

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1506 of 2019
Arising Out of PS. Case No.-155 Year-2019 Thana- BASANTPUR District-
Siwan

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RAMDEO RAI Son of Late Visheshwar Ray Resident of Village - Dighwa,
P.S.- Basantpur, District- Siwan

... .. Petitioner

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna
3. The Inspector General of Police Saran Division Chhapra
4. The Deputy Inspector General of Police Saran Division Chhapra
5. The Superintendent of Police, Siwan
6. The Deputy Superintendent of Police Maharajganj Siwan District Siwan
7. The Subdivisional Police Officer Maharajganj District Siwan
8. The Officer in Charge Basantpur District Siwan

----- Respondent 1st Set.

9. Subhas Rai Son of Anil Rai Resident of Village - Sareyasrikant, P.S.-
Basantpur, District- Siwan
10. Bhola Rai Son of Anil Rai Resident of Village - Sareyasrikant, P.S.-
Basantpur, District- Siwan
11. Mira Devi Wife of Anil Rai Resident of Village - Sareyasrikant, P.S.-
Basantpur, District- Siwan
12. Rambha Devi D/O - Anil Rai Resident of Village - Sareyasrikant, P.S.-
Basantpur, District- Siwan
13. Sunil Rai Son of Chhathu Rai Resident of Village - Sareyasrikant, P.S.-
Basantpur, District- Siwan
14. Srimati Devi Wife of Sunil Rai Resident of Village - Sareyasrikant, P.S.-
Basantpur, District- Siwan

... .. Respondents IInd Set.

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Appearance :

For the Petitioner : Mr. Pankaj Kumar, Advocate.

For the Respondents : Mr. Prabhat Kumar Verma, AAG-3

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 writ petition has been filed for a direction to the respondent 1st set authority *“to insure proper and expeditious investigation in Basantpur P.S. Case No. 155/19 dated 17.05.2019 attributing offences U/S 304(B), 201, 34 of I.P.C., which has been lodged against respondent IInd set, and further for direction to the respondent 1st set to take appropriate action against respondent IInd set against whom non bailable offence is being made out.”*

3. Learned counsel for the petitioner submits that an F.I.R. in Basantpur P.S. Case No.155 of 2019 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 has been made before the Superintendent of Police, Siwan 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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