

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1141 of 2019

Arising Out of PS. Case No.-397 Year-2015 Thana- ARA MUFFSIL District- Bhojpur

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1. Dinesh Rai, Son of Ram Rishi Rai, Resident of Village-Mahakampur Bara, P.S.-Ara Muffassil District-Bhojpur at Ara.
 2. Shushil Yadav @ Chokhar Yadav, Son of Ram Rishi Rai, Resident of Village-Mahakampur Bara, P.S.-Ara Muffassil, District-Bhojpur at Ara.

... .. Petitioners

Versus

1. The State of Bihar through the District Magistrate, Bhojpur
2. The Superintendent of Police, Bhojpur.
3. The Deputy Superintendent of Police, Bhojpur.
4. The Medical Officer, Sadar Hospital Bhojpur at Ara.
5. The Station House Officer, Ara Mufassil, Bhojpur.
6. Manish Kumar, Son of Jai Govind Rai, Resident of Village-Mahkampur Bara, P.S.-Ara Muffassil, District-Bhojpur.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Manoj Kumar, Advocate
For the Respondent/s	:	Md. Iqbal Asif Niazi, AC to GP-5

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 06-08-2019

Defect pointed out by the Stamp Reporter is ignored.

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioners for constituting a medical board for examination of the injuries of the informant, which is alleged to have been caused by the petitioner no.2 by firearm.

3. It is submitted by the learned counsel for the petitioners that in the oral statement of Manish Kumar recorded at



Sadar Hospital, Ara on 02.12.2015 at 1:50 p.m., it has been alleged that on the same day at about 12:30 p.m. while he was returning to his home, on account of previous enmity relating to land, Sushil Yadav (Petitioner no.2) opened fire from some distance causing bleeding injury on his shoulder. On hearing the sound of firing, some neighbouring people assembled at the place of occurrence and took him to Sadar Hospital, Ara where he was undergoing treatment and, in course of treatment, one Suresh Prasad Kushwaha, a compounder, extracted the cartridge from his person.

4. He contended that in course of investigation, the police have not investigated the case properly. The petitioners have obtained an information under the Right to Information Act, which shows that in the Sadar Hospital, Ara no person in the name of Suresh Prasad Kushwaha is posted as compounder.

5. He has further contended that the injury report issued by the doctor of the Sadar Hospital, Ara is misleading. Since the police have not investigated the case from all possible angles, a medical board is required to be constituted in order to examine as to whether the informant of Ara Muffasil P.S. Case No.397 of 2015 had ever sustained any gun shot injury.

6. On the other hand, learned counsel appearing for the State submitted that investigation of the case has already been



completed. The police have submitted their report under Section 173(2) of the Code of Criminal Procedure before the court pursuant to which cognizance of the offence has already been taken and, as per the statement of the petitioner made in the writ petition itself, the case is at the stage of framing of charges. He contended that the request made by the petitioner, as a matter of fact, is for issuance of a direction to investigate the case further after submission of the police report.

7. According to him, the defence of an accused can not be made a ground for issuance of a direction to investigate the case further. The defence taken by the accused can be considered by the court when the evidence on behalf of the defence would be led and the case would be considered on merit.

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

9. Admittedly, petitioner no.2 is a named accused in the first information report. There is specific allegation against him in the first information report by the informant of the case that he opened fire causing gun shot injury in the shoulder of the informant. The oral statement of the informant was recorded in the Sadar Hospital by a police officer. It is true that in his statement, he has stated that one Suresh Prasad Kushwaha, a compounder,



extracted the bullet from his shoulder. Whether the statement made by the informant is true or false is a subject matter of trial. At this stage, it would not be proper for this Court to issue any direction to conduct further investigation into the matter and submit a further report.

10. The power of police to conduct further investigation after filing of the police report is recognized by sub-section (8) of Section 173 of the Code of Criminal Procedure. This provision confers an express and specific powers in the police to carry out further investigation after the cognizance is taken by the court. An order of further investigation is not a judicial order and whether there exists sufficiently valid ground for further investigation is entirely for consideration of the investigating and supervising officer of police.

11. The defence taken by the petitioner on the basis of an information received under the Right to Information Act can not be made a ground for directing the police to investigate the case further.

12. The application, being devoid of any merit, is dismissed.

13. Since the trial of the case is reported to be pending before the court of sessions for framing of charge, the trial court is



directed to expeditiously proceed with the trial of the case and dispose of the same in accordance with law as early as possible.

14. Registry is directed to transmit a copy of the order to the learned Session Judge, Ara forthwith.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.08.2019
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