

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1544 of 2019

Arising Out of PS. Case No.-247 Year-2017 Thana- BAUSI District- Purnia
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MD. ANSAR RAJJA Son of Md. Tanjim Alam Resident of Village- Naya Tola,
Janta Hat, Asja Mawaia, Asja Mobaiya, P.S.- Biasi, District- Purnea.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary Home Deptt., Govt. Of Bihar, Patna
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General, Purnea.
4. The Superintendent of Police, District- Purnea.
5. The Sub Divisional Police Officer, Purnea.
6. Thana Incharge of Biasi Police Station, District- Purnea.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Sarveshwar Tiwary, Advocate.

For the Respondents : Mr. Manish Kumar, GP-4

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 21-11-2019

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

2. The present writ petition has been filed *“for a direction to the respondents particularly respondent nos. 4 and 6 to take proper inquiry and take action for submitted charge sheet against the named accused persons in connection with Baisi P.S. Case No. 247 of 2017 dated 12.12.2017 instituted under Sections 341, 323, 324, 307, 498A, 506/34 and 302 IPC and ¾ of the Dowry Prohibition Act and also to protect the life and property of the petitioner and his father and mother which is in danger in the hands of named accused persons.”*

3. It is submitted that though investigation has been taken up in Baisi P.S. Case No. 247 of 2017, the police is not



investigating the case in a proper manner. Only one accused person has been arrested so far while the remaining accused persons are moving freely against whom police officials are not taking any action. It is therefore submitted that the police 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, as it has not been satisfactorily shown that the petitioner has taken appropriate steps for redressal of his grievances.

6. As regards the threat perception to the life and liberty of the informant and his family members at the hands of the accused persons who are threatening the informant and family members to withdraw the case, the petitioner is at liberty to



approach the concerned State Security Committee with an appropriate representation for providing adequate security. If any such representation is filed within a period of two weeks from today, the same shall be considered and disposed of on its own merits in accordance with law expeditiously and in any event within a further period of two weeks thereafter.

7. The writ petition stands disposed of with the aforesaid observations and directions.

(Vikash Jain, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.12.2019
Transmission Date	03.12.2019

