

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1208 of 2021

Arising Out of PS. Case No.-119 Year-2020 Thana- MOHAMMADPUR District- Gopalganj

Shri Abhay Kant Mishra S/O Shri Narendra Mishra R/O-230/A, SSP
Complex, Jain Nagar, Rohini, Sector-22, P.S-Begumpur, New Delhi.

... .. Petitioner

Versus

1. The State of Bihar through Home Secretary, Home Deptt., Govt. of Bihar Patna.
2. The Director General of Police, Govt. of Bihar, Patna.
3. The District Magistrate, Gopalganj.
4. The Superintendent of Police, Gopalganj.
5. The Deputy Superintendent of Police, Gopalganj.
6. Mithlesh Kumar Pandey, SHO, Mohammadpur P.S, Gopalganj.
7. Janardan Ram (ASI) Investigating Officer of this Case FIR No.119/2020

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Abhishek Kumar, Advocate

For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 17-11-2022 After hearing learned counsel for the petitioner on

27.09.2022, this Court passed the following order:-

“Learned counsel for the petitioner submits that in this case after lodging of the First Information Report, police conducted the investigation and final closure report was drawn and submitted in the court. Learned counsel is, however not aware as to whether the said final form has been accepted by the learned court below. The submission of learned counsel for the petitioner is that the Assistant Registrar (Law) has vide his communication contained in Annexure-11 to the writ application dated 28.06.2021 called upon the Director General of Police, Bihar to get the matter investigated by CB-CID of the State which would also examine contention of the complainant regarding failure on part of police to register FIR despite offence being cognizable in nature and submit action taken report within six weeks. It is submitted that despite the said communication no action taken report has been sent to the National Human Rights Commission.

Mr. Saroj Kumar Sharma, learned AC to AAG-3 submits that once the police has submitted a closure report,



it is for the competent court to accept or not to accept the same and at this stage an opportunity of hearing is to be given to the informant. It is submitted that the National Human Rights Commission cannot issue a direction which virtually amounts to directing re-investigation of the case. Such powers are only vested with the Constitutional Courts. It is, thus, his submission that State may be granted time to file a counter affidavit.

List this matter on 02.11.2022.

In the meantime, the State shall file its counter affidavit.

The petitioner shall also file a supplementary affidavit stating clearly as to whether the final closure report has been accepted in the learned court below after giving him an opportunity of hearing.

List accordingly.”

Today, office notes says that the SR defects dated 22.10.2021 has not been removed as yet and further that supplementary affidavit has not been filed as per computer verification in view of the order dated 27.09.2022.

Mr. Abhishek Kumar, learned Proxy counsel for the petitioner prays for adjournment to give him some more time to remove the defects. No plausible reason has been shown to this Court as to why the order of this Court passed on 27.09.2022 has not been complied with.

Mr. Saroj Kumar Sharma, AC to AAG-3 for the State once again submits that in this case, the investigation is over and police has submitted its report in the learned court below. It is his submission that under the statutory scheme of the Code of Criminal Procedure, the petitioner has got his remedy before the competent court, therefore, there is no reason as to why this writ



application be kept pending.

This Court finds substance in the submission of learned AC to AAG-3. In this case, the petitioner and his brother are fighting over properties and complaint has been lodged by the petitioner who is an Advocate practicing at Delhi. The said complaint has already been investigated and a police report has been submitted on 30.11.2020. It appears from Annexure '11' that taking cognizance of the complaint filed by the petitioner, the National Human Rights Commission (hereinafter referred to as 'NHRC') called for a report from the District Magistrate and the Superintendent of Police, District-Gopalganj, Bihar within four weeks and Superintendent of Police, Gopalganj informed the NHRC that after registration of FIR, police has conducted investigation but in absence of any evidence in support of the allegation, final closure report was drawn and submitted in the court of law and thus, the investigation is closed. Thereafter, NHRC called its Registry to obtain comments of the complainant on the said report and went on to pass the following order:-

“In pursuance to that direction vide a communication dated 21.6.2021, complainant has submitted his comments along with supportive papers/evidences wherein he has raised objections against inquiry report of C.O. dated 8.2.2021 on ground of being false, fabricated and concocted wherein the material facts have been suppressed for giving illegal benefits to the accused persons. It is further alleged that the IO has not conducted any investigation in the matter as statement of the complainant and the witnesses were not recorded.



He is seeking impartial enquiry and registration of FIR against SHO PS-Mahmadpur, SI Mithlesh Kumar and ASI Janardan Ram under relevant provisions of IPC who failed to take action against accused persons and connived with them in submitting false, fabricated and concocted report to higher authorities including the Commission. It is further alleged that despite complaints were disclosing happening of cognizable offence yet FIR was not registered in contravention to the guidelines of Supreme Court in Lalita Kumari vs. State of UP and ors case wherein it was clearly ruled that the police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Hence, action must be taken against named erring officers who had failed to register the FIR in the instant case. The complainant is seeking intervention of the Commission for registration of FIR on complaints dated 20.12.2010, 10.1.2021, 12.1.2021 and 14.1.2021 for cancellations of registration of Land sold illegibly by fraud and criminal conspiracy and impersonation and for capture of land by force and trying to make illegal construction thereupon, arrest of accused person, investigation by independent agency and compensation for violation of rights of a senior citizen.

In view of the above, the Commission consider it expedient to direct the DGP, Bihar to get the matter investigated by CB-CID of the State which would also examine contention of the complainant regarding failure on part of police to register FIR despite offence being cognizable in nature and submit action taken report within six weeks.

Registry to transmit copy of complaint and comments of the complainant to aforesaid authority for submission of action taken report within specified time.”

In the nature of the reliefs prayed in this writ application, it has become necessary for this Court to examine the legality of Annexure ‘11’. To this Court, it appears that once the police had submitted its report under Section 173 CrPC, no comment thereon could have been invited from the complainant



and then after noticing the comments of the complainant the NHRC could not have issued directions to the DGP, Bihar to get the matter investigated by CB-CID of the State. Doing so would amount to drawing a parallel procedure contrary to the scheme of the Code of Criminal Procedure. The report was filed before the learned Magistrate and under the scheme of the CrPC, it was for the learned Magistrate to look into the report and take a view thereon. At this stage, the petitioner, if aggrieved with the police report could have appeared before the learned Magistrate after notice and he has his remedy available in accordance with law.

This Court is, therefore, of the considered opinion that Annexure '11' to the writ application cannot prevail over the statutory scheme of CrPC, hence the reliefs prayed in the writ application cannot be granted.

This writ application is dismissed.

Liberty is available to the petitioner to seek his remedy in the court of learned Magistrate where the police report has been filed, in accordance with law.

(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'.

