

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 222 of 2014

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1. Vishnu Shankar Tiwary @ Vishnu Tiwary Son of Sh. Ramraj Tiwary
2. Neeraj Kumar Yadav @ Neeraj Yadav Son of Late Fuchchu Yadav
3. Jay Dev Kumar Yadav @ Bhim Yadav Son of Late Fuchchu Yadav
4. Jay Kishore @ Om Yadav Son of Late Fuchchu Yadav
All resident of Mohalla-Gewal Bigha Bathan, P.S.-Rampur, District-Gaya.

.... Petitioners

Versus

1. The State Of Bihar
2. The District Magistrate, Gaya
3. The Senior Superintendent of Police, Gaya
4. The Superintendent of Police, (Town) Gaya
5. The Deputy Inspector General of Police, Gaya
6. The Dy. S.P., (Town) Gaya
7. The Officer In-charge, Gaya Civil Lines Police Station, Gaya
8. The A.S.I., Investigating Officer of (Gaya Civil Lines P.S. Case No. 118 of 2011) Gaya Civil Lines Police Station, Gaya
9. Simpu Singh Son of Shri Uday Singh Resident of Mohalla-Gewal Bigha Bathan, P.S.-Rampur, District-Gaya
10. Ruby Devi Wife of Late Satish Kumar Singh Resident of Mohalla-Gewal Bigha Bathan, P.S.-Rampur, District-Gaya

.... Respondents

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Appearance :

For the Petitioners : Mr. Aaruni Singh
For the State : AC to SC-18

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

C.A.V. ORDER

10 08 -02-2017

1. The matter has been placed for passing order.

2. I have already heard all the concerned parties.

3. Petitioners have filed this criminal writ petition for issuance of writ in the nature of mandamus for handing over investigation of Gaya Civil Lines P.S. Case No. 118 of 2011 to an independent agency and to prosecute the real culprits including the



erring police officials for deliberately framing the petitioners as an accused in above stated case and also for holding that ongoing investigation of above stated case in respect of the petitioners is illegal/bad.

4. The relevant facts for proper appreciation of the matter are stated as follows:- Above stated Gaya Civil Lines P.S. Case No. 118 of 2011 was registered under Section 302/34 of the Indian Penal Code against the petitioners and two unknown persons on 21.04.2011 at 19:30 hours in respect of killing of Satish. The aforesaid case was lodged on the basis of written report filed by informant, Simpu Kumar Singh, who happens to be brother of the deceased, Satish. The informant stated in his written report that on 21.04.2011 at about 11:30 A.M., while he was taking breakfast in his house, F.I.R named accused, Om Yadav, Bhim Yadav, Niraj Yadav, Vishnu Tiwari who are petitioners here and two unknown persons entered in his house. Accused, Om, Bhim and Vishnu Tiwari were carrying lathi and pistols in their hands. They caught his brother, Satish and dragged him out of the house. The informant and his other family members tried to save him but accused Vishnu Tiwari (petitioner no. 1) aimed his pistol towards them and they started assaulting his brother by means of lathi levelling allegation of theft. However, in the meantime,



police came there. The accused persons made statement before the police that deceased had committed theft in the house of accused, Vishnu. The brother of the informant was taken to police station. The informant and his other family members followed the police and when they reached at the police station, they saw the deceased lying dead in thana premises. On the basis of written report of informant, Simpu Kumar Singh, above stated Gaya Civil Lines P.S. Case No. 118 of 2011 was lodged and the investigation of the case was taken up by the police on the same day. The formal FIR as well as written report were put up before the concerned Magistrate on 22.04.2011.

5. Before institution of Gaya Civil Lines P.S. Case No. 118 of 2011, Rampur P.S. Case No. 90 of 2011 for the offences under Sections 457, 380 of the Indian Penal Code was lodged against one Vijay Ramani and one unknown on 20.04.2011 on the basis of written report given by petitioner no. 1, who alleged in his written report that in the midnight of 19.04.2011, theft was committed in his house and one culprit was caught on the spot whereas another culprit managed to escape from there. The apprehended culprit disclosed his name as Vijay Ramani. The above stated case was registered on 20.04.2011 at 08.30 A.M. and the formal FIR and written report of aforesaid case were put up on



22.04.2011 before the concerned Magistrate. Apart from aforesaid two cases, Gaya Civil Lines P.S. Case No. 119 of 2011 for the offences under Sections 147, 148, 149, 435 as well as Gaya Civil Lines P.S. Case No. 120 of 2011 for the offences under Sections 147, 148, 149, 427, 353, 435 were also registered on 21.04.2011. Gaya Civil Lines P.S. Case No. 119 of 2011 was lodged against several unknown persons on the basis of written report given by driver of District Transport Officer, Gaya, who stated that a mob of unknown person damaged his government vehicle. Similarly, Gaya Civil Lines P.S. Case No. 120 of 2011 was lodged against 200-250 unknown persons on the basis of written report given by Lalan Singh, S.I. of Civil Lines police station, Gaya, who alleged in his written report that more than thousand people assembled in protest of killing of Satish Singh and the mob started pelting stones and damaging the government property and also set several vehicles on fire.

6. The combined reading of all the above stated first information reports goes to show that theft was committed in the house of petitioner no. 1 in midnight of 19.04.2011 and F.I.R. named accused of Rampur P.S. Case No. 90 of 2011, namely, Vijay Ramani was caught on the spot. Subsequently, on 21.04.2011 at about 11.30 A.M, the petitioners and two unknown



persons went at the house of deceased Satish Singh and caught him levelling allegation of theft. The deceased Satish was dragged out and assaulted by the FIR named accused of Gaya Civil Lines P.S. Case No. 118 of 2011 and the deceased, Satish was handed over to police. Deceased Satish was brought to Gaya Civil Lines police station where his dead body was found. It is also gathered from the above stated first information reports that local people got agitated due to death of deceased Satish Singh while he was in police custody and the mob ransacked the private and government vehicles as well as other properties.

7. In course of investigation of Gaya Civil Lines P.S. Case No. 118 of 2011, the inquest report was prepared and post mortem was done and a judicial enquiry regarding the death of deceased, Satish Singh was also held by a Judicial Magistrate, who submitted his enquiry report finding the prima facie involvement of police officials in killing of the deceased. However, in course of investigation, the involvement of petitioners in the aforesaid case was found prima facie true whereas the investigation regarding involvement of police officials was kept pending which is still pending.

8. The grievance of the petitioners is that deceased, Satish Singh was taken to police station where he was assaulted



and tortured by the police officials including one Dy.S.P. and unfortunately, deceased Satish Singh died on account of above stated assault and torture by the police officials and when the local people including the family members of deceased got agitated and made protest, Gaya Civil Lines P.S. Case No. 118 of 2011 was lodged but the local police in connivance with culprit police officials got changed the original statement of informant of Gaya Civil Lines P.S. Case No. 118 of 2011 and made the petitioners responsible for killing of deceased, Satish Singh. Furthermore, the grievance of the petitioners is that the local police in collusion with culprit police officials is not making fair and proper investigation and therefore, the investigation of the aforesaid case should be handed over to an independent agency like Central Bureau of Investigation.

9. Counter affidavit has been filed on behalf of respondents no. 3, 4, 6, 7 and 8 in which it has been pleaded that investigating officer of Gaya Civil Lines P.S. Case No. 118 of 2011 has been investigating the case fairly and properly and in course of investigation, the investigating officer recorded the statement of prosecution witnesses and on the basis of materials collected in course of investigation, the investigating officer as well as supervising authority have formed their opinion. It has also



been pleaded that so far as suspected police officials are concerned, the investigating officer as well as supervising authority opined that deeper enquiry regarding the involvement of police officials in the occurrence is needed.

10. Again, supplementary counter affidavit was filed on behalf of above stated respondents in which it has been pleaded that present investigating officer made prayer before the Chief Judicial Magistrate Gaya on 28.11.2016 for issuance of warrant of arrest against the F.I.R. named accused but till the date of filing supplementary counter affidavit, warrant of arrest has not been given to investigating officer. However, it has also been pleaded that supervising authorities have directed the concerned investigating officer to look into the enquiry report submitted by the judicial Magistrate and proceed with the investigation in the light of enquiry report of judicial Magistrate and also take steps to get recorded the statements of witnesses under Section 164 of the Cr.P.C, if needed.

11. Vide order dated 08.12.2016, this court directed the Home Secretary, Government of Bihar to swear an affidavit to this effect as to whether the Government will have any objection if the investigation is handed over to Central Bureau of Investigation, keeping in mind the fact that there is allegation of involvement of



local police officers in commission of the offence. Pursuant to above stated order dated 08.12.2016, the Home Secretary, Government of Bihar filed counter affidavit on 11.01.2017 mentioning therein that in the light of order dated 08.12.2016, the status report of investigation of Gaya Civil Lines P.S. Case No. 118 of 2011 as well as opinion regarding handing over the aforesaid case to Central Bureau of Investigation were obtained from Senior Superintendent of Police, Gaya, who in turn, submitted status report of investigation of aforesaid case mentioning in its report that investigation of aforesaid case is going on in right direction but if it is needed, the investigation of case may be handed over to Criminal Investigation Department, Bihar to which the local police has no objection. The Home Secretary, Government of Bihar also pleaded in his affidavit that on the basis of opinion given by Senior Superintendent of Police, Gaya, the Director General of Police, Bihar recorded his opinion that investigation of this case may be handed over to Criminal Investigation Department, Bihar.

12. Learned counsel Sri Aaruni Singh appearing for the petitioners submits that it is specific stand of informant of Gaya Civil Lines P.S. Case No. 118 of 2011 that deceased was taken to police station by local police and furthermore, the informant of



aforesaid case claimed that he saw the dead body of deceased lying in premises of police station. The post mortem report of deceased goes to show that several injuries were found on the person of the deceased. He further submits that judicial Magistrate, who conducted judicial enquiry also found the involvement of some police officials and specifically mentioned in his report that deceased was badly assaulted at Civil Lines police station in presence of police officials. The aforesaid enquiry report was submitted by the learned Judicial Magistrate on 13.06.2011 but admittedly, the investigating officer of the case did not take pain even to look into the enquiry report of judicial Magistrate and when this writ petition was filed before this court and this court took serious note of the matter, the supervising authorities, to save their skin, directed the investigating officer to look into the enquiry report submitted by the learned Judicial Magistrate. He further submits that above the all, Gaya Civil Lines P.S. Case No. 118 of 2011 was lodged on 21.04.2011 and during course of investigation, the informant of the aforesaid case filed protest petition on 31.05.2011 before the Chief Judicial Magistrate, Gaya against the investigation of the police alleging therein that in killing of his brother, the then Dy.S.P. Gaya Town, namely, Pankaj Kumar Rawat and the police personnels attached with the



aforesaid Dy.S.P. as well as F.I.R. named accused were involved and he had seen the police officials assaulting his brother in the premises of police station. He has also alleged in his protest petition that police official forcibly took his as well as his wife's signature on the written report while they were mourning death of the deceased and subsequently, he came to know that by using his signature the written report of Gaya Civil Lines P.S. Case No. 118 of 2011 was prepared by the police distorting the real facts. He also alleged in the protest petition that his brother was killed by the police officials in the premises of police station and in the aforesaid manner, he expressed his dissatisfaction regarding the contents of F.I.R. as well as the investigation of aforesaid case.

13. Learned counsel for the petitioners further submits that since the police personnels are involved in the present occurrence, free and fair investigation is not expected from the local police and, therefore, the investigation of Gaya Civil Lines P.S. Case No. 118 of 2011 should be handed over to Central Bureau of Investigation.

14. Learned counsel appearing for the State opposed the prayer submitting that investigation of Gaya Civil Lines P.S. Case No. 118 of 2011 is going on in its right direction and nothing has been brought on the record to show that local police is not



making investigation in fair manner. He further submitted that as a matter of fact, petitioners are themselves named accused in Gaya Civil Lines P.S. Case No. 118 of 2011 and when they came to know that their involvement in the present case has been found true by the investigating agency, they have preferred the present writ petition with an intent to derail the investigation of aforesaid case. He further submits that moreover, the State has no objection if this court thinks proper to hand over investigation of Gaya Civil Lines P.S. Case No. 118 of 2011 to any other agency such as Criminal Investigation Department of State of Bihar.

15. It is well known maxim of law that justice is not only to be done but seen to be done. In the present case, the informant of Gaya Civil Lines P.S. Case No. 118 of 2011 filed protest petition before the Chief Judicial Magistrate, Gaya on 31.05.2011 making allegation against the investigating officer as well as police officials of the concerned police station. The aforesaid protest petition was filed within forty days of institution of the aforesaid case. The above stated protest petition goes to show that informant was also not satisfied with the investigation of the present case as well as with the working of the police officials. Admittedly, in the present case, deceased was taken to police station and the informant saw the dead body of the deceased



in the premises of police station. The post mortem report of the deceased goes to show that deceased was brutally assaulted and several injuries were found on his person including the injury on dorsum of hand and foot. The learned Judicial Magistrate, who conducted judicial enquiry just after the death of the deceased, also prima facie found the involvement of some police officials in the present crime. Therefore, it is explicit clear that not only petitioners, who happen to be accused in the above stated case but also informant claimed that police officials were involved in killing of the deceased of that case. The aforesaid fact goes to show that informant as well as accused are not satisfied with the investigation being carried by the local police. Moreover, the State has specifically pleaded that the State has no objection, if the investigation of above stated case is handed over to Criminal Investigation Department of Bihar. The aforesaid pleading of State suggests that State is also conscious of this fact that there is allegation of involvement of some police personnels in the present matter and, so, it would be proper that matter should be investigated by an independent agency.

16. The investigation is an important ingredient of criminal justice delivery system because the entire criminal justice delivery system is based on proper and fair investigation of the



case. If the investigation of any criminal case is not properly done by the investigating agency, there is every chance of failure of criminal justice delivery system and if the criminal justice delivery system is failed, the common people will loose their faith in our criminal justice delivery system. The investigation of a criminal case is foundation of criminal justice delivery system and the foundation of any structure should be made very carefully and cautiously so that in future there should not be even a slightest possibility of collapsing of any structure stood on the aforesaid foundation.

17. It is obvious from the aforesaid facts that informant and named accused of Gaya Civil Lines P.S. Case No. 118 of 2011 are levelling allegation against the police officials in the present occurrence and they have raised question mark regarding the investigation of Civil Lines P.S. Case No. 118 of 2011 done by local police. Therefore, it would be proper to hand over the investigation of aforesaid case to an independent agency so that fair and proper investigation in the aforesaid case could be done. Moreover, the State Government is also ready, at least, to this extent that case may be handed over to Criminal Investigation Department, Bihar but in my view, it is better to hand over this case to Central Bureau of Investigation instead of handing over the



case to Criminal Investigation Department of Bihar.

18. On the basis of aforesaid discussions, this criminal writ petition stands disposed of directing the respondents no. 1, 3, 5, 7 and 8 to hand over the investigation of Gaya Civil Lines P.S. Case No. 118 of 2011 with all relevant documents to Central Bureau of Investigation within three weeks from the date of receipt/production of copy of this order. The Central Bureau of Investigation after receipt of all the relevant documents shall proceed with the investigation of Gaya Civil Lines P.S. Case No. 118 of 2011 forthwith in accordance with law. Furthermore, respondent no. 1 is directed to take necessary steps in this regard so that order of this court could be complied with without any delay.

19. Let copy of this order be sent to concerned officials of Central Bureau of Investigation for needful.

(Hemant Kumar Srivastava, J)

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