

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1276 of 2019

Arising Out of PS. Case No.-144 Year-2015 Thana- GHANSHYAMPUR District- Darbhanga

BISHWA NATH MISHRA Son of Late Rameshwar Mishra Resident of
Village, P.O. and P.S.- Ghanshyampur, District- Darbhanga.

... .. Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Patna.
2. The principal Secretary, Home Dept. Govt. Bihar, Patna.
3. Soni Devi Wife of Ram Babu Yadav Resident of village - Mansara, P.S. - Ghanshyampur, District - Darbhanga

... .. Respondents

Appearance :

For the Petitioner : Mr.Krishna Kumar, Advocate
For the Respondent-State: Mr.Md. Nadim Seraj, GP5

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 04-09-2019

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

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for directing the court below to proceed with the report of police dated 14.12.2015 and punish the informant of Ghanshyampur P. S. Case No. 144 of 2015 for the offences punishable under Sections 181 and 211 of the Indian Penal Code (for short 'IPC').

3. The petitioner was made an accused in the aforesaid Ghanshyampur P. S. Case No. 144 of 2015 registered *inter alia* under Sections 354 A and 379 of the IPC. On completion of investigation, the police submitted final form



holding the accusation made in the FIR to be false.

4. During pendency of the investigation, the informant of the case had filed a protest petition. While accepting the final report submitted by the police vide order dated 20.07.2016, the learned ACJM directed the protest petition to be registered as complaint. He had further directed the complainant to record her statement under Section 200 of the Code of Criminal Procedure (for short 'CrPC'). Accordingly, a complaint case vide C.R. No. 290 of 2016 was registered. Since the complainant never appeared before the court, vide order dated 30.08.2017, the learned ACJM dismissed the complaint in exercise of powers conferred under Section 203 of the CrPC.

5. It is submitted by the learned counsel for the petitioner that while submitting the final report, the police had filed a petition for initiation of a proceeding under Sections 182 and 201 of the IPC against the informant of the case. The said application was filed on 14.12.2015. However, no action was taken on the complaint made by the police. He has further contended that even a formal complaint was not instituted on the report of the police dated 14.12.2015. He urged that after the complaint case filed by the informant Soni Devi (Respondent



No. 3) was dismissed on 30.08.2017, the petitioner filed a Misc. Case No. 7 of 2018 on 07.08.2018 with a prayer to pass proper order in view of the police report against the respondent no. 3, but no action was taken. Thereafter, the petitioner filed another application on 11.02.2019 in Misc. Case No. 7 of 2018 for initiating prosecution against the respondent no. 3 under Sections 182 and 211 of the IPC, even that has yielded no result.

6. In the opinion of this Court, the instant application filed by the petitioner is totally misconceived. A prosecution under Sections 182 and 211 of the IPC can be launched only on the complaint in writing by the public servant concerned or other public servant to whom he is administrative sub-ordinate. In case of any grievance against the inaction on the part of the court, it is the complainant, who will have locus to come to the court for issuance of any direction.

7. Admittedly, the public servant concerned or other public servant to whom he is administratively sub-ordinate has not approached this Court. In view of the statutory bar under Section 195(1)(a)(i) and (b)(i) a prosecution under Sections 182 and 211 of the IPC cannot be launched on the complaint of a private complainant.

8. It is not the case of the petitioner that the



public servant concerned or other public servant to whom he is administratively sub-ordinate has filed any complaint against the respondent no. 3 under Sections 182 and 211 of the IPC.

9. Admittedly, in the instant case, the final report was submitted on 31.08.2015. Since then no separate complaint has been registered against the respondent no. 3.

10. In that view of the matter, no mandamus can be issued to the court concerned to proceed with the report of the police dated 14.12.2015, in absence of a proper complaint under Sections 182 and 211 of the IPC.

11. Moreover, cognizance of the offences under Sections 182 and 211 of the IPC after lapse of more than 4 years from the date of submission of report under Section 173(2) of the CrPC would be barred under Section 468 of the CrPC.

12. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.09.2019
Transmission Date	11.09.2019

