

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1271 of 2022

Arising Out of PS. Case No.-1122 Year-2021 Thana- PATNA COMPLAINT CASE District-
Patna

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Gayatri Kumari Daughter of Late Rajeshwar Singh Resident of village -
Kateya, P.S.- Jamhaor, District - Aurangabad.

... .. Petitioner

Versus

1. The State of Bihar, Through its Chief Secretary, Government of Bihar, Patna.
2. Gulab Yadav Son of Late Jebah Yadav Resident of Village - Gangaur, P.S.- Jhanjharpur, District - Madhubani at present Vindeshwari Apartment Flat no.- 401, Rukanpura, P.S.- Rupaspur, District - Patna.
3. Sanjeev Hans, Son of Laxman Das Hans, Secretary, Energy Department, Government of Bihar, Patna.
4. Lalit Son of Not Known to the petitioner Care of Gulab Yadav, Resident of Village- Gangaur, P.S.- Jhanjharpur, District - Madhubani at present Vindeshwari Apartment Flat no.- 401, Rukanpura, P.S.- Rupaspur, District - Patna.
5. Station House Officer, Rupaspur, District - Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Dinu Kumar, Advocate
For the Respondent/s : Mr. Shiv Kumar, AC to GA-3

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 12-12-2022 Heard Mr. Dinu Kumar, learned counsel for the

petitioner and Mr. Shiv Kumar, learned AC to GA-3 for the

State.

Petitioner in the present case is seeking the following

reliefs:-

“(a) For quashing the order dated 12/05/22 issued
by the Additional Chief Judicial Magistrate (I)
Danapur in complaint case no. 1122© /21 as
contained in Annexure-1, in accordance to which
the learned Additional Chief Judicial Magistrate (I)
Danapur has passed the order that it not proper to
send the complaint filed by the petitioners to the



police as per section 156(3) CrPC for registration of FIR on the reason that the police is conducting inquiry as per police report dated 31/01/22 and 11/5/22.

(b) Also for commanding the Director General of Police to conduct DNA test for Aryan who was born on 25/12/18 from the wedlock of petitioner and Sanjeev Hans currently designated as Secretary, Energy Department, Government of Bihar, Patna in the end of justice.

(c) Also for necessary relief/reliefs, order/orders, direction/directions for which the petitioner is entitled in the ye of law as well as on facts of the case.”

Learned counsel submits that by the impugned order, the learned Additional Chief Judicial Magistrate (I), Danapur has been pleased to keep the records of the complaint case in his file and called upon the complainant to come for her statements on 14.06.2022. Later on, the complaint case has been dismissed vide order dated 20.09.2022 on the ground of non-prosecution.

Learned counsel submits that on a bare perusal of the order dated 12.05.2022, it would appear that after taking note of the submissions made by learned counsel for the complainant and having noticed that the police was conducting the enquiry, the court observed that it would not be just and proper to send the records to the police station under Section 156(3) Cr.P.C.

Learned counsel submits that on perusal of the previous orders of the learned ACJM court, it would appear that in the order dated 18.11.2021, the court directed the office to



call for report from the concerned police station through Senior Superintendent of Police, Patna in the light of the complaint petition. The matter was adjourned thereafter for submission of report by the police. Learned counsel submits that in the nature of the present case, perhaps a preliminary enquiry was required to be done and that was the purpose behind calling for a report even without directing the police to register an FIR. Learned counsel submits that he is not calling upon this Court in its writ jurisdiction to direct registration of FIR as the learned counsel is aware of the judgments of the Hon'ble Supreme Court saying that any direction in the writ application to register FIR is required to be discouraged.

The only grievance of the petitioner is that when the preliminary enquiry report was still awaited, the learned Magistrate was not justified in proceeding with the complaint case and in all fairness he should have awaited for the report. It is his further submission that the complaint case itself has been dismissed which has been challenged by the petitioner by filing the interlocutory application being I.A. No. 1 of 2022.

As regards his prayer in paragraph 1(b), learned counsel submits that since in this case, no FIR has been registered and the case has still not been registered and no



investigation has taken place, at this stage, he would not press prayer no. 1(b).

Learned counsel for the State has opposed this application. Learned counsel submits that in this case, there is neither any order of the learned magistrate to lodge fir nor police has lodged any FIR. A preliminary enquiry has already been conducted in this case. It is pointed out from the order dated 01.06.2022 that one sealed envelope was received in the learned court from the Rupaspur Police Station. Learned counsel for the State is, however, not aware as to whether the preliminary enquiry report has been submitted by police.

Having heard learned counsel for the petitioner and learned counsel for the State, this Court finds that there is no dispute with the submission of the learned counsel for the petitioner that in this case, police was conducting a preliminary enquiry into the matter and a report was required to be sent to the learned ACJM Court at Danapur. The said report has been submitted or not is not within the knowledge of learned counsel for the State.

Be that as it may, this Court is of the considered opinion that once the matter was pending at the stage of preliminary enquiry and the report had been called for from the



police, the learned ACJM should not have acted in haste in taking up the enquiry at his level by treating it as a complaint case.

Without going into the merit of the allegations, this Court would, therefore, set aside the part of the order dated 12.05.2022 by which the application of the petitioner was taken as a private complaint on the records of the learned ACJM and then this Court would further set aside the order dated 20.09.2022 by which the same has been dismissed in purported exercise of power under Section 203 Cr.P.C.

As a result of this, let the preliminary enquiry report be submitted in the court of learned ACJM, Danapur within a reasonable time whereupon the learned ACJM shall consider the same and pass an appropriate order in accordance with law.

This application as well as interlocutory application stand disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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