

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1507 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

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MD. SHAFIQUE ANSARI Son of Late Noor Mahammad Resident of Village-
Gorgawan, Near Mushari, Police Station- Shahpur, District- Patna.

... .. Petitioner

Versus

1. The State Of Bihar through the Director General of Police., Bihar, Old Secretariat, Patna.
2. The Director General of Police, Bihar, Old Secretariat, Bihar, Patna.
3. The Deputy Inspector General of Police, Gandhi Maidan, Patna, Bihar.
4. The Senior Superintendent of Police, Patna.
5. The Deputy Superintendent of Police, Phulwarisharif, Patna
6. The Station House Officer, Phulwari Sharif, Patna.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Gopal Govind Mishra, Advocate.

For the Respondents : Mr. M. Nasrul Huda Khan, SC-1

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 15-11-2019

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

2. The present application has been filed for the
following reliefs as formulated by the petitioner -

“(i) For direction to the Station House Officer, Phulwari Sharif Patna for institution of first information report and enquiry/investigation on the basis of application filed by the petitioner dated 11.04.2019 by speed post in accordance with law and the application forwarded to the Senior Superintendent of Police, Patna vide speed post dated 08.05.2019 along with copy to the D.I.G. Patna vide speed post dated 08.05.2019 for appropriate action in accordance with law in the light of settled preposition of law.



(ii) For further direction to the Senior Superintendent of Police, Patna for appropriate action against the Station House Officer, Phulwari Sharif who kept the application pending in the case of disclosure of cognizable offence from application dated 11.04.2019 without any rhyme and rhythm contrary to the law.

(iii) For further direction to the Station House Officer, Phulwari Sharif, Patna to submit a report which was demanded by the petitioner under the provision of right of information act particularly on the point that the criminal case is maintainable against the person who has said dowry at the time of marriage and admitted in her first information report and directed by the Senior Superintendent of Police, Patna to supply the information within a period of one week failing which he will be liable for his conduct.

(iv) For any other appropriate order/orders, direction/directions relief/reliefs admissible under the law in the light of factual profile of this case in the interest of justice and greater interest of the society."

3. Learned counsel for the petitioner submits that an F.I.R. in Phulwari Sharif P.S. Case No. 793 of 2015 has been instituted but the police is not properly investigating the case not taking action against the accused persons who are alleged to have committed the offence. A representation dated 08.05.2019 was sent through speed post before the Senior Superintendent of Police, Patna which does not also appear to have evoked any response. It is therefore submitted that it is a fit case for a direction to the police to conduct proper investigation in 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)

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