

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2191 of 2017

Arising Out of PS. Case No.-540 Year-2017 Thana- NAGAR District- Vaishali

Mukesh Kumar Singh, Son of Sri Chandeshwar Singh, Resident of Andar Kila, Police Station - Hajipur (Town), District - Vaishali at Hajipur.

... .. Petitioner

Versus

1. The State Of Bihar through The Home Secretary, Government Of Bihar, Patna.
2. The Home Secretary, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. Inspector General of Police, Muzaffarpur Range, Muzaffarpur.
5. The Deputy Inspector General of Police, Muzaffarpur Circle, Muzaffarpur.
6. The District Magistrate, Vaishali at Hajipur.
7. The Superintendent of Police, District - Vaishali at Hajipur.
8. The Officer In Charge Town Police Station Hajipur, Vaishali at Hajipur.
9. Sri Sunil Kumar, Police Inspector cum Officer In Charge Hajipur Town Police Station - Vaishali at Hajipur.
10. The Investigating Officer Cum ASI, Vaishali at Hajipur.
11. Sri Gautam Singh, Assistant Sub Inspector, Vaishali at Hajipur.
12. Ratan Singh, Son of John Singh, Resident of Village - Naya Tola, Gulabganj, Police Station - Korha, District - Katihar.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Choudhary Shyam Nandan, Advocate.
For the Respondent/s : Mr.Sheo Shankar Prasad, SC-8.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 13-09-2022 Heard learned counsel for the petitioner and learned SC-8 for the State.

This writ application has been filed by the petitioner who is son of the informant of Hajipur Town P.S. Case No. 540 of 2017 lodged on 02.08.2017. It is his grievance that the informant's family and the public had apprehended respondent no. 12 on the



basis of his identification in CCTV footage of the Bank of Baroda, Hajipur and respondent no. 12 was handed over to respondent nos. 7, 8 and 10 but he was unlawfully released or was given opportunity to escape from the prison ward of the P.M.C.H. It is his further grievance that the police authorities did not take proper steps in the matter, rather made the informant and his family members accused by registering two FIRs being Hajipur Town P.S. Case No. 596 of 2017 and 597 of 2017 both dated 26.08.2017.

It is further grievance of the petitioner that no information as regards the escape of respondent no. 12 from the police custody was given to the Chief Judicial Magistrate, Hajipur. He has prayed for calling an explanation from respondent no. 7 who is the high ranking officer in Vaishali District and has knowledge of the entire episode.

The petitioner is said to be a practising advocate at Chapra Civil Court and is the eldest son of the informant-victim of Hajipur P.S. Case No. 540 of 2017. Hajipur P.S. Case No. 540 of 2017 was registered against unknown for the alleged occurrence in which the miscreants snatched away Rs. 2 lakh 50 thousand from the hand of the father of the petitioner who happened to be a retired person and was coming to home after



withdrawing a sum of Rs. 2 lakhs from the Bank of Baroda.

It is the case of the petitioner that the respondent no. 12 was admitted in prisons' ward P.M.C.H. vide registration no. EMER. 57781 dated 23.08.2017 at 03.28.27 pm and he had escaped from there on 24.08.2017 and was not located.

On questioning this, the officer incharge of Town Hajipur P.S. became offensive and lodged two FIRs. In this regard, he has filed several representations to the concerned authorities but those have not been considered. Annexure '7' series are the copies of the representations.

A counter affidavit has been filed in this case. The respondents have stated that on examination of the CCTV footage it has been found that the person who was handed over to police was brutally assaulted by informant and others alleging that he had snatched the money from the father of the informant. The said person was sent to P.M.C.H. for treatment in protection of two home guards from where he absconded after treatment. Having said so, the respondents have stated that the allegation of the informant of Hajipur Town P.S. Case No. 540 of 2017 has been found to be true. Because the said person was not identified in CCTV footage, no offence has been reported against him. The counter affidavit further states that for taking



the law into their hands, two different cases have been instituted against the informant and their family members.

Having gone through the entire materials on the record, this Court finds that the fact that the apprehended accused who was handed over to police had escaped from police custody is not in dispute. There is no answer to the allegation that the episode of escape was not reported to the Chief Judicial Magistrate, Vaishali. This seems to be a serious matter.

In the opinion of this Court, the investigation of the three cases must be conducted properly and in this regard the common order passed by this Court on 09.09.2022 in Cr.W.J.C. No. 153 of 2017 shall apply. For the ready reference, the directions part of the said order 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, thus disposed of in terms of the directions no. (i) to (vii) above mentioned.

(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'.

