

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.854 of 2017

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Gopal Krishnan, Son of Sri Ram Charan Prasad, Resident of Mohalla Sri Nagar Hata, P.S. K. Hat, District Purnea.

.... Petitioner

Versus

1. The State of Bihar through the Home Secretary, Govt. of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. Superintendent of Police, Supaul.
4. Deputy Superintendent of Police, Supaul.
5. The Secretary Rural Development Department, Bihar, Patna.
6. The Collector cum District Magistrate, Supaul.
7. Md. Nadimul Gaffar Siddique, the Sub Divisional Officer, Supaul, Sadar.
8. The Additional District Magistrate, Aapde (Disaster Management), Supaul.
9. Mr. Birendra Kumar, Block Development Officer, Sarai Garh Bhaptiyahi, Supaul.
10. Officer in Charge, P.S. Kishanpur, Supaul.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ram Prawesh Kumar, Adv.

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 13-09-2018 The petitioner happened to be the Block Development Officer, Kisanpur Block. Some time during the year 2016 alleging certain acts and omissions against him a first information report came to be lodged giving rise to Kisanpur P.S. Case No. 43 of 2017 dated 02.03.2017 registered under Section 409 and 420 of the Indian Penal Code. He has challenged the said first information report on various grounds including that it is a case of malafide prosecution of the petitioner.

Mr. Rama Kant Sharma, learned Senior Counsel representing the petitioner has drawn the attention of this Court



towards the various documents available on the record with the supplementary affidavits filed on behalf of the petitioner and has submitted that a perusal thereof would show that the petitioner is being falsely implicated in the case with sole intention to harass him because he had taken action for removal of encroachment made by one member of Legislative Assembly.

Learned senior counsel has also submitted that in course of the departmental inquiry the complainant has backed out from the allegations and has in fact admitted to the extent that he had been acting at the behest of certain persons who had vested interest against the petitioner. On these grounds learned Senior Counsel wanted this Court to peruse all documents and come to a conclusion that it is a case of malafide intention.

No one appears on behalf of the State.

Having heard learned Senior Counsel for the petitioner and on perusal of the records, this Court finds that the plea of malafide prosecution based on certain facts which are required to be examined and based on such examination an opinion is to be formed by this Court that the prosecution is a malafide one cannot be gone into at this stage sitting as in its writ jurisdiction the Court is not meant to deal with such exercise when investigation is still pending.

In the opinion of this Court, if the petitioner produces



all such materials including documentary evidences on which he is trying this Court to take a view, before the investigating agency, the agency shall in order to conduct a free and fair investigation be obliged to look into those materials, thereupon the investigating agency come to a *prima-facie* conclusion as regards culpability of the petitioner.

At this stage, therefore, the writ application is not entertained. Liberty is granted to the petitioner to produce all such materials on which he wants to rely upon to bring his points home before the investigating agency within a period of four weeks from today and on the petitioner's bringing to the notice of the investigating agency such materials, the same would be looked into, considered and then an opinion will be formed. The investigation agency shall in addition to the materials produced by the petitioner will be free to act independently and collect all such materials which may be required to come out with a proper investigation.

This writ application is disposed off with the aforesaid observations and directions.

(Rajeev Ranjan Prasad, J)

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