

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.487 of 2021

Arising Out of PS. Case No.-243 Year-2018 Thana- GORIAKOTHI District- Siwan

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ASHOK SINGH @ ASHOK KUMAR SINGH, aged about 60 years, Male,
SON OF LATE GANESH PRASAD SINGH, AT PRESENT RESIDING AT
VILLAGE- SISAI, P.S.- GORIYA KOTHI, DISTRICT- SIWAN

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY,
HOME (POLICE), GOVT. OF BIHAR, PATNA
2. THE PRINCIPAL SECRETARY, HOME (POLICE), GOVERNMENT OF
BIHAR, PATNA BIHAR
3. THE DIRECTOR GENERAL OF POLICE, BIHAR, PATNA
4. THE I.G., SIWAN DIVISION, SIWAN
5. THE SUPERINTENDENT OF POLICE, SIWAN
6. THE DY.S.P. SIWAN
7. THE S.H.O., GORIYAKOTHI P.S., SIWAN
8. SRI UDAY KUMAR SINGH, SON OF NOT KNOWN THE THEN S.H.O.,
GORIYAKOTHI P.S., DISTRICT- SIWAN
9. SRI RAVI KANT DUBEY, SON OF NOT KNOWN, THE THEN S.H.O.,
GORIYAKOTHI, DISTRICT- SIWAN
10. SRI MANOJ KUMAR SON OF NOT KNOWN THE PRESENT S.H.O.,
GORIYAKOTHI P.S. , DISTRICT- SIWAN

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Kant Singh, Advocate
For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG 3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 27-07-2021

Heard learned counsel for the parties.

Petitioner has prayed for following relief(s):-

“(i) For issuance of a writ in the nature of ‘mandamus’ directing the concerned authorities to release the vehicle of the petitioner bearing registration No.BR29GA-1362, Engine No.31021L53J521844F5, Chassis No.KZVDU526783S3 make ITL SONALIKA D47RX tractor which has been illegally / forcibly kept in the Goriyakothi P.S. by the S.H.O. of Goriyakothi P.S. without any authority.

(ii) For further directing the concerned respondent to compensate for the loss incurred due to keeping the vehicle idle in open at the police station as also due to loss incurred financially by keeping the vehicle idle as also for harassment and financial burden due to litigation cost.

(iii) For any other relief/reliefs to which the petitioner may be found entitled in the facts of the case.”

Briefly stated the facts of the case is that a written complaint was lodged by Choukidar of Goriyakothi on 5.12.2018 that on 1.12.2018 at about 4.p.m. while, he was returning to his village, Sisai, he was informed by the local villagers that one Bikrama Singh of village Goriyakothi while

going on his cycle, was dashed by a tractor coming from the opposite side which was being driven in a rash and negligent manner, as a result of which, he died on the spot and he informed the police station and police personnel came and send the dead body for postmortem and subsequently, he came to know that the tractor which dashed against the cycle of deceased belongs to Ashok Kumar Singh (petitioner) and was being driven by Raghunath Yadav and on the basis of said written complaint dated 5.12.2018, an FIR was instituted as Goriyakothi P.S. Case No.243/18 under Sections 279/304A of I.P.C.

From the counter affidavit filed on behalf of respondents, it appears that neither any seizure list was prepared nor any entry was made in the case diary regarding seizure of the tractor and it was kept in the police station and only when the learned CJM issued show cause notice to the officer-in-charge of Police Station, a show cause was filed in the court of CJM in which, it was admitted that till date, no seizure list was produced/submitted in the court and on 4.10.2019, alleged seizure list dated 1.12.2018 was submitted in the court although the FIR itself is of 5.12.2018. It is strange that in the station diary, accident is reported on 01.12.2018 and police arrived at the accident place and send the body for the postmortem but no

FIR was instituted and same was instituted on 5.12.2018 and the witness of the alleged seizure list dated 1.12.2018 is the informant of FIR.

It is alleged by the petitioner that on 01.12.2018 SHO of Goriyakothi P.S. Uday Kumar Singh with other police personnel came and forcibly took away the tractor as well as Rs.10,000/- from possession of petitioner and also demanded ransom of Rs. 1,00,000/- (One Lac) against which petitioner filed complaint case No.55/2009 (trial No. P1572 of 2019) before the learned C.J.M., Siwan in which learned C.J.M., vide order dated 04.04.2019 took cognizance against the said S.H.O. Uday Kumar Singh and others under Sections 355, 506/34 of I.P.C.

Petitioner filed a petition in the court of CJM for release of his tractor and by order dated 16.10.2019, the learned CJM, Siwan directed to release the tractor on furnishing Rs.4,10,000/- and two sureties of like amount. Thereafter, the petitioner deposited the amount as well as the sureties which was accepted. It is stated that accordingly, the release order was issued vide letter no.2179 dated 17.10.2019 and, thereafter, the petitioner approached the S.H.O. of Goriyakothi P.S. for release of his vehicle but the S.H.O. refused to release it and also

misbehaved and abused the petitioner.

Petitioner thereafter filed several petitions before the learned court below that the S.H.O. is not releasing the vehicle in spite of order of release and, as such, vide order dated 23.10.2019, the S.H.O., Goriyakothi was directed to file his show cause. Thereafter, the S.H.O., Goriyakothi called the petitioner and forcibly took a receiving of the tractor on 26.10.2019 but did not allow him to take the tractor and misbehaved with him.

Petitioner thereafter again approached the learned court and filed a petition on 26.10.2019 before learned C.J.M., Siwan stating the entire facts. Subsequently, again on 16.11.2019, the petitioner filed a petition before the learned C.J.M., Siwan stating all the facts but his tractor was not released and thereafter he approached this Court by filing present writ petition.

A counter affidavit has been filed on behalf of SP. Siwan in which he has found after making inquiry all the allegations levelled by petitioner to be true and has stated in his counter affidavit in paragraph no.3 and 9 which is as follow:-

“3. xxxxxx after getting the knowledge about this CR.W.J.C., called for a report from present officer-in-charge Goreakothi PS and thereafter directed Dy. Sp (HQ), Siwan to

enquire into the matter and identify officers responsible for delayed F.I.R, no compliance of court's release order and not ensuring motor vehicle inspection (M.V. I.) of the seized tractor. The present S.H.O. Mukesh Kumar and Dy. SP (HQ), Siwan submitted separate reports on the basis of which it was found that the above mentioned tractor was seized by Goreakothi Assistant Sub-Inspector of Police Raj Kumar Kashyap on 01.12.2018, at the instance of the then officer-in-charge Uday Kumar Singh and in his presence and the case in respect of the said vehicle vide Goreakothi PS case No.243/18 was registered u/s 279 / 304(A) on 05.12.2018 and the investigation of the case was firstly taken over by the then officer-in-charge, Uday Kumar Singh and on his transfer from Goreakothi, he made over charge of the investigation to Sub-Inspector of Police, Ramesh Kumar Singh, but no effort was made for further investigation nor M.V.I (Motor Vehicle Inspector) was requested to examine the said tractor nor seizure list was attached in the case diary, by the S.H.O. Uday Kumar Singh, though the seizure of the Sonalika tractor of the petitioner had been done on 01.12.2018 itself. x xx x x x ”

“ 9. x x x x It is true that a person named Vikarma Singh died in a road accident being hit by a tractor and the then officer-in-charge namely Uday Kumar Singh visited the place where dead body was lying near the house of the petitioner. At that time, no one appeared and came forward to make statement or to give his fardbayan. Hence, the relation of the deceased were informed and the dead body was sent for postmortem examination after preparing inquest report. This fact is mentioned in Goreakothi P.S diary No.18 & 20. And, when no body turned up to lodge F.I.R., Goreakothi P.S. Case No.243/18 dated 05-12-2018 u/s 279/304A IPC was registered by then S.H.O. Uday Kumar Singh on the basis of written report of local Choukidar. Further, it is submitted that, the then SHO has made procedural lapse by not lodging the F.I.R. on the date of first information of occurrence, for which action is being initiated against him.”

In their counter affidavit, they have taken a specious plea that order to release the tractor of the petitioner was passed by the court in trial No.1572 /2019 by its order dated 16.10.2019 and accordingly the tractor was released in said case but was not

released as no order of release was passed in Goriyakothi P.S Case No.243 of 18. This stand of the respondents cannot be accepted as from the records, it appears that officer-in-charge of police station filed his explanation on 4.10.2019 in trial no.1572/2019 in which, he admitted that no seizure list was submitted in the court and same was submitted on 4.10.2019 and thereafter order of release was passed on 16.10.2019.

From facts as gathered, from the pleadings of the parties, it is apparent that an accident took place on 1.12.2018 in which one person Vikrama Singh died and such information was received in the Goriyakothi police station and thereafter, police reached the place of accident and sent the dead body for postmortem but no FIR was registered on said date and tractor of the petitioner was taken away by the police and kept in police station and after four days, i.e., on 5.12.2018, on a written complaint of Choukidar, FIR was registered in which informant stated that he came to know from the villagers that tractor of petitioner is involved in the accident which was driven by Raghunath Yadav and on the basis of said written complaint, Goriyakothi P.S case no.243 / 18 dated 5.12.2018 under Section 279/304A of IPC was registered and officer-in-charge himself took the investigation of the case. It is an admitted fact that no

seizure list of tractor was prepared nor any entry in the case diary was made regarding seizure of the tractor but same was brought in the police station on 01.12.2018 and such entry has also been made in the police station diary.

It is quite intriguing that the Informant (Chowkidar) was present at the place of accident on 01.12.2018 and is witness of alleged seizure list on which date, even according to respondent, the Tractor of the petitioner was taken to police station but no FIR was instituted on 01.12.2018 and Informant (Chowkidar) in FIR has alleged that from the local villagers on 05.12.2018 he came to know for the first time that Tractor of the petitioner was involved in the accident and thereafter FIR was instituted against petitioner and others on 05.12.2018, as such, there was no occasion for the police to take away the Tractor of the petitioner in the Police Station on 01.12.2018.

However, when the court of learned CJM issued show cause to the officer-in-charge of the police station for the first time, in his explanation, it was stated that seizure memo was prepared on 1.12.2018, however, seizure memo was neither part of the case diary nor it was ever produced before the trial court and for the first time on 4.10.2019, same was produced by the IO and was directed to be kept in the record of the case and after

filing of this writ petition, it was stated on behalf of the respondent that on account of non-inspection of the tractor by the MVI, same could not be released, however, when this Court asked Sr. Police officers to file their counter affidavit and explain their conduct then tractor was inspected by M.V.I. and was released to the petitioner on 6.7.2021, as such, the tractor remained in police station from 1.12.2018 to 06.7.2021. Initially, without any seizure memo, and thereafter, on account of non-inspection of the tractor by the MVI.

This Court finds that the conduct and action of the police officials of the Goriyakothi police station is highly condemnable and same amounts to gross abuse of power and misuse of authority and they have failed to discharge their duty in accordance with law and have unnecessarily harassed and humiliated a citizen of this country and subjected him to undergo pain and mental agony for which, he needs to be compensated and accordingly, compensation amount is quantified as Rs. 5,00,000/-(Five Lacs) to be paid to the petitioner within three months with liberty to State to realize it from the erring police officials.

This Court expects that departmental proceeding initiated against the erring police officials comes to its logical

end.

This Court appreciates petitioner's faith in rule of law and judicial system and inspite of all odds, threatening and high handedness of police officials, he did not bow down.

With aforesaid observation and direction, this writ petition stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/-Veena

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.10.2021
Transmission Date	NA