

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.656 of 2018

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Amit Kumar, son of Sri Akhilesh Prasad, Resident of Manikpur, Police Station- Kurtha, District- Arwal, presently residing at C- 424, 11th Avenue, Gaur City- 2, Sector 16 C, Gautam Buddha Nagar, Greater Noida West, Uttar Pradesh.

... .. Petitioner

Versus

1. The State of Bihar, through the Home Secretary, Government of Bihar, Old Secretariat, Patna
2. Sub Divisional Magistrate, Arwal at Arwal.
3. The Superintendent of Police, Arwal at Arwal.
4. Sh. Avinash, the Officer in Charge, Manikpur- Outer Post, District- Arwal.
5. The Circle Officer, Block- Kurtha, Arwal.

... .. Respondent 1st set

6. Harkhu Yadav, Son of Ramchander Yadav. Resident of Manikpur, Police Station- Kurtha, District- Arwal.
7. Vinay Yadav, Son of Ramchander Yadav. Resident of Manikpur, Police Station- Kurtha, District- Arwal.
8. Ramchander Yadav, Son of Nathun Yadav, Resident of Manikpur, Police Station- Kurtha, District- Arwal.
9. Phul Chand Yadav, Son of Not known, Resident of Manikpur, Police Station- Kurtha, District- Arwal.
10. Sughan Paswan, Son of Madhuwan Paswan, Resident of Manikpur, Police Station- Kurtha, District- Arwal.
11. Phul Chand Yadav, Son of Parmeshmar Yadav, Resident of Manikpur, Police Station- Kurtha, District- Arwal.
12. Badri Paswan, Son of Devki Paswan, Resident of Manikpur, Police Station- Kurtha, District- Arwal.
13. Uday Yadav, Son of not known, Resident of Manikpur, Police Station- Kurtha, District- Arwal.
14. Rajesh Mistri, Son of Nawal Mistri, Resident of Manikpur, Police Station- Kurtha, District- Arwal.

... .. Respondents 2nd set

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Appearance :

For the Petitioner/s : Mr. Jagjit Roshan, Advocate
For the Respondent/s : Md. Asif Iqbal Niazi, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 14-05-2019



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

2. This application under Article 226 of the Constitution of India has been filed by the petitioner for issuance of a direction to the respondents to lodge a First Information Report (for short 'FIR') against private respondents on the basis of a written report submitted by his father to the Officer-in-charge, Manikpur O.P., Arwal as contained in Annexure-2 to the present application.

3. It is submitted by the learned counsel appearing for the petitioner that despite the written report having been submitted to the Officer-in-charge of the Police Station in respect of continuous threats from respondent nos. 6 to 12, the police have failed to institute an FIR. It is further contended that the local police is acting completely in collusion with respondent nos.6 to 8 who have managed to illegally keep them under their clutches by using their muscle and money power.

4. A counter affidavit has been filed on behalf of the respondent wherein it is stated that the written report was never submitted in Manikpur Police Station rather it was received from the office of the Public Grievance Cell by the Superintendent of Police, Arwal vide receipt no.13 dated 11.11.2017. On receipt of the written application, in the preliminary enquiry, Akhilesh Prasad,



father of the petitioner stated that he had not submitted the written application. He told the police that he had filed an application dated 15.10.2017 to the Sub Divisional Magistrate, Arwal on the basis of which a proceeding under Section 107 of the Code of Criminal Procedure has been started. Even in the subsequent enquiry report dated 23.02.2018, which was prepared and submitted before the Superintendent of Police, Arwal, the aforesaid facts were found correct. It is further contended in the counter affidavit that the petitioner is an advocate practicing in Delhi and he used the signature of his father Akhilesh Prasad, which was taken on a blank sheet of paper to file an application before the Superintendent of Police, Arwal and this fact has been stated by the father of the petitioner himself.

5. Learned counsel appearing for the State submitted that in view of the preliminary enquiry conducted by the police, since the signature of the complainant Akhilesh Prasad was misused by the petitioner and the father of the petitioner himself told the police that he had not submitted any written complaint, the FIR has not been registered. He contended that on the basis of the complaint made by the father of the petitioner, a proceeding under Section 107 of the Code of Criminal Procedure has already been drawn. He pleaded that in case petitioner intends to file an FIR, he



should himself submit a complaint in terms of Section 154(1) of the Cr.P.C. before the Officer-in-charge of the police station. In case any report regarding cognizable offence would be received, the same would certainly be entertained and an FIR would be registered.

6. Having heard learned counsel for the parties and perused the record, I find that no rejoinder to the counter affidavit filed by the respondent no.3 has been filed by the petitioner. In absence of any rejoinder to the counter affidavit, the averments made therein would go unrebutted. Since a categorical statement has been made in the counter affidavit that after receipt of the written complaint, a preliminary enquiry was conducted in which the father of the petitioner in whose writing the complaint was filed has himself stated that he had not written any such complaint and his son has misused his signature obtained on a blank sheet of paper, no fault can be found with the action of the police if an FIR has not been registered on the basis of such written complaint. In case, any cognizable offence has taken place and the petitioner is privy to that and he intends that an FIR in connection with the same be registered, he may himself file a complaint before the Officer-in-charge of the police station concerned. In case, after filing of the written report also an FIR is not registered by the



Officer-in-charge of the police station, the petitioner may take steps under Section 154(3) of the Code of Criminal Procedure and transmit the substance of such information in writing and by post to the Superintendent of Police concerned. Even thereafter, if investigation is not commenced, the petitioner may take steps under Sections 190 and 200 of the Code of Criminal Procedure and file a complaint in the court of Magistrate and make a request for sending the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure.

7. Having not taken any steps under Section 154(1), 154(3), 190 and 200 and 156(3) of the Code of Criminal Procedure, the petitioner can not raise any grievance in respect of non-institution of the FIR specially when the author of the complaint himself denies making of any such complaint to the police.

8. The application lacks merit. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.05.2019
Transmission Date	18.05.2019

