

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.891 of 2012

Arising Out of PS.Case No. -86 Year- 2008 Thana -null District- NAWADA

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Shambhu Prasad @ Shambhu Lal, son of Sri Gaya Lal, Village-Laund, P.S. Sirdala, District-Nawada.

.... Petitioner.

Versus

1. The State of Bihar.
2. Sri D.N. Gautam, Director General of Police, Bihar, Patna.
3. Sri Pravin Vashist, Deputy Inspector General of Police, Magadh Range, Gaya.
4. Sri Vinod Kumar, Superintendent of Police, Nawada.
5. Sri Ajay Kumar, Deputy Superintendent of Police, Rajauli.
6. Sachidanand Pandey, Inspector of Police, Rajauli Prabhag, Rajauli.
7. Gajadhar Prasad Yadav, Deputy Inspector of Police, Rajauli.
8. Sumeshwar Lakra, Assistant Deputy Inspector of Police, Rajauli.
9. Basanti Devi, wife of Ramvriskh Chaudhary, Ex- Member, District Board-Sirdala, North, village-Takiya, Post-Chaubey, P.S. Sirdala, Disrtrict-Nawada.
10. S.K. Manjhi, Officer Incharge, Sirdala.
11. Mamta Devi alias Mina Devi, wife of Late Baliram Paswan alias Chamari Paswan, village-Kumbhrua, P.S. Rajauli, District-Nawada.

.... Respondents.

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Appearance :

For the Petitioner : Mr. Shambhu Prasad alias Shambhu Lal (in person).

For the State : Mr. Kaushal Kumar Jha, A.A.G.-VIII.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

Date: 26-07-2017

This application has been filed by the petitioner under Article 227 of the Constitution of India for giving direction to the Special Judge, Nawada, to take action against the police officials and the responsible persons deciding the Criminal Misc. No.01 of 2011 filed under Section 240 of the Code of Criminal Procedure.

2. The facts, leading to this application, is that one Mamta Devi alias Mina Devi filed Complaint Case No.485 of 2008 against petitioner in the court of the Chief Judicial Magistrate, Nawada, which was sent under



Section 156(3) of the Code of Criminal Procedure to the concerned police station for investigation. Accordingly, Rajauli P.S. Cae no.86 of 2008 under Section 376 of the Indian Penal Code and Sections 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was instituted against the petitioner. After investigation, the police submitted the chargesheet against the petitioner under Section 376 of the Indian Penal Code and Sections 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The case was committed to the court of sessions numbered as Special (H) Case No.1 of 2009. During trial, the petitioner, who was accused in the said case, filed an application on 31.03.2011 under Section 340 of the Code of Criminal Procedure for inquiry and lodging the case against the complainant/informant Mamta Devi alias Mina Devi and other responsible authorities. After trial, vide Judgment dated 21.04.2011 passed in Special (H) Case No.1 of 2009 by the court of the Additional Sessions Judge-I-cum-Special Judge, Nawada, while the petitioner was acquitted but in respect of the petition of the accused-petitioner filed under Section 340 of the Code of Criminal Procedure, the trial court in paragraph-14 of the said Judgment held that the complainant/informant Mamta Devi alias Mina Devi is not a fake lady and if any police officer made a defective or collusive investigation against the accused then he may file a petition before a higher police authority. The accused Shambhu Prasad has also option that he may file a case of malice prosecution against the responsible person. As such, there is no necessity to initiate the proceeding under Section 340 of the Code of Criminal



Procedure against the complainant/informant and others.

3. Against the aforesaid finding of the trial court, the accused-petitioner filed Criminal Appeal (SJ) No.675 of 2011 before this Court, which was disposed of on 22.06.2011 with a direction to the trial Judge to issue notice to P.W.2 Mina Devi alias Mamta Devi (complainant/informant) and all concerned to appear before him and to show cause on holding an inquiry and filing of complaint, in the light of the evidence available on record. After considering the show cause, if it is convinced that any offence appeared committed in or in relation to the evidence adduced in that proceeding which required the filing of a complaint as envisaged by Section 195(i) of the Code of Criminal Procedure for eradicating the commission of such offence or offences in future, it shall file a complaint.

Thereafter, the accused-petitioner filed an application under Section 340 of the Code of Criminal Procedure in the court of the Special Judge, Nawada, bearing Criminal Misc. No.1 of 2011 in which notice was issued to the complainant/informant Mamta Devi alias Mina Devi and other police officials related to the investigation of the case.

4. It appears from the ordersheet of Criminal Misc. No.1 of 2011, which is Annexure '5' to this application, that in the aforesaid case, the inquiry is being conducted and the complainant/informant Mamta Devi alias Mina Devi and others have also filed their show cause. Unless the inquiry is not completed in the aforesaid Criminal Misc. No.1 of 2011 by holding the concerned persons guilty, it would not be permissible in law to



lodge the complaint case under Section 195 Cr.P.C.

5. As such, I do not think it proper to give any direction to the Special Judge, Nawada, for lodging a complaint case under Section 195(i) of the Code of Criminal Procedure against the complainant/informant Mamta Devi alias Mina Devi and other police officials unless the inquiry is not completed in the aforesaid Criminal Misc. No.1 of 2011 by holding the concerned persons guilty.

6. With the aforesaid observation, this application stands disposed of.

(Rajendra Kumar Mishra, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
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