

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1096 of 2015

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

Devendra Prasad, S/o Late Ramcharitra Mahto, resident of village-Selari, Post-Binda, P.S.-Barachatti, Dist.-Gaya.

.... Petitioner

Versus

1. The State of Bihar through Home Secretary, Bihar, Patna
2. Senior Superintendent of Police, Gaya
3. Officer-in-Charge, Barachatti, Gaya
4. Shiv Shankar Prasad, S/o Rameshwar Mahto, resident of Village-Selari, District-Barachatti, Dist.-Gaya
5. Amarjeet Bhagat, Anchal Adhikari, Barachatti

.... Respondents

Appearance :

For the Petitioner/s : Mr. Indradeo Prasad, Advocate

For the Respondent/s : Mr. Shyameshwar Kumar Singh, AC to GP012

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 25-02-2016

Heard learned counsel for the petitioner and learned counsel for the State.

By way of the present application preferred under Articles 226 & 227 of the Constitution of India, the petitioner seeks a direction to be issued to the respondents to institute an FIR pursuant to the written report dated 04.08.2015 submitted by the petitioner to the Officer-in-charge, Barachatti Police Station, Gaya,

Bihar and make investigation of the case.

In my view, the present writ petition is misconceived. In case, an information regarding commission of a cognizable offence is given to the Officer-in-Charge of a police station in terms of Section 154(1) of the Code of Criminal Procedure (hereinafter referred to as “the Code”) and the Officer-in-Charge declines to register F.I.R., the person aggrieved may send the substance of such information, in writing and by post to the Superintendent of Police concerned in terms of Section 154(3) of the Code and in case, the Superintendent of Police also fails to take any action in that behalf, the aggrieved person may approach the superior officers of police in this regard under Section 36 of the Code. Despite all these steps, if the F.I.R. is not registered and investigation is not taken up, the person aggrieved can file a complaint under Section 190 read with Section 200 of the Code before the Jurisdictional Magistrate, who may either inquire into the complaint himself or direct the police to investigate the case in terms of Section 156(3) of the Code.

In *Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others* since reported in (2004) 7 SCC 768, the Apex Court in paragraph 13 held as under:-

“13. When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the



complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to inquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in *All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India*. It was specifically observed that a writ petition in such cases is not to be entertained”.

In Sakiri Vasu Vs. State of Uttar Pradesh and others

since reported in (2008) 2 S.C.C. 409, the Apex Court in paragraph 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 F.I.R. 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 Apex Court, the relief prayed for in the present application cannot be allowed.

In that view of the matter, the present application is disposed of.

(Ashwani Kumar Singh, J.)

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