

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.379 of 2014

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

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1. Sanjay Singh Son of Sri Biswanath Singh Resident of village- Fulkaha, P.S-
Fulkaha (Nababganj), District- Araria.

.... Petitioner/s

Versus

1. The State of Bihar
2. District Magistrate, Araria.
3. Block Development Officer, Narpatganj, Araria.
4. Superintendent of Police, Araria.
5. Deputy Superintendent of Police Farbisganj.
6. Officer- In- Charge Fulkaha, District- Araria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Jha

For the Respondent/s : Mr. Asit Kumar Jha, AC to GP6

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-01-2015

Heard the learned counsel for the petitioner and learned counsel for the State. The grievance of the petitioner is that despite lodging an information about the cognizable offence, the police have failed to take any action.

The instant application under Articles 226 and 227 of the Constitution of India has been filed with a prayer to direct the respondents to institute F.I.R. and make investigation of the case, pursuant to the written complaint of the petitioner dated 12-2-2014, as contained in Annexure-1 to the application.

It has been contended that the petitioner has also approached the Superintendent of Police, Araria for the purpose of institution of F.I.R., but all his

efforts made in this regard went in vain.

In my view, the application is misconceived. In case the police fail to register an F.I.R. on the basis of information regarding cognizable offence, the person aggrieved can file a complaint under section 190 read with section 200 of the Code of Criminal Procedure before the Magistrate concerned, who may either enquire into the complaint himself or direct the police to investigate the case in terms of section 156(3) of the Code of Criminal Procedure. In the case of Sakiri Vasu Vs. State of Uttar Pradesh and others since reported in (2008) 2 S.C.C. 409 the Hon'ble Supreme Court in paragraph no. 24 to 28 held as under:-

“24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) CrPC to order registration of a criminal offence and/or to direct the officer in charge of the police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) CrPC, we are of the opinion that they are implied in the above provision.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 CrPC. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, first under Section 154(3) and Section 36 CrPC before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

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 Sections 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.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.”

For the reasons, discussed hereinabove and the law laid down by the Hon’ble Supreme Court, in my view, for the relief prayed for in the present application , a writ petition is not an appropriate remedy.

In that view of the matter, the application is dismissed.

B.Roy/-

(Ashwani Kumar Singh, J)

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