

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1799 of 2019

Arising Out of PS. Case No.-382 Year-2019 Thana- GHOSI District- Jehanabad

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1. Nakul Prasad Son of Late Rajendra Prasad, Resident of Village - Arhit, P.O. - Daulatpur, P.S.- Modanganj, Distt - Jehanabad at present Mukhiya of Naima Garm Panchayat, Block- Modanganj, Distt - Jehanabad.
 2. Vijay Kumar Son of Late Kamleshwar Prasad, Resident of Village - Dharaut, P.S.- Makhdumpur, Distt - Jehanabad at present posted as a Panchayat Secretary Naima Gram Panchayat, Block Modanganj, Distt - Jehanabad.

... .. Petitioners

Versus

1. The State Of Bihar Through The Principal Secretary, Panchayati Raj Dept., Govt. Of Bihar, Patna
2. The director, Panchayati Raj Department, Govt. of Bihar, Patna.
3. The District Magistrate, Jehanabad.
4. The Superintendent of Police, Jehanabad.
5. The Deputy Superintendent of Police, Jehanabad
6. The Deputy Development Commissioner (DDC), Jehanabad.
7. The District Panchayat Raj Officer, Jehanabad.
8. The Sub - Divisional Officer, Jehanabad.
9. The Block Development Officer, Modanganj Block, District - Jehanabad. Bihar
10. The Investigating Officer of Ghoshi, P.S. Case No. 382 of 2019, District - Jehanabad.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Anil Kumar Singh, Advocate
For the Respondent/s : Mr.Ashok Kumar Gupta, A.C. to G.P.-10

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 04-02-2020 Heard learned counsel for the petitioners and learned
counsel for the State.

Petitioners in the present case are seeking quashing of
the First Information Report being Ghoshi (Okari O.P.) P.S.
Case No. 382 of 2019 registered for the offences under Sections



420, 409/34 of the Indian Penal Code.

Learned counsel for the petitioners submits that petitioner no. 1 is the Mukhiya and petitioner no. 2 is the Panchayat Sachiv of Naima Panchayat in Modanganj Block, District-Jehanabad. A First Information Report has been lodged against them by the present Block Development Officer, Modanganj on 28.10.2019 alleging that the petitioners have indulged in transfer of funds amounting to Rs. 44,02,500/- which was provided for carrying on the Seven Nischay Yojana in different wards. There are also allegations of committing irregularities in execution of the scheme in various wards.

Learned counsel submits that in this regard vide Annexure '9' to the present application a notice to show cause was issued to the petitioners and in fact the petitioners had submitted their reply but it would appear from the records that Annexure '9' was issued on 27.10.2019 and even without waiting for the reply of the petitioners, the present FIR has been lodged on the very next day i.e. on 28.10.2019.

Learned counsel for the State submits that a reading of the FIR would disclose commission of a cognizable offence and if that information was brought to the notice of the concerned police station, in view of the judgment of the Hon'ble



Supreme Court in the case of **Lalita Kumari Vs. Govt. of U.P. & Ors.** reported in **AIR 2014 SC 187** the Police had no option but to register FIR by making entry in the FIR book/register of the concerned police station. It is submitted that mere lodging of the FIR where a cognizable offence has been pointed out cannot be said to be illegal and at the time of lodging of the FIR the police officer is not required to weigh the evidences and the credibility of the evidences.

Learned counsel submits that from a perusal of Annexure '9' it would appear that in between 02.06.2017 to 20.06.2017 the petitioners had withdrawn a sum of Rs. 44,02,500/- which was contrary to the directions issued in the letter no. 4630 dated 23.09.2016 and letter no. 6846 dated 25.10.2016 issued by the Panchayati Raj Department, Government of Bihar. It is submitted that even if the said issue was pending consideration and final judgment came on 17.05.2017 in C.W.J.C. No. 19591 of 2016, the petitioners should not have acted in haste and there was no occasion for them to withdraw the entire amount and transfer the same to their own account. The amount was brought back in the account of the Panchayat only in between 31.03.2018 and 09.05.2019 therefore the huge government money was kept in the account



of the petitioners were used by them for their own gain. In these backgrounds it is submitted that when the matter is still under investigation, the FIR need not be interfered with.

Having heard learned counsel for the petitioners and the State and upon perusal of the records, this Court finds substance in the submission of the learned counsel for the State for purpose of rejection of the present writ application. There are allegations which discloses commission of a cognizable offence. It has been held by Hon'ble Supreme Court in the case of Lalita Kumari (supra) that on getting an information as to commission of a cognizable offence the police officer has to make an entry in this regard in the FIR book/register which is maintained in the police station. At this stage, it is not required to be seen whether the allegations are being made without there being any evidence or that the evidences which are said to be present are not credible evidence. That stage will come only in course of investigation when police will have an opportunity to investigate the alleged offence. It is for this reason that in judicial pronouncements it has been held that mere lodging of the FIR is not a violation of constitutional right of the accused as enshrined under Article 20 and 21 of the Constitution of India.



In the facts of the present case, in the nature of the allegations present in the FIR and Annexure '9' the submission of learned counsel for the petitioners that the informant should have waited for the receipt of the show cause seems no ground to interfere with the First Information Report. Even otherwise it appears that vide Annexure '9' as contained in Memo No. 1545 dated 18.10.2019 one week time was granted to the petitioners to submit their show cause and the FIR has been lodged after expiry of the said one week period. No ground for interference is made out.

This application has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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