

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1452 of 2019

Arising Out of PS. Case No.-550 Year-2017 Thana- KATIHAR District- Katihar

Md. Hasim, Son of Md. Siddiq, Resident of Village - Rampara, Ward No. 23,
P.S.- Nagar, District- Katihar

... .. Petitioner

Versus

1. The State of Bihar through the Director General of Police, Bailey Road, Bihar Patna.
2. The Director General of Police, Bailey Road, Bihar Patna.
3. The District Magistrate, Katihar, District- Katihar.
4. The Superintendent of Police, Katihar, District- Katihar.
5. The Police Inspector-Cum-Station House Officer of Nagar Police Station, Katihar, District- Katihar.
6. The, Concerned Investigating Officer in Nagar Police Station Case No. 550 of 2017, Katihar, District- Katihar, Bihar
7. The Chief Medical Officer, Katihar Sadar Hospital, Katihar, District- Katihar.
8. Dr. Y.B. Bhagat, Sadar Hospital, Katihar, District- Katihar Bihar

... .. Respondents

Appearance :

For the Petitioner : Mr.Arun Kumar Mandal, Advocate
For the Respondents-State: Mr. Sheo Shankar Prasad, SC-8

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 06-11-2019

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 respondent authorities to incorporate Section 307 of the Indian Penal Code (for short 'FIR') in the Nagar Police Station Case No.550 of 2017 on the basis of supplementary injury report dated 13.11.2017 submitted by the doctor in the



light of Memo No.1751 dated 18.10.2017 issued by the Medical Board headed by the Chief Medical Officer, Sadar Hospital, Katihar and further for directing the respondent authorities to complete the investigation and submit charge-sheet at the earliest.

3. Learned counsel appearing for the petitioner submitted that initially the doctor, who examined the informant-petitioner submitted the injury report holding the same to be simple in nature. However, subsequently, a Medical Board was constituted and the Medical Board found the injuries sustained by the petitioner to be grievous. He submitted that the case was registered under Sections 341, 323, 324, 379 and 448 read with 34 of the IPC. Since the injury sustained by the informant has been found grievous, it is necessary that Section 307 of the Indian Penal Code be also incorporated in the FIR. He has further contended that the investigation is pending since long and there is no likelihood that the same would be concluded soon. In that view of the matter, a direction needs to be issued to the respondent authorities to submit charge-sheet against the accused persons forthwith. He has also contended that the police are in collusion with the accused persons and are not investigating the case properly.



4. On the other hand, learned counsel appearing for the State submitted that there is no material to support the contention of the petitioner that the accused persons or the doctor, who examined the injured informant had issued any erroneous report. The only material on the basis of which the petitioner has approached this Court is that the Medical Board subsequently found the injuries sustained by the informant to be grievous in nature. He contended that the FIR is not registered on the basis of the injury report. The FIR was instituted first and, thereafter, the injured informant was sent to the doctor for examination. Since the investigation is going on, there would be no justification for incorporating Section 307 of the IPC in the FIR. Whatever be the outcome of the investigation would reflect in the police report on the completion of the investigation. Once the investigation would be completed, it would be open for the court to appreciate the materials available on record and find out under which provision of law the case is made out.

5. I have heard learned counsel for the parties and perused the materials on record.

6. It is true that there is some delay in completion of investigation, but the same can not give rise to an inference that the police are acting in collusion with the accused persons.



The subsequent medical report holding the injuries sustained by the petitioner to be grievous would also not necessarily require the prosecution of the accused persons under Section 307 of the IPC.

7. To justify a case to be made out under Section 307 of the IPC, it is necessary to show that there was an intent coupled with some overt act capable of causing death. Merely because the injury is found to be grievous would not necessarily mean that a person must be tried for the offence punishable under Section 307 of the IPC. That apart, since the case is still under investigation, no direction is required to be issued, as it is for the police to find out at the stage of investigation under which provision of law the prosecution of the accused is required. Once the police would submit their report, the court of Magistrate would consider the materials available on record and take cognizance of the offences under which materials would be available on record. To that extent, the prayer of the petitioner is totally misconceived.

8. So far as the grievance of the petitioner that proper investigation is not being conducted by the police, save and except ocular submission made by the petitioner, there is no material on the basis of which the court can draw any



adverse inference against the investigating agency.

9. Moreover, at the stage of investigation, the court has no role to play.

10. In **Sakiri Vasu vs. State of UP and Ors.** [(2008) 2 SCC 409], the Supreme Court observed:-

“ ... 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. ... ”

11. Keeping in mind the discussions made above as also the facts and circumstances of the case, I see no merit in this application.

12. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.11.2019
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