

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.693 of 2015

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Satya Prakash Agarwal S/o Late Mohan Das Agarwal Resident of Village /
Mohalla Ram Gopal Sarkar Lane, Naya Bazar, P.S. Kotwali, District
Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Home (Police) Govt. of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Bhagalpur Range, Bhagalpur.
4. The Senior Superintendent of Police, Bhagalpur, District Bhagalpur.
5. The Superintendent of Police, Town Bhagalpur, District Bhagalpur.
6. The Sub Divisional Police Officer, Sadar, District Bhagalpur.
7. The Officer-in-Charge, Kotwali Police Station, Bhagalpur, District Bhagalpur.
8. Rajesh Kumar Chokhani S/o Sri Dwarika Prasad Chokhani Resident of Village Naya Bazar, P.S. Kotwali, District Bhagalpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Choudhary, Advocate

For the Respondent/s : Mr. Alok Kr. Rahi, AC to AAG-2

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

3 18-08-2015 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner has filed the application praying for a writ of habeas corpus for the recovery of his son by the respondent police officials from the captivity of respondent No.8.

From the perusal of the materials on the record both in the writ petition as also counter affidavit filed on behalf of respondent No.4, it is evident that on 24.1.2013 an FIR was lodged by respondent No.8 before the Kotwali P.S. in which allegation was made that the son of the petitioner, namely, Roshan Kumar,



who was an employee of respondent No.8, had been given Rs.1 lac to deposit in the Bank and had gone there along with another employee Mukesh but after about 45 minutes the said Mukesh came back and said that the son of the petitioner had taken the said money from him and had fled away while on the way with the money. On the said information respondent No.8 made enquiries from the home of Roshan Kumar and other places which he used to frequent but upon not finding him the FIR was lodged. On the basis of the same Kotwali P.S.Case No. 33/13 under Section 381 IPC was registered against the son of the petitioner.

It is claimed by the petitioner that upon his son not returning to his house he had gone to the police and reported that the employer of the son of the petitioner, respondent No.8, had murdered him but upon the police not registering the case he filed a complaint before the Superintendent of Police on 27.1.2013. Thereafter no action being taken by the police he filed Cr.W.J.C. No. 284 of 2013 before this Court, which was dismissed by order dated 20.3.2013 by a learned Single Judge of this Court holding that the writ petition is not an appropriate remedy for seeking a direction to the respondent to institute an FIR and make the investigation of the case pursuant to the written complaint of the petitioner dated 27.1.2013. Thereafter the petitioner more than five months after the dismissal of the writ petition filed a complaint case under Sections 384 and 442 of the IPC before the Chief

Judicial Magistrate, Bhagalpur, which was sent under Section 156(3) of the Cr.P.C. to the police for registering the FIR and making investigation by order dated 21.10.2013 of the Chief Judicial Magistrate, Bhagalpur.

From the counter affidavit filed on behalf of the State it is evident that on investigation of the police case filed by respondent No.8 the same was found to be true. With regard to the FIR of the petitioner on the basis of the complaint case, it is stated in the counter affidavit that the entire allegation was found false and fictitious and accordingly final form has been submitted showing the case as false by the final report No. 45 of 2015.

Learned counsel for the petitioner submits that the police in collusion with respondent No.8 has not investigated the case of the petitioner properly and no efforts are being made to recover the son of the petitioner.

Learned counsel for the State, on the other hand, submits that in the present matter the son of the petitioner is an accused in a case which has been found to be true and all efforts are being made by the police to arrest the son of the petitioner in the said matter and thus it is the son of the petitioner who is absconding and made himself not available.

On a consideration of the facts and circumstances of the case, it is evident that the FIR against the son of the petitioner is of a prior date and there is nothing on the record to show that the

petitioner had filed anything in writing before the respondent police authorities before 27.1.2013 and for the first time he had filed a complaint to the Superintendent of Police and there is no explanation as to why he took so much time after the alleged occurrence dated 22.1.2013 to have moved before the Superintendent of Police and, that too, straightaway making allegation against the employer having murdered his son without any rhyme and reason. The same goes to show that the case filed by the petitioner was after he had learnt about the filing of the criminal case by the respondent No.8.

In the aforesaid view, we do not find that the petitioner has been able to make out a case for issuance of a writ of habeas corpus in the present matter.

The writ application is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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