

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Criminal Writ Jurisdiction Case No.375 of 2020**

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

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Ram Nandan Singh @ Rama Balak Singh, S/o Late Jalo Singh, Resident of
Village-Pacheya, Post/P.S.-Nardiganj, District-Nawada, Pin-805109.

... .. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Department of Home, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Dy. Inspector General of Police, Magadh Range, Gaya.
4. The Superintendent of Police, Nawada.
5. The District Magistrate, Nawada.
6. The Sub Divisional Police Officer, Nawada Sadar, District-Nawada.
7. Ram Kripal Yadav, S/o Late Ram Prasad Yadav, the Sub Inspector of Police-cum-In Charge Station House Officer, Nardiganj Police Station, District-Nawada.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Sidhendra Narayan Singh, Advocate
For the Respondent/s : Mr. Prabhu Narayan Sharma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 23-12-2020 The present writ application has been preferred by the

father of one Ajit Kumar who is an accused in Nardiganj P.S.

Case No.175 of 2020.

The petitioner is seeking following reliefs:-

“i. Respondents may be commanded forthwith to
register FIRST INFORMATION REPORT against
Respondent-Ram Kripal Yadav (a Sub Inspector of
Police, posted at Nardiganj Police Station, District-
Nawada) and his associates in terms of allegations
of unauthorised acts, inter alia, of BRUTAL



ASSAULT giving 13-17 INJURIES (examined & reported by Sadar Hospital, Nawada in police custody itself) on person of son of petitioner -Ajit Kumar (a Central Govt. Officer) taking him under police custody & details mentioned in Representation along with enclosures, contained in Annexure-7.

ii. Investigation of Nardiganj P.S. Case No.175 of 2020, contained in ANNEXURE-1, may be ordered to be done by an S.P. Rank police officer of any neighbouring district as the credibility of police officials of Nawada district particularly in this case are in doubt who are acting in collusion, which has been registered u/s 307 & other minor offences of IPC against petitioner's sons & Others by Respondent no.7 making himself informant on dictates & in collusion of local heavy weights/MLA of a particular community.

iii. Further, the Respondents may also be directed to initiate disciplinary/departmental proceeding against respondent-Ram Kripal Yadav on account of his illegal/unauthorised activities, as said above, and on finding him guilty under inquiry, he may be dismissed from service.

iv. During pendency of Investigation, as prayed above, and/or till disposal of this case, the Arrest or Coercive Action in Nardiganj P.S. Case No.175/2020 may be kept in abeyance."

Earlier while considering the writ application, this Court has passed order dated 09.12.2020 which reads as under:-

"Although the prayer of the petitioner is to issue a direction to register First Information Report against Ram Kripal Yadav who is Sub Inspector of Police



posted at Nardiganj (respondent no. 7) and initially this Court was a prima-facie view that the petitioner should have approached the learned Chief Judicial Magistrate at Nawada to register the First Information Report but after going through the facts of the case placed before this Court and the kind of materials brought to the notice of this Court, since this writ application is raising some issues of seminal importance as regards the constitutional rights of an accused and to some extent it is also indicating prima-facie subject to further consideration a complete violation of the mandates of the Hon'ble Supreme Court issued from time to time in respect of the practice and procedures to be followed in the matter of an arrest and production of an accused in connection with a case registered against him, this Court thinks it just and proper to entertain this writ application for further consideration.

The facts as disclosed in the writ application are that a vehicle of model Majic Sawari which belongs to this petitioner allegedly met an accident on 03.08.2020 and fell down in the field. The passengers in the vehicle came outside the vehicle and there was no causality. People were trying to lift/pull out the vehicle from the field, there was a crowd assembled. At this stage, the Sub Inspector of Police, Ram Kripal Yadav (respondent no. 7) reached there and as the vehicle was lifted out, the Police Officer wanted to seize the vehicle and bring the same to the premises of the Police Station. It is alleged that the petitioner and his brother objected to this action of the Police Officer and they were not allowing the Police Officer to seize the vehicle and bring it to the Police Station. Allegation is that there was a scuffle between the petitioner and his brother on the one



hand and the Police Officer on the other hand. It is alleged that this petitioner had caught the neck of the Police Officer and started pressing him and then three other persons also joined the petitioner. The Police Officer who is himself informant of Nardiganj P.S. Case No. 175 of 2020 has further alleged that as a result of pressing of the neck by the petitioner and three others he became unconscious but thereafter he recovered and came to the Primary Health Centre, Nardiganj where he got his treatment done. It is alleged that the vehicle was taken away by the petitioner and others taking advantage of the situation.

The petitioner has enclosed a copy of the injury report said to have been issued by the Primary Health Centre, Nardiganj on 03.08.2020 at about 10.50 A.M. in which it is reported that the said Ram Kripal Yadav (respondent no.7), S.I. has suffered bruises on neck and forearm and he had bodyache.

The case of the petitioner is that on 11.08.2020 at about 3.15 (during night hours) the respondent no. 7 forcibly entered in the residential portion of the house of the petitioner and took this petitioner in custody, he was brought to Police Station during the night hours and he has been brutally assaulted in Police custody causing 13 to 17 injuries on his body. Allegation is also that a sum of Rs. 76,000/- in cash, Credit Card of LIC and ATM Card which were with the petitioner were also snatched from him but no seizure list was prepared. During the working hours on 11.08.2020 the petitioner was produced in the court of Sri Rajeev Kumar, learned Judicial Magistrate 1st Class, Nawada. It is his case that he himself submitted a written application (Annexure '2') addressed to the learned Presiding Officer of the



court in which he specifically alleged that he has been brutally assaulted by respondent no. 7 who stood up on the chest of the petitioner and assaulted the petitioner by his shoes and then the petitioner has been assaulted brutally which has caused injury on his body and he was bleeding. He alleged that he was not getting treated by the escort party. Annexure '2' and '2/A' to the writ application have been enclosed with the writ application showing that such complaint was addressed to the learned Presiding Officer of the court.

Learned counsel for the petitioner has submitted that after the aforesaid complaints, though the petitioner was sent for medical examination but despite revelation of the fact that he was brutally assaulted by respondent no. 7 and the injury reports (Annexure '3/A') has been showing multiple bruises on different size on back, right arm, right shoulder and left shoulder the total being 13 injuries noted on Annexure '3/A' and then lacerated wound on chest/finger and injuries found on left thumbs and left fore-fingers, the learned Magistrate did not register a case against the said Police Officer. It is his submission that by no means a Police Officer can exceed his power so as to cause as many as 13 to 17 injuries on the body of an arrested person and from the injury report it would appear that all injuries have been caused by hard and blunt substance within six hours. These are prima-facie materials, according to the petitioner which were disclosing commission of a cognizable offence by respondent no. 7 but the learned Judicial Magistrate who is fully competent under the provisions of the Code of Criminal Procedure to take cognizance suo motu on coming to know that a cognizable offence has been committed



by a person, may be a police officer but by abuse of his power, the learned Magistrate did not act on the basis of Annexure '2', '2/A' and the injury report (Annexure '3/A').

Learned counsel submits that if the written complaint of an accused who has been assaulted in Police custody is not being taken care of by a Presiding Officer of the court, he has no option but to move this Court for protection of his constitutional rights. Learned counsel submits that it is a settled law that even an arrested person has his fundamental rights fully secured though restricted to some extent and it is one of those cases in which apparently the fundamental rights of the petitioner have been interfered with, violated and infringed by respondent no. 7.

Learned counsel submits that apart from the fact that these facts were brought to the notice of the learned Judicial Magistrate at Nawada, it is also a matter of record it would be evident from Annexure '7' that a written complaint was sent to the Director General of Police, Bihar with copy thereof to the Superintendent of Police, Nawada but no action has been taken thereon, therefore, the petitioner has every reason to believe that he will not get justice unless this Court comes forward to protect the fundamental rights of the petitioner.

Mr. Prabhu Narayan Sharma, learned A.C. to learned A.G. was though initially of the same view which this Court was having prima-facie as indicated in the very beginning of this order but very soon after going through Annexure '2', '2/A' and the injury reports (Annexure '3/A') to the present application even learned A.C. to learned A.G. submits that in such circumstance where such huge injuries were there on



the body of the petitioner and he was bleeding and this fact was reported to the learned Presiding Officer of the court with specific allegation against respondent no. 7, the learned Presiding Officer of the court was required to take appropriate steps in terms of the Constitution Bench judgment of the Hon'ble Supreme Court in the case of **Lalita Kumari Vs Government of U.P. & Ors.** Reported in (2012) 4 SCC 1. He has sought some time to seek instruction in the matter and report to this Court as to what steps have been taken so far by the official respondents on the complaint of the petitioner.

This Court calls upon him to file a counter affidavit clearly indicating the stand of the official respondents and further as to why in the nature of the allegation against respondent no. 7 a case be not directed to be registered by an independent investigating agency such as the Central Bureau of Investigation or by the Crime Investigation Department of the Government of Bihar itself in the interest of justice and fair play in action.

This Court also calls for a report from Sri Rajeev Kumar, learned Judicial Magistrate 1st Class, Nawada as to what steps were taken by the learned Judicial Officer after receipt of Annexure '2', '2/A' as also after the injuries were reported and whether he had considered the kind of allegations made by the petitioner in writing for purpose of making an enquiry into the same.

Let a report from Sri Rajeev Kumar, learned Judicial Magistrate 1st Class, Nawada be obtained within two weeks. The counter affidavit be filed by 21st of December, 2020.

Issue notice to respondent no. 7 by both modes ordinary process as well as registered cover with A/D



for which requisites etc. must be filed by 14th of December, 2020 on the address of S.P. Nawada who will transmit such notice to Respondent no. 7 at his place of present posting.

Learned counsel is also given liberty to send a copy of the writ petition with a copy of this order on e-mail of Superintendent of Police, Nawada for his doing needful towards service of notice on respondent no. 7 at his present place of posting.

Let this case be listed at the top of the list on 23rd December, 2020.

Order be communicated through Fax to the learned court below.”

Let it be recorded that in the order dated 09.12.2020 there is an error of record inasmuch as the order refers the petitioner as accused of Nardiganj P.S. Case No.175 of 2020 and that he was arrested, assaulted in police custody. In fact the petitioner is the father of the accused Ajit Kumar and the case of this petitioner is that his son was arrested by Respondent no.7 and in police custody he was brutally assaulted. Thus, the order dated 09.12.2020 be read accordingly.

Pursuant to the order dated 09.12.2020 passed by this Court a report has been received from Mr. Rajeev Kumar, learned Judicial Magistrate 1st Class, Nawada. In his report kept at Flag ‘L’ vide letter no. 102 dated 18.12.2020 the learned



Judicial Magistrate has informed this Court that two applications filed by the accused were taken into consideration by the learned Presiding Officer and the Presiding Officer directed the Office Clerk to inform the Superintendent of Police, Nawada (in short 'S.P., Nawada') regarding production of the said accused in the court after assaulting by the Police and it was accordingly complied with. With his report, the learned Presiding Officer has not enclosed the copy of any order, if any, passed by him to that effect or the compliance recorded by him.

The learned Presiding Officer has further stated that he had directed the Jail Superintendent, Nawada to provide immediate medical facility to the said accused but again no such order has been enclosed with his report. It seems that learned Presiding Officer has not passed any order on the records.

A counter affidavit has been filed on behalf of respondent nos. 4 and 6 which has been sworn by the Additional S.P., Nawada. A perusal of the counter affidavit shows that while pointing out Section 41 of the Code of Criminal Procedure and the power of arrest on the part of a Police Officer and justifying the arrest of petitioner's son namely Ajit Kumar it has been stated that so far as the injuries found on the person of Ajit Kumar is concerned, contradictory statements have come in



course of enquiry made by S.D.P.O., Sadar, Nawada. Members of the raiding party have stated that the accused Ajit Kumar on seeing the Police started fleeing away and in that course he fell down on crib (fodder tub) resulting in injuries on his body whereas the family members of the petitioner have stated that Police force have assaulted Ajit Kumar. It is further stated that with regard to the assault made by the Police upon Ajit Kumar the office of S.P., Nawada received information through Media and thereafter Inspector of Police, Hisua was directed vide Memo no. 2413/confidential dated 11.08.2020 to enquire into the matter upon which Inspector of Police, Hisua submitted his report vide Memo no. 1591/Pu.Ni. dated 12.08.2020.

The deponent of the counter affidavit further states that the said enquiry report was not clear hence, the Enquiry Officer was directed to submit report clarifying the facts. Vide Memo No. 1603/Pu.Ni. dated 14.08.2020 the Inspector of Police, Hisua submitted his report mentioning therein that several injuries were found on the person of Ajit Kumar which is not possible due to fall and he opined that assault to accused Ajit Kumar @ Guddu cannot be ruled out. It has also been reported that the S.H.O., Ram Kripal Yadav was leading the raid for arrest of the accused , therefore, it becomes his responsibility



to guide his team to discharge the work properly but he did not do so which indicates his negligence. According to the counter affidavit S.I., Ram Kripal Yadav and S.I., Madan Kumar were directed vide Memo no. 2542/confidential dated 25.08.2020 of respondent S.P., Nawada to submit their explanation within three days but they did not do so till 10.09.2020 as a result of which Dy. S.P. (Reserved) Police Line, Nawada was directed vide Memo no. 2696/confidential dated 10.09.2020 to frame charges against both the Officers and in order to enable free and fair enquiry they have been transferred to Police Line vide District order no. 1174/2020 dated 08.09.2020 and are currently in Police Line. Annexure 'B' to the counter affidavit is the report of the Enquiry Officer.

Learned counsel for the petitioner submits that the counter affidavit is in fact indicating that the Police Officer, S.I., Ram Kripal Yadav (respondent no. 7) has exceeded his power of arrest and in his custody the son of the petitioner was assaulted causing as many as 13-17 injuries on his body. It is further submitted that the respondent no.7 forcibly entered in the house of the petitioner at 4.00 AM (Morning) without following the established procedure of law and the directions of Hon'ble Supreme Court in several judicial pronouncements. It is also



submitted that on a bare perusal of the letter written by the S.P., Nawada to Dy.S.P. (Annexure 'B') it may be found that the S.P., Nawada has himself noted the view that assault to the arrested accused in the Police custody cannot be ruled out and in fact the I.O. of the case (Nardiganj P.S. Case No.175 of 2020) had not clearly recorded the kind of injuries found on the body of the accused son of the petitioner. It is thus submitted that once the S.P., Nawada himself formed an opinion that it seems to be a case of assault on the arrested accused, in all fairness he should have directed for registration of a First Information Report and the matter should have been investigated and enquired into in accordance with law but he has failed to do so.

Learned counsel has further submitted that the report of the learned Judicial Magistrate is also halfhearted. The Presiding Officer has taken a stand that he had directed the Office Clerk to inform the S.P., Nawada regarding production of the said accused in the court after assault by Police. The Presiding Officer has not even stated that he had seen the accused when he was produced, it leads to another submission that the accused are forwarded in judicial custody in a routine and mechanical manner and some time it is done only by the Office Clerk on the strength of pre-signed papers by the learned



Magistrate.

Learned counsel further submits that the counter affidavit of the respondent nos. 4 and 6 nowhere confirms that any information was received from the Office Clerk attached to the learned Presiding Officer, therefore, there is neither any recorded order in this respect nor any other material before this Court to show even prima-facie that the learned Magistrate had taken care to see the conditions of the son of the petitioner when he was produced with several injuries on his body. The learned Magistrate has, thus according to learned counsel for the petitioner, acted in a most casual manner despite written complaint lodged by the accused (Annexure-2) and the enquiry report available on the record.

Mr. Prabhu Narayan Sharma, learned A.C. to learned A.G. has made submissions reiterating the statements made in the counter affidavit of respondent nos. 4 and 6.

Respondent no. 7 has entered appearance in this case and learned counsel for respondent no. 7 submits that he has received the copy of the writ petition but is looking for adjournment to file a counter affidavit.

Since this Court is not going to examine the matter on merit, no adjournment is required. This Court has heard learned



counsel for the parties on a limited issue as to why the prayer made in the writ application to direct registration of F.I.R. and transfer of the investigation of Nardiganj P.S. Case No. 175 of 2020 be not allowed through an independent investigating agency. This Court while passing the order dated 09.12.2020 had called upon the official respondents to file a counter affidavit clearly indicating the stand of the official respondents as to why in the nature of allegation against respondent no. 7 a case be not directed to be registered by any independent investigating agency such as Central Bureau of Investigation or by the Crime Investigation Department (in short 'C.I.D.') of the Government of Bihar itself in the interest of justice and fair play in action.

Today, Mr. Prabhu Narayan Sharma, learned A.C. to learned A.G. has categorically submitted that he would have no objection if the C.I.D. is directed to investigate into the matter after lodging an F.I.R. in respect of the present occurrence in which the son of the petitioner is said to have been assaulted.

Let the Additional Director General, C.I.D., Government of Bihar be added as party respondent no. 8 in this writ application to avoid any issue.

Mr. Prabhu Narayan Sharma, learned AC to learned



AG submits that he would also represent the Additional Director General, C.I.D., Government of Bihar. Let it be recorded accordingly.

Consideration

To this Court it is crystal clear that the learned Judicial Magistrate, Nawada has failed to exercise his powers under Section 156(3) of the Code of Criminal Procedure. This Court further finds that while directing for issuance of Prapatra 'K' to respondent no.7 though the S.P., Nawada had before him materials showing that a case of assault and torture of the accused after his arrest cannot be ruled out, the S.P., Nawada did not order for registration of F.I.R. and investigation in the matter.

The Hon'ble Constitution Bench of Supreme Court of India in the case of **Lalita Kumari Vs. Government of U.P. & Ors.** reported in **(2014) 2 SCC 1**. has observed in paragraph 32 as under:-

“**32.** Historical experience has thrown up cases from both the sides where the grievance of the victim/informant of non-registration of valid FIRs as well as that of the accused of being unnecessarily harassed and investigated upon false charges have been found to be correct.

Further in paragraph 48 the Hon'ble Apex Court held



thus:-

“48. The legislative intent of Section 154 is vividly elaborated in Bhajan Lal (State of Haryana Vs. Bhajan Lal reported in 1992 Supp (1) SCC 335) which is as under:

30.

31.

32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression ‘*information*’ without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, ‘*reasonable complaint*’ and ‘*credible information*’ are used. Evidently, the non-qualification of the word ‘information’ in Section 154(1) unlike in Sections 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, ‘reasonableness’ or ‘credibility’ of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word ‘information’ without qualifying the said word. Section 139 of the Code of Criminal Procedure, 1861 (25 of 1861) passed by the Legislative Council of India read that ‘*every complaint or information*’ preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code, 1872 (10 of 1872) which



thereafter read that ‘every complaint’ preferred to an officer in charge of a police station shall be reduced in writing. The word ‘complaint’ which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word ‘information’ was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code, 1973 (2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be information and that information must disclose a cognizable offence.”

It has been categorically held that whenever any information is furnished to a Police Officer showing commission of a cognizable offence, the same is required to be registered in the General Book kept in the Police Station which is also known as First Information Report.

This Court would observe that in the present case on receipt of the information from the son of the petitioner the learned Magistrate should have considered the same in accordance with law, could have either referred the same to the Police Station for registering F.I.R. or he may have enquired into the same himself before taking a view thereon as to whether a prima-facie case is made out or not but the learned Magistrate seems to have acted in a routine and mechanical manner in forwarding the accused to Judicial custody without passing an



appropriate order on the applications filed by him in his own pen which are Annexure '2' and '2/A' to this application. The report received from the learned Magistrate does not inspire confidence. It is not expected that a Judicial Officer shall tell his clerk to inform the senior police officers about the assault to an accused produced before him. The learned Magistrate should have enquired into the matter in accordance with law.

This Court would wish that the learned Magistrate would be more sensitive in future whenever an accused is produced before him in Police custody and the accused complains of torture committed upon him after his arrest.

In the given facts and circumstances, the materials such as Annexure 'B' to the counter affidavit and that the State has also no objection if the entire matter is investigated by C.I.D., this Court instead of directing the petitioner to approach the learned court below, thinks it just and proper to refer the entire issue to the C.I.D., Government of Bihar to register a First Information Report on the basis of the information furnished by the son of the petitioner as regards his alleged torture in Police custody after his arrest from his house in the early morning hours at about 4.00 A.M. on 11.08.2020. Annexure '2' to the present application which was submitted by him before the



learned Magistrate, Nawada shall be treated as an information for this purpose.

The A.D.G., C.I.D. shall ensure registration of a First Information Report and get investigated the matter in accordance with law within a reasonable time and submit a report accordingly in the appropriate court.

Since the conduct of the I.O. of Nardiganj P.S. Case No.175 of 2020 is also being examined and he has been served with Prapatra 'K', let the records of Nardiganj P.S. Case No. 175 of 2020 be also sent to the C.I.D. for carrying an independent investigation afresh and submit a report in this regard as well before the appropriate court.

Let it be recorded that the direction to register F.I.R. and investigate the matter would not be construed as an opinion of this Court either in favour of the petitioner, the accused or against the respondent no. 7 and it is expected that the C.I.D. shall investigate the entire matter independently and in accordance with law and without being influenced by observation, if any.

Let a copy of this order be communicated to the Principal Secretary, Department of Home, Government of Bihar, the S.P., Nawada as well as to the Additional Director General,



C.I.D., Government of Bihar.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

vats/Arvind

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

