

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1208 of 2016

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1. Surendra Kumar Maharaj @ Surender Maharaj, son of Late Shyam Sundar Maharaj.
 2. Madhav Murari Sharma, son of Surendra Kumar Maharaj @ Surendra Maharaj.
- Both residents of village – Mokhtiarpur, P.S. – Bhagwanpur, District – Begusarai.

.... Petitioners

Versus

1. The State of Bihar through Home Secretary, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Eastern Range, Bhagalpur.
4. Sri Shiveshwar Shukla, Ex. (Retired) Deputy Inspector General of Police, Munger, C/o – Director General of Police, Bihar, Patna.
5. Superintendent of Police, Begusarai.
6. Sri Manoj Kumar, the then Superintendent of Police, Begusarai, C/o – Director of Police, Bihar, Patna.
7. Sri Hari Shankar Prasad, Dy. S.P. C/o – S.P., Begusarai.
8. Shree Raj Kishore Singh, Dy. Superintendent of Police, Begusarai. C/o – Director General of Police, Bihar, Patna.
9. Sri Sudhisht Mishra, Investigating Officer, Town (Lohianagar), P.S. – Lohianagar, Begusarai.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Y.V. Giri, Sr. Advocate
		Mr. Amresh Kumar, Advocate
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2. 30-08-2018

Heard learned senior counsel for the petitioner.

The present writ application has been filed for issuance of a writ of certiorari or any other appropriate writ/writs or order/orders or direction/directions setting aside the investigation of Town (Lohiya Nagar) P.S. Case No. 635/2014 dated 09.10.2014.

It is the contention of learned senior counsel representing the petitioner that the entire investigation has



been conducted in a totally unfair and tainted manner. Learned senior counsel has gone on to contend that in fact the investigating agency has while exonerating the named accused Vijay Maharaj has falsely implicated this petitioner in the present case and a charge-sheet has been filed against the petitioner.

It appears that during pendency of the writ application the investigation has been completed and the learned Chief Judicial Magistrate, Begusarai has taken cognizance of the offences and issued summons to the petitioner who is facing trial in the present case.

Perusal of the record would show that in course of investigation on the basis of the materials whatsoever were collected by the investigating agency they have now submitted a charge-sheet which has been accepted by the learned Chief Judicial Magistrate, Begusarai, but despite the order taking cognizance and issuance of summon having been passed against this petitioner as an accused, the petitioner has not challenged the order taking cognizance and issuance of summon.

In course of argument, learned senior counsel has taken a stand that even if the petitioner has not challenged the order taking cognizance and issuance of summon by which he has been called upon to face the trial as an accused, still this petitioner can agitate this case seeking re-investigation or



further investigation in the matter as the case may be in accordance with law. It is his contention that this court being a constitutional court sitting in its writ jurisdiction under Article 226 of the Constitution of India can definitely go through the materials available on the record and take a view what is being contended on behalf of the petitioner that the entire investigation was tainted and it requires either further investigation or re-investigation.

While answering a query raised by this court, learned senior counsel admits that after submission of charge-sheet while the learned Chief Judicial Magistrate took cognizance and issued summon, this petitioner has never moved any application under Section 173(8) of the Code of Criminal Procedure requesting the court for further investigation. The Investigating Officer of the case has also not requested for the same so far. Still it is the submission of learned senior counsel that this writ application should be considered at the instance of the petitioner and order for further investigation or re-investigation be passed. This court has gone through the materials available on the record and what has been found from the materials as well as the submissions advanced on behalf of the petitioner is that the petitioner is not challenging the order by which he has been summoned as an accused. If he is not aggrieved by the order issuing summon to him and no challenge has been made to



that order, in the opinion of this court, at his instance this writ application cannot be entertained. It is for a simple reason that on the one hand the petitioner does not choose to challenge an order which is based on the materials collected in course of investigation by police and at the same time he is calling upon this court to interfere with the materials collected by the investigating agency by holding the same as tainted materials and are not trustworthy. This court is of the considered opinion that any such order passed by this court would amount to interfering with the order taking cognizance and summoning the petitioner which has not been challenged by him in an appropriate proceeding.

This court finds no reason to entertain the present writ application. It is hereby dismissed.

(Rajeev Ranjan Prasad, J)

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