

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.665 of 2017

Arising Out of PS. Case No.-38 Year-2013 Thana- JANTA BAZAR District- Saran

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Umravati Devi Wife of Lal Deep Kunwar, resident of Village- Ballau, P.S.-
Maharajganj, District- Siwan.

... .. Petitioner

Versus

1. The State Of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, Saran.
4. The Deputy Superintendent of Police, Chapra Town, Saran.
5. The Officer-in-Charge, Janta Bazar Police Station, District- Saran.

... .. Respondents

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Appearance :

For the Petitioner : Mr.Vipin Kumar, Advocate
For the Respondent-State: Mr.Manish Kumar, GP4

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 28-08-2019

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

2. This application under Articles 226 and 227 of
the Constitution of India has been filed by the petitioner praying for
issuance of a direction for further investigation of Janta Bazar P. S.
Case No. 38 of 2013 registered under Section 302 read with 34 of the
Indian Penal Code.

3. Learned counsel appearing for the petitioner
submitted that the investigating officer of Janta Bazar P. S. Case No.



38 of 2013 did not investigate the case with full sensitivity and commitment. He conducted the investigation in an arbitrary manner and submitted a collusive report under Section 173 of the Code of Criminal Procedure (for short 'CrPC') before the Court. During pendency of the investigation, the petitioner suspected that the investigation was not being made in a fair and impartial manner as such, he filed a complaint in the nature of protest in the aforesaid police case. Ultimately, his apprehension proved right and the police submitted final report holding the case to be 'mistake of fact'.

4. He submitted that while accepting the closure report, learned Chief Judicial Magistrate registered the protest petition as Complaint Case No. 796 of 2014.

5. After solemn affirmation of the complainant, he recorded the statement of P.W. 1 Ravinder Rai, P.W. 2 Om Prakash and P.W. 3 Bihari Kunwar in the complaint case.

6. However, the learned SDJM, Chhapra, Saran dismissed the complaint vide order dated 04.12.2014 in exercise of powers conferred under Section 203 of the CrPC.

7. He pleaded that since the learned SDJM had erroneously dismissed the complaint petition, the petitioner challenged the order dated 04.12.2014 by way of filing a revision application before this Court vide Cr. Revision No. 60 of 2015, which was dismissed by a non-speaking order in limine and the order



dated 04.12.2014 passed by the learned SDJM, Chhapra in Complaint Case No. 796 of 2014 was upheld.

8. He contended that being aggrieved by the dismissal of the revision petition, the petitioner filed Special Leave Petition (Crl.) No. 10604 of 2015 before the Supreme Court. After grant of leave, the appeal was taken up by the Supreme Court on 02.12.2016 wherein it was held that the order dismissing the revision application passed by the High Court was bad in law. Hence, the same was set aside and the matter was remanded to the High Court for early disposal.

9. Thereafter, the case was taken up by this court on 06.03.2017. However, the same was dismissed as withdrawn with liberty to the petitioner to file an appropriate application under Articles 226 and 227 of the Constitution of India seeking a direction for probe into circumstances of death of the petitioner's son.

10. He contended that under the circumstances, the petitioner is left with no option. The son of the petitioner died an unnatural death. The police have submitted final report holding the case to be 'mistake of fact' and the complaint has already been dismissed by the court of Magistrate. The mystery regarding the unnatural death of the son of the petitioner remains unsolved. It is under such circumstance, the instant case has been filed with a prayer to direct the police to further investigate the case so that the real fact



of death may be ascertained and the persons responsible for causing death may be booked and put on trial.

11. The State has filed its counter affidavit, wherein the major part of the pleadings of the petitioner on facts stand admitted. However, it is disputed that the investigation was not fair and impartial. The contention is that the investigation was done with full sensitivity and commitment. The doctor did not find any fatal injury on the body of the deceased in the post mortem examination. Since the petitioner had alleged that her son was poisoned to death, viscera was preserved and sent for chemical examination. The report received from the forensic science laboratory also suggests that it was not a case of poisoning. Since the death was natural one, the police had submitted final report holding the case to be 'mistake of fact'.

12. Learned counsel appearing for the State submitted that in the background of the facts of the case, no case for issuance of any direction for further investigation is made out.

13. I have heard learned counsel for the parties and carefully perused the record.

14. There is no dispute to the fact that initially, an FIR was registered on the basis of statement of the petitioner recorded by Anil Kumar, Sub-Inspector of Police, Janta Bazar Police Station on 15.05.2013.



15. In the oral statement, the petitioner stated that her son Jai Prakash Kunwar earned his livelihood at Delhi by driving tempo. He was married to one Ranju Devi daughter of Ganesh Singh of village Senduar, Dhujia Tola, P.S. Janta Bazar. Out of the wedlock, Jai Prakash Kunwar was blessed with a son, who is aged about seven years. He was taken to Delhi for study. On 12.05.2013, her son went to his Sasural and told for 'Bidai' of his wife, but his in-laws did not agree for 'Bidai'. When he insisted that his wife should accompany him as he had to look after the minor son, his in-laws got infuriated. They assaulted him and administered poison on 14.05.2013 as a result of which he died. When she came to know about his death, she rushed to Sasural of her son along with her relatives and co-villagers. She alleged that her second son Jai Prakash Kunwar was done to death by his father-in-law, mother-in-law and wife.

16. After lodging the FIR, the investigating officer of the case investigated the case. In course of investigation, autopsy of the body of the deceased son of the petitioner was done. The autopsy report reflects no apparent cause of death. Viscera was preserved and was sent for chemical examination. Viscera report confirmed that no component of poison was found.

17. Having regard to the materials collected in course of investigation, the police submitted Final Form No. 104 of 2013 in the court holding the case to be "Mistake of Facts".



18. During pendency of the investigation, a protest petition was filed by the petitioner while accepting the final report. The same was treated as a complaint. After holding inquiry, the Sub-Divisional Judicial Magistrate found no material to summon the accused persons. Accordingly, complaint was dismissed in exercise of power under Section 203 of the CrPC by the learned SDJM.

19. Thereafter, a revision petition was filed by the petitioner before this Court vide Cr. Revision No. 60 of 2015 which was also dismissed on 01.10.2015. Again being aggrieved with the order dated 01.10.2015, the petitioner filed Special Leave Petition (Crl) No. 10604 of 2015. After grant of leave, the same was converted into appeal. The appeal was ultimately allowed and after setting aside the revisional order passed by this Court, the matter was remanded back to this Court. Subsequently, Cr. Revision No. 60 of 2015 was dismissed as withdrawn vide order dated 06.03.2017. Thereafter, the instant application has been filed praying for a direction to the respondents to investigate the case further.

20. The power of the police to conduct further investigation after filing of the final report is recognized under Section 173(8) of the CrPC. The matter as to whether there exists sufficient and valid grounds for further investigation is entirely to the consideration of the investigating officer. The investigating officer can make further investigation in respect of an offence after a report



under Section 173(2) of the CrPC has been forwarded to the Magistrate only after the Officer-in-Charge of the Police Station obtains further evidence oral or documentary. It is not the case of the petitioner that after the investigation was completed, any further evidence has transpired as a result of which there would be no justification for issuance of any direction for further investigation of the case.

21. In view of the above discussions, I am of the considered opinion that no case for issuance of any direction for further investigation in Janta Bazar P. S. Case No. 38 of 2013 is made out.

22. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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