

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.308 of 2017

Arising Out of PS. Case No.-391 Year-2013 Thana- ARA MUFFSIL District- Bhojpur

Sudama Paswan Son of Late Shiv Pujan Paswan, Resident of Village- Shri
Nagar Bhakura, P.S.- Ara Muffassil, District- Bhojpur at Ara Bihar.

... .. Petitioner

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Patna
2. The Principal Secretary, Home Department, Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Bihar, Patna.
5. The Deputy Inspector General of Police Shahabad Range, Dehri-on-Sone, Rohtas.
6. The Superintendent of Police, Bhojpur at Ara.
7. The Deputy Superintendent of Police, Ara Sadar, Bhojpur within the Jurisdiction of Ara Muffassil Police Station, Ara, District- Bhojpur
8. The Officer in-Charge, Ara Muffassil, Police Station, Ara, District- Bhojpur.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Adv.
For the Respondent/s : Mr. Sheo Shankar Pd SC-8

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 16-07-2019

This application has been filed by the petitioner for directing the respondents to take into custody the accused persons of Ara Muffasil P.S. Case No. 391 of 2013.

2. It is submitted by the learned counsel for the petitioner that though the first information report (for short 'FIR') under Section 365 of the Indian Penal Code was registered on 28.12.2013 pursuant to a written report submitted by the petitioner



highlighting the circumstances surrounding disappearance of his son Meghnath Paswan, the police have not arrested the FIR named accused Dara Paswan alias Shailesh Paswan. He contended that the petitioner's son Meghnath Paswan was not having cordial relation with his wife Bimla Devi. He was taken by accused Shailesh Paswan, brother-in-law of Meghnath Paswan, to his home on the pretext that his son Nami Kumar is not well. Thereafter, Meghnath Paswan did not return till 20.12.2013. When the informant inquired about his whereabouts, his *samadhi* Shivnath Paswan disclosed that Meghnath Paswan had never come to his house. He contended that in the FIR, the informant had raised suspicion that his son might have been abducted by his brother-in-law. However, till date there is no progress in the case. Neither the son of the informant has been recovered nor the accused Dara Paswan alias Shailesh Paswan has been apprehended.

3. Per contra, learned counsel for the State submitted that counter affidavit on behalf of respondent no.6 was filed in this case, which was sworn on 6th October, 2017. It is not known what happened in course of investigation thereafter. He contended that in course of investigation of the case all efforts were made for recovery of the son of the informant. However, till the date of filing of the counter affidavit, his whereabouts could not be found.



4. Be that as it may, to hold investigation into a cognizable offence is the statutory right of the police. At the stage of investigation, the court has no role to play. The Court cannot issue any direction to arrest any person named in the FIR, as it is within the discretionary power of the police under Section 41 of the Code of Criminal Procedure. The arrest of any accused named in the FIR is not to be made mechanically only because he has been named in the FIR.

5. The circumstances surrounding a disappearance may be many. There could be umpteen number of reasons behind such disappearance. The role of the police in a missing person investigation is quite challenging. It is difficult to establish whether the disappearance of the missing person is intentional or unintentional or someone has forcefully confined the missing person. The complexities of such report are enormous. However, since the FIR was instituted in 2013 and, at least till the date of filing of the counter affidavit, the investigation was not complete, the Superintendent of Police, Bhojpur at Ara is directed to personally look into the matter and, if the investigation of Ara Muffasil P.S. Case No. 391 of 2013 has not yet been concluded, he shall take all possible steps to conclude the investigation and



submit a report under Section 173(2) of the Code of Criminal Procedure before the court concerned promptly.

6. With the aforesaid observation and direction, the application is disposed of.

7. Let a copy of the order be sent to the Superintendent of Police, Bhojpur at Ara forthwith.

(Ashwani Kumar Singh, J)

pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19-07-2019
Transmission Date	19-07-2019

