

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1567 of 2019

Arising Out of PS. Case No.-577 Year-2019 Thana- KHAJANCHI HAT District- Purnia

UPENDRA KUMAR SINGH Son of Late Brahmdeo Prasad Singh Resident
of Village/ Mohalla - Sapahi Tola, Ward No. 5, P.S.- K.Hat, District- Purnea

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE DIRECTOR GENERAL OF POLICE, BIHAR, PATNA
2. The Zonal Inspector General, Purnea,
3. The Deputy Inspector General, Purnea
4. The Inspector General of Crime Investigation Department, Patna
5. The Deputy Inspector General, Crime Investigation Department, Patna
6. The Superintendent of Police, Purnea
7. The Dy. S.P. Purnea Sadar, Purnea
8. Police Inspector Mukesh Mishra, S/O - Not Known the S.H.O. K.Hat (Maranga), Police Station, District- Purnea
9. S.I. Nand Kishore Roy, S/O - Not Known S.I. of K.Hat (Maranga), Police Station, District- Purnea

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Birendra Kumar
For the Respondent/s : Mr.Sheo Shankar Prasad

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 direction to the respondents to entrust the investigation of K. Hat (Maranga) P.S. Case No. 577/2019 dated 13.08.2019 registered under Section 363 IPC to an independent agency (Central Bureau of Investigation) or to any superior police



officer of the C.I.D.

(ii) For direction to the respondents to complete the investigation expeditiously and search out/find out the old conjugal couple (victims) in K. Hat (Maranga) P.S. Case No. 577/2019.

(iii) For direction to the respondent to take steps for proper investigation of this case and arresting the accused/Bhu-Mafia who involved in this case of kidnapping of old conjugal couple in K. Hat (Maranga) P.S. Case No. 577/2019.

(iv) For direction to the respondents for initiation of an appropriate proceeding for misuse of authority by the S.H.O. of K. Hat (Maranga) P.S. and Investigation Officer of the case and other responsible personnel who are responsible for proper investigation of this K. Hat (Maranga) P.S. Case No. 577/2019 because till today neither any trace out of the victims nor any accused persons arrested till today.

(v) For any other relief/reliefs for which the petitioner entitled to.”

3. Learned counsel for the petitioner submits that K. Hat (Maranga) P.S. Case No. 577/2019 was instituted for the offences under Section 363 of the Indian Penal Code in connection with disappearance of an elderly couple, but thereafter proper investigation has not been made by the police. As such direction has been sought for proper investigation by an independent agency. Learned counsel for the petitioner in course of submissions states that even though in a recent development, one of the accused persons Ajit Kumar has been arrested who has confessed his guilt and a cow belonging to the missing couple has been recovered on his



confessional statement, but no proper investigation thereafter is being made.

4. Learned counsel for the State on the other hand submits that the investigation appears to be proceeding in right earnest as evident from the petitioner's submission that one of the accused persons has recently been arrested.

5. 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.”

6. 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.

7. The writ petition stands disposed of.

(Vikash Jain, J)

Chandran/-

AFR/NAFR	NAFR
CAV DATE	NA
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