

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1559 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District-

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IRFAN AHMAD Son of Late Nishar Ahmad Resident of Mohalla - PWD Colony, Anicut Road, Dehri-on-sone, Rohtas Bihar, P.S.- Dehri, District - Rohtas, Bihar.

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Home Police Department, Govt. Of Bihar, Patna
2. The Inspector General of Police, Patna Central Range, Patna.
3. The Director General of Police, Bihar, Patna
4. The Superintendent of Police, Patna.
5. The SHO, Phulwarishariff Police Station, District - Patna.
6. Md. Zafar Alam Son of Late Md. Nahaluddin Resident of - Saijeddenna, Mohalla- Phulwarishariff, P.S.- Phulwarishariff, District - Patna.
7. Md. Chand @ Aslam Son of Late Md. Nahaluddin Resident of - Saijeddenna, Mohalla- Phulwarishariff, P.S.- Phulwarishariff, District - Patna.
8. Md. Naushad Ali Zamali @ Guddu Son of Late Salahuddin Resident of - Saijeddenna, Mohalla- Phulwarishariff, P.S.- Phulwarishariff, District - Patna.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Ranjeet Kumar
Mr. Yogesh Kumar
Mr. Ayush Kumar, Advocates.
For the Respondents : Mr. Asif Niazi

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 19-11-2019

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 direction to the respondent authority more particularly the SHO, Phulwarishariff



Police Station, District- Patna, to immediately lodge FIR against three private respondents who on the point of pistol threatened the petitioner to commit murder and forcing him to hand over possession of a piece of land appertaining to Khata No. 847, Plot No. 1235-31D, Plot No. 1239-31D, Thana No. 35, Tauzi No. 5247, situated at Phulwarishariff, P.S. Phulwarishariff, District- Patna, and also threatened of dire consequences, if the petitioner dares to come on his said ancestral land.

(ii) The petitioner also prays for direction to the respondents authorities to provide adequate security so that the petitioner may be able to enjoy his peaceful possession over the said piece of land.

(iii) For any other relief for which the petitioner may be deemed entitled to."

3. It is submitted that despite approaching the SHO, Phulwarishariff Police Station with complaint, no F.I.R. was registered despite compliance with the oral direction for furnishing documents. It is further submitted that accused persons are creating apprehension in the mind of the petitioner with regard to his safety and liberty and is in need of proper security affecting his day-to-day life.

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 of the petitioner with regard to his day-to-day personal safety, the petitioner appears to have approached this Court without having filed representation before the appropriate authorities in this regard. The petitioner is at liberty to approach the State Security Committee for appropriate relief.

7. In the above circumstances, this Court is not inclined to interfere in its extraordinary writ jurisdiction. If the petitioner files any representation before the appropriate forum, the same



shall be considered and disposed of on its own merits, in accordance with law, expeditiously.

8. The writ petition stands disposed of with the aforesaid observations as above.

(Vikash Jain, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28.11.2019
Transmission Date	

