

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5831 of 2015

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Dalan Yadav @ Dalan Prasad Yadav son of Late Raghunath Prasad Yadav Resident of village and P.O. Nandpur, P.S. Manjhi, District- Saran at Chapra, Presently Mukhiya of Gram Panchayat Raj, Sonebarsa, Block- Manjhi, District- Saran at Chapra.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar Patna.
2. The Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The Director, Panchayati Raj Department, Government of Bihar, Patna.
4. The Officer-on-Special Duty, Panchayati Raj Department, Government of Bihar, Patna.
5. The Commissioner, Saran Division, Chapra.
6. The District Magistrate, Saran at Chapra, District Saran at Chapra.
7. The District Panchayat Raj Officer, Saran at Chapra, District saran at Chapra.
8. The Sub Divisional Officer, Sadar Chapra, District- Saran at Chapra.
9. Ramesh Prasad Prasad son of Paramhans Yadav, Resident of village and P.O. Nandpur, P.S Manjhi, District- Saran at Chapra.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. S.B.K. Manglam, Advocate

For the Respondent-SEC : Mr. Amit Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-07-2018

This writ petition under Article 226 of the Constitution of India has been filed by the petitioner for quashing the order dated 11.02.2015 issued by the respondent no. 2 whereby



and whereunder he has directed respondent no. 5 to lodge first information report (for short 'FIR') against the petitioner under the relevant provisions of the Indian Penal Code on the ground that the petitioner had suppressed certain information in his affidavit filed along with nomination paper to contest the panchayat election in 2011.

2. It is submitted by the learned counsel for the petitioner that the act of omission and commission by the petitioner does not constitute any cognizable offence and, thus, no direction could have been issued by the respondent no. 2 for an institution of an FIR against the petitioner.

3. On the other hand, learned counsel appearing for the respondent-State Election Commission submitted that it is for the police to examine whether a cognizable offence is made out or not and even if there is no direction by any authority, any person having knowledge of an act of omission or commission constituting cognizable offence may inform the police in this regard.

4. I have heard learned counsel for the parties and perused the record.

5. The law in respect of institution of an F.I.R is well settled. In case, a cognizable offence is made out, the S.H.O. of the police station is duty bound to register an F.I.R. and investigate



the same. In case, no cognizable offence is made out, but a non-cognizable offence is made out, the police cannot institute an F.I.R in absence of any direction by the Magistrate.

6. In that view of the matter, I do not see any merit in this application whereby challenge has been made to the order passed by the respondent no. 2 whereby a direction has been issued to respondent no. 5 to institute an F.I.R for the acts of omission and commission on the part of the petitioner. Whether an offence is made out or not for which F.I.R can be instituted has to be seen by the police when the matter is reported to it.

7. At this stage, it would be a pre-mature exercise by the court to see as to whether the allegations made against the petitioner would constitute a cognizable offence or not.

8. Accordingly, the writ petition being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/Sksuman

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.07.2018
Transmission Date	NA

