

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.320 of 2019

Arising Out of PS. Case No.-637 Year-2011 Thana- KOTWALI District- Patna

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Shambhu Nath Singh @ Shambhu Singh S/o Late Ram Kishun Ram, resident
of Mohalla-New Yarpur, P.S-Gardanibagh, Distt.-Patna, at present Shambhu
Nath Singh, Advocate, Civil Court, Patna.

... .. Petitioner

Versus

1. The State of Bihar through Director General of Police , Govt. of Bihar, Patna
2. The Senior Superintendent of Police, Patna. .
3. The Investigating Officer of Kotwali Police Station Case No 637/2011, P.S-
Kotwali, District-Patna. Patna.
4. The S.H.O, Kotwali Police Station, Patna, District-Patna Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Dhirendra Nath Jha, Advocate

For the Respondent/s : Mr.P.K.Verma, AAG3

Mr. Anand Kumar, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 05-02-2019

Heard learned counsel for the petitioner and
learned counsel for the State.

2. The petitioner has filed the instant writ
petition with two prayers. His first prayer is for quashing the
notice issued under Section 160 of the Code of Criminal
Procedure (for short 'CrPC') dated 26.03.2018 by the
investigating officer of Kotwali P. S. Case No. 637 of 2011 and



the second prayer is to direct the District & Sessions Judge, Patna to recover the record of Kotwali P. S. Case No. 637 of 2011, which is not traceable so that the petitioner may get certified copy of the first information report (for short 'the FIR') for moving anticipatory bail petition before the learned Sessions Judge, Patna.

3. Learned counsel for the petitioner submitted that in a case, which was instituted on 13.12.2011, a notice under Section 160 of the CrPC has been issued to the petitioner on 26.03.2018. The inordinate delay caused in issuance of notice is bad in law and is fit to be set aside. He further contended that the record of Kotwali P. S. Case No. 637 of 2011 in which the notice under Section 160 of the CrPC has been issued is not traceable in the court below. Hence, a direction be issued to the District and Sessions Judge, Patna to recover the original record of Kotwali P. S. Case No. 637 of 2011.

4. *Per contra*, learned counsel appearing for the State submitted that the FIR has been instituted by the Officer-in-charge of Kotwali P. S. Case No. 637 of 2011 against altogether five named accused persons, who had obtained bail by playing fraud upon the court in a case registered *inter alia* under Section 302/34 of the Indian Penal Code. In the said case,



in course of investigation, the investigating officer came to know that the petitioner is acquainted with the facts and circumstances of the case. Hence, a notice has been issued in exercise of powers conferred under Section 160 of the CrPC to procure the attendance of the petitioner. He contended that the petitioner has neither brought on record any requisition filed by him before the court below for obtaining the certified copy of the FIR of Kotwali P. S. Case No. 637 of 2011 nor he has filed any application before the court concerned. In that view of the matter, there is nothing on record on the basis of which he can plead that the record of the case is missing.

5. In view of the submissions made above, he submitted that the writ petition is totally misconceived and is fit to be dismissed.

6. I have heard learned counsel for the parties and carefully perused the record.

7. Section 160 of the CrPC provides that any police officer, making an investigation under Chapter XII may, by an order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and



such person shall attend as so required.

8. As, in course of investigation, the investigating officer came to know that the petitioner is acquainted with the facts and circumstances of the police case, a notice under Section 160 of the CrPC for requiring his attendance was issued. The said notice does not suffer from any illegality or irregularity. The delay in issuance of a notice itself cannot be a ground for quashing the same.

9. As far as the second prayer for the petitioner to direct the District & Sessions Judge, Patna to recover the record of Kotwali P. S. Case No. 637 of 2011 is concerned, learned counsel for the State has rightly pointed out that no document has been brought on record to show that the record is missing. The petitioner has not even filed any requisition for obtaining certified copy of the FIR. In absence of any application filed for obtaining the certified copy of the FIR, the same could not have been supplied to him. Merely because, a prayer has been made, in absence of any substantive evidence, it would not be proper for this Court to issue any mandamus to the District & Sessions Judge, Patna to trace out the record and provide a certified copy of the FIR to the petitioner.

10. Keeping in mind the discussions made



above, I see no merit in this writ petition. It is dismissed,
accordingly.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.02.2019
Transmission Date	12.02.2019

