

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.87 of 2019

Arising Out of PS. Case No.-576 Year-2017 Thana- GOPALGANJ TOWN District-
Gopalganj

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Sudama Prasad, son of Harihar Sah, resident of village-Basdiha Khas, P.S.-
Gopalganj, District-Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Home (Police), Government of Bihar, Patna.
2. the District Magistrate, Gopalganj.
3. The Superintendent of Police, Gopalganj.
4. The Officer Incharge, Gopalganj Town Police Station, District-Gopalganj.
5. The Investigating Officer, Gopalganj Town P.S. Case No.576 of 2017, P.S.- Town, District-Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Thakur, Advocate Mr. Shashank Shekhar, Advocate
For the Respondent/s	:	Md. Nasrul Huda Khan, SC-1

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 15-01-2019

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

2. This writ petition has been filed by the petitioner for
directing the respondents to conduct proper and fair investigation
in Gopalganj Town P.S. Case No.576 of 2017 dated 30.11.2017
registered under Sections 302, 120B read with 34 of the Indian
Penal Code and Section 27 of the Arms Act.



3. Learned counsel for the petitioner submitted that in the first information report, altogether six persons have been named in the column of accused, but on completion of investigation, only two of them have been sent up for trial. The investigation is still going on. As far as the other four accused persons are concerned, the investigation is not being conducted in a fair and impartial manner. The police are in collusion with the accused persons and are deliberately delaying the conclusion of the investigation of the case. He contended that a direction be issued to the police authorities to arrest the other accused persons named in the first information report and submit charge-sheet against them also.

4. On the other hand, learned counsel appearing for the State submitted that there is no truth behind the allegation that the police are not conducting the investigation in a proper and impartial manner. Simply because an accused is named in the first information report, it is not incumbent upon the police to arrest and submit charge-sheet against him. He contended that if the incriminating materials could be collected only against two persons named in the FIR and the police have submitted charge-sheet against them and they are still continuing with the



investigation of the case, no illegality can be found in the action of the police.

5. I have heard learned counsel for the parties and carefully perused the materials on record.

6. As far as the arrest of an accused in a cognizable offence is concerned, section 41 of the Code of Criminal Procedure empowers the police to do so even without an order of warrant of arrest from the court.

7. To hold investigation into a cognizable offence is the statutory right of a police. It is well settled position in law that at this stage, the Court has no role to play.

8. Whether to arrest an accused and submit chargesheet against him or not depends on several factors including the gravity of the offence, involvement of the accused in the crime, allegation made against him, truthfulness of the allegation and outcome of investigation.

9. If an accused named in the FIR is found innocent in course of investigation, the police may submit final form against him holding the accusation to be false.

10. In that view of the matter, this Court would not like to say anything on merit, as the case is still under investigation. In case, there is any illegality in the investigation, the petitioner is not



remediless. The Code of Criminal Procedure confers power upon the Magistrate to issue direction under Section 173(8) of the Code of Criminal Procedure for further investigation.

11. The writ petition, being pre-mature and devoid of any merit. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.01.2019
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