

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.903 of 2019

Arising Out of PS. Case No.-592 Year-2017 Thana- MOTIHARI MUFASIL District- East
Champanan

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Subhas Prasad @ Subhas Sah Son of Late Vidya Sah Resident of Village -
Katahan, P.S.- Muffasil Motihari, District- East Champanan

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Home Department, Govt. of Bihar
2. The ADG (CID) Bailey Road Patna, Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Pramod Kumar Pandey, Advocate
For the State : None

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 17-06-2019

The defects, as pointed out by the registry,

are ignored.

2. Heard learned counsel for the petitioner.

3. In the instant application preferred under

Articles 226 and 227 of the Constitution of India, the petitioner

has prayed for a direction to be issued to the respondent no.2 to

take over charge of further investigation of Motihari Mufassil

P.S. Case No.592 of 2017, which is being investigated by one

Mr. Arbind Prasad, Sub Inspector of Police, Mufassil Police

Station, East Champanan.



4. Learned counsel appearing for the petitioner submitted that the police have falsely implicated the petitioner in Mufassil P.S. Case No.592 of 2017 dated 04.11.2017 registered under Sections 302 and 120B of the Indian Penal Code. They did not investigate the case properly and submitted charge-sheet against the petitioner without there being any evidence against him. He has contended that the purpose of investigation of a criminal case is to find out as to who the offenders are. Since the police have completely failed to come to a correct finding, the case requires further investigation in terms of Section 173(8) of the Code of Criminal Procedure (for short 'the Cr.P.C.') and in order to arrive at a correct finding it would be necessary that a direction be issued to the respondent no.2 to personally monitor the investigation and submit a further report.

5. No one appears for the State.

6. Admittedly, the petitioner has been made a named accused in a criminal case registered inter alia under Section 302 of the Cr.P.C. The police investigated the case and submitted its report under Section 173(2) of the Cr.P.C.. On completion of investigation, the petitioner has been sent up for trial. There is nothing on the record that after completion of



investigation the police had obtained further evidence, oral or documentary, on the basis of which a further investigation would be required. The provision prescribed under Section 173(8) of the Cr.P.C. gives power to the police to hold further investigation after a report under sub section (2) of section 173 is forwarded to the Magistrate. However, such further investigation would be dependent on the receipt of further evidence, oral or documentary after completion of investigation. In other words, only on receipt of further evidence, the police may conduct further investigation and submit a further report or reports regarding such evidence in the form prescribed under Section 173(8) of the Cr.P.C.. In the instant case, the pre-requisite for exercise of power under Section 173(8) of the Cr.P.C. is completely absent.

7. Even otherwise, it is well settled position in law that an accused has no right to choose an investigating officer or investigating agency of his own choice. Once the investigation is complete and charge-sheet has been submitted even if an accused presumes himself to be innocent, he has to prove the same in course of trial. For the purpose of holding an accused to be innocent against whom charge-sheet has already been submitted, a mandamus cannot be issued by this court to



get the matter investigated by an agency or an officer of the choice of the accused.

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

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.06.2019
Transmission Date	19.06.2019

