

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 5789 of 2013

=====

Md Ilham S/O Late Md Zahid R/O Village- Banandha, P.S.- Mufassil, District-
Monghyr

.... Petitioner/s

Versus

1. The State Of Bihar
2. Director General of Police, Bihar, Patna
3. Deputy Inspector General of Police, Purnea Region, Purnea
4. Superintendent of Police, Kishanganj

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr Niranjan Kumar, Advocate

For the S t a t e : Mr Harishankar Roy, AC to AG

=====

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 22-06-2018

Heard learned counsel for the petitioner and the learned
counsel for the respondent-State.

2 Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the first information report (for brevity, *FIR*) leading to institution of Pothia Police Station (for brevity, *PS*) Case No 24 of 2009. It is the case of the petitioner that the Station House Officer along with one Prem Kumar Sah conspired to implicate the petitioner in a case alleging commission of rape upon an intellectually disabled woman. The petitioner, upon institution of the FIR on 07.02.2009, was taken into custody on 08.02.2009 in connection with the said case.



3 It is the petitioner's contention that the entire proceedings, right from issuance of the charge memo up to the submission of the enquiry report dated 12.08.2009, is unjust and illegal. He submits that while he was in custody, the charge memo is alleged to have been submitted upon him on 08.03.2009. It is also his submission that the witnesses were examined behind his back and he had appeared in the proceedings as late as on 24.07.2009, upon his release on bail. He had filed his show cause thereupon asking the Enquiry Officer to fix the next date to afford him an opportunity to cross-examine the witnesses but the request was not acceded to.

4 Respondent-State, on the other hand, has filed a counter affidavit stating that it was the petitioner who, upon his appearance in the proceedings on 24.07.2009 as also on 30.07.2009, failed to cross-examine the witnesses though due opportunity had been granted to the petitioner.

5 Neither the application said to have been filed by the petitioner upon his appearance in the proceedings on 24.07.2009 has been placed on record, nor the petitioner's reply to the second show cause dated 30.12.2009 has been placed on record.

6 In view of such situation, this disputed issue of fact cannot be looked into in the instant proceedings.

7 One issue, which learned counsel for the petitioner has



strenuously raised before this Court, is that the allegation maker in the FIR has totally denied any knowledge of the allegations made against the petitioner in the criminal trial arising out of Pothia PS Case No 24 of 2009. He has drawn the attention of the Court towards the judgment and order dated 08.08.2012 passed in Sessions Trial No 191 of 2010 by the Additional Sessions Judge, Kishanganj. The allegation maker, namely, Prem Kumar Sha, who is the informant in the said case, has deposed in the proceedings as follows:

“7. The informant Prem Kr Sah (PW 6) has stated in his examination-in-chief that on the day of occurrence in the night, 2 to 4 Constables came to his shop and asked for Gutkha and when he demanded the dues amount, hot exchange took place between them, then he informed the police on telephone upon which SHO of concerned PS called him in PS and obtained signature on a plain paper. His signature has been identified by the witness as Ext 1. Further, he has stated at para 3 of his examination-in-chief that he could not identify the Constables with whom hot exchange had taken place due to insufficiency of light and in the Court he also declined to identify the accused persons present in the dock.”

8 In view of the said deposition of the informant, other witnesses, and since even the victim lady has not supported the allegations in the trial, the trial Court has come to the conclusion that the prosecution has miserably failed to bring home the guilt of the accused and acquitted all the accused persons including the instant



petitioner.

9 Learned counsel for the petitioner submits that in view of such stand taken by the informant in the criminal trial, the deposition of the same informant, namely, Prem Kumar Sah, as recorded by the Enquiry Officer in the Enquiry Report dated 12.08.2009, loses its credibility.

10 Considering this submission, this Court would only observe that the order of the trial Court in the criminal trial has come much later to the proceedings which were conducted before the Enquiry Officer and much after the order of punishment of dismissal from service dated 30.06.2011 passed by the Superintendent of Police, Kishanganj.

11 Even the petitioner's appeal as well as the Memorial before the Director General of Police (for brevity, *DGP*) was decided and rejected much prior to the petitioner's acquittal in Sessions Trial No 191 of 2010, as noticed above. The fact that the very same witnesses have totally denied having any knowledge of the same occurrence in respect of which the petitioner was subjected to departmental proceedings, the order of punishment passed in the departmental proceedings against the petitioner visiting him with such severe consequence from dismissal of service may be reexamined by the DGP with reference to the findings recorded in the criminal trial



on the basis of deposition made by the same witnesses.

12 Learned counsel for the petitioner has submitted that he would be filing a detailed representation placing on record the judgment and order dated 08.08.2012 passed by the trial Court in Sessions Trial No 191 of 2010 so as to facilitate consideration of the issue by the DGP (Respondent No 2). He submits that such consolidated and detailed representation will be presented before the DGP within two weeks.

13 If such application is filed, respondent No 2 may consider the same and pass a reasoned and speaking order in light of the judgment and order dated 08.08.2012 passed by the Additional Sessions Judge, Kishanganj in Sessions Trial No 191 of 2010 within a period of three months thereafter.

14 The writ petition is disposed of with the aforesaid directions.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.06.2018
Transmission Date	NA

