

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.381 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

=====

Tribhuwan Prasad @ Tribhuwan Prasad Yadav, RTI Activist, aged about-42 years, Son of Sri Arjun Singh, Resident of Yadubanshi Nagar, (Akhadha Road), Digha Ghat, Police Station- Digha, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through Director General of Police, Patna
2. The Inspector General of Police, Patna Region, Patna
3. The Inspector General of Police, Patna Rail, Patna
4. The Deputy Inspector General of Police, Central Range, Patna
5. The Deputy Inspector General of Police, Patna Rail, Patna
6. The Senior Superintendent of Police, Patna
7. The City Superintendent of Police, Patna
8. The Superintendent of Police, Patna Rail
9. The Deputy Superintendent of Police, Patna Rail
10. The Deputy Superintendent of Police, Law and Order Kotwali, District-Patna
11. The Officer in Charge, P.S.-Digha, Patna
12. The Officer in Charge, Patna Rail, Patna Junction (GRP)
13. Kanhaiya Samrat, Son of Late Brij Bilash Singh, Resident of Awadhपुरi Colony, Digha Ghat, P.S.- Digha, Patna, Present posted as Patna GRP Patna Junction Patna till 2012 to 2018

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Jyoti Shankar, Advocate
For the Respondent/s : Mr.Partha Sarthy, GA-4

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 15-02-2019

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

2. This writ petition has been filed by the
petitioner for a direction to the respondent authorities to institute
an FIR against respondent No.13 and to take legal action against
him. Another prayer of the petitioner is to direct the respondent
authorities to take appropriate steps to fix responsibility on the



persons, who have failed in discharging and performing their legal duties.

3. Learned counsel appearing for the petitioner submitted that though the petitioner has submitted a written report to the Station House Officer, Digha Police Station in respect of a cognizable offence of theft against the respondent no.13 on 28.05.2016, no FIR has been registered against him till date. He contended that only a station diary entry in respect of a report submitted by the petitioner has been made and no investigation into a cognizable offence reported by the petitioner has been initiated. His further contention is that the matter was brought to the notice to the superior police officers, but still the grievance of the petitioner has not been redressed.

4. Per contra, learned counsel appearing for the State submitted that firstly, no cognizable offence was reported to the police. Hence, only a station diary entry was made in respect of the report submitted by the petitioner. Secondly, even if it is presumed that an information in respect of a cognizable offence is given and the Station House Officer failed to register FIR, the petitioner ought to have invoked the provision prescribed under sub-section (3) of Section 154 of the Code of Criminal Procedure (for short 'Cr.P.C.'), which he failed to do.



On query, whether on refusal on the part of the Station House Officer to initiate an FIR pursuant to the written report submitted by the petitioner, the substance of such information was sent to the Superintendent of Police concerned, learned counsel for the petitioner admitted that no such information was transmitted to the Superintendent of Police, but an information under Right to Information Act was sought for from the Superintendent of Police and other superior police officers in this regard.

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

6. Chapter-XII of the Cr.P.C deals with information to the police and their powers to investigate. Sub-section (1) of Section 154 of the Cr.P.C. provides that every information relating to commission of a cognizable offence, if given orally to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.



7. Sub-section (3) of Section 154 Cr.P.C provides that any person aggrieved by a refusal on the part of an officer-in-charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer-in-charge of the police station in relation to that offence.

8. In the instant case, if the information relating to commission of a cognizable offence was given to the Station House Officer of a police station in terms of Section 154 (1) of the Cr.P.C and the Station House Officer declined to register the FIR, the petitioner was required to send the substance of such information, in writing and by post, to the Superintendent of Police concerned, in terms of Section 154(3) of the Cr.P.C.

9. Apparently, the petitioner has failed to take any steps under Section 154(3) of the Cr.P.C. That apart, if the FIR is not registered in spite of an information, in writing and by post, sent to the Superintendent of Police and investigation is



not taken up, the petitioner could have filed a complaint under Section 190 read with 200 of the Cr.P.C before the Magistrate concerned. On such complaint, the Magistrate would have either enquired into himself or directed the police to investigate the case in terms of Section 156(3) of the Cr.P.C.

10. *In Sakiri Vasu Vrs. State of Uttar Pradesh and Others since reported in (2008) 2 SCC 409*, the Supreme Court in Paragraphs 24 to 28 held as under:-

“24. In view of the above mentioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) CrPC to order registration of a criminal offence and/or to direct the officer in charge of the police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) CrPC, we are of the opinion that they are implied in the above provision.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station



and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 CrPC. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, first under Section 154(3) and Section 36 CrPC before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so



many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.”

11. In view of the statutory provisions prescribed under Sections 154, 190, 200 and 156(3) of the Cr.P.C as also



the ratio laid down by the Supreme Court in Sakiri Vasu (supra), for the relief prayed for in the present application, the writ petition is not an appropriate remedy.

12. As the petitioner has failed to avail of the statutory remedy available in law, I am not inclined to entertain this writ petition.

13. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.02.2019
Transmission Date	21.02.2019

