

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1500 of 2019

Arising Out of PS. Case No.-239 Year-2019 Thana- PATORI District- Samastipur

VIPIN KUMAR Son of Sri Yogendra Rai Resident of Village- Fatehpur, P.S.-
Patori, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary Home Department.
2. The Principal Secretary, Home Department, Govt. of Bihar, Patna.
3. Home Department, Govt. of Bihar, Patna.
4. That Director General of Police (D.G.P.), Bihar, Patna.
5. The Inspector General of Police (I.G.), Darbhanga Region, District- Darbhanga.
6. The Deputy Inspector General (D.I.G.) of Police, Darbhanga Region, District- Darbhanga.
7. That District Magistrate, Samastipur, District- Samastipur.
8. The Superintendent of Police, Samastipur, District- Samastipur.
9. The Deputy Development Commissioner, Samastipur, District- Samastipur.
10. The Sub Divisional Officer, Patori, Samastipur, District- Samastipur.
11. The Officer-In-Charge, Patori, Police Station, Samastipur, District- Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Mrityunjay Kumar
For the Respondent/s	:	Mr.Prabhat Kumar Verma

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 15-11-2019

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

2. The present writ petition has been filed for the following reliefs, as formulated by the petitioner __

“(i) For issuance of a writ in the nature of mandamus or any other appropriate writ/order/direction commanding upon the respondents to handover the investigation relating



to Patori P.S. Case No. 239/2019 dated 16.06.2019 u/s 420, 504, 506, 385, 34 of the Indian Penal Code dated 16.06.2019 to any other free and independent agency or higher authority as the matter is related to mass scale corruption in Indira Awas Yojna and other Govt. sponsored development schemes within Chaksaho Panchayat in Patori, Samastipur and the authorities involved in the said corruption are being protected by the investigating officer and Sub-divisional Police Officer, Patori as is evident from the supervision report dated 14.07.2010 submitted by the S.D.P.O., Patori in Patori P.S. Case No. 239 of 2019 dated 16.06.2019;

(ii) For holding that the investigation of Patori P.S. Case No. 239/19 dated 16.06.2019 is not being conducted in free and impartial manner by the investigating officer and has become evident from the supervision report submitted by the SDPO, Patori, which manifest that by ignoring cogent documentary evidence, I.O. and SDPO are trying their level best to protect concerned BDO and Junior Engineer;

(iii) For issuance of any other writ, order of direction which your Lordships may deem fit and proper in the facts and circumstances of the case."

3. It is submitted that investigation is going in Patori P.S. Case No. 239/2019, but the police is not investigating the case in a proper manner and the same suffers from several irregularities. The petitioner personally met the Superintendent of Police,



Samastipur and submitted an application on 25.07.2019 with a request to take appropriate action in the matter. It is submitted that the police is not discharging their duties in impartial manner in investigating the case.

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)

Chandran/-

AFR/NAFR	NAFR
CAV DATE	NA
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