

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.16 of 2022

Arising Out of PS. Case No.-142 Year-2021 Thana- BARARI District- Katihar

Md Anisur Rahman S/o Late Naimudin Resident of Village - Titwari, P.O.-
Jagdishpur, P.S. - Barari, District - Katihar, Bihar- 854115.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Home Secretary, Deptt. of Home, Old Secretariat, Patna. Bihar
3. The Director General of Police, Deptt. of Police, Old Secretariat, Patna. Bihar
4. The Inspector General of Police Purnia Commissioner, Purnea. Bihar
5. Superintendent of Police, District - Katihar. Bihar
6. The Deputy Superintendent of Police, Subdivision Katihar. Bihar
7. The Police Inspector, Katihar Sadar, Katihar. Bihar
8. The Police Sub Inspector, P.S. - Barari, District - Katihar. Bihar
9. Md. Harun Rashid S/o Late Abdul Rahman Resident of Village - Titwari, P.S. - Barari, District - Katihar.
10. Taimur Alam S/o Late Abdul Rahman Resident of Village - Titwari, P.S. - Barari, District - Katihar.
11. Sarfaraz S/o Late Abdul Rahman Resident of Village - Titwari, P.S. - Barari, District - Katihar.
12. Abdul Razzaque S/o Late Abdul Rahman Resident of Village - Titwari, P.S. - Barari, District - Katihar.
13. Jamal S/o Late Abdul Rahman Resident of Village - Titwari, P.S. - Barari, District - Katihar.
14. Nazrul Haque S/o Late Abdul Rahman Resident of Village - Titwari, P.S. - Barari, District - Katihar.
15. Jawed Ali S/o Late Abdul Rahman Resident of Village - Titwari, P.S. - Barari, District - Katihar.
16. Hussain Ali S/o Harun Rashid Resident of Village - Titwari, P.S. - Barari, District - Katihar.
17. Saddam S/o Sarfaraz Resident of Village - Titwari, P.S. - Barari, District - Katihar.
18. Abdul Barique S/o Abdul Razaque Resident of Village - Titwari, P.S. - Barari, District - Katihar.
19. Lalu S/o Abdul Razaque Resident of Village - Titwari, P.S. - Barari, District - Katihar.

... .. Respondent/s

Appearance :



For the Petitioner/s : Mr.Kumod Kumar Shrivastaw, Advocate
For the State : Ms.Babita Kumari, AC to SC-1

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 29-09-2022 Learned counsel for the petitioner shall remove all the defects as pointed out by the Stamp Reporter within three weeks from today.

Heard learned counsel for the petitioner and the State.

The petitioner, in the present case, is seeking the following reliefs:-

“(a) For a direction to the respondent no.4 to change the Investigating Officer of the case bearing Barari P.S. Case No.142/21 and to appoint any police officer of this police station or of neighbouring police station to investigate this case properly and filing charge sheet.

(b) For a direction to the concerned police station/S.H.O. to give proper protection to the petitioner who is being threatened by the private respondents for killing if he would not give them ransom/Rangdari for cultivating the land which is the land of the petitioner.

(c) For issuance of any other writ/writs, direction/direction, order/orders in the ends of justice.”

In this case, a counter affidavit has been filed. There is an admitted fact that the petitioner has filed representation before the S.P., Katihar and Dy.S.P, Katihar seeking proper investigation of the case. The counter affidavit is, however, silent as to how the said representation has been considered by



the supervising authority.

To this Court, therefore, it appears that the counter affidavit does not contain any substance.

The petitioner has made allegations against the I.O. saying that he has changed the section in the FIR and in collusion with the accused he changed Section 307 into Section 327 by making overwriting as a result whereof all the accused persons got bail from the learned court below. This has created a doubt in the mind of the petitioner as to the free and fair investigation by the said I.O.

In the given facts and circumstances of the case, this Court is of the considered opinion that once the petitioner had submitted his representation to the S.P., Katihar and Dy.S.P., Katihar, they were obliged to consider the same and take an appropriate view thereon. It is a case of inaction on the part of these two authorities in sitting over the representation of the petitioner and not looking into the same.

This Court, therefore, directs the S.P., Katihar as well as Dy.S.P., Katihar, respondent nos.5 and 6 respectively to immediately act upon the representation of the petitioner, consider the same and in case change of I.O. is required the same be done immediately to ensure that free and fair



investigation is carried out in this case.

This Court has, while disposing of the batch of writ applications the lead case being Cr.WJC No. 153 of 2017 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.”

This Court directs that the authorities such as



respondent nos.5 and 6 and the competent court shall consider the grievance of the petitioner in the light of the aforesaid directions in similar manner.

In the counter affidavit it is stated that the charge-sheet is likely to be filed, in case the charge-sheet has been filed, it will be open for the petitioner to seek his remedy for further investigation, if so advised, in accordance with law.

This application stands 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'.

