

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Criminal Writ Jurisdiction Case No.613 of 2017**

Arising Out of PS. Case No.-150 Year-2016 Thana- GANDHIMAIDAN District- Patna

1. Shambhu Prasad and Anr son of Late Raghunandan Prasad resident of Bakerganj, Bajaja, P.S. Pirbahore, Town and District - Patna.
2. Kumar Sachin son of Shambhu Prasad resident of Bakerganj, Bajaja, P.S. Pirbahore, Town and District - Patna.

... .. Petitioners

Versus

1. The State Of Bihar Through Secretary, Department Of Home, Government Of Bihar, Patna
2. The Senior Superintendent of Police, Patna.
3. The Officer In Charge Gandhi Maidan Police Station, Patna.
4. Basant Prasad son of Late Rameshwar Prasad resident of Village Jalalpur, P.S. Noorsarai, District - Nalanda at present residing at Sri Radhe Krihsna Thakurbari, Exhibition Road, P.S. Gandhi Maidan, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Rakesh Kumar Sharma, Advocate
For the Respondent/s	:	Mr.Md. N. H. Khan SC-I Mr. Md. Haroon Quraishi, AC to SC 1
For Resp. No. 4	:	Mr. Anil Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

3 28-09-2020 Heard Mr. Ramakant Sharma, learned Senior Counsel for the petitioners, Mr. Anil Kumar, learned counsel for the respondent no. 4 and Mr. Md. N. H. Khan, SC 1 assisted by Mr. Md. Harun Quareshi, learned Assistant Counsel for the State.

The petitioners in the present case are seeking quashing of the First Information Report being Gandhi Maidan P.S. Case No. 150 of 2016 registered on 28.04.2016 for the offences under Sections 147, 148, 149, 452, 420, 467, 468, 471, 380, 341, 342, 323, 324, 307, 504, 506 of the Indian Penal Code, Section 27 of the Arms Act and



Sections 3(1) (x) of the SC/ST (Prevention of Atrocities) Act.

Learned Senior Counsel for the petitioner submits that petitioner no. 1 and 2 both are father and son. Petitioner no. 1 is practicing Advocate of Civil Court, Patna and petitioner no. 2 is practicing in the Central Administrative Tribunal and this High Court also.

Learned Senior Counsel has taken this Court to the First Information Report wherein the informant has alleged that the petitioner no. 1 was appointed as Shebait of the Thakurbadi namely Sri Radha Krishna Sri Shankar Ji Thakurbari, Exhibition Road, Patna. The allegation is that petitioner no. 1 handed over forged documents to a builder and his associates in order to help them in selling the land of the Bihar State Religious Trust Board and in lieu of this he took a sum of Rs.50 lakhs as advance and prepared an agreement. It is further alleged that on the strength of the said agreement the builder along with some dreaded criminal lashed with deadly weapons entered in the premises and attacked on the persons residing in the premises, they damaged the shops and articles kept there, in this occurrence it is alleged that this petitioner no. 1 and 2 along with other 20-25 criminals entered in the premises. There are some specific allegations also in the FIR saying that who had assaulted whom. So far as these two petitioners are concerned there are allegations that they had abused one Satyanarayan Chaudhary by his caste name and threatened him that he will be shot dead. They



had damaged the house and shops and looted away the entire material kept there.

Learned Senior Counsel submits that in this case the informant was noticed, he has appeared and in his counter affidavit filed before this Court, in paragraph '9' he has made a statement that these petitioners were not present on the spot at the time of the alleged occurrence. It is, thus, his submission that the petitioners' prosecution is malafide and as such the FIR is fit to be quashed and cancelled.

Mr. Anil Kumar, learned counsel for the informant has while explaining the statements made in paragraph '9' of the counter affidavit submitted that when the alleged occurrence took place there was a commotion as the people were running away here and there and in that situation the signature of this informant was taken on the written report. On hearing this the attention of this Court went on as to how many persons have signed the FIR. On query made, this Court has been informed that the FIR has been signed by two persons namely Basant Prasad (respondent no. 4) and one Mithun Kumar who has not been arrayed as a party in this application.

Learned APP for the State has opposed the prayer for quashing of the First Information Report as according to him the lodgment of the FIR only facilitates an investigation in the matter and at this stage when the matter is still said to be under investigation, this Court sitting in its writ jurisdiction need not scuttle



the investigation. In this connection he has relied upon a judgment of the Hon'ble Apex Court in the case of **State of Haryana & Ors. Ch. Bhajan Lal & Ors.** reported in **AIR 1993 SC 1348**.

Having heard learned Senior Counsel for the petitioners, learned counsel for respondent no. 4 and learned counsel for the State, this Court is of the considered opinion that the FIR does disclose commission of a cognizable offence, therefore if the police has registered the FIR it has been rightly done and in this regard the judgment of the Hon'ble Apex Court in the case of **Lalita Kumari versus State of U. P. & Ors.** reported in **(2014) 2 SCC 1**. clearly states that wherever a cognizable offence has taken place and it is brought to the notice of the police station it is required to be registered as FIR. The Constitution Bench of the Hon'ble Apex Court has also held that mere lodgment of the FIR is not an initiation of a criminal proceeding. The judgment of the Hon'ble Apex Court in the case of **Bhajan Lal** (Supra) though states that no exhaustive list may be provided to cover the cases which may be fit for quashing but the seven illustrations which have been provided by the Hon'ble Apex Court in the case of **Bhajan Lal** (supra) are very categorical and clear to this Court.

The prima-facie reading of the First Information Report without adding or subtracting anything out of it would take this Court to conclude that the case requires an investigation and this Court sitting in its writ jurisdiction need not interfere with the investigation.



This Court is not commenting on the defence of the petitioners as are being sought to be taken before this Court purposely because it may prejudice their case. All that this Court would say at this stage is that it is not a fit case for quashing of the First Information Report.

Needless to say that the investigating agency must conclude the investigation within a reasonable time and in any case within a period of three months and submit its report to the court of competent jurisdiction. The petitioners if aggrieved may seek their remedy in appropriate proceeding at subsequent stage in accordance with law.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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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'.

