

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.310 of 2019

Arising Out of PS. Case No.-377 Year-2018 Thana- LAHERIMUHALLA District- Nalanda

Yogendra Singh @ Doman Singh son of Late Lallu Singh, Resident of
Mohalla-Mathuria, Police Station -Laheri, District-Nalanda

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home(Police) Department,
Bihar, Patna
2. The Director General of Police, Bihar, Patna
3. The Inspector General of Police, Patna
4. The Deputy Inspector General of Police, Patna
5. The Superintendent of Police, Nalanda
6. The Station House Officer, Laheri Police Station, Nalanda

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Suraj Narain Yadav, Advocate

For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date : 06-02-2019

Heard Mr. Suraj Narain Yadav, learned counsel for
the petitioner and Mr. Sheo Shankar Prasad, learned counsel for
the State.

2. This writ petition has been filed by the petitioner
for issuance of a direction to the respondents to conduct proper
investigation of Laheri P.S. Case No. 377 of 2018 registered on
16.11.2018 under Sections 302, 324 and 307/34 of the Indian



Penal Code and Section 27 of the Arms Act.

3. Mr. Suraj Narain Yadav, learned counsel for the petitioner submitted that the investigation of the case is not being conducted in a fair and impartial manner. He contended that the investigation must unearth the truth and the real culprit may be brought to book and the person falsely dragged in the case may not be harassed. He urged that the petitioner is an innocent person and he has been made an accused in the case for satisfying the grudge of the informant with some vested interest. In support of his submission that the investigation is not proceeding in proper direction, he has referred to the contents of various paragraphs of the case diary in his petition. On query, as to how he could know about the contents of the statements made during investigation when the investigation is still continuing, he submitted that when the bail application of the petitioner was moved in the court below the case diary was called for by the court below. At that stage, he had occasion to see the case diary. That is how, he knows what has been stated by the witnesses in different paragraphs. He further contended that the truth of the matter is that after hearing the sound of firing, the petitioner came at the place of occurrence and saw the deceased in an injured condition. Since he was a close friend of his younger son



and was also known to the petitioner, he immediately took him to hospital for treatment on a two wheeler with the help of another person. He also informed the family members of the deceased from the hospital about the occurrence. However, before the family members could reach, he left the hospital. These facts are verifiable from the recordings made in CCTV cameras installed at various places as well as at the place of occurrence, but the investigating agency has not collected any CCTV footage and has wrongly believed upon the statement of the informant, who has alleged that at the instance of the petitioner, the co-accused Nitesh Kumar @ Rikki Singh, who happens to be his son opened fire causing fatal injury to his cousin brother as a result of which he died. He contended that a direction is required to be issued by this Court to the Investigating Officer to examine the CCTV footage in order to find out the truth before the closing the investigation.

4. *Per contra*, learned counsel appearing for the State submitted that the petitioner being accused in the case is in judicial custody. At the stage of investigation the accused cannot have any access to any material collected in course of investigation. He contended that the investigation of the case is being conducted in a fair and impartial manner. The petitioner,



an accused, cannot seek any direction from the Court for conducting the investigation in any particular manner.

5. It is not disputed that the petitioner is a named accused in the case registered *inter alia* under Section 302 of the Indian Penal Code and is languishing in judicial custody. It is also not disputed that the investigation of the case is still going on. The role of the petitioner has been assigned in the first information report as that of an order giver. On his exhortion, his son, who had taken a friendly loan of Rs. 10 lakhs from the brother of the informant, opened fire causing injury in his chest as a result of which, he died.

6. It is true that a sensitive and committed investigating agency is a must for a criminal case. However, to hold investigation into a cognizable offence is the statutory right of the police. It is settled position in law that at this stage neither the accused nor the informant of the case has any say. The investigation of a criminal case is supposed to be confidential. The case diary can not be claimed by the accused person at any time for the purpose of assessing and scrutinizing its entries. Even if the court below had called for the case diary while considering the application for bail of the petitioner, the diary should have been with the court and not with the accused.



7. Section 173(2) of the Code of Criminal Procedure (for short 'CrPC') provides that neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred by the court; but, if they are used by the police officer who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officer, the provisions of Section 161 CrPC or Section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872) shall apply. Thus, it would be manifest that the accused or his lawyer shall not be entitled to see the contents of the case diary specially when the case is still under investigation.

8. It is surprising as to how the petitioner could see any part of the case diary, which was summoned by the court below at the stage of investigation. The court below should be cautious of the legal position and should ensure in future that the materials collected in course of investigation should not fall in the hand of an accused while the investigation is going on.

9. In **Sidharth v. State of Bihar [(2005) 12 SCC 545]**, the Supreme Court observed as under:-

“Lastly, we may point out that in the present case, we have noticed that the entire case diary maintained by the



police was made available to the accused. Under Section 172 of the Criminal Procedure Code, every police officer making an investigation has to record his proceedings in a diary setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement of the circumstances ascertained through his investigation. It is specifically provided in sub-clause (3) of Section 172 that neither the accused nor his agents shall be entitled to call for such diaries nor shall he or they be entitled to see them merely because they are referred to by the court, but if they are used by the police officer who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officer, the provisions of Section 161 CrPC or the provisions of Section 145 of the Evidence Act shall be complied with. The court is empowered to call for such diaries not to use it as evidence but to use it as aid to find out anything that happened during the investigation of the crime. These provisions have been incorporated in the Code of Criminal Procedure to achieve certain specific



objectives. The police officer who is conducting the investigation may come across a series of information which cannot be divulged to the accused. He is bound to record such facts in the case diary. But if the entire case diary is made available to the accused, it may cause serious prejudice to others and even affect the safety and security of those who may have given statements to the police. The confidentiality is always kept in the matter of criminal investigation and it is not desirable to make available the entire case diary to the accused. In the instant case, we have noticed that the entire case diary was given to the accused and the investigating officer was extensively cross-examined on many facts which were not very much relevant for the purpose of the case. The learned Sessions Judge should have been careful in seeing that the trial of the case was conducted in accordance with the provisions of CrPC.”

10. An accused may come to know about the outcome of the investigation only after the investigation is completed and a report under Section 173(2) of the CrPC is submitted before the court. He may even obtain a certified copy



of the charge-sheet/police report by the police and that would only indicate the substance of accusation as also the oral and documentary evidence on which the prosecution would place reliance in order to prove its case. Even at that stage an accused has no right to look into the case diary.

11. It is only after the completion of investigation, in compliance of the provisions prescribed under Section 207 of the CrPC, an accused becomes entitled to have a copy of the first information report, the police report, the statements of witnesses recorded under Section 161(3) of the CrPC the prosecution proposes to examine as its witnesses and any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of Section 173 CrPC.

12. In the instant case, as the case is still under investigation, if the petitioner has in any illegal manner been able to look into the case diary, the same cannot be perpetuated by this Court by issuing direction to the investigating agency to investigate the case in any particular manner. The statements made by the petitioner in his pleading referring to different paragraphs of the case diary are nothing but an example that he has tried to tamper with the investigation of the case.



13. At this stage, I say no more.

14. As far as the relief prayed for by the petitioner is concerned, I am of the considered opinion that the same cannot be allowed. The accused has no right either to control or monitor the investigation. He cannot issue any direction that the investigation should be done in a particular manner.

15. The writ petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/R.Ranjan-

AFR/NAFR	NAFR
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