

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1508 of 2019

Arising Out of PS. Case No.-352 Year-2018 Thana- BELAGANJ District- Gaya

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DILIP PASWAN S/o Shivnandan Paswan R/o village- Rouna, P.S.- Belaganj,
District- Gaya

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY,
HOME DEPTT., GOVT. OF BIHAR, PATNA
2. The Principal Secretary, Home Department, Government of Bihar, Patna
3. The Director General of Police, Government of Bihar, Patna
4. The Senior Superintendent of Police, Gaya, District- Gaya
5. The Superintendent of Police, Gaya, District- Gaya
6. The Dy. Superintendent of Police, Sadar, District- Gaya
7. The Officer-in-Charge, Belaganj, District- Gaya
8. The Investigation Officer of the Belaganj P.S. Case No. 352/18, District-
Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Deepak Kumar
For the Respondent/s : Mr. Manish Kumar

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

15-11-2019 Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present writ petition has been filed for “*for a direction to the respondents for considering the case of the petitioner who has filed application on 19.08.2019 along with document as evidence which proved the case against the accused persons of the Belaganj P.S. Case No. 352/2018 and for further direction to the respondents for investigating the case*”



in true perspective, to consider the application filed on 19.08.2019 along with the documentary evidence and to give other legal consequential benefit to the petitioner.”

3. It is submitted that the police is not investigating the case in a fair and proper manner due to the fact that two police personnel namely, Kanti Kumari, Sub Inspector of Police, Mahila P.S. Gaya and Doman Paswan, Area Chaukida of village Atopur have been made accused in Complaint Case No. 1986 of 2018 filed by the daughter of the petitioner on 06.11.2018 before the learned Chief Judicial Magistrate, Gaya, on the basis of which the police has registered Belaganj P.S. Case No. 352/2018. It is further submitted that the daughter of the petitioner has also filed an application before the Senior Superintendent of Police, Gaya on 19.08.2019 and another application before the Director General of Police on 23.08.2019 for taking appropriate action against the accused persons. It is therefore, submitted that the police is in collusion with the accused persons and is not conducting the investigation faithfully.

4. At the outset itself, this Court may advert to the scope of interference by this Court in matters of police investigation which falls within the exclusive domain of the executive, as laid



down in *Sakiri Vasu vs. State of Uttar Pradesh and Others*, (2008) 2 SCC 409. The guiding principles and procedure to be followed in cases of failure by the police to register an FIR or if proper investigation is not being conducted by the police after registering an FIR, have been enunciated in lucid detail in the said judgment, extracts wherefrom may be reproduced fruitfully as under ____

“11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156 (3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the



investigation to ensure a proper investigation.

17. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.

26. If a person has a grievance that his FIR has not been registered by the police station



his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. 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. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police



officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.”

5. In the above circumstances and having regard to the above exposition of law, this Court is not inclined to interfere in the matter in exercise of its extra ordinary writ jurisdiction under Article 226 of the Constitution.

6. The writ petition stands dismissed.

(Vikash Jain, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	N/A
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