

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.759 of 2021

Arising Out of PS. Case No.-233 Year-2018 Thana- DHANARUA District- Patna

Dr. Nawal Kishore Singh, Son of Late Devsharan Singh, Resident of Muhalla - Sarswati Lane Kailuchak, P.O. and P.S. Masaurhi, District - Patna, Lecturer- Political Science Deptt., Ramswaroop Prasad College, Bhergawan, Masaurhi, Patna.

... .. Petitioner

Versus

1. The State of Bihar through Home Secretary, Patna.
2. Principal Secretary, Education Deptt, Government of Bihar, Patna.
3. The Director, Education Deptt., Govt.of Bihar, Patna.
4. The Vice Chancellor, Patliputra University, Patna.
5. The Registrar, Patliputra University, Patna.
6. The Chairman, B.S.E.B., Patna.
7. The Secretary, B.S.E.B. Bihar
8. The D.G.P, Bihar, Patna.
9. The Senior Superintendent of Police, Patna.
10. Superintendent of Police, Rural Patna East .
11. The Dy.S.P. Masaurhi, Patna. Bihar
12. The S.H.O., Dhanrua, Masaurhi, Patna. Bihar
13. Dr. Lalti Singh, Principal Ramswaroop Prasad College, Bhergawan, Masaurhi, Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Indradeo Prasad, Advocate.
For the Respondent/s : Mr.Iqbal Asif Niazi, AC to GP-5.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 22-09-2022 Learned counsel for the petitioner shall remove all the defects as pointed out by the Stamp Reporter within four weeks from today.

Petitioner in the present case has challenged the order dated 22.03.2021 passed by the learned Judicial Magistrate-I,



Class, Mashauri, Patna in Dhanarua P.S. Case no. 223 of 2018 whereby and whereunder the learned court has dismissed the petition filed under Section 345 of the Cr.P.C.

Petitioner further prays for a direction to the respondent authorities to conduct a proper investigation of case and submit a police report without unnecessary delay.

On perusal of the writ application it appears that the petitioner has submitted a written complaint alleging various illegalities allegedly committed by the Principal of the College in question. On the basis of the complaint of the petitioner Dhanarua P.S. Case No. 233 of 2018 has been registered under Section 406 and 420 of the Indian Penal Code. According to the petitioner, the investigation of the case is still pending.

It is further alleged that in support of the said case the teaching and non-teaching employees union has also made written submissions to the Sub-Divisional Police Officer, Mashauri vide Annexure '4' to the writ application. On the delay in lodging of the F.I.R. , a representation dated 08.11.2019 has been submitted which is Annexure '5' to the writ application.

It is the further case of the petitioner that he has filed an application under Section 156(3) Cr.P.C in the court of the learned Superintendent of Police, Judicial Magistrate-I, Class,



Mashauri wherein further progress report has been called for.

It is submitted that the reader of S.D.G.M., Mashauri is in connivance with the accused persons and through him the informant started getting threats which has been reported to the S.D.G.M., Mashauri, Patna.

The petitioner filed a Public Interest Litigation being C.W.J.C No. 6824 of 2020 but the same was permitted to be withdrawn in the light of the ratio of the judgment of the Hon'ble Supreme Court in the case of **Sakiri Vasu Vs. State of U.P. and Others** reported in **AIR 2008 SC 907**. A copy of the order dated 23.12.2020 passed by the Hon'ble Division Bench of this Court in C.W.J.C. No. 6824 of 2020 has been enclosed as Annexure '8' to the writ application.

The petitioner further alleges that he filed an application under Section 345 of Cr.P.C. in the learned Court below praying therein to punish the Investigating Officer of the case under Section 175 and 228 of the Indian Penal Code and to pass any other order for purpose of implementation of the order dated 06.11.2019. A copy of the application under Section 345 of Cr. P.C. is Annexure '9' to the writ application. A reply to the same is Annexure '10'. Thereafter, the learned court below called for the show cause reply from the Sub Inspector of



Police, Dhanarua asking him to submit further progress report of the case but the I.O. submitted only the case diary. It is alleged that from the case diary itself it is evident that he had delayed the investigation.

The petitioner claims that the case is one of deliberate disobedience of the order dated 06.11.2019 for which the I.O. is liable to be punished under sections 172(1) and 173(2) of the Indian Penal Code. It is submitted that the learned Court below passed the order dated 22.03.2021 whereby the application of the petitioner filed under Section 345 Cr.P.C. has been dismissed.

By filing this application the petitioner complained that the I.O. was violating the order dated 06.11.2019 by which the learned court had directed him to submit further progress of the case in question. The petitioner claims that for this violation the I.O. be punished under Sections 175 and 228 of the Indian Penal Code.

At the outset, this Court finds that Section 345 Cr.P.C. deals with a case of contempt when a person commits an offence under Section 175, 178, 179, 180 and 220 of the Indian Penal Code is committed in the view or presence of any civil, criminal or revenue court, in such case this Court may cause the



offender to be detained in custody and may at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause as to why he should not be punished under this Section, sentence the offender to fine not exceeding to Rs 200/- and in default of payment of fine, a simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

The Section 175 and Section 228 of the Indian Penal code would be attracted in a case where a person being legally bound to produce or deliver up any document or electronic record to any public servant, as such intentionally omits so to produce or deliver up the same.

Section 228 of the Indian Penal Code gets attracted when anybody intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding.

On perusal of the petition under Section 345 Cr.P.C., this Court finds that the petitioner has alleged that despite order dated 06.11.2019 the I.O. had not submitted progress report. The prosecution had submitted a reply in which it was duly stated that the I.O. of the case has submitted a progress report of the



investigation of the case and the accused Dr. Lalti Sinha has been released on bail. The Court was informed that the supervision is going on and Report 2 has been received.

In the above view of the matter, this Court finds that the order passed by the learned Court below on 22.03.2021 cannot be found fault with and it requires no interference.

So far as the prayer for proper investigation is concerned, this Court has recently while disposing Cr.W.J.C. 153 of 2017 with other analogous matters on 09.09.2022 issued following directions:-

“(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.”

The case of the petitioner shall also be considered by the concerned respondent and the competent Court in accordance with the directions noted hereinabove.

This application disposed of accordingly.

Certified copy of this order shall be made available only after removal of the defects.

(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'.

