

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1035 of 2019

Arising Out of PS. Case No.-279 Year-2016 Thana- KHAGARIA District- Khagaria

DEEPAK KUMAR Son of Late Sushil Kumar Sah Resident of Village -
Rohua Rajaram, P.S.- Mushahari, Distt - Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Deptt., Govt. Of Bihar
2. Director General of Police, Bihar, Patna.
3. Senior Superintendent of Police, Muzaffarpur
4. Superintendent of Police, Khagaria.
5. Narendra Brahmchari Son of Shanti Prakash Resident of Dan Nagar, ward no. 5, P.S.- Khagaria Town, Distt - Khagariya.
6. Ritambhara @ Richa Yogmayee @ Poonam D/o Narendra Brahmchari. Resident of Dan Nagar, ward no. 5, P.S.- Khagaria Town, Distt - Khagariya.

... .. Respondents

Appearance :

For the Petitioner : Mr.Naresh Chandra Verma, Advocate

For the Respondent-State: Mr.Prabhat Kumar Verma, AAG-3

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 08-07-2019

Defect pointed out by the stamp reporter is ignored.

2. Heard learned counsel for the petitioner.

3. This application under Article 226 of the

Constitution of India has been filed by the petitioner for directing the respondent no. 2, Director General of Police, Bihar, Patna to order for re-investigation of Mushahari P. S. Case No. 47 of 2017 and Khagariya Town P. S. Case No. 279 of 2016 by a competent authority.



4. Learned counsel appearing for the petitioner has submitted that the investigation conducted by the police in Mushahari P. S. Case No. 47 of 2017 and Khagariya Town P. S. Case No. 279 of 2016 are perfunctory and erroneous.

5. Having seen the erroneous outcome of the investigations, the petitioner filed several representations to the superior police officers highlighting the follies in investigation, but no action has been taken on the representations filed by the petitioner. He submitted that in case an order for re-investigation is not made, the petitioner would suffer an irreparable loss.

6. Per contra, learned counsel appearing for the State submitted that the prayer made by the petitioner is totally misconceived. The cases have been investigated properly and, on completion of the investigations, the police have already submitted their report under Section 173(2) of the Code of Criminal Procedure (for short 'CrPC') before the court concerned and on perusal of the police report, the respective Magistrates have already passed order in accordance with law.

7. Having heard learned counsel for the parties, I find that in Khagariya Town P. S. Case No.279 of 2016, the petitioner and his relatives have been made accused in a case instituted inter alia under Sections 307 and 498A of the Indian



Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. On completion of investigation, the police submitted charge-sheet on 25.11.2016 finding the allegations made in the first information report (for short 'FIR') to be true. As far as Mushahari P. S. Case no. 47 of 2017 registered under Sections 457 and 380 of the Indian Penal Code is concerned, the same was instituted on the basis of a written report submitted by the petitioner to the officer-in-charge of Mushahari Police Station wherein the petitioner alleged that his wife fled away after taking ornaments, Rs.25,000/- cash and some papers of the house on 20.04.2015. The police investigated the case and submitted final form holding the accusation made in the FIR to be false on 29.12.2017.

8. After submission of the report by the police in the aforesaid two cases under Section 173(2) of the CrPC, the respective Magistrates applied their mind and passed order in accordance with law.

9. In case, the petitioner has any grievance against the order passed by the court, he can challenge the same in accordance with law. However, instead of challenging the same, he has filed this application under Articles 226 and 227 of the Constitution of India seeking re-investigation of the case.



10. Firstly, CrPC does not contain any provision whereby a re-investigation into a criminal case can be ordered. Under Section 173(8) of the CrPC the police have got jurisdiction to investigate the case further in respect of an offence after a report under sub-section (2) is forwarded to the Magistrate upon receipt of further evidence, oral or documentary. However, there is no provision in the CrPC under which a de novo investigation wiping out the previous investigation conducted by the police can be taken up. Secondly, there is no material on record on the basis of which this Court may come to the conclusion that the investigations conducted by the police in the aforesaid two police cases were unfair or tainted. Thirdly, there is nothing on record to suggest that after conclusion of the investigations in the case, in question any further evidence, oral or documentary has been received by the police warranting further investigation of the cases.

11. For the reasons stated above, the application being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.07.2019
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