

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1338 of 2019

Arising Out of PS. Case No.-202 Year-2018 Thana- JANDAHA District- Vaishali

Kundan Kumar @ Kundan Sahni Son of Sri Ramnandan Sahni Resident of
Village - Narharpur, P.S.- Jandaha, Distt - Vaishali.

... .. Petitioner

Versus

1. The State Of Bihar Through Secretary Department Of Home , Bihar ,Patna
2. Secretary, Department of Home, Bihar, Patna. Bihar
3. The Superintendent of Police, Vaishali at Hajipur. Bihar
4. The Deputy Superintendent of Police (Hq) Hajipur. Bihar
5. The S.H.O. Jandaha, P.S.- Jandaha, Vaishali. Bihar
6. The Investigating Officer, Jandaha P.S.- Case No. 202/2018 Dt. 14/08/2018.
Jandaha Police Station, Jandaha, Vaishali. Bihar

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Amresh Kumar Sinha, Adv.

For the Respondent/s : Mr. Md. Nadim Seraj, Adv.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 23-09-2019

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 setting
aside the charge-sheet no. 46 of 2019 dated 09.03.2019 submitted
in Jandaha P.S. Case No. 202 of 2018 by which the petitioner has
been sent up for trial as the case was found true against him under
Sections 302, 120-B, 506 read with 34 of the Indian Penal Code
and 27 of the Arms Act.



3. Mr. Amresh Kumar Sinha, learned advocate appearing for the petitioner submitted that in the first information report instituted on the basis of the written report of one Om Prakash Sahni, altogether 10 persons were made named accused including the petitioner Kundan Kumar along with Randhir Kumar, Ranjeet Kumar and Umesh Singh Kushwaha. He contended that in course of investigation though the police have found materials against the petitioner, Randhir Kumar, Ranjeet Kumar and Umesh Singh Kushwaha, the investigating officer submitted charge-sheet only against the petitioner vide charge-sheet no. 46 of 2019. He has exonerated the other accused, namely, Randhir Kumar, Ranjeet Kumar and Umesh Singh Kushwaha while submitting report under Section 173 of the Code of Criminal Procedure (for short 'Cr.P.C').

4. On the basis of the aforesaid submission, he submitted that the action on the part of the police in conducting the investigation was negatively biased against the petitioner as a result of which a tainted report under Section 173(2) of the Cr.P.C has been submitted before the court.

5. Having heard learned counsel for the petitioner, I find that the application is totally misconceived. After institution of a case, the duty of the investigating officer is to investigate the same



and, on completion of investigation, submit a report under Section 173(2) of the Cr.P.C before the court. Once, a report is submitted before the court under Section 173(2) of the Cr.P.C, the Magistrate before whom the report is submitted is required to look into the materials collected in course of investigation and pass appropriate orders in accordance with law. The Magistrate dealing with the police report is not bound by the conclusions arrived at by the police in course of investigation. He may agree with the police report or form a different opinion and pass order differing with the police report. As the matter is still pending before the court of Magistrate, there is no occasion for the petitioner to rush to this Court seeking quashing of the charge-sheet. There is yet another reason for holding the application to be misconceived. The petitioner does not dispute that there are incriminating materials against him. His grievance is that inspite of there being incriminating materials against some other co-accused persons also, they have not been sent up for trial. Thus, if there are incriminating materials against the petitioner, no illegality can be attached to the police report whereby he has been sent up for trial. He cannot seek quashing of the charge-sheet on the ground that some other accused against whom materials are available have not been sent up for trial.



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

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25-09-2019
Transmission Date	25-09-2019

