

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.232 of 2017

Arising Out of PS. Case No.-531 Year-2016 Thana- GOPALGANJ TOWN District- Gopalganj

Sujeet Shukla @ Sujeet Kumar Shukla Son of Rambali Shukla, Resident of Mohalla- Rajeev Nagar, Ward No.- 14, Police Station- Gopalganj, District- Gopalganj.

... .. Petitioner

Versus

1. The State Of Bihar Through The Principal Secretary, Department Of Home, Police, Government Of Bihar
2. The Director General of Police, Govt. of Bihar, Patna.
3. The Inspector General of Police, Tirhut Range, Muzaffarpur.
4. The Deputy Inspector General of Police, Saran Range, Saran at Chapra.
5. The District Magistrate, Gopalganj.
6. The Superintendent of Police, Gopalganj.
7. Sri Santosh Kumar, Officer-in-charge S.H.O.-cum-Inspector, Gopalganj Town Police Station, Gopalganj
8. Sri Ram Sevak Rawat, Officer-in-Charge S.H.O., Manjhargarh Police Station, District- Gopalganj.
9. Sri Navin Kumar, A.S.I. Gopalganj Town Police Station, Gopalganj.
10. Sri Gulam Azadani, A.S.I.-cum-Investigating Officer, Gopalganj Police Station, Gopalganj.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Lokesh Kumar Singh, Adv.
For the Respondent/s : Mr. Ajay Kumar Sharma, A.C. to A.G.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 09-07-2019

This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for directing the respondents to hand over the investigation of Gopalganj Town P.S. Case No. 531 of 2016 registered for the offences punishable under Section 414 of the Indian Penal Code and Section 30(a) of the Bihar Prohibition and Excise Act, 2016 to some impartial agency preferably the Central Bureau of Investigation.



2. It has been contended by the learned counsel for the petitioner that the petitioner was taken to Gopalganj Town Police Station on 17.12.2016, but the FIR was registered on 20.12.2016. In the meantime, the petitioner was kept in police lock-up. The aforesaid illegal action of the police is sufficient to show hostility and highhandedness of the investigating agency in the matter. He contended that in order to arrive at a rightful conclusion, it is necessary that the investigation be handed over to the Central Bureau of Investigation or any other independent and impartial agency.

3. In the instant case, the allegation made in the FIR is that the petitioner was apprehended with huge quantity of liquor kept in a Scorpio vehicle bearing registration no. BR-28L-4129. The FIR goes to suggest that the vehicle in question was intercepted on 20.12.2016 and the FIR was registered on the same day and thereafter the petitioner was remanded to judicial custody on 21.12.2016. It is an admitted fact that the petitioner has got criminal antecedent. A case vide Town P.S. Case No. 82 of 2008 was registered under Sections 20 and 21 of the NDPS Act earlier in which on completion of investigation he has already been charge-sheeted.



4. It would be relevant to note that the Bihar Prohibition and Excise Act, 2016 came into force with effect from 2nd October, 2016 in order to enforce, implement and promote complete prohibition of liquor and intoxicants in the territory of the State of Bihar. Section 30(a) of the said Act provides that whoever, in contravention of provision of this Act or of any rule or order made or notification issued under the Act or in contravention of any condition of any license or permit or pass, renewed under the Act or without a valid license, permit or pass issued under the Act manufactures, possesses, buys, sells, distributes, collects, bottles, imports, exports, transports or removes any intoxicant or liquor shall be punishable with imprisonment for a term not less than ten years but which may extend to imprisonment for life and with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees.

5. On query, learned counsel appearing for the petitioner conceded that on conclusion of investigation the police have already submitted charge-sheet in the court and cognizance of the offence has already been taken.

6. The application filed by the petitioner cannot be allowed for more than one reason. Firstly, because the investigation itself is over and charge-sheet has been submitted



and on appreciation of materials on record, the learned Special Judge has taken cognizance of the offence. Secondly, because transfer of investigating agency is not to be ordered as a matter of routine or merely because a party has levelled some allegations against the local police. The extraordinary powers conferred under Article 226 of the Constitution of India is required to be exercised sparingly, cautiously and in exceptional situation.

7. In *State of West Bengal Vs. Committee for Protection of Democratic Rights*, since reported in (2010) 3 SCC 571, the Supreme Court has laid down as under:-

“... we deem it necessary to emphasize that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in



exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order maybe necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

8. Having regard to the facts and circumstances of the case, for the reasons stated above, as also in view of the ratio laid by the Supreme Court in *State of West Bengal Vs. Committee for Protection of Democratic Rights* (Supra), I see no merit in the present application.

9. The application is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
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