

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2092 of 2017

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Lal Bhushan Singh, Son of Saryug Singh, resident of Village- Janpara, Police Station- Bikram, District- Patna(Bihar). At Present 7 Guards 56 APO.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The District Magistrate, Patna.
4. The Senior Superintendent of Police, Patna.
5. The Superintendent of Police, City, Patna.
6. The Officer-in-Charge, Jakkanpur, Police Station, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No.2, Adv.
Mr. Avinash Kumar Singh, Adv.

For the Respondent/s : Mr. Utsav Kumar, AC to GA-4

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 29-01-2018

To act as a police officer is not an act of heroism.

This case demonstrates how a person in power can demolish the rule of law and a common citizen may be harassed to the extent it is possible. This is a case in which as back as on 10.03.2016 the petitioner was allegedly apprehended while he made a firing from his rifle and that firing was allegedly made while the petitioner was in intoxicated condition. He was brought to the police station and his licensee rifle was seized. He was taken to Patna Medical College Hospital (P.M.C.H.) where doctor found him conscious, but smell of wine was coming from his mouth. Since there was no facility to analyze the blood sample in the P.M.C.H. the doctor provided the blood sample to the investigating officer to get it examined from



somewhere else.

The investigating officer came back with the blood sample but did not take any action to proceed further. The petitioner was released from the police station and rifle in question remained under seizure, but without reporting the incident to the court of learned C.J.M. at Patna within whose jurisdiction the occurrence had taken place and the seizure was made. No report of seizure was submitted to the court of learned C.J.M. and it transpires now from the submissions that the rifle remained in the Malkhana, under what condition is still not known.

In these circumstances, when the petitioner moved this Court and a counter affidavit was called for, the factual position as stated above emerged from the records.

The officer in-charge of Jakkanpur police station as well as the then officer in-charge and the investigating officer were summoned to this Court to explain the circumstances under which neither any F.I.R. was lodged nor any seizure was reported and submitted to the court of learned C.J.M., Patna.

When the officers appeared before this Court and the Sanha Diary register was produced it was found that an entry has been made in the register vide Sanha diary entry no.408 dated 10.03.2016 wherein the facts and circumstances under which the petitioner was



brought to the police station are fully stated. The officers were thereafter directed to file their affidavits explaining the circumstances in terms of the order dated 08.01.2018. The affidavits have been filed. The investigating officer has stated in paragraph 8, 9 and 10 as under:-

“8. That it is stated that by the time the deponent received the blood sample from the PMCH, it was about 1.45 am [night] on 11.03.2016 and he tried to submit the blood sample at appropriate pathological lab but all the labs were closed. So the deponent returned to police station and kept the blood sample at an appropriate place for giving the sample for analysis to a pathological lab in day time but unfortunately said sample missed out and deponent did not find it at the place where he kept and the analysis of the blood sample of this petitioner could not be given to analytical lab.

9. That it is stated that in the meantime on 11.03.2016 after taking personal bond petitioner was released without instituting FIR because nobody came to the police station to lodge an FIR against the petitioner and during primary enquiry any malafide on the part of petitioner was not transpired during primary enquiry and interrogation and petitioner was found to be an ex-army man with no criminal antecedent and was carrying valid license of seized arms.

10. It is humbly stated that only mistake on the part of this deponent is that he could not get analyzed the blood sample of the petitioner as he



could not trace the blood sample placed in the police station which is nothing but an unintentional act on the part of this deponent due to which any further action in the matter could not be taken at the police station level. For this the deponent tenders unconditional and unqualified apologies and undertakes before this Hon'ble Court that in future no such mistake would be repeated and would be cautious in such sensitive matters and prays for exonerating him from the present proceeding. ”

The then officer in-charge of Jakkanpur police station has also reiterated the same line of argument in his affidavit. He has further stated that the petitioner filed an application before the learned ACJM, Patna for release of his seized arms and cartridges. The learned ACJM called for a report from the SHO, Jakknapur whereupon Sub-Inspector of Police namely Sri Krishndeo Prasad submitted a report detailing the materials found in the records relating to seizure of licensee arms and cartridge of the petitioner and recommended not to release the seized arms. Thereafter looking into the police report, the learned ACJM, Patna was pleased to reject the petition filed by the petitioner and consigned the petition.

Learned counsel for the petitioner has drawn the attention of this Court towards the order dated 30.11.2016 passed by the learned ACJM, Patna which is based on the report submitted by



said Sri Krishndeo Prasad. The learned ACJM, Patna rejected the application of the petitioner for release only on the ground that because no FIR has been registered in this regard, the police station is free to take appropriate action in accordance with law.

This order of the learned ACJM, Patna according to learned counsel leads nowhere and the whole view of the learned ACJM that because no FIR has been registered therefore the police is free to take any action in accordance with law is not in accordance with the spirit of Section 156(3) Cr.P.C. as also the judicial pronouncements of the Hon'ble Supreme Court in the case of **Sakiri Vasu Vs. State of U.P. & Ors. reported in (2008) 2 SCC 409** which has been recently followed in the case of **Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage & Ors. reported in (2016) 6 SCC 277**. Learned counsel submits that in the facts and circumstances, the learned ACJM was competent to direct the police to lodge an appropriate proceeding if it was so required in accordance with law and call for a report based on the proper investigation though belatedly and without prejudice to the rights and contentions of the petitioner to take such pleas which are available to him in connection with the case, but the learned ACJM was not rightly exercising his power which has been conferred upon him under Section 156(3) Cr.P.C. By the judicial pronouncements, it has already been held that



even though Section 156(3) Cr.P.C. is not very widely worded but the conferment of power on the Magistrate under that provision is very wide. It is also submitted that if then I.O. in his affidavit states that during preliminary enquiry and interrogation the petitioner was found having no criminal antecedent and had a valid license then the stand of the present I.O. in his report to learned A.C.J.M. is in conflict with the stand of the then I.O. who was obliged to act in terms of Section 102 Cr.P.C.

Learned State counsel submits that in the facts and circumstances of the case it is apparent from the affidavits that the I.O. and the then Officer in-charge of Jakknapur police station have accepted the mistake committed by them, but even at this stage records may be set right by brining it to the notice of the court of learned C.J.M., Patna by way of an appropriate proceeding and a report regarding seizure.

Having considered the facts and circumstances of the case, this Court is of the considered opinion that the then officer in-charge of Jakkanpur police station and the investigating officer both have failed to perform in accordance with law in terms of Section 102 Cr.P.C., the mistakes which they have admitted have been committed without taking care of the duties which have been cast upon them to act only and only in accordance with law and not by keeping away the



law. The seizure as on today is wholly illegal and, therefore, for the illegal seizure, both of them are jointly liable to pay a compensation of Rs.10,000/- to the petitioner.

In the nature of this case, the Court would also direct the present officer in-charge of Jakkanpur police station to set right the records by reporting the matter to the court of learned C.J.M., Patna along with seizure list/report as required in accordance with law. The arms licence of the petitioner which is under seizure shall be released forthwith. However, final decision regarding release of rifle in question shall be taken by the learned C.J.M./A.C.J.M., Patna only after the arms licence of the petitioner is renewed in accordance with law. The petitioner shall be within his right to take all such pleas which may be available to him in accordance with law pursuant to the report/seizure report of the police submitted to the court of learned C.J.M., Patna.

The writ application stands disposed of with the observations and directions made above.

Arvind/-

(Rajeev Ranjan Prasad, J)

AFR/NAFR	AFR
CAV DATE	N/A
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