

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1580 of 2019

Arising Out of PS. Case No.-287 Year-2017 Thana- GARKHA District- Saran

SATYA DEO OJHA Son of Late Dinanath Ojha Resident of Village-
Dhangola, P.S.- Baniyapur, District- Saran.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECTT. DEPT. OF HOME, GOVT. OF BIHAR, PATNA Bihar,
2. The Senior Superintendent of Police Chapra.
3. The Deputy Superintendent of Police Chapra.
4. The S.H.O., Garkha Police Station, District- Chapra.
5. Shila Nath Singh Son of Late Jagarnath Singh Resident of Village- Mahmmadpur, P.S.- Garkha, District- Chapra (Saran).
6. Rupesh Kumar Son of Shila Nath Singh Resident of Village- Mahmmadpur, P.S.- Garkha, District- Chapra (Saran).
7. Indra Mani Singh Son of Krishna Singh Resident of Village- Mahmmadpur, P.S.- Garkha, District- Chapra (Saran).
8. Kaviyendra Singh Son of Mahendra Singh Resident of Village- Mahmmadpur, P.S.- Garkha, District- Chapra (Saran).
9. Pankaj Singh Son of Rameshwar Singh Resident of Village- Mahmmadpur, P.S.- Garkha, District- Chapra (Saran).
10. Bablu Singh Son of Triyogi Nath Singh Resident of Village- Mahmmadpur, P.S.- Garkha, District- Chapra (Saran).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ghanshyam Tiwary
For the Respondent/s : Mr.Manish Kumar

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 22-11-2019

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 writ in the nature of mandamus
for commanding and directing the respondents*



State to arrest the private respondent nos. 5 to 10 as in case of where absconding proceeding of 82 and 83 Cr. P.C. be initiated because they are the FIR named accused persons in Garkha P.S. Case No. 287/2017 under Section 147, 148, 149, 341, 302, 120(B) IPC and Section 27 of the Arms Act and they have accused due to their indiscriminate firing resulted the Ramendra Kumar Sharma declare dead but I.O. of the present case not arrested taking advantage of favour of the police concerned.

(ii) For a direction to State respondents to protect the life and property of the lame petitioner and his family because they are facing all trouble in the regular threat of the private respondent nos. 5 to 10.

(iii) For a further direction to the Respondent no. 2 and 3 to inquire the matter on his own level and also point themselves on the dullness of the investigating officer and on the officer concerned.

(iv) For a direction to respondent no. 2 to 4 to ask an explanation-cum-show cause for non-arrest till date to respondent nos. 5 to 10.

(v) For any other relief/reliefs which the petitioner is entitled in this case."

3. It is submitted that even though an FIR in Garkha P.S. Case No. 287/2017 came to be registered, the police is not conducting investigation in a fair and proper manner. It is submitted that the FIR was instituted as far back as in the year 2017 against named accused persons who fired indiscriminately which resulted in death of the *samdhi* of the petitioner, yet some FIR named accused persons are yet to be arrested and they are roaming freely.



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. The writ petition stands dismissed.

(Vikash Jain, J)

Chandran/-

AFR/NAFR	NAFR
CAV DATE	NA
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