

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1578 of 2018

Arising Out of PS. Case No.-14 Year-2017 Thana- SHASTRINAGAR District- Patna

Smt. Bandana Kumari, wife of Shri Shashi Shekhar Kumar, resident of Flat No. A-1 Kunti Villa Apartment, Ambedkar Path, P.S.- Rajeev Nagar, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar, through the Home Secretary, Government of Bihar, Patna
2. The Director General of Police, Bihar, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Station House Officer, P.S.- Shastrinagar, District- Patna.
5. The Investigating Officer, P.S. Shashtri Nagar, District- Patna.
6. Abrar Ahmed, Chief Manager, Branch Officer, Raja Bazar, Punjab National Bank, at present the Chief Manager, BO, LDM, PNB, Boring Road, Patna.
7. The Locker In- charge, Branch Officer, Raja Bazar, Punjab National Bank.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Sudhir Kumar Singh, Advocate
For the Respondent-State:		Mr. Partha Sarthi, GA-4
		Mr. Mithilesh Kr. Singh, AC to GA-4
For the Respondent No.6:		Dr. Pankaj, Advocate
For the Respondent-Bank:		Mr. Arvind Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 20-02-2019

In the instant writ petition, the prayer of the petitioner is to direct the respondent nos. 3 to 5 to arrest respondent nos. 6 and 7 in connection with Shastri Nagar P.S. Case No. 14 of 2017 registered under Section 406 of the Indian Penal Code. The further prayer of the petitioner is to direct the respondent nos. 3 to 5 to initiate the process prescribed in law in order to compel the accused persons to appear in the court



below.

2. The contention of the learned counsel for the petitioner is that the petitioners had initially filed a complaint vide Complaint Case No. 3729(C) of 2016 in the court of Chief Judicial Magistrate, Patna on 01.12.2016 against respondent nos. 6 and 7. The said complaint was referred to the police by the learned Chief Judicial Magistrate in exercise of powers conferred under Section 156(3) of the Code of Criminal Procedure (for short 'CrPC') for investigation pursuant to which the first information report was registered vide Shastri Nagar P.S. Case No. 14 of 2017 dated 12.01.2017. In the said case, the accused persons have not appeared before the court till date. The police are also sitting tight over the matter and nothing is being done by them to apprehend the accused persons, who are Chief Manager of Punjab National Bank, Raja Bazar Branch and custodian of the locker of the bank.

3. *Per contra*, learned counsel appearing for the State submitted that the petition is totally misconceived. At the stage of investigation, when the culpability of the accused has not been established, no direction for arrest can be issued by this Court.

4. Learned counsel appearing for the respondent



no. 6 submitted that the accused persons named in the complaint are responsible public servants. They are serving officers of the Punjab National Bank and are not evading arrest rather they are attending their office and doing their duties. The complaint filed by the complainant is malicious in nature. The same has also been filed contrary to the law laid down by the Supreme Court in **Priyanka Shrivastava and Ors. vs. State of U.P. and Ors. [(2015) 6 SCC 287]**. He further contended that in absence of any material against respondent nos. 6 and 7, it would not be proper for this Court to issue any direction for their arrest.

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

6. The petitioner filed the aforesaid Complaint Case No. 3729 (C) of 2016 dated 01.12.2016 in the court of Chief Judicial Magistrate, Patna against respondent nos. 6 and 7. In the said complaint she has stated that she had opened a saving account on 23.10.2010 in the Raza Bazar Branch of the Punjab National Bank and applied for a locker. Locker No. 322 was allotted to her against the annual rent of Rs.700/- and her account was linked for realization of rent of the locker. On 21.11.2011, she made a fixed deposit of Rs.25,000/- for five



years. She kept her ornaments weighing 67 - 70 *tola* of gold worth Rs. 25 lakhs of her own as also of her sister-in-law in the locker. On 08.02.2016, she went to take out her ornament from the locker for a family function, but was informed that the said locker has been allotted on 06.11.2014 to one Swati and no locker stands in her name with the branch of the bank.

7. On the basis of the aforesaid allegations, she alleged that respondent nos. 6 and 7 have committed breach of trust and misappropriated the ornaments. She has further stated that an information was sent to the Reserve Bank of India, but she was suggested to approach civil court. She also stated that thereafter, she filed complaint before the Senior Superintendent of Police on 08.02.2016. When no action was taken, she is filing the complaint.

8. The said complaint was transmitted to the Shastri Nagar Police Station for investigation, whereafter the FIR was instituted against respondent nos. 6 and 7.

9. It is not in dispute that after institution of the case, the investigation has yet not been completed.

10. To hold investigation into a cognizable offence is within the exclusive domain of Police. At this stage, the court has no role to play. It is none of the duty of the Court to



issue a warrant of arrest on the mere asking of a complainant or an informant of the criminal case.

11. The Chief Judicial Magistrate or a Magistrate of first class may direct a warrant to any person within his local jurisdiction for arrest of any escaped convict or proclaimed offender or of any person who is accused of non-bailable offence or is evading arrest in exercise of powers conferred under Section 73 of the CrPC.

12. As far as the present case is concerned, the respondent nos. 6 and 7, who have been made accused in the criminal case instituted by the petitioner are neither escaped convict nor proclaimed offender. They are not even evading arrest.

13. At this stage, it would not be desirable for this court to issue any direction to the police either to arrest the respondent nos. 6 and 7 or to compel them to appear before the court. The veracity of the allegation made by the petitioner in the complaint is to be examined by the investigating agency in the course of investigation. Unless involvement of the accused person named in the first information report in connection with a criminal case is found, it would not be proper for any court even to ask the accused persons to appear before the court.



14. In view of the above discussions, I am of the considered opinion that the instant writ petition is nothing but an abuse of process of the Court. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/R.Ranjan-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.02.2019
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