

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1129 of 2016

Arising Out of PS. Case No.-730 Year-2014 Thana- HAJIPUR District- Vaishali

Dr. Surendra Kumar Prasad, Son of late Ram Vichar Prasad, Resident of
Mohalla - Hariji Ka Hatta, Ara, P.S. - Ara, Nawada, District - Bhojpur at Ara.
... .. Petitioner

Versus

1. The State of Bihar Through Home Secretary, Govt. of Bihar, Patna
2. The Chief Secretary, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The DIG Tirhut Division, Muzaffarpur, District - Muzaffarpur.
5. The DIG, Patna Range, District - Patna.
6. The Senior S.P., District - Patna.
7. The Town S.P. Patna, District - Patna.
8. The Senior S.P. Vaishali at Hazipur.
9. The Vice-Chancellor, Chanakya National Law University, Nayaya Nagar, Mithapur, P.S. - Jakkanpur, District-Patna.
10. The Registrar, Chanakya National Law University, Nayaya Nagar, Mithapur, P.S. - Jakkanpur, District- Patna
11. The Warden/Hostel Superintendent, Boys Hostel, Chanakya National Law University, Nayaya Nagar, Mithapur, P.S.-Jakkanpur, District-Patna.
12. Aditya Khampadia Son of Girish Khamparia 3rd year student of Chanakya National Law University, Mithapur, Patna.
13. Madhukar Anand, Son of Dr. Manvendra Kumar, 3rd year student of Chanakya National Law University, Mithapur, Patna.
14. Ujjawal Singh Son of Ranjit Kumar Singh 3rd year student of Chanakya National Law University, Mithapur, Patna.
15. Sriman Kumar Son of Rakesh Kumar 3rd year student of Chanakya National Law University, Mithapur, Patna.
16. Jaswant Singh Son of Dilip Singh 3rd year student of Chanakya National Law University, Mithapur, Patna.
17. Gaurav Sangwan Son of Ravindra Sangwan 3rd year student of Chanakya National Law University, Mithapur, Patna.
18. Satyam Shekhar Son of Hari Shankar Alpana Market Near International School, Patliputra Patna (Outsider).
19. Ritwik Singh son of Chandraket Singh Hari Apartment 2A, Boring Road, Patna (Outsider).

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Arun Kumar No. 1, Advocate
For the State : Mr. Ajay Kumar Sharma, A.C.to A.G.



For the Respondent No.15 : Mr. Krishna Kant Singh, Advocate
Mr. Rakesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
Date : 25-02-2020

Heard learned counsel for the parties at length.

This matter has been argued earlier also on 20.02.2020 and 24.02.2020 and after hearing learned counsel for the parties for some times their respective submissions have been recorded in the following orders:

“ 20.02.2020 Learned counsel for the petitioner submits that the revisional order passed by the learned Sessions Judge, Vaishali at Hazipur is bad in law and the same is liable to be set-aside as the learned Sessions Judge has refused to issue directions to Central Bureau of Investigation in Hazipur Town P.S. Case no. 730/2014 without applying its judicious mind and ignoring the Hon'ble High Court's order dated 17.07.2015 passed in Cr.W.J.C. No. 881/2014 by which an inquiry was set up for verification of the genuineness of the investigation conducted in relation to Hazipur Town P.S. Case No. 730/2014.

Learned counsel has heavily relied upon the affidavit with the report filed by Mr. Paresh Suxena, I.G. Home Guard, as contained in Annexure '10' to the present application.

On the other hand, learned counsel representing respondent no. 15 submits that on perusal of Annexure '1' to the present writ application it would appear that Cr.W.J.C. No. 881/2014 in which the affidavit and the report as contained in Annexure '10' was filed was disposed off on 02.09.2015 by a learned coordinate Bench of this court taking a view that the learned Magistrate has the power to look into the case diary and thereafter conclude that further investigation



is required under Section 173(8) Cr.P.C. The matter was, thus, left for learned Magistrate to look into and pass an appropriate order.

It is submitted that the learned Chief Judicial Magistrate, Hazipur thereafter accepted the police final report and refused to pass an order for further investigation. The petitioner thereafter moved this court in Cr.W.J.C. No. 239/2016 challenging the order dated 12.10.2015 passed by learned Chief Judicial Magistrate, Vaishali, but the said writ application was withdrawn with liberty to file an appropriate application putting a challenge by way of revision to the order dated 12.10.2015 whereby police report submitted by police was accepted by learned Chief Judicial Magistrate.

Learned counsel for respondent no. 15 has referred and relied upon the order dated 18.03.2016 passed by the then Hon'ble the Acting Chief Justice in Cr.W.J.C. No. 239/2016 (Annexure '2'). It is the submission of learned counsel for respondent no. 15 that after the aforesaid order was passed vide Annexure '2' to the present application the petitioner did not challenge the order dated 12.10.2015 passed by the learned Chief Judicial Magistrate, Vaishali and no revision application challenging the order of learned C.J.M. was filed. In fact, it is the submission that the revision application which was preferred by the petitioner giving rise to Criminal Revision No. 148/2016 was only confined to a prayer to direct the Central Bureau of Investigation to re-investigate the case.

Since learned counsel for the parties intend to make further submissions, let this matter be listed again under the same heading in the daily cause list on 24.02.2020 maintaining its position."

Again on 24.02.2020 the following order was passed:-

"24.02.2020 Matter has been heard further. Learned counsel for the petitioner has produced before this Court a copy of the criminal revision application bearing Cr.Rev. No.148 of



2016 filed in the court of learned District and Sessions Judge, Vaishali at Hazipur. The prayer portion of the revision application reads as under:-

“It is, therefore, prayed that your honour may graciously be pleased to direct this case to be re-investigated by the C.B.I. in the light of Section 173(8) of Cr.P.C. and in the light of Mr. Paresh Saxena’s inquiry report submitted in Hon’ble Patna High Court. and/or to pass such order/orders as may be deemed fit and proper.”

Learned counsel for the petitioner has relied upon judgments of the Hon’ble Supreme Court in the case of **State of West Bengal and Ors. Vs. Committee For Protection of Democratic Rights, West Bengal and Ors.** reported in **(2010)3 SCC 571** (Paragraph 79) and in the case of **State of Bihar & Anr. Vs. Ranchi Zila Samta Party & Anr.** reported in **1996 (1)PLJR 97 (SC)** (Paragraph 7).

At this stage, learned counsel submits that he would place some more judgments in support of his application tomorrow.

Let this matter be listed tomorrow under the same heading”.

Learned counsel for the petitioner has today relied upon the judgments of the Hon’ble Apex Court in the case of **S.P.S. Rathore vs. Madhu and others** reported in **(2017) SCC 843** (paragraph 3 and 4) and in the case of **COMMON CAUSE AND OTHERS Versus UNION OF INDIA AND OTHERS** reported in **(2017) 3 SCC 5012** (Paragraph 4,5, 7 and 8) and has submitted before this Court with reference to the submissions made in paragraph ‘17’ of the writ application that it would be an



appropriate case in which reinvestigation be directed through the Central Bureau of Investigation (C.B.I.).

Learned counsel has in course of the argument accepted that so far as the order passed by learned Chief Judicial Magistrate, Vaishali at Hajipur as contained in Annexure '12' is concerned, the same was not challenged in revision before the learned Sessions Judge, Vaishali at Hajipur in Criminal Revision No. 148 of 2016. Learned counsel has thus concluded his submissions.

Submissions of the State and Respondent no. 15

On the other hand, learned counsel for the State as well as Respondent No. 15 who has appeared on his own have opposed this writ application.

Learned counsel for the State submits that the police has conducted investigation and after completion thereof submitted a police final report which has already been accepted by the learned C.J.M. vide his order dated 12.10.2015 and the same has attained finality.

Learned counsel for the respondent no. 15 has submitted that the petitioner had twice moved this Court in Cr.W.J.C. No. 881 of 2014 and Cr.W.J.C. No. 239 of 2016 and in both the writ applications the petitioner had prayed for a direction to the Central Bureau of Investigation to reinvestigate the case but on both the



occasions learned Co-ordinate Benches of this Court did not deem it just and proper to issue such direction, rather in Cr.W.J.C. No. 881 of 2014 a learned Co-ordinate Bench of this Court specifically observed that “a series of orders were passed which in the interest of justice should be ignored in the present circumstances. Since the Magistrate has the power to look into the case diary and thereafter conclude that further investigation is required under Section 173 (8) Cr.P.C., I would expect the Magistrate to look into the records and thereafter pass an appropriate order within a period of four weeks from the date of receipt of this order.....”, in the submission of learned counsel at this stage any direction to the CBI to reinvestigate would amount to virtually reviewing the order passed by the learned Co-ordinate Bench of this Court.

It has also been pointed out that once again Cr.W.J.C. No. 239 of 2016 was filed before this Court with a similar prayer for a direction to the CBI to reinvestigate the matter but the Cr.W.J.C. No. 239 of 2016 was sought to be withdrawn with liberty to prefer a revision application before the learned Sessions Judge, Vaishali at Hajipur for setting aside the order dated 12.10.2015 passed by learned C.J.M. but in fact when the revision application was preferred before the learned Sessions Judge the order passed by the learned C.J.M. was not challenged and no



prayer was made for setting aside of the order dated 12.10.2015, thus, in his submission once again the order dated 12.10.2015 passed by learned C.J.M., Vaishali at Hajipur has attained finality and at this stage this Court sitting in its writ jurisdiction would not be looking into the legality and validity of the order which was not challenged by the petitioner before the competent court/forum despite opportunity granted to him in Cr.W.J.C. No. 239 of 2016. Learned counsel for the respondent no. 15 has thus prayed for dismissal of the writ application.

Consideration

Having heard learned counsel for the parties at length, this Court finds that the present writ application has been preferred for issuance of a writ in the nature of certiorari for setting aside the order dated 08.06.2016 passed by learned Sessions Judge, Vaishali at Hajipur in Criminal Revision No. 148 of 2016 whereby the learned Sessions Judge, Vaishali has been pleased to dismiss the revision application as framed and refused to issue directions to the Central Bureau Investigation to reinvestigate the case being Hajipur Town P.S. Case No. 730 of 2014.

It is this order of the learned Sessions Judge which has been assailed inter alia on the ground that the learned Sessions Judge has not applied his judicious mind and the order has been



passed by ignoring this Court's order dated 17.07.2015 passed in Cr.W.J.C.No. 881 of 2014.

It is a matter of record that in course of hearing of Cr.W.J.C. No. 881 of 2014 a learned co-ordinate Bench of this Court had called upon one Mr. Paresh Suxena the then Inspector General, Home Guard, Bihar Patna to assist this Court after going through the materials as to whether the case has been properly investigated from all angles, the State functionaries were directed to place all the relevant materials relating to investigation done by them of Hajipur Town P.S. Case No. 730 of 2014 before the same Police Officer. Mr. Suxena was directed to look into the matter as to what happened pursuant to lodging of the 'Sanha' with local Hajipur Town Police Station. Mr. Suxena was then also authorised to call for any records relating to the case from the concerned authorities who were held obliged to comply with the said order.

Pursuant to the aforesaid order Mr. Paresh Suxena, IPS, went into the investigation conducted by Hajipur Town Police Station from different angles and upon analysis of the relevant materials he formed an opinion that the investigation should have been done on some more issues. He gave emphasis that the scene of crime should have been recreated. In his concluding part Mr.



Suxena made some discussions on the issues as to whether satisfaction of victim (the complainant) with the Police could be restored even after presenting him a trustworthy sequence of events and further whether the incidents as alleged could be prevented.

This Court will take note of these discussions as held in paragraph '9' and '10' of the report of Mr. Paresh Suxena hereinafter.

At this stage, it is noted that though the said report was submitted on the records, at the time of final hearing of Cr.W.J.C. No. 881 of 2014, a learned co-ordinate Bench of this court decided not to go into such report and report was specifically ordered to be ignored and in the interest of justice the observations as quoted herienabove were made in the order dated 02.09.2015.

The fact remains that the petitioner accepted the said order dated 02.09.2015 and remained contended with the directions issued by the learned co-ordinate Bench to the learned Chief Judicial Magistrate, Vaishali at Hajipur to take a view on the basis of the case diary. Pursuant to the order dated 02.09.2015 passed by this Court, the learned C.J.M., Vaishali at Hajipur heard the parties and passed the order dated 12.10.2015 as contained in Annexure '12' to the present writ application. On a reading of said



order it appears that before the learned C.J.M., the petitioner prayed for a direction to the respondents to reinvestigate the case through C.B.I. The Police has after completion of investigation submitted a Police final report saying that the case is based on 'a mistake of fact'. Learned C.J.M. went through the materials collected in course of investigation and finally took a view that the I. O. has rightly investigated the case after recording the statements of the witnesses under Section 161 Cr.P.C. including of the students (friends of the victim) and then learned C.J.M. noticed that though two students were the victims of the alleged occurrence, the family of one of the victims had not been agitating this issue and further that the petitioner had filed an application for realizing a compensation which was the defence version, the learned C.J.M. did not agree with the submissions of the petitioner for a direction to reinvestigate the matter through C.B.I. The petition dated 28.09.2015 filed on behalf of the petitioner was thus rejected vide Annexure '12' to the present writ application.

After passing of the order dated 12.10.2015 the petitioner had moved this Court again, as stated above in Cr.W.J.C. No. 239 of 2016 with the same prayer for a direction to reinvestigate the matter through C.B.I. but the said writ



application was also withdrawn with liberty to challenge the order dated 12.10.2015 passed by the learned C.J.M.

At this stage, this Court would notice the accepted position as appearing from the submissions of learned counsel for the petitioner recorded in Court's order dated 20.02.2020 and 22.04.2020 as also today that the revision application preferred before the learned Sessions Judge did not contain any prayer for setting aside the order dated 12.10.2015 passed by the learned C.J.M., all that was prayed before the learned Sessions Judge was to direct reinvestigation through C.B.I. in the light of Section 173(8) of the Cr.P.C. and in the light of the inquiry report of Mr. Paresh Suxena.

This Court also noticed from the order of the learned Sessions Judge that on 08.06.2016 the learned Sessions Judge found that the petitioner had not made prayer challenging the order of learned C.J.M. in the revision application hence, he called upon learned counsel for the petitioner to amend his prayer in the revision application but learned counsel for the petitioner was not inclined to amend the payer as he was looking for reinvestigation of the matter by C.B.I. The learned Sessions Judge thereafter, passed the order saying that he had no jurisdiction to issue or grant the relief as prayed in the revision application i.e. "to direct this



case to be reinvestigated by the C.B.I. in the light of Section 173 (8) of the Cr.P.C.”

In the nature of the materials available on the record, this Court is of the considered opinion that the judgment on which learned counsel for the petitioner has placed reliance would not be applicable in the facts and circumstances of the present case. In the case of **West Bengal and Ors. Vs. Committee for Protection of Domestic Rights, West Bengal & Ors.** reported in **2010 (3) SCC 571** (Paragraph 79), in the case of **State of Bihar & Anr. vs. Ranchi Zila Samta Party & Anr.** reported in **1996 (1) PLJR 97 SC** (para 7), the issues for consideration before the Hon’ble Apex Court were quite different and distinct. In both those cases, the petitioner had been challenging the power of the Central Bureau of Investigation to investigate the matter in relation to a Police officer in the State and it was the contention of the petitioner that without the permission of the State Government such investigation cannot be carried out. The issues, therefore, framed in those cases are not falling for consideration in the present case. Again in the two judgments on which reliance have been placed before this Court today in the case of **S.P.S. Rathore** (supra), the facts were in respect of an occurrence which took place in the year 1990, the writ application was filed in the year 1997, no investigation in the



said case was conducted earlier, the allegations were against a senior Police officer and therefore, the Hon'ble Apex Court was of the view that the matter is required to be investigated by C.B.I. Again in the case of **Common Cause and Others** (supra) the Hon'ble Apex Court was considering the allegations made against the then Director, C.B.I. that he had been meeting the accused persons in the Coal Block allocation cases and had scuttled the investigation of those cases by making them to file closure reports by C.B.I. The Hon'ble Supreme Court held it necessary to accept the prayer of the petitioner to allow an investigation as to the abuse of the authority committed by the then C.B.I., Director in order to scuttle inquires, investigation and prosecutions being carried out by the C.B.I. in Coal Block allocation cases and in other important cases. From these judgments also it does not appear that the facts of the present case were available in the said case and the directions were issued in similar circumstance.

To this Court, it is very clear that it being a constitutional court, can direct reinvestigation of a case but the question is as to whether such reinvestigation may be ordered in the facts of the present case and keeping in view the previous judicial orders of the learned co-ordinate Bench of this Court.



In the present case the alleged occurrence is that the son of the petitioner and his friends went for an outing from their hostel in the night of 23.08.2014 and then in the morning of 24.08.2014 it was reported by one of the students that two of their friends had drown away in Gana River. A Sanha Entry in this regard was made on 24.08.2014 in the Hajpur town Police Station. Rescue Team and boats were deployed in the river. The petitioner had also been informed on 24.08.2014 and the investigation has revealed that from morning to late evening he was in the vicinity of the river where the search operation were going for the dead bodies of the two boys. In the night hours he went back to his place of residence at Arrah and the same has been noticed from the location of his mobile phone by the investigating officer. On the next day i.e. on 25.08.2014 he came back, the dead bodies were not found then he lodged the first information report in Jakkanpur Police Station in which he raised suspicion against the friends of his son. It has come in course of investigation that while raising suspicion against the friends of the son of the petitioner, the petitioner had also stated that he may have enemies for different reasons because he had contested election on the ticket of Aam Admi Party and then he had some dispute over construction of his house in the premises of 'Hariji Ka Hata' at Arrah. It is this FIR



lodged by the petitioner on 25.08.2014 which was sent to the Hajipur Town Police Station and then subsequently it was investigated and the Police submitted a final report.

This Court has perused the report of Mr. Paresh Suxena also. No doubt he has pointed out some more angles from which the investigation could have been possibly done but the report as contained in Annexure '10' which concludes death by drowning at Konhara Ghat and nowhere points out any evidence much less any material to take even a prima-facie view that there are something against the private respondents who happen to be the friends of the son of the petitioner. For purpose of issuing a direction to reinvestigate the matter, no clinching material were present in the report and perhaps that may be one of the reasons that on 12.09.2015 a learned co-ordinate Bench of this Court in specific words ignored the report of Mr. Paresh Suxena and directed the learned C.J.M. to consider the materials collected in course of investigation in the case diary. The petitioner accepted the said order.

This Court would only take note of the two paragraphs of the report of Mr. Paresh Suxena just to take a view that those observations are more in the nature of academic/moral



discussions than any kind of material. Paragraph '9' and '10' of the report are quoted hereunder for a ready reference:

"9. Hajipur Town P.S. Case No. 730 of 2014 does also raise a fundamental question whether 'satisfaction of victim (the complainant) with the police could be restored even after presenting him a trustworthy "sequence of events" following the scientific interview of the suspect ? Here, it may be noted that complainant's first interface with the students and university authorities on 24.08.2014 has not been investigated. If now it is thoroughly, but diplomatically probed and only a 'physiological basis of suspicion' is suggested; then perhaps a 'restorative conferencing' of victim and suspects along with the university authorities, facilitated by the police and/or forensic psychologist, could be thought of to end the hostile feelings. Perhaps, this dialogic process will set a trend in handling many such cases in future where presumptive evidence is centered on suspicion rather than on corpus delicti.

10. Whether 'accidents' as alleged could be prevented is also an ancillary issue to the instant case. The fact is that students had broken rules of the university by leaving at prohibited hours and such indiscipline led to rustication of some students last year also; yet, after this incident, no disciplinary action has been taken against erring students (para 85, 86 and 240). These young students 'ate and drank' at Basant Bihar Hotel and then freaked out at "poorly lighted" and "poorly manned" Konhara Ghat and the two unfortunate ones in the group drowned. None of the students had even the police or emergency numbers. The issues of community policing, such as plugging loopholes in management of educational institutions and public places, require attention at the higher level of police service."

(underline is mine)

The petitioner had approached this Court once again after the learned C.J.M., Vaishali at Hajipur rejected his prayer for



a direction to reinvestigate the matter. But once again the petitioner withdrew the second writ application and thereafter, in terms of the liberty granted to him did not challenge the order passed by learned C.J.M. To This Court, therefore, has no hesitation in recording that at this stage the prayer for a reinvestigation of the case through C.B.I. cannot be entertained by this Court. The said prayer has not found favour with this Court in Cr. W.J.C. No. 239 of 2016 vide order dated.

The petitioner himself failed to avail the liberty granted to him in Cr.W.J.C. No. 239 of 2015 and thereafter, allowed the order dated 12.10.2015 passed by the learned C.J.M., Vaishali at Hajipur to attain finality. In such circumstance, this Court finds no illegality or infirmity with the order passed by the learned Sessions Judge, Vaishali at Hajipur which is impugned in the present writ application.

This writ application is devoid of merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

vats/-

AFR/NAFR	
CAV DATE	
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