

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.462 of 2019**

Arising Out of PS. Case No.-70 Year-2017 Thana- PARBATTa District- Khagaria

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1. Munna Mishra @ Hari Shankar Mishra S/o Satya Narayan Mishra, Resident of Village- Kanhaiya Chak, P.S. Parbatta, District- Khagaria
  2. Rajnish Mishra S/o Murlidharan Mishra
  3. Shrawan Rai S/o Manoj Rai
  4. Vimlesh Kumar Gautam S/o Sunil Kumar Mishra
- All are Resident of Village- Kanhaiyachak, P.S- Parbatta, District- Khagaria

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna
3. The Superintendent of Police Khagaria
4. The Sub Divisional Police Officer, Gogari, Khagaria
5. The Police Inspector, Gogari, Khagaria
6. The SHO, Parbatta, Khagaria

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Saroj Kumar, Advocate  
For the Respondent/s : Mr.M. Nasrul Huda Khan, SC-1

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**  
**ORAL JUDGMENT**  
**Date : 06-03-2019**

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

2. This writ petition has been filed by the petitioners for directing the respondents to get the investigation of Parbatta P.S. Case No. 70 of 2017 done by Criminal Investigation Department ( for short 'CID') for the ends of justice and to exonerate the petitioners from prosecution and to book the real offenders, who have obstructed the police force in



performing their duties at the time of raid conducted by the Parbatta Police on 25.02.2017, in order to execute the warrant of arrest against Rabindra Mishra and Sanjeev Kumar.

3. It has been alleged by the informant Ziauddin Khan in his written report giving rise to Parbatta P.S. Case No.70 of 2017 that in order to execute the warrant of arrest issued by the court against Ravindra Mishra and Sanjeev Kumar, a raiding party of the police proceeded on government jeep from the police station. The local Chaukidar identified said Ravindra Mishra and after disclosing about the case and the warrant of arrest issued against him, he was taken into custody. Immediately, thereafter, his wife and daughter-in-law started shouting loudly whereafter altogether 10 persons named in the FIR including the petitioners Munna Mishra, Rajnish Mishra, Shrawan Rai and Vimlesh Kumar Gautam and ten unknown persons assembled near the police vehicle and started protesting against the arrest of Ravindra Mishra. In spite of persuasion by the police, they were not ready to hear anything and they tried to rescue Ravindra Mishra from the police custody. When the police party protested against the action of the accused persons, they started abusing and manhandling them. They tried to snatch their rifle and when it was protested, they pelted stones and, in



the meantime, the accused, namely, Chanakya alias Chanti took out a knife and thrust it in his right thigh. The other police personnel were also assaulted and due to pelting of stones some of them has sustained serious injuries and the police vehicle was also damaged by them.

4. In view of the allegations made in the written report, the FIR was registered under Sections 147, 149, 323, 324, 307, 337, 379, 353, 333, 427 and 504 of the Indian Penal Code.

5. It is submitted by Mr. Saroj Kumar, learned counsel for the petitioners that the petitioners are innocent. They were not present at the place of occurrence when the police had apprehended the wanted accused. The local chaukidar mischievously gave names of the persons residing in the locality with ulterior motive. Since some police personnel had sustained minor injuries, the FIR was registered for serious offences. There is nothing in the FIR to suggest that there was any attempt to kill any one, but the FIR has been registered also for the offence under Section 307 of the Indian Penal Code. The investigation being conducted by the local police is tainted and all efforts are being made to justify the prosecution of innocent persons.



6. He contended that as far as petitioner no.4 is concerned, he is not named in the FIR, but still the police are chasing him. In the light of the aforesaid submissions, he submitted that the investigation of the case should be handed over to an independent agency like CID so that justice may be done and innocent persons may be saved from prosecuted illegally.

7. On the other hand, Mr. M. Nasrul Hoda Khan, learned counsel appearing for the State submitted that the petitioner nos. 1 to 3 are named accused in the FIR. The FIR would show that apart from named accused, 10 unknown persons also participated in the alleged offence. Thus, there is no merit in the contention of the petitioners that petitioner no.4 is being harassed by the police even though he is not named in the FIR. He further contended that there is nothing to suggest that the investigation is not being done in a fair and impartial manner. The accused persons named in a police case can not dictate the terms of investigation or choose the investigating agency of their choice. He contended that registration of the FIR under Section 307 of the IPC is not exaggeration and on the basis of that no inference against the action of the police can be drawn.



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

9. I find substance in the submission of learned counsel for the State. Three of the petitioners are named accused whereas the fourth person, namely, Vimlesh Kumar Gautam, who claims himself to be innocent may also be one of the unnamed accused, who may have participated in the alleged occurrence. It is apparent from the FIR that the FIR is not confined only against the named accused persons rather allegation is that apart from the named accused persons 10 others had also participated in the commission of crime. The allegation is quite serious. The accused persons are alleged to have attacked upon the police party and they deterred them in discharge of their official duty. One of the accused is alleged to have assaulted with knife causing injury in the thigh of the informant. Whether the allegations made in the FIR attract the ingredients of Section 307 of the Indian Penal Code or not can be seen by the court at the appropriate stage, but that cannot be a ground to hold at the initial stage that the investigation is not being done in a fair and impartial manner.

10. The accused in a criminal case cannot choose the investigating agency of his own choice or manner in which



investigation should be conducted.

11. In that view of the matter, I see no merit in this writ petition. It is dismissed, accordingly.

**(Ashwani Kumar Singh, J)**

Md. S/SKSuman.

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