

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.164 of 2017

Arising Out of PS. Case No.-145 Year-2016 Thana- SIKARPUR District- West Champaran

Mahtab Alam @ Dadul, Son of Late Saiyad Manjur Alam, Resident of Village-Dhobani, Post-Daniyal Parsauna, P.S.-Sathi, District-West Champaran.

... .. Petitioner

Versus

1. The State of Bihar through Director General of Police, Bihar, Patna.
2. The Director General of Police, Bihar, Patna
3. The Superintendent of Police, West Champaran at Bettiah.,
4. The Sub Divisional Police Officer, Shikarpur, West Champaran.
5. The Officer-in-Charge, Shikarpur Police Station, West Champaran.
6. The Investigating Officer, A.S.I. Mr. Virendra Kumar Singh of Shikarpur Police Station in the District-West Champaran.
7. Saiyad Mainuddin, Son of Late Saiyad Nek Mohammad, Resident of Village-Chaturbhujawa, P.S.-Shikarpur, District-West Champaran.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Bimlesh Kumar Pandey, Advocate
For the Respondent/s	:	Md. Nasrul Huda Khan (Sc1)
		Md. Harun Quareshi, AC to SC-01

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 11-01-2019

Heard learned counsel for the petitioner and learned
counsel for the State.

2. This writ petition has been filed by the petitioner for quashing the first information report (for short 'FIR') of Shikarpur P. S. Case No. 145 of 2016 registered under Sections 385 and 387 of the Indian Penal Code (for short 'IPC').



3. Learned counsel for the petitioner submitted that even if the entire allegations made in the FIR are accepted to be true, no cognizable offence would be attracted. In absence of any cognizable offence, the police have no jurisdiction to institute an FIR and investigate the same. He further submitted that the implication of the petitioner in a criminal case is serious matter and in absence of any material against him, the investigation cannot proceed.

4. On the other hand, learned counsel appearing for the State submitted that there is allegation in the FIR that the informant had received five calls between 03.12.2015 and 06.03.2016 through internet on his mobile from Abu-Dhabi. The informant has also suspected that the voice on call was of the petitioner and one Md. Anzar Ahmad.

5. I have heard learned counsel for the parties and carefully perused the FIR, as contained in Annexure-1 to the writ petition.

6. The informant, Saiyad Mainuddin submitted a written report on 26.03.2016 at 5 pm to the Officer-in-Charge, Sikarpur Police Station pursuant to which Shikarpur P. S. Case No. 145 of 2016 was registered under Sections 385 and 387 of the IPC. The written report contains the subject at the top which has been



mentioned as repeated threat on mobile. He has alleged in the written report that between 03.12.2015 and 06.03.2016, he had received five calls on his mobile number and there are recordings with him. The calls were coming through internet from Abu-Dhabi. He suspected that those calls were being made by the petitioner and one Md. Anzar Ahmad.

7. On perusal of the written report, I find that there is no allegation that the accused persons put the informant in fear of any injury or thereby dishonestly induced him to deliver any property or valuable security or anything signed or sealed which may be converted into valuable security. There is no allegation that in order to commit extortion the accused persons put the informant in fear or attempted to put any person in fear of any injury. There is also no allegation that the accused persons in order to commit extortion put the informant or any other person in fear of death or of grievous hurt.

8. In absence of any such allegation, in the opinion of this Court, none of the offences punishable under Sections 385 and 387 of the IPC is attracted. At best, the allegation made in the written report would attract an offence under Section 506 of the IPC, which prescribes punishment for criminal intimidation. The offence punishable under Section 506 of the IPC



is a non-cognizable offence. In case of a non-cognizable offence, the police have no jurisdiction to investigate a case without the order of Magistrate having power to try such case or commit the case for trial in terms of sub-section (2) of Section 155 of the Code of Criminal Procedure.

9. Apparently, no report was made by the police to the Magistrate and the Magistrate concerned had not issued any direction to investigate the case.

10. In that view of the matter, the institution of the FIR and its investigation are patently bad in law. Accordingly, the writ petition is allowed. The FIR of Shikarpur P. S. Case No. 145 of 2016 and its ongoing investigation are hereby quashed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.01.2019
Transmission Date	14.01.2019

