sharma, his wife Indra Devi and his son Bhoolan Sharma. Furthermore, due to the highhandedness of the police, the petitioner and her husband have also been made accused in a false case instituted by the wife of Anandi Sharma simply to provide a counter version to Bihra P. S. Case No. 211 of 2014. The

further contention of the petitioner is that the whole sequence of the fact goes to show the *mala fide* of the police to drag the petitioner in a false case at the instance of said Anandi Sharma for wrecking vengeance.

5. *Per contra*, learned counsel for the State has contended that the petitioner has deliberately and mischievously distorted facts to put undue pressure on the investigating agency and has levelled wrong and unfounded allegations against the police officer in order to protect herself from being prosecuted in a case lodged against her and her husband. She has further contended that the falsity of the case could be apparent from the fact that the allegations made in Bihra P. S. Case No. 121 of 2014 were found to be false during investigation and accordingly, the police submitted final report bearing No. 140 of 2014 dated 30.12.2014 holding the accusation to be false. Despite being aware of the submission of the final report in Bihra P. S. Case No. 121 of 2014 on 30.12.2014, the petitioner has suppressed the fact and filed the present writ application on 17th March, 2015 seeking proper and appropriate action against the accused persons named in Bihra P. S. Case No. 121 of 2014. She has further contended that so far as Bihra P. S. Case No. 211 of 2014 and Bihra P. S. Case No. 212 of 2014 are concerned, on completion of investigation, charge-sheet has already

been submitted in both the cases vide charge-sheet no. 34 of 2015 dated 10.03.2015 and charge-sheet no. 146 of 2015 dated 31.05.2015 respectively.

6. The writ petition has been filed for directing the respondents to conduct free and fair investigating of Bihra P. S. Case No. 211 of 2014, not on the basis of its FIR rather on the basis of a petition allegedly sent to the SHO Bihar Police Station through registered post by the petitioner and for taking proper action against the accused persons of Bihra P. S. Case No. 121 of 2014. Apparently, the application has not been filed with clean hands. The petitioner has not disclosed in the application filed on 17.03.2015 that on completion of investigation in Bihra P. S. Case No. 121 of 2014, the investigating agency had filed a final report holding the accusation to be false as back as on 30.12.2014. From perusal of the record, it would also appear that both the parties are agnates and co-sharers and there is land dispute in between them. They have lodged criminal case against one other. There is nothing on record to show that Bihra P. S. Case No. 211 of 2014 was not instituted on the original report submitted to the police. Moreover, the other two cases, i.e., Bihra P. S. Case No. 211 of 2014 and Bihra P. S. Case No. 212 of 2014 have already ended in submission of charge-sheet before the Magistrate. In that view of the matter, in

case, the petitioner has any grievance, she ought to have approached the Court of Jurisdictional Magistrate, who has the authority to take appropriate action on receipt of police report under Section 173(2) of the Code of Criminal Procedure.

7. In view of the discussions made, hereinabove, the writ application being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J.)

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