

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.237 of 2015

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

1. Smt. Rita Singh W/o Sri Shambhu Nath Singh @ Sunil Kumar Singh @ Sunil Singh, resident of village- Lakho, P.O.- Lakho, P.S.- and Block- Begusarai, District- Begusarai

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Govt. of Bihar, Home Department, Patna
2. Sri Ravi Shankar Kumar S/o Ram Kishore Chandra Nahar, Block Development Officer, Begusarai Sadar, District- Begusarai

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Subodh Kumar Jha,
Mr. Pranav Kumar Jha
Mr. Roshan Kumar Mishra (Adv.)
For the Respondent/s : Mr. Mohan Kumar Singh (A.C. to Sc-5)

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 15-09-2015

By way of filing the present writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the First Information Report of Begusarai Muffasil P.S. Case No. 20 of 2015 dated 18.01.2015 instituted under Section 177 and 181 of the Indian Penal Code.

2. The prosecution case as alleged in the written report submitted by one Ravi Shankar Kumar, Block Development Officer, Begusarai Sadar to the Officer-in-Charge, Begusarai Muffasil Police Station is that the petitioner has given a false affidavit regarding his income at the time of filing of nomination paper to contest the

election on the post of Panchayat Samittee.

3. Mr. Subodh Kumar Jha, learned counsel for the petitioner has submitted that the offences prescribed under which the F.I.R. has been registered are non-cognizable offences. In view of mandatory provisions of sub-section (2) of Section 155 of the Code of Criminal Procedure (for short the Cr.P.C.) the police could not have registered the case and proceeded with the investigation without an order of the Magistrate in this regard.

4. Learned counsel for the State submits that there are serious allegations against the petitioner who had filed a false affidavit while filing his nomination paper in order to contest the election of Panchayat Samittee. According to him, investigation of the case is at the preliminary stage and it would not be proper for this court to interfere with the ongoing investigation of the case at this stage. He submits that the police have statutory power to investigate the case and only after a report is submitted under Section 173 (2) of the Cr.P.C., it can be ascertained as to whether or not the offences alleged are non-cognizable.

5. I have heard respective counsel for the parties and perused the First Information Report.

6. The offences are divided into two categories: (i) Cognizable and (ii) non-cognizable. Police are empowered to register

the F.I.R. and investigate only the cognizable offences. Police can arrest an accused involved in cognizable offences even without warrant. However, in case of non-cognizable offences, in view of the mandatory provisions prescribed under Section 155 (2) of the Cr.P.C., the police can neither register the F.I.R. nor can investigate it nor effect arrest without an express permission or direction from the Court. As per Cr.P.C., police is required to record an abstract of such complaint in case of non-cognizable offences in general diary and it would be open to the complainant to file the complaint in the concerned court as police is not empowered to initiate the action in such matters without the direction of the Court.

7. In view of the fact that the police have no power to investigate the non-cognizable offences without permission of the Court, the institution of the F.I.R. in the present case for the offences under Sections 177 and 181 of the Indian Penal Code, is bad in the eye of law.

8. In that view of the matter, the First Information Report of Begusarai Muffasil P.S. Case No. 20 of 2015 dated 18.01.2015 is hereby quashed.

9. The application stands allowed.

(Ashwani Kumar Singh, J)

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