

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.7 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- VAISHALI(HAJIPUR)

Shyam Chandra Prasad Singh, son of Late Jogeshwar Singh, Resident of Village-
Veer Kunwar Singh Colony, Police Station- Hajipur (Town), District- Vaishali

.... Petitioner/s

Versus

1. The State of Bihar
 2. The Director General of Police, Bihar, Patna
 3. The Superintendent of Police, Vaishali
 4. The Deputy Superintendent of Police, Vaishali
 5. Investigating Officer (I.O.) Sri Krishna Murari Singh, P.S.-Nagar, District-
Vaishali
 6. Kumar Kishan @ Kishan Kumar @ Monu, son of Surya Kant Kumar, C/o Girija
Devi wife of Late D.P. Singh, Mohalla- J.P. Colony, Navin Cinema Road, Police
Station- Hajipur (Town), District- Vaishali
 7. Prince Kumar, son of Manjay Singh, Resident of Village- Jurawanpur Kasari,
Police Station- Jurawanpur, District- Vaishali at present c/o Shiv Jee Prasad,
Assistant Engineer Railway Bank Main Colony, Police Station- Hajipur Town,
District- Vaishali
- Respondent/s

Appearance :

For the Petitioner/s : Mr. Zeyaul Hoda, Advocate

For the Respondent/s : Mr. Kundan Bhadur Singh, SC-22

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 05-08-2015

In the present application filed under Articles 226 and
227 of the Constitution of India, the prayer of the petitioner in
paragraph no. 1 is as follows:-

“1. That the instant writ application on behalf of the petitioner is being filed for the following reliefs:

(i) For issuance of appropriate writ of, in the nature of writ of mandamus, directing the D.G.P., Bihar to enquire the matter properly in connection with Nagar (Town) P.S. Case No. 795 of 2013 registered under Sections 302/201/34 of the Indian Penal Code by the other investigating agency or by the other higher police officers other than the present officers including the present I.O. of the instant case, so that the real fact will come out.

(ii) For further direction/directions to the official respondents to arrest the real culprits, they are private respondent nos. 6 and 7 to whom police officers seem to be connived, and they are wandering freely in the Mohalla without any hesitation.

(iii) For issuance of appropriate writ/writs, command/commands commanding upon the official respondent to ensure safety and security of the petitioner as well as his other family members including his daughters, because private respondents no. 6 and 7 including their family members are giving threatening of dire consequences.

(iv) For issuance of any other relief/reliefs to which the petitioner may be entitled to in the facts and circumstances of the case.”

It is contended that though sufficient materials were collected by the police in course of investigation, the investigating

officer of the case submitted a final report in connection with Hazipur Nagar P.S. Case No. 795 of 2013 instituted under Section 302 and 201 read with 34 of the Indian Penal Code.

The contention of the petitioner is that in view of the collusive report submitted by the police, further investigation is required to be carried out.

On the other hand, learned counsel for the State has submitted that it would appear from Annexure 5 to the present application that the police submitted final report on 31st August, 2014 before the court of Magistrate. On completion of investigation the police came to a conclusion that the son of the informant died an accidental death due to drowning and, accordingly, the police submitted its report as mistake of fact.

Be that as it may, regard being had to the facts and circumstances of the case, the remedy of the petitioner lies before the learned Magistrate and not before this Court. Once a police report is submitted before the Court of Magistrate, it is for the Magistrate to look into all the materials collected in course of investigation and pass an appropriate order in accordance with law. In case a final report is submitted, the Magistrate is not bound by the police report and, if incriminating materials are found on the record, the Magistrate may differ with the police report and take

cognizance of the offence. In case the Magistrate accepts the final report, the petitioner may still proceed with a complaint filed under Sections 190 and 200 of the Code of Criminal Procedure.

In view of so many alternative remedies being available to the petitioner, I am not inclined to entertain this application. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

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