

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2989 of 2018

Arising Out of PS. Case No.-199 Year-2017 Thana- NAUHATTA District- Saharsa

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1. Sunil Kumar Singh, son of Late Rameshwar Singh @ Doman Singh, Resident of Village- Nauhatta, Police Station- Nauhatta, District- Saharsa.
 2. Deepak Kumar Singh, son of Arun Kumar Singh, Resident of Village- Dibra, Police Station- Nauhatta, District- Saharsa. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Govt. of Bihar, Patna.
 2. The Principal Secretary, Department of Home, Govt. of Bihar, Patna.
 3. The Director General of Police, Bihar, Patna.
 4. The Deputy Inspector General of Police, Kosi Range, Saharsa.
 5. The Superintendent of Police, Saharsa.
 6. The Deputy Superintendent of Police, Saharsa Sadar, Saharsa.
 7. The Officer-in-Charge, Nauhatta Police Station, Saharsa.
 8. The Sub Inspector Shahid Khan-cum-Investigating Officer, Nauhatta Police Station, Saharsa.
 9. Kanchan Devi, Wife of Late Vidyanand Jha, Resident of Village- Mahishi, District- Saharsa. Respondent/s
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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Advocate Mr. Satya Prakash, Advocate
For the Respondent/s	:	Mr. Partha Sarthy, GA-4 Mr. Kumar Vikram, AC to GA-4

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 10-01-2019

Learned counsel for the petitioners submits that defect

No. 14 (6) shall be removed in the course of the day.

2. Leave is granted.

3. Let the other defects pointed out by the registry be ignored.

4. Heard Mr. Bindhyachal Singh, learned counsel for the petitioners and Mr. Partha Sarthy, learned counsel for the State.

5. The petitioners have filed the present writ petition for quashing the first information report (for short 'FIR') of



Nauhatta P.S. Case No. 199 of 2017 registered under Sections 406, 420 and 384 read with Section 34 of the Indian Penal Code and directing the respondent authorities to arrest the informant by impleading her accused in the present case. Their alternative prayer is for directing the respondent authorities to properly investigate Nauhatta P.S. Case No.199 of 2017.

6. Learned counsel for the petitioners submitted that the allegations made in the FIR are malicious in nature. The informant of the case herself has been made an accused in Nauhatta P.S. Case No. 178 of 2015 dated 08.08.2015 registered under Section 409 of the Indian Penal Code pursuant to an information given by the Block Development Officer, Nauhatta and just in order to save her skin from that case by way of creating defence, she has instituted the instant FIR. He further contended that the allegations made in the FIR that after receiving the amount, the petitioners did not supply the building materials are false would be apparent from the pleading made by the informant in her application for bail filed before the court in connection with Nauhatta P.S. Case No.178 of 2015 in which she has not taken any such plea. He contended that approach of the police in investigating the case is also not proper, as the informant has not been arrested till date in connection with the FIR lodged against her despite lapse of more than three years



since the date of institution of FIR. The police are trying somehow or other to save her from prosecution and misdirect the investigation in order to implicate the petitioners with ulterior motive.

7. *Per contra*, Mr. Partha Sarthy, learned counsel appearing for the State submitted that the allegations made in the FIR would attract ingredients of cognizable offence. The matter is still under investigation and the police are doing their duties without any prejudice or bias against anyone. There is no material to substantiate that the investigation of the case is misdirected or positively or negatively bias against anyone. He contended that in course of investigation, it is not necessary that a person who has been made accused must be arrested.

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

9. In the FIR instituted against the petitioners, the informant has alleged that the accused persons by putting her under fear got transferred more than Rs. 8,05,000/- in their account through RTGS in the name of supply of bricks and other building materials to be used in construction of Anganbari Center as also some other governmental schemes. However, they did not supply the material and misappropriated the entire amount.



10. The allegations made in the FIR would attract the ingredients of cognizable offence.

11. To hold investigation into cognizable offence is the statutory right of the police. In that view of the matter, the institution of the FIR can not be held to be bad. It is true that a sensitive and committed investigation in a criminal case is the need of the hour. There is no material to substantiate that the investigation being conducted by the police is biased or misdirected. Simply because an FIR has been instituted against the informant also by the Block Development Officer, the case instituted against the petitioners at the instance of informant cannot be termed to be malicious one. As far as the plea of the petitioners that the case against them has been instituted in order to create defence by the informant is concerned, the same can be substantiated only at an appropriate stage by way of leading evidence. Whatever plea has been taken by the petitioners in her pre-arrest bail application cannot be looked into by this Court for forming any opinion against her. It has right been submitted by the learned counsel for the State that merely because a person has been made accused in a criminal case, he or she has not to be arrested by the police mechanically. To arrest an accused named in the FIR or not is the discretion of the investigating agency, which



has to be exercised taking into consideration the facts and circumstances of the case. The court would not issue any direction in this regard at this stage.

12. At the stage of investigation, the role of the Court is limited. The defence taken by an accused cannot made a ground for quashing of an FIR. The nature of the two cases, one instituted against the informant and the other instituted against the petitioners are totally different.

13. Moreover, the prayers made by the petitioners are misconceived. On the one hand the petitioners have prayed for quashing of the FIR of Nauhatta P.S. Case No.199 of 2017, but on the other hand they want arrest of the informant in the same case. Alternatively, they have prayed that the case be investigated properly.

14. Having regard to the totality of the materials on record, I see no illegality in institution of the FIR. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/R.Ranjan-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.01.2019
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