

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Miscellaneous No.24524 of 2015**

Arising Out of PS.Case No. -179 Year- 2010 Thana -PATLIPUTRA District- PATNA

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1. Shankaranand Upadhyay, S/o Late Basudewanand Upadhyay
 2. Lalit Upadhyay @ Lalit Narayan Upadhyay, son of Shankaranand Upadhyay, both residents of village-Station Road, Parsa Bazar (Nathupur) P.O. Kurthoul, P. S. Parsa Bazar, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
 2. Superintendent of Police, Patna.
 3. Officer-in-Charge, Police Station Patliputra, District-Patna.
 4. Shiv Shankar Pathak
 5. Prem Shankar Pathak, both sons of Late Chunchun Pathak.
 6. Rakesh Shankar Pathak, son of Late Gourishankar Pathak, all residents of village-Gosain Tola (Mainpura), P.O. and P. S. Patliputra, District-Patna.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Mritunjay Prasad Singh- Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**CAV ORDER****Date: 25-07-2018**

Heard learned counsel for the petitioners as well as
 learned Additional Public Prosecutor.

2. At an earlier occasion, CRI.W.J.C. No.976 of 2011 was filed asking for quashing of the F.I.R. of Patliputra P. S. Case No.179 of 2010 as well as issuance of writ of mandamus commanding the respondents' authority not to take any action against the petitioners in pursuance of aforesaid F.I.R., any other relief or reliefs, which may deem fit and proper in the facts and circumstances of this case by the petitioners wherein the opposite parties were noticed. During course of hearing over admission, it has been found that



another CRI.W.J.C. No.18220 of 2011 has also been preferred at the end of other co-accused as well as parties are litigating under Civil Revision No.1238 of 2008, Civil Review No.98 of 2010, First Appeal No.117 of 2010, on account thereof, vide order dated 13.03.2013, the matter was directed to be listed along with the aforesaid relevant cases. On 04.04.2013, after hearing both the parties, the matter was admitted for hearing. Side by side, further proceeding in connection with Patliputra P. S. Case No.179 of 2010 was also directed to be stayed. Matter proceeded, during midst thereof, as is evident vide order dated 07.02.2014, petitioners have prayed for conversation of instant writ petition as a petition purported to be under Section 482 of the Cr.P.C., on account of submission of chargesheet followed with order of cognizance, which was allowed.

3. From the pleading of the respective parties, it is evident that germane of the instant litigation happens to be under guise of an order dated 26.08.2010 passed in CRI.W.J.C. No.764 of 2010 (Annexure-2), which was filed asking for a prayer at the end of the Respondent Nos.4, 5, 6/ petitioners of the aforesaid CRI.W.J.C. No.764 of 2010 to provide proper security of the life and property and to direct institution of F.I.R. against the private respondents/ petitioners of present petition and others with a further direction that the industries namely M/s J. R. Industrial Switchgears Corporation



and Awantika Enterprises erecting over Plot No.712, Khata No.802 situated at Mauza-Manpura, Gosaitola may not be disturbed at the hands of private respondents, which was disposed of on 26.08.2010 with a direction in following way:-

“In the facts and circumstances of the case, this writ petition is disposed of with liberty to the petitioners to file an application before the City Superintendent of Police, Patna, who would look into the matter. The learned Superintendent of Police would hear both sides. Parties are at liberty to produce their relevant papers in support of the case”.

This Court has not made any opinion regarding merits of the case.

4. As is evident, petitioners of the aforesaid writ/ respondent nos.4,5,6 have not approached the City Superintendent of Police, Patna as directed rather addressed the application to Officer-in-Charge, Patliputra P.S., copy to his Excellency Governor of Bihar, Chief Minister, Deputy Chief Minister, Chief Secretary, Director General of Police, Senior Superintendent of Police, Deputy Inspector General of Police, Inspector General of Police, Additional Superintendent of Police, Human Rights Commission, whereupon Patliputra P. S. Case No.179 of 2010 has been registered (Annexure-1).

5. From perusal of first paragraph of the aforesaid petition now the written report (Annexure-1), it is evident that there



happens to be divulgence of the fact that instant petition is being filed in pursuance of order dated 26.08.2010, passed by the High Court under CRI.W.J.C. No.764 of 2010.

6. Had there been a simple prayer for quashing of the F.I.R. as well as further proceeding either under Article 226 of the Constitution of India or under Section 482 of the Cr.P.C., the matter would have been seen with different angle under the guise of settled principle laid down by the Apex Court on that score, but as the petition has been filed under the guise of an order having been passed under Cr.W.J.C. No.764 of 2010 (Annexure-2), then in that circumstance, it was expected at the end of the opposite party nos.4,5,6/ petitioners to have approached the City Superintendent of Police, Patna, instead of duping, addressing the application to the Officer-in-Charge, Patliputra P. S. and further, would have placed the relevant judgment whereunder the City Superintendent of Police was directed to hear both the parties and to take suitable steps in pursuance thereof, after scrutinizing the documents, if any, having adduced on behalf of respective parties.

7. From the Annexure-1, it is apparent that there happens to be disclosure with regard to annexing of the copy of the judgment, but the reason best known to the concerned authorities, same was not at all gone through. Had there been proper application of mind, F.I.R.



(Annexure-1) would not have been registered as the order (Annexure-2) was not for registration of the case rather an exercise was directed to be taken up at the end of the City Superintendent of Police on a petition having at the end of the opposite party nos.4,5,6/ petitioners as well as noticing the adversary and after scrutinizing the relevant documents having been filed by the relevant parties, if any, expected to pass necessary order. That means to say, registration of the case under order dated 26.08.2010 in Cr.W.J.C. No.764 of 2010 (Annexure-2), without complying the mandate happens to be in utter violation of direction so given.

8. Consequent thereupon, the present F.I.R. bearing Patliputra P. S. Case No.179 of 2010 is hereby quashed and in likewise manner, the subsequent event. Petition is allowed. However, parties are at liberty to pursue the matter in light of direction having under Annexure-2, the order dated 26.08.2010 passed in Cr.W.J.C. No.764 of 2010.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	11.07.2018
Uploading Date	25.07.2018
Transmission Date	25.07.2018

