

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.424 of 2018

Arising Out of PS. Case No.- Year-1111 Thana- District-

Surendra Kumar @ Sonu, son of Late Etwari Yadav, resident of Dautbat, P.S.-
Habibpur, District- Bhagalpur.

... .. Petitioner

Versus

1. The State Of Bihar, through The Secretary, Department Of Homes,
Government Of Bihar at Patna.
2. The Secretary, Department of Homes, Government of Bihar at Patna.
3. The Director General of Police, Bihar at Patna.
4. Inspector General of Police, Bhagalpur.
5. The Deputy Inspector General of Police, Bhagalpur.
6. The Senior Superintendent of Police, Bhagalpur.
7. The Deputy Superintendent of Police (City), Bhagalpur.
8. The Officer-in- Charge, Habibpur Police, Station, Bhagalpur.
9. The District Magistrate, Bhagalpur.
10. The Circle Officer, Jagdishpur.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Diwakar Upadhyaya, Advocate.
For the Respondent/s : Mr. Fazle Karim, AC to SC-1.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 13-09-2022 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner in the present case is seeking an appropriate writ, order, direction etc. to the respondents especially respondent nos. 2 and 3 to get all the 21 cases lodged against the petitioner be investigated through an independent investigating agency such as CID or CBI.

The petitioner claims that he is an educated, law-abiding and peace loving person and has formed a trust namely



Neelkanth Educational Development Society. The said society has established one school namely Swami Vivekanand Public School which is affiliated to CBSE, Delhi.

The petitioner claims that one Rajiv Kumar Singh (not impleaded as party respondent in this writ application) is an Advocate at Bhagalpur and his main job is of purchase and sale of land. He had eyes over the land of the petitioner and in association with one Sunil Shekhar, he hatched a conspiracy to grab the land of the petitioner and land of the society.

The petitioner refers the case lodged by said Rajiv Kumar Singh against the petitioner and then altogether 21 cases mentioned in paragraph '19' of the writ application which have been lodged against the petitioner under various provisions of the Indian Penal Code. The submission of the petitioner is that all these cases arise out of civil dispute and these cases have been lodged between 28.07.2014 and 19.08.2017 in which said Rajiv Kumar Singh is instrumental either directly or indirectly.

The petitioner has further complained that the District Bar Association, Bhagalpur has passed a resolution that no member of the association of the advocate will do pairvi or will assist the court in cases where the accused has committed any offence against an Advocate. Copy of the said resolution has



been enclosed as Annexure '3' to the writ application.

The petitioner has enclosed copies of the orders passed by learned Co-ordinate Bench of this Court in Cr. Misc. No. 19964 of 2016 together with Cr. Misc. No. 5354 of 2017 and Cr. Misc. No. 10241 of 2017 by which taking note of the conduct of Rajiv Kumar Singh who was O.P. No. 2 in those cases and the resolution of the Bar Association of the District Bar, Bhagalpur, learned Co-ordinate Bench directed to transfer the records of all the three cases to the District Judge, Patna (Annexure '4' series).

A counter affidavit has been filed in this case on behalf of respondent no. 6. It has been sworn by Dy.S.P. (HQ), Bhagalpur. It appears on perusal thereof that with the counter affidavit a photocopy of the FIR and chargesheet filed in some of the cases have been brought on record. From Annexure 'A' to the counter affidavit, it appears that in some of the cases chargesheets have been filed whereas in most of the cases, the investigation was still pending at the relevant time.

Learned counsel for the petitioner has not pointed out the present stage of the investigation in those cases in which the investigations were pending.

So far as the investigation of those cases are



concerned, there is no allegation in the petition that the Bhagalpur police is not likely to properly investigate those cases. Most of the allegations are against Rajiv Kumar Singh and his associates. The only grievance of the petitioner is that the local police is lodging the FIR even in the cases of civil dispute and the petitioner is being continuously harassed by Rajiv Kumar Singh and the land brokers with the help of some local police officers. The allegations of help of local police officers have not been substantiated by placing any credible materials.

In this case, therefore, in the opinion of this Court, no reasons have been shown to direct conduct of investigation by another investigating agency.

This Court has on 09.09.2022 passed a common order in Cr.WJC No. 153 of 2017 and other analogous cases. Certain directions have been issued to the investigating agency and the competent court of the learned Magistrate in the matter of conduct and monitoring of the investigation. In the opinion of this Court, the grievance of the petitioner may be taken care of in terms of the directions issued by this Court vide the said common order which are being reproduced hereunder:-

“(I) In the cases where the investigation of the case is still pending, the concerned writ petitioner/an



aggrieved person (hereinafter referred to as the 'writ petitioner' or 'an aggrieved person') may file an appropriate application before the Senior Superintendent of Police/Superintendent of Police of the concerned district drawing his attention towards the pending investigation. The aggrieved person shall submit his stand by way of an application with all supporting materials in the office of Senior Superintendent of Police/Superintendent of Police or send the same through registered post/speed post/email, as the case may be. A copy of the same shall also be sent to the investigating officer of the case.

(II) On receipt of such application from the aggrieved person, the Senior Superintendent of Police/ Superintendent of Police shall himself supervise the said case within a period of two weeks, wherever necessary he shall give a chance of hearing to the aggrieved person and all endeavours be made to consider the submissions as well as the materials produced before him.

(III) The Senior Superintendent of Police/ Superintendent of Police shall issue necessary instructions to any other supervising authority such as Dy.S.P. and also to the I.Os. of the case to complete the investigation from all angles within a reasonable period. What will be the reasonable period will depend upon the nature of the case and the kind of materials which are required to be dealt with. It is to be kept in mind that only because the Criminal Procedure Code does not provide for maximum limit within which an investigation is to be completed, it does not mean that the investigation is to be kept pending for decades. There are many judicial pronouncements of the Hon'ble Supreme Court in



which the prosecution has been quashed because the investigating agency failed to complete the investigation of the case despite lapse of several years. Undue delay in completion of investigation erodes public faith and confidence in the investigating agency.

(IV) Upon receipt of a request/application /representation from a person connected with the case and aggrieved by and dissatisfied with the investigation alleging improper investigation, complaints of threat to him or his family or the witnesses by his opponents, accused or his associates, it is the Sr. Superintendent of Police/Superintendent of Police of the concerned district and the Station House Officer of the concerned police station as well as the I.O. of the case who would be duty bound to enter or caused to be entered the information in the station diary of the police station and examine or caused to be examined the threat perception of the informant and/or his family members/witnesses and take appropriate steps at the earliest, in the cases where threat perceptions are found to be genuine, they would take immediate measures to protect the life of the person(s) under threat. Delay in examining the request/representation leading to any serious consequences shall in itself be a matter of enquiry and action against the erring police officials.

(V) As regards the grievance that accused persons are not being arrested in cases involving serious and heinous offences the Senior Superintendent of Police/Superintendent of Police/Investigating Officer shall take appropriate steps keeping in view the law and judgments of the Hon'ble Apex Court on the subject. In the matter of absconding accused the I.O. must take immediate



steps to arrest him and exhaust all other procedures in accordance with law with utmost expedition.

(VI) This Court has already reproduced the extracts from judgment of the Hon'ble Supreme Court in the case of **Sakiri Vasu** (supra). In the light of the said judgment, this Court directs that in all these cases the learned Magistrate(s) in whose court the case is pending, shall, without seeking any application from the informant monitor the investigation. They are fully competent to take a view as to whether a proper investigation is taking place or not. Learned Magistrates are expected to exercise their powers under Section 156(3) Cr.P.C. to ensure that investigation of the case pending before the learned Magistrate is duly investigated. If it is found that the Investigating Officer is not proceeding with the investigation expeditiously and is keeping the same pending without rhyme or reason and in the opinion of the learned Magistrate it is found to be a case of inaction on the part of the Investigating Officer, the learned Magistrate would be well within his powers to direct the Senior Superintendent of Police/Superintendent of Police to change the Investigating Officer, to supervise the case himself by the Senior Superintendent of Police/Superintendent of Police and to take appropriate measures in accordance with law. While exercising his power under Section 156(3) Cr.P.C., the learned Magistrate shall definitely monitor the investigation, though he cannot investigate the case himself and will not act as supervisory authority but it is certainly within his domain to ensure that the investigation is done properly and for this purpose without interfering with the power of the Investigating Officer or the Supervising Authority to conduct an investigation, the



learned Magistrate may issue appropriate directions which in his opinion is required for conduct of proper investigation. What would be the nature of such direction(s) in a given case cannot be put in a straight jacket formula and it is for the learned Magistrate to look into this aspect of the matter on case to case basis. An application filed by an aggrieved person with prior service of copy upon the learned Public Prosecutor/A.P.P. seeking directions for proper investigation must be heard expeditiously and the same be disposed of within a period of 30 days from the date on which such application is moved before the learned Magistrate on the first date. If the learned Magistrate fails to exercise his power under Section 156(3) Cr.P.C. either on his own or on filing of the application by the aggrieved person, an appropriate application may be brought before this Court for an order/direction and monitoring as the case may be.

(VII) If any of the directions issued by the learned Magistrate in accordance with the order of this Court as stated above to the Senior Superintendent of Police/Superintendent of Police/investigating officer, unless otherwise interfered with by a competent court of law, is not given effect to by the concerned authorities, it will be taken to be a case of contempt of this Court and the learned Magistrate may inform this Court as regards the willful disobedience or disregard shown to the order/orders, direction/directions issued by him in terms of this judgment. In such circumstance an aggrieved person may also file an application seeking initiation of contempt.

(VIII) All the stake-holders in the present writ applications shall act accordingly. A copy of this order be sent to the Director General of Police, Bihar



to enable him to issue necessary instructions at the earliest.”

This writ application is being disposed of with a direction to the official respondents to consider the grievance of the petitioner with respect to the investigation of the cases in the light of the directions mentioned hereinabove.

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'.

