

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1002 of 2021

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

SUDHIR KUMAR Son of Late Radha Prasad Resident of South Gandhi Nagar, P.S.- Sadar, District- Hazaribagh, Jharkhand, presently residing at A3/7, Officers Flat Bailey Road, Patna, P.S.- Shastri Nagar, District- Patna.

... .. Petitioner

Versus

1. The State Of Bihar through Chief Secretary, Government Of Bihar, Patna
2. The Additional Chief Secretary, Department of Home Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Additional Director General of Police, Weaker Section (C.I.D.), Government of Bihar, Patna.
5. The Senior Superintendent of Police, District Patna, Bihar
6. The Superintenden of Police, Weaker Section (CID), Government of Bihar, Patna
7. The Officer in Charge, SC/ ST Police Station, Gardanibagh, District Patna, Bihar.
8. The Union of India through Cabinet Secretary Government of India, Restrapati Bhawan, New Delhi.
9. The Secretary, Ministry of Home Affairs, Govt. of India, North Block, Cabinet Secy., Rai Sena Hills New Delhi
10. The Secretary, Department of Personnel and Training (DOPT) Government of India, New Delhi.
11. The Director, Central Bureau of Investigation Plot No.5-B, CGO Complex, Lodhi Road, New Delhi.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Jitendra Singh, Sr. Advocate Mr. Saket Tiwary, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, Advocate General Mr. nadim Seraj, GP 5

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date : 28-09-2022

The petitioner in this case is seeking the following
reliefs:-



- “i) Issuance of appropriate writ, rule or direction commanding upon the Central Bureau of Investigation (C.B.I.) to register the First Information Report in connection with the alleged Acts of omission, commission and serious forgery by creating false Administrative Records at the behest of the accused persons named in the written report which has already been filed before the competent authority as far as back, 17.07.2021 under Section 154 of the Cr.P.C.;
- ii) Issuing appropriate writ, rule or direction ordering an enquiry in connection with the omission on the part of the Respondent No.3 to 7 to register the First Information Report; which act is in direct conflict of the ratio of the Hon’ble Apex Court laid down in the case of Lalita Kumari Vrs. The Government of Uttar Pradesh since reported in (2014) 2 SCC 1 and which was binding upon all the authorities in terms of the mandate of Article 141 of the Constitution of India; and
- iii) Alternatively directing any independent and impartial investigating agency to register the subject FIR and investigate the case under the supervision of this Hon’ble Court.
- iv) For any other relief(s) for which the petitioner is entitled to in the facts and circumstances of the case and interest of justice.”

2. The petitioner in the present writ application is a former member of the Indian Administrative Service (in short ‘IAS’). He happened to be the Chairman of the Bihar Staff Selection Commission, Patna on 04.02.2017. On this day, a first information report giving rise to Aghamkuan P.S. Case No. 44 of 2017 under Sections 419, 420, 467, 468, 471/34 of the Indian



Penal Code was registered by one Dhirendra Kumar Singh a Sub-Inspector of Police alleging therein that on receipt of a secret information at about 10:00 P.M. on 03.02.2017 that in the house of one late Pappu Singh on first floor two persons Pawan Kumar and Atul Ranjan Sinha are involved in getting selection of the candidates in different departments of the Government through the competitive examination conducted by Bihar Staff Selection Commission by fraudulent act and use of electronic gadgets in lieu of huge considerations amount, conducted a raid and arrested three persons who disclosed their names as (i) Pawan Kumar (ii) Bipin Kumar (iii) Nawneet Kumar. They disclosed the name of other persons who were involved in the alleged fraudulent act and revealed that they were looking a sum of Rs.6 lakhs was being taken from each of the candidates. The informant police officer seized some electronic gadgets, ATM cards, cash, mobile, several original certificates and documents.

3. For purpose of investigation, a Special Investigation Team (SIT) was constituted. In course of investigation, the name of the petitioner surfaced, he was interrogated and was taken into custody. He remained in judicial custody for over three years eight months approximately



whereafter he was granted bail by the order of the Hon'ble Supreme Court in SLP (Crl) No. 3441 of 2020 vide order dated 06.10.2020.

4. The petitioner has been chargesheeted in the said case and police papers have been supplied. It is the case of the petitioner at this stage that on receipt of the police papers, he noticed serious forgery, interpolation and anti-dating in the case diary. He alleges that sanction for prosecution has been obtained on forged documents. He has further alleged that the various acts of omission and commissions have been committed by certain influential persons in order to secure the conviction of the petitioner in a criminal case for the reason that he did not succumb as a senior IAS officer of the State to the illegal and nefarious activities.

5. The grievance of the petitioner is that he having gathered all the necessary documents and evidences showing prima-facie act of forgery etc. informed through various communications to the Chief Minister, the Chief Secretary, Government of Bihar, the Law Secretary, Department of Law and various other authorities but they did not pay heed to his complaints. His grievance remained unaddressed.

6. In the aforementioned facts and circumstances, the



petitioner submitted a written complaint dated 17.07.2021 addressed to the Officer Incharge SC/ST Police Station Gardanibagh alleging certain acts of omissions and commissions and claim to support the allegations with reference to those documents. He required the Officer Incharge to lodge a first information report under appropriate Penal provisions and take up the investigation of the case. He made a grievance that on asking for receipt of the complaint along with station diary entry number, the Officer Incharge concerned reluctantly put his signature and stamp of the police station but did not give the station diary entry number. He complaint that although the written complaint was received by the Officer Incharge at 12:10 hours on 17.07.2021, till date neither FIR has been instituted under Section 154 CrPC nor the substance of the accusation has been entered in the record kept in the police station. The writ application as it appears from the records was served on the State on 27.08.2021 and it was presented on 03.09.2021. The date of the filing of the writ application is 03.09.2021.

7. The petitioner prayed for the reliefs in terms of the paragraph '1' which has been taken note of by this Court at the top of this order.



8. During the pendency of the writ application, the Senior Superintendent of Police, Patna has filed a counter affidavit sworn on 27.04.2022. After adverting to the allegations, it is stated in the counter affidavit that the written complaint submitted by the petitioner was entered in the station diary vide entry no. 275 dated 17.07.2021 and receipt of the same was also given to the complainant. In paragraph '12' to '15' of the counter affidavit following statements have been made:-

“12. That according to the S.H.O concerned did not deem it proper to register a first F.I.R. in respect of the said complaint filed by the petitioner immediately and decide to make a preliminary enquiry in order to ascertain the facts. Accordingly the S.H.O looked into from the records of the Trial Court in respect of the aforesaid Agamkuan P.S. Case no. 44/2017 and upon perusal of the relevant records it transpired that the allegations leveled in the said complaint petition are really in the nature of defence of the petitioner in connection with the aforesaid Agamkuan Police Station P.S. case no. 44/2017 which is pending for trial in the competent court.”

“13. That it further transpired to the S.H.O. that the averment made in the said complaint are reliable to various documents which were filed along with charge-sheet in the said Agamkuan P.S. Case No. 44/2017 registered against the petitioner.”

“14. That over and above, the petitioner himself has



admitted that he came to know about the alleged allegation on receipt of the police papers. As mentioned hereinabove, the police papers were supplied to the petitioner on 06.06.2017. The petitioner was enlarged on bail pursuant to order dated 06.10.2020 passed by the Hon'ble Apex Court still after about a year, the said complaint was submitted before the S.C./S.T. Police Station and such gross delay was also one of the reasons for holding preliminary enquiry to ascertain necessary facts.”

“15. That having made the said limited preliminary investigation, the S.H.O. recorded the reasons for not registering the formal F.I.R. in terms of Section 157 Cr.P.C. in the said Station Diary Entry.”

9. The petitioner has also filed a supplementary affidavit with Annexures thereto. One of the Annexures to the supplementary affidavit is a copy of the written complaint dated 17.07.2021 (Annexure '4' to the supplementary affidavit). Perusal thereof would show that the petitioner has alleged that on the basis of forged and fabricated documents, created for securing his false implication and conviction for an offence punishable with imprisonment up to 7 years in connection with Agamkuan P.S. Case No. 44 of 2017 dated 04.02.2017, the several acts of illegal omissions and commissions have been committed by the accused persons named in the criminal complaint and that they have committed act of criminal conspiracy. The kind of omission and commission alleged are



briefly recorded as under:-

- (i) The seizure list of Agamkuan P.S. Case No. 44 of 2017 is forged and fabricated document.
- (ii) Case diary of Agamkuan P.S. Case No. 44 of 2017 has been forged, fabricated and interpolated and the same is not a true reflection of the record as to what actually transpired in course of investigation. He has alleged that some of the pages of the case diary have been anti-dated and forged and changes in the pages of the case diary have been committed.
- (iii) For securing his false implication and conviction in the criminal case of the accused persons have managed to change even the station diary of Agamkuan police station case. They received copy of the station diary from the issue section of Senior S.P., Patna on 18.02.2017 and have reiterated all these facts information and the station diary entry events which happened on 10.02.2017 onwards. It is alleged that Mr. Manu Maharaj, the then SSP,



Patna heading the SIT along with Rakesh Dubey, Rajesh Kumar both the Dy.S.P. at the relevant point of time and Mr. T.N. Tiwary, Reserve Officer, New Police Line cum I.O. deliberately omitted to record in the case diary the statements which was recorded by the petitioner under videography. Though, he states that the CD of such recording form part of the police paper. The I.O. has recorded the statement under Section 161 CrPC on 14.02.2017 at BMP Guest House, Patna. The entire statement was videographed and all such recording is formed the part of the police paper for the purpose of securing his false implication and conviction all the members of the SIT on the instruction of Manu Maharaj deliberately acted to record case diary what were not stated by him and mentioning certain facts found recorded which fact was never stated by him in course of recording.

(iv) it is alleged that his arrest and remand order and remand order were managed by Mr. Manu



Maharaj along with all the members of S.I.T.

10. The petitioner has also referred about institution of Sonepur P.S. Case No. 39 of 2017 and allegations have been made that deliberately the then Chief Secretary, Bihar, the then Principal Secretary, Home, the then Special Secretary, Home, the then D.G.P. Bihar and the then ADG, CID and ultimately the Chief Minister without verifying the chit and examinee who was said to have been arrested and reported to be under custody at the instruction of these persons a proxy person in the name of Ranjit Kumar Patel was said to have been arrested and was released on the same day on bond of personal recognizance on the instruction of these officials and file was initiated for cancellation of the examination in the name of leak of question paper.

11. Mr. Jitendra Singh, learned Senior Counsel assisted by Mr. Saket Tiwary, learned Advocate submitted that the allegations made in the written complaint dated 17.07.2021 apparently disclosed commission of cognizable offence, therefore, in the light of the judgment of the Hon'ble Supreme Court in the case of **Lalita Kumari Vrs. The Government of Uttar Pradesh** reported in (2014) 2 SCC 1, the Officer Incharge of the police station was duty bound to register the first



information report and take up the investigation of the case. Learned Senior Counsel has taken this Court through the judgment of the Hon'ble Constitution Bench in the case of **Lalita Kumari** (supra).

12. Mr. Singh, learned Senior Counsel has further relied upon the judgment of the Hon'ble Supreme Court in the case of **Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr.** reported in (2005) 4 SCC 370 to submit that in the said case the Hon'ble Supreme Court has categorically held that there is no statutory provision or a legal principle that the findings recorded in one proceeding may be treated as final or binding in others, as both the cases are to be decided on the basis of evidence adduced therein. Based on this proposition it is the contention of the learned Senior Counsel for the petitioner that even though the petitioner is facing trial in Agamkuan P.S. Case No. 44 of 2017 on the basis of materials collected by the investigating agency, the allegation which are being made by the petitioner against the conduct of the investigation and the manner in which the evidences have been prepared and fabricated may be investigated separately by registering a first information report.

13. In course of hearing, this Court repeatedly called



upon learned Senior counsel for the petitioner to take a stand as to whether in view of the allegations made by the petitioner as regards the investigation of Agamkuan P.S. Case No. 44 of 2017 he is looking for re-investigation of the case by an independent agency. The answer of learned Senior Counsel is in emphatic 'No'. He has taken a stand that the petitioner would not seek a re-investigation of the case by any independent agency rather he would pursue his complaint made against the investigating agency and the documents prepared right from one stage of lodging of F.I.R. till submission of chargesheet as stated above.

Submission of the State

14. Mr. Lalit Kishore, learned Advocate General has appeared for the State of Bihar. His submission is that in the present case the petitioner is only advancing his grudge against the Investigating Agency and the members of the SIT. There are serious allegations against the petitioner that he being the chairman of the Commission had leaked the question papers of the exam to his close kith and kin such as his sister's son and wife of his brother who were taking the exam with several other relations of the petitioner. Through them the question papers went in hand of other co-accused persons. According to him, a



bare perusal of the complaint petition would show that the entire allegations of the petitioner center around the materials collected by the investigating agency in course of investigation of Agamkuan P.S. Case No. 44 of 2017.

15. Learned Advocate General submits that in the said case the Police papers were supplied to the petitioner on 06.06.2017. The petitioner was enlarged on bail pursuant to the order dated 06.10.2020 passed by the Hon'ble Apex Court. Since 06.06.2017 he did not make any complaint but after about nine months of his release on bail, he has filed the written complaint dated 17.07.2021. On the one hand he is complaining about the investigation, he says that forgery has been committed in recording of FIR and the case diary but he does not want re-investigation of the case and at the same time he is pressing for lodging of the FIR against the officers who have conducted investigation and several others. It is submitted that the veracity of the materials collected in course of investigation of the case including that of the sanction order etc. are to be tested in course of trial of Agamkuan P.S. Case NO. 44 of 2017 and at this stage calling upon the officer incharge to register the FIR against the members of the investigating agency, the several other officers such as the then Chief Secretary, the Home Secretary and



several others is nothing but an attempt to unduly harass them and subvert the pace of trial pending against the petitioner.

16. Learned Advocate General has submitted that on receipt of the complaint case the S.H.O. of the concerned Police Station has entered the same in the Station Diary and upon finding that this case would be covered under the exceptions carved out by the Hon'ble Supreme Court in paragraph 120.6 of the judgment in the case of **Lalita Kumari (supra)** conducted a preliminary enquiry. In course of preliminary enquiry he has formed an opinion that the written complaint contains allegation which are nothing but by way of defence of the accused-petitioner in Agamkuan P.S. Case No. 44 of 2017. He has further recorded that presently hearing on framing of charge is going on. After going through the written complaint it appears that the petitioner is only placing his defence version which may plausibly be done in learned court only. In these circumstances, the S.H.O. has concluded that it would not be appropriate to register a first information report and in these circumstances, it may adversely affect the on going enquiry/trial in Agamkuan P.S. Case No. 44 of 2017.

17. Learned Advocate General submits that this Court may well appreciate that the facts situation of the present case



are such that the office incharge of the police station has in his conclusion stated that the allegations made in the complaint of this petitioner are in the nature of his defence which may only be submitted in the court, therefore, it is the submission of the learned Advocate General that the officer incharge has in the circumstances come to a conclusion that this is not kind of case in which FIR may be registered.

18. Relying upon the paragraph 120.5 of the judgment in the case of **Lalita Kumari (supra)**, learned Advocate General submits that in unambiguous words the Hon'ble Supreme Court has held that the scope of preliminary enquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether this information reveals any cognizable offence. In this case, it is submitted that the information contained in the complaint petition reveals only the defence of the petitioner as an accused in Agamkuan P.S. Case No. 44 of 2017 and by no stretch of imagination it may be taken as one of those cases which were envisaged by the Hon'ble Supreme Court capable of being registered as a first information report. It is submitted that any attempt to do so would amount to creating a clog over the veracity of the evidences collected in course of investigation of Agamkuan P.S. Case No. 44 of 2017



and shall not allow the trial of the said case to proceed in accordance with law.

19. Answering the submissions of Mr. Jitendra Singh, learned Senior Counsel as regards the independence of two separate proceedings, learned Advocate General submits that in the said case the Hon'ble Supreme Court was dealing with a contention that efforts should be made to avoid conflict of findings between civil and criminal courts. The Hon'ble Supreme Court observed that the standard of proof required in two proceedings are entirely different. Civil cases are tested on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubts. In that view of the matter the Hon'ble Supreme Court observed that there is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in other as both the cases have to be tested on the basis of the evidences adduced therein. It is submitted that in the present case, it is the very F.I.R., the seizure list and other evidences which are to be adduced in Agamkuan P.S. Case No. 44 of 2017 are being questioned by the petitioner and he is looking to register a first information report with regard to those very evidences which



are to be adduced, examined and tested in the trial of Agamkuan P.S. Case No. 44 of 2017. Thus, it is a peculiar case on its own facts and circumstances and the general propositions which are will settled and reiterated in the case of **Iqbal Singh Marwah (Supra)** would not be applicable in the present case.

20. The learned Advocate General submits that the only requirement which remains to be fulfilled in terms of the mandates of the Hon'ble Supreme Court in the case of **Lalita Kumari (Supra)** is that the Officer Incharge of the Police Station having come to a conclusion that no FIR may be registered in the present case, a copy of the entry of the closure of complaint must be supplied to the informant. It is thus, his submission that the Officer In charge of the Police Station shall supply the copy of the preliminary enquiry as entered in the Station Diary to the petitioner. This will be in compliance of the judgment of the Hon'ble Supreme Court in the case of **Lalita Kumari (supra)**

21. Further referring to paragraph 120.6 of the judgment in the case of **Lalita Kumari (supra)**, learned Advocate General submits that the category of cases in which preliminary inquiry may be made as provided in paragraph 120.6 of the judgment is not exhaustive in nature. Those are



only by way of illustrations and it is upon for the Officer Incharge of the Police Station to whom the complaint has been made to apply his mind as to the facts and circumstances of the each case and take a view as to whether it requires a preliminary inquiry to be conducted.

22. In the present case, therefore, the Officer Incharge of the Police Station has acted perfectly in accordance with the judgment of the Hon'ble Supreme Court in conducting the preliminary inquiry in the given facts and circumstances of the case. Hence, no interference is required with the same.

Consideration

23. Having heard learned Senior Counsel for the petitioner and learned Advocate General for the State, this Court finds that admittedly the petitioner is an accused in Agamkuan P.S. Case No. 44 of 2017. In the said case he has been chargesheeted and after about three and half years of judicial custody he has been enlarged on bail. Police papers have been supplied on 06.06.2017.

24. The case is at the stage of framing of charge. At this stage the allegation is that the petitioner has been made accused in the said case by committing anti-dating in the first information report and further that the seizure list, the case diary



and the sanction order in connection with Agamkuan P.S. Case No. 44 of 2017 have been forged, fabricated and interpolated in order to secure his conviction. At this stage, this Court need not go into discussing the manner of such forgery as has been alleged by the petitioner in his complaint petition. Suffice is to say that the entire allegations are in respect of the materials which form part of the prosecution case in Agamkuan P.S. Case No. 44 of 2017. The trial of the said case is still pending and in course of trial the petitioner will have an opportunity to confront the prosecution witnesses by putting all those questions which he may be advised, in order to reveal the truth. The petitioner will have opportunity to confront the prosecution witnesses and question the veracity and credibility of the witnesses as well as the materials collected by the investigating agency in connection with Agamkuan P.S. Case No. 44 of 2017.

25. This Court cannot lose sight of the stand taken by learned Senior Counsel on repeated occasion that the petitioner does not want re-investigation of the case by any independent agency. If it is so, this Court is afraid as to how on the one hand the petitioner wants to face trial on the basis of the same and one material regarding which he is alleging forgery and fabrication by the prosecution and at the same time how he may



seek initiation of an investigation against the members of the investigating agency, as also against the materials collected by them alleging that the materials produced by the prosecution are forged and fabricated.

26. To this Court, it appears that an attempt on the part of the petitioner to lodge an FIR is nothing but an attempt to create a clog over the veracity of the prosecution case, which if done would not only be unlawful and unwarranted but shall also adversely affect the trial of Agamkuan P.S. Case No. 44 of 2017.

27. On the other hand, when this Court considers from the petitioner's point of view, this Court finds that the petitioner would have adequate remedy available, if he succeeds on conclusion of trial of Agamkuan P.S. Case No. 44 of 2017 and thereafter establishes a case of malicious prosecution, if so advised. If the petitioner succeeds in persuading the learned trial court by casting a doubt over the veracity of the prosecution evidences, in course of trial, perhaps he may have his remedies available in law to vindicate his grievances.

28. This Court is cautiously not going into the merit of the allegations at this stage. To this Court, it appears that in the given facts and circumstances of the case, the approach of the Officer In charge of the Police Station in taking a decision to



conduct a preliminary inquiry is bonafide and no fault may be found with the same.

29. In view of the discussions made hereinabove, this Court finds no reason to conduct any scrutiny of the decision of the Officer In charge of the concerned Police Station in closing of the complaint. The learned Advocate General has assured this Court that a copy of the preliminary inquiry report as contained in the Station Diary would be made available to the petitioner within a period of seven days from today. Let it be done accordingly.

30. This Court sitting under Article 226 of the Constitution of India does not find it an appropriate case to exercise its discretion to grant the reliefs prayed in this writ application.

31. This writ application stands disposed of accordingly.

32. Let the case diary be returned to the learned court below and the Station Diaries be handed over to learned GP 5.

(Rajeev Ranjan Prasad, J)

avin/-

AFR/NAFR	
CAV DATE	26.09.2022
Uploading Date	28.09.2022
Transmission Date	28.09.2022

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'.

