

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1498 of 2019

Arising Out of PS. Case No.-12 Year-2019 Thana- SC/ST District- Sitamarhi

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YOGENDRA PASWAN Son of Late Ram Swarup Paswan Resident of
Village- Bariyarpur, Police Station and District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Additional Chief Secretary Home Department, Govt. of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Tirhut Division, Muzaffarpur.
5. The District Magistrate, District- Sitamarhi.
6. The Superintendent of Police, District- Sitamarhi.
7. The Sub-Divisional Police Officer, Sadar, District- Sitamarhi.
8. The Station House Officer SC/ST Police Station, Sitamarhi.
9. The Investigating officer SC/ST Police Station Case No. 12/2019 dated 24-01-2019, SC/ST Sitamarhi Police Station, District- Sitamarhi.
10. Raj Kumar Paswan son of Nirdhan Paswan Resident of Village- Bariyarpur, Police Station and District- Sitamarhi.
11. Second wife of Raj Kumar Paswan (Unknown) W/O Raj Kumar Paswan Resident of Village- Bariyarpur, Police Station and District- Sitamarhi.
12. Jhapsi Paswan Son of Sunar Paswan Resident of Village- Bariyarpur, Police Station and District- Sitamarhi.
13. Chunchun Paswan S/O Jhapsi Paswan Resident of Village- Bariyarpur, Police Station and District- Sitamarhi.
14. Kiran Devi W/O Jhapsi Paswan Resident of Village- Bariyarpur, Police Station and District- Sitamarhi.
15. Ashok Kumar Son of Ram Nandan Paswan Resident of Village- Bariyarpur, Police Station and District- Sitamarhi.
16. Anil Kumar Son of Raj Nandan Singh Resident of Village- Bariyarpur, Police Station and District- Sitamarhi.
17. Rakesh Kumar (Night Guard) Kasturwa Vidyalaya son of Not Known Resident of Village- Bariyarpur, Police Station and District- Sitamarhi.
18. Ashok Kumar Das Sub-Inspector of Police, Town Police Station, Sitamarhi.
19. Sashibhushan Singh Police Inspector-cum-Station Incharge, Sitamarhi Town, Police Station, District- Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Anil Kumar
For the Respondent/s : Mr.M. Nasrul Huda Khan



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 directing and commanding the respondent authorities for prompt investigation in SC/ST Sitamarhi P.S. Case No. 12 of 2019 instituted for the offence under Sections 302, 120B, 468, 34, 201 of the Indian Penal Code and under Section 3(i)(p)(2)(s)(3)(2)(u)(vi)(vii) of the SC/ST Act dated 24.01.2019 lodged by the petitioner against respondent no. 10 to 19;*
- (ii) For issuance of an appropriate writ/writs, direction/directions, order/orders monitoring the investigation and to make accused the person to involve in the present crime and after a scientific investigation the police will submit charge sheet against the accused person;*
- (iii) To grant any other relief/reliefs for which the petitioner is entitled according to law as well as on fact.*

3. It is submitted that though investigation has been taken up in SC/ST Sitamarhi P.S. Case No. 12 of 2019, the police is not investigating the case in a proper manner. Despite the petitioner having filed an application before the Superintendent



of Police, Sitamarhi for appropriate direction, no FIR was instituted. The petitioner then filed Complaint Case No. C1 1778 of 2018, pursuant to which SC/ST Sitamarhi P.S. Case No. 12 of 2019 came to be instituted. It is submitted that the police is in collusion with the accused persons and 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.

6. The writ petition stands dismissed.

(Vikash Jain, J)

Chandran/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.11.2019
Transmission Date	18.11.2019

