

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1380 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

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Santosh Kumar, Son of Shiv Jatan Prasad, Resident of Village - Ghoswari,
P.S.- Bakhtiyarpur, District - Patna.

... .. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Home Department, Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Town Superintendent of Police, Patna.
5. The Subdivisional Police Officer, Patna City, District - Patna.
6. The Officer in Charge, Chawk Kala Station, Patna. Bihar
... .. Respondent 1st set
7. Lalan Prasad, Son of Late Shiv Narayan Prasad, Resident of Village - Barah, P.S. - Harnaut, District - Nalanda, present address Mohalla - Kaimashikoh, Patna City, P.S. - Chawk Kala, District - Patna.
8. Manoj Kumar, Son of Lalan Prasad, Resident of Village - Barah, P.S. - Harnaut, District - Nalanda, Present Address Mohalla - Kaimashikoh, Patna City, P.S. - Chawk Kala, District - Patna.
9. Nitish Kumar, Son of Lalan Prasad, Resident of Village - Barah, P.S. - Harnaut, District - Nalanda, Present Address Mohalla - Kaimashikoh, Patna City, P.S. - Chawk Kala, District - Patna.
10. Raj Kumar, Son of Lalan Prasad, Resident of Village - Barah, P.S. - Harnaut, District - Nalanda, Present Address Mohalla - Kaimashikoh, Patna City, P.S. - Chawk Kala, District - Patna.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Binit Kumar, Advocate
For the Respondents-State: Mr. Manoj Kumar, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 30-09-2019

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 Officer-in-charge of Chawk Kala, Patna City Police Station to institute First Information Report (for short 'FIR') for an occurrence, which allegedly took place on 15th July, 2019 on the basis of a written report sent to him through registered post on 02.08.2019.

3. The allegation in the written report dated 02.08.2019 is that on the alleged date of occurrence of offence when he went to collect rent from his tenants, the accused persons namely, Lalan Prasad, Manoj Kumar, Nitish Kumar and Raj Kumar along with 4-5 unknown miscreants threatened him to execute sale deed of his house. They also assaulted him as a result of which he sustained injuries. The accused Lalan Prasad snatched his golden chain and Manoj Kumar took away Rs. 17,000/- from his pocket.

4. The petitioner has further stated in his written report that as he was frightened, he had no courage to visit the police. Hence, he is submitting his written report through registered post.

5. Learned counsel for the petitioner has contended that since a cognizable offence was reported to the police, the Officer-in-charge of the police station was duty bound to register an FIR and investigate the allegation made in the written report. He



contended that the Officer-in-charge of the police station is sitting tight over the written report of the petitioner. According to him, the inaction on the part of police is a glaring example of police high-handedness and arbitrariness.

6. *Per contra*, learned counsel appearing for the State submitted that in case a cognizable offence is reported to the police and the Officer-in-charge refuses to register FIR, the statutory remedy available to the person aggrieved is under Section 154(3) of the Code of Criminal Procedure (for short 'CrPC'), which prescribes that any person aggrieved by a refusal on the part of an Officer-in-charge of the police station to record the information referred to in sub-section (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. He has further contended that in case no FIR is registered even after action having been taken under Section 154(3) of the CrPC, the person aggrieved has a remedy under Section 200 read with Section 156(3) of the CrPC. He can file a complaint before the court and make an request for sending the complaint to the police for institution of FIR. He has submitted



that in **Sakiri Vasu vs. State of U.P. and Ors. [(2008) 2 SCC 409]**, the Supreme Court has held that for such matters an application under Article 226 should not be entertained.

7. Having heard learned counsel for the parties, I find substance in the submission made by the learned counsel for the State.

8. In **Sakiri Vasu** (supra), the Supreme Court has ruled that if a person has a grievance that the police station is not registering his FIR under section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made.

9. The Supreme Court further ruled in the aforesaid case that the High Court should discourage the practice of filing a writ petition or petition under Section 482 CrPC simply because a



person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.

10. Keeping in mind the ratio laid down by the Supreme Court in **Sakiri Vasu** (supra), the application is disposed of with liberty to the petitioner to avail of the remedies available in CrPC for the redressal of his grievance.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.10.2019
Transmission Date	NA

