

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.669 of 2017

Arising Out of PS. Case No.-136 Year-2017 Thana- MADHAURAH District- Saran

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1. Shivji Singh @ Shivji Thakur, son of Late Jagarnath Thakur,
 2. Sanjay Kumar Singh @ Tunna Thakur, son of Shivji Singh @ Shivji Thakur,
 3. Santosh Kumar Singh @ Lalu Thakur, son of Shivji Singh @ Shivji Thakur,
All residents of Village- Nethua, P.O.- Awari, P.S.- Marhaura, District- Saran
at Chapra.
 4. Jitendra Kumar Singh, son of Late Uma Singh.
 5. Chandan Kumar @ Chandan Kumar Singh, son of Ram Babu Singh,
 6. Rajesh Kumar Singh, son of Binda Singh,
All residents of Village- Salimapur, P.O.- Awari, P.S.- Marhaura, District-
Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna
2. The Inspector General of Police, Tirhut Range, Muzaffarpur.
3. The Deputy Inspector General of Police, Saran Range, Chapra.
4. The Superintendent of Police, Saran at Chapra, District- Saran at Chapra.
5. The Sub-Divisional Police Officer, Marhaura, District- Saran at Chapra.
6. The Station Head Officer, Marhaura Police Station, District- Saran at
Chapra.
7. Arun Singh, son of Sri Ganesh Singh, resident of village and P.O.- Awari,
P.S.- Marhaura, District- Saran at Chhapra.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.B.K. Manglam, Advocate
For the Respondent/s	:	Mr. Shailesh Kumar, AC to GP-5

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 12-03-2019

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

2. This writ petition has been filed by the petitioners for
issuance of a writ in the nature of *certiorari* for quashing the First



Information Report (for short 'FIR') of Marhaura P.S. Case No.136 of 2017 dated 09.04.2017 registered under Sections 302, 307 and 120B of the Indian Penal Code as also section 27 of the Arms Act and for commanding the respondents to register a case on the basis of fardbeyan of the injured recorded by Pirbahore Police Station, Patna on 10.04.2017 at Patna Medical College and Hospital, Patna which has been forwarded to Marhaura Police Station for needful and for a further direction for investigation of the aforesaid case by an independent agency like Criminal Investigation Department of the State or the Central Bureau of Investigation.

3. Mr. S.B.K. Mangalam, learned counsel for the petitioners has submitted that for an occurrence, which took place on 09.04.2017, the statement of the injured Shamsheer Ali was recorded by the Pirbahore Police at 9:30 a.m. of 10.04.2017, which was sent to the Marhaura Police. However, Marhaura Police deliberately suppressed the said information and registered a concocted FIR on the written report of Respondent No.7 Arun Singh. He submitted that the action of Marhaura police is neither fair nor proper. Hence, no fair investigation is expected from it, as there was no occasion for the Marhaura police to register FIR on the report of Respondent No.7 in respect of occurrence in which



the injured himself was alive and was in a position to make oral statement.

4. Mr. Mangalam has further contended that Respondent No.7 was not present at the place of occurrence when the occurrence took place. However, since he has his political clout and influence over the local police, if Marhaura police would investigate the case, there can be no imagination of fair investigation of the case. Hence, the investigation is required to be handed over to the Central Bureau of Investigation or the Criminal Investigation Department.

5. The State has contested the matter. Learned counsel appearing for the State referring to the statements made in the counter affidavit submitted that the allegations, as levelled against the police by the petitioners, are based on conjectures and surmises and the same has been lodged with *mala fide* intention. The petitioners are trying to put pressure upon the police in the investigation of Marhaura P.S. Case No.136 of 2017. He has stated that a separate criminal writ application bearing Cr.W.J.C. No.847 of 2017 has also been filed by one Niru Devi, who is daughter-in-law of the petitioner. In Cr. W.J.C. No.847 of 2017, she has alleged that no FIR was registered on the basis of fardbeyan of the injured Samsher Ali along with other frivolous allegations. He has



contended that on the fardbeyan of injured Md. Samsher Ali, an Station Diary Entry vide Station Diary Entry No.27 of 2017 dated 11.04.2017 has been made and the statement of the injured is under consideration in Marhaura P.S. Case No.136 of 2017.

6. I heard the learned counsel for the parties. On perusal of the FIR of Marhaura P.S. Case No.136 of 2017, as contained in Annexure-1 to the writ petition, I find that the informant (respondent no.7) has stated, in his written report submitted to the Officer-in-charge of Marhaura Police Station, Saran at Chapra that he is Mukhiya of Panchayat Raj, Salimapur. His wife is Chairman of Saran Zila Parishad. The petitioner no.2 Sanjay Kumar Singh @ Tunna Thakur had contested election against him and was defeated. Since then, he is trying to commit his murder. Earlier also, he along with others had made a murderous attack upon him in which he had sustained three gun shots and was admitted in PMCH for treatment for which Marhaura P.S. Case No.108 of 2007 was registered in which petitioner no.2 Sanjay Kumar Singh and his family members were sent up for trial and the matter is still pending adjudication before the trial court. On account of the said enmity, on 09.04.2017, at 7:30 p.m., when he was going to his residence at Chapra in his Scorpio vehicle bearing Registration No. BR-04PA-5530 along with constable No.116 Munna Kumar



Singh, driver Binod Singh, private security guards Satrugan Singh and Anuj Kumar Singh and nephew Subodh Kumar Singh, another Scorpio vehicle having red beackon light on its top front was proceeding ahead of his vehicle. When the said vehicle reached near Devasthan, Salimapur, the petitioners treating the vehicle having red beackon on its top front to be the vehicle of his wife resorted to indiscriminate firing with sophisticated weapons as a result of which, the driver of the vehicle sustained injuries and died on the spot. Another person sitting inside the said vehicle had also sustained injuries, and was taken to hospital.

7. On the basis of the said allegation made in the written report submitted by the Respondent No.7, Marhaura P.S. Case No.136 of 2017, was registered inter alia under Section 302 of the Indian Penal Code against the petitioners and five others on 09.04.2017, at 11 p.m.. The allegations made in the FIR are quite serious. They do attract ingredients of a cognizable offence.

8. To hold investigation into a cognizable offence is the statutory duty of the police.

9. In that view of the matter, neither any illegality can be traced in institution of the FIR nor in the investigation of the case.



10. As far as the contention of the petitioners regarding non-institution of an FIR on the basis of fardbeyan of the injured Samsher Ali is concerned, on perusal of his statement, as contained in Annexure-4 to the writ petition, it would be manifest that he has fully corroborated the facts stated by the informant in the FIR. He has subsequently given his fardbeyan at PMCH, Patna on 10.04.2017, at 9:30 a.m., which was recorded by one police officer of Pirbahore police station. In his oral statement made to the police, he has stated that he is an Assistant Comptroller of Audit Accounts posted under the Government of India at New Delhi. He was deputed in Bihar as Observer as per direction of the Election Commission. On 09.04.2017, he had proceeded on the government vehicle to Marhaura in order to attend the ailing mother of one of his friends and while coming back near Salimapur village, at about 7:45-8:00 p.m., 8-10 unknown miscreants being armed with pistol surrounded him and opened indiscriminate firing as a result of which, his driver Anil Kumar died on the spot and his vehicle was also badly damaged. Thereafter, two of the miscreants opened the door of his vehicle. When he showed them his identity card and requested them not to kill, they stated that the person whom they wanted to kill was not in the vehicle. Thereafter, one of the miscreants exhorted to kill him also and opened fire as a result of



which, he sustained injury in his chest. The local police arrived, who took him to sadar hospital, Chapra from where he was referred to PMCH, Patna for treatment.

11. It would be manifest from perusal of the FIR of Marhaura P.S. Case No.136 of 2017 and the statement of Shamsher Ali that the offence alleged took place on 09.04.2017, at 07:30 p.m. . The Respondent No.7 was in his vehicle just behind the vehicle in which the deceased and the injured were seated. He submitted his written report on 09.04.2017 itself to the Officer-in-charge, Marhaura Police Station on 09.04.2017 itself upon which a formal FIR was drawn up by the Officer-in-charge vide Marhaura P.S. Case No.136 of 2017 dated 09.04.2017 at 11 p.m. and investigation was handed over to the Circle Inspector, Marhaura, namely, Sri Jai Prakash Pandit. Subsequently, the oral statement of the injured Samsher Ali was recorded on the next day i.e., 10.04.2017, at 9.30 a.m. in emergency ward of PMCH, Patna by a Police Officer of Pirbahore Police Station. Prior to the receipt of the said information given by the injured, Marhaura Police had already registered FIR and investigation had already commenced.

12. Section 154 of the Code of Criminal Procedure (for short 'Cr.P.C.') defines as to what amounts to first information.

13. The said section reads as under:-



“ 154. Information in cognizable cases.-

(1) Every information relating to the 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.

(2) A copy of the information as recorded under subsection (1) shall be given forthwith, free of cost, to the informant.

(3) 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 subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned 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.”

14. It would be evident from the reading of Section 154 Cr.P.C. that it means an information recorded by a police officer-in-charge of the police station relating to commission of a



cognizable offence. The information may be given by the aggrieved person or any other person. It is not required to be necessarily given by the victim or injured or any eye witness. Once the FIR is registered, the investigation commences. A report or a statement recorded after the commencement of the investigation in respect of the same occurrence corroborating the allegations made in the FIR by the injured can not be treated to be an FIR. If such subsequent statement is not signed by the person making the statement, the same can be treated as the statement made in course of investigation under Section 161(3) of the Cr.P.C.. If such statement is signed by the person concerned, the same will be hit by section 162 of the Cr.P.C..

15. In that view of the matter, I see no merit in the contention of the petitioners. There is no illegality in the action of the police. The subsequent statement of the injured has rightly not been treated as FIR by the Marhaura Police.

16. As far as the prayer of the petitioners regarding change of investigating agency is concerned, the same is also fit to be rejected. The accused has no vested right to choose investigating agency of his own choice. The investigation needs to be carried on promptly with all sensitivity and commitment by the police.



17. In view of the discussions made above, the writ petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.03.2019
Transmission Date	16.03.2019

