

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.206 of 2020**

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

Prabhat Narayan Sharma, Advocate R/O Pratap Narayan Sharma, Resident of  
Dujra Pahalwan Ghat, P.S.- Budha Colony, District- Patna

... .. Petitioner

Versus

1. The State of Bihar
2. The Home Commissioner, Govt. of Bihar, Patna
3. The Director General of Police, Bihar, Patna
4. The Deputy Inspector General of Police, Patna Range, Patna
5. The Senior Superintendent of Police, Patna
6. The Assistant Superintendent of Police, Patna
7. The Deputy Superintendent of Police, (Law and Order) Kotwali, Patna
8. The S.H.O. Police Station Budha Colony, District- Patna
9. Arun Kumar S/O Late Krishna Roy R/O Village- Bakarchak, P.S.-  
Gaurichak, District-Patna

... .. Respondents

**Appearance :**

For the Petitioner/s : Mr. Diwakar Yadav, Advocate

For the Respondent/s : Mr. Iqbal Asif Niazi, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL ORDER**

8      05-10-2023                      Heard learned counsel for the petitioner and learned  
counsel for the State.

2. Learned counsel for the petitioner submits that  
earlier notice was issued to respondent no. 9 but respondent no.  
9 has died during pendency of the present application. He  
submitted that in the nature of the grievance raised by the writ  
petitioner, there would not be any substitution of the legal heirs  
of respondent no. 9, hence, the matter may be heard on its own  
merit.



3. By filing this writ application, the petitioner has prayed for the following reliefs:-

“I. For issuance of an appropriate writ/order/direction to the Respondents for taken legal action on application dated 28.01.2020 submitted by the petitioner and lodged an F.I.R. against all the accused persons.

II. For issuance of an appropriate writ/order/direction to the respondents to take legal action against A.S.P. Kotwali Patna and to the S.H.O. Budha Colony, Patna who sitting over on the representation of 26.01.2010 of the petitioner with the collusion of accused persons.

III. For issuance of an appropriate writ/order/direction to the respondents for granting any other relief of reliefs for which the petitioner is entitled under the law.”

4. As it appears from the reliefs prayed in the writ application that the petitioner is aggrieved by and dissatisfied with the inaction on the part of the S.H.O. of the Buddha Colony Police Station, Patna in non-lodging of the first information report on the basis of the information furnished to the S.H.O. in writing by the youngest brother, namely, Prabhash Chandra Sharma of the petitioner.

5. The petitioner claims to have brought these things to the notice of the senior police officers vide Annexure ‘3 series’ to the writ application, however, no action was allegedly



taken by the senior police officers. The petitioner claims that they are in collusion with the accused persons and it is because of the collusion on the part of the S.H.O., Buddha Colony Police Station, Patna that the accused persons committed a trespass in the house of the petitioner and broke the boundary of the premises of the petitioner.

6. In this case, a counter affidavit has been filed on behalf of respondent no. 5 which has been sworn by the Dy.S.P. (HQ)-1, Patna. The counter affidavit reveals that there was a land dispute between the petitioner and Arun Kumar (deceased respondent no. 9) over construction of a boundary wall at the land situated at Dujra Pahalwan Ghat at Khata No. 83, Khesra No. 111 area 07.05 decimal. It has been stated that Arun Kumar broke his own boundary wall then dispute took place between both the parties. Police have initiated proceeding under Section 107 Cr.P.C. vide Buddha Colony Non-FIR No. 05(A)20 dated 27.01.2020. On the basis of an application of the second party Arun Kumar, an action was taken towards initiation of a proceeding under Section 144 Cr.P.C. between both the parties and a recommendation was sent to the S.D.O., Sadar Patna vide Buddha Colony P.S. Non-FIR No. 01/2020 dated 27.01.2020.

7. The counter affidavit further states that during



inquiry, the allegation of the petitioner regarding breaking of his boundary wall has not been found to be true rather Arun Kumar had broken some part of his own boundary wall. The police has concluded that the matter seems to be of a land dispute, however, action has been taken to maintain law and order on this issue and strict vigil is kept at the place in question to avoid any untoward act.

**8.** Having regard to the materials available on the record, this Court is of the considered opinion that this writ application has outlived its utility. The police has already taken action by initiating proceedings under Sections 107 Cr.P.C. and 144 Cr.P.C.

**9.** Learned counsel for the petitioner is, however, not aware of the present stage of those proceedings. It is not known whether Section 144 Cr.P.C. proceeding has been converted into 145 Cr.P.C. or the order under Section 144 Cr.P.C. came to an end on expiry of the given period of 60 days.

**10.** Be that as it may, in the nature of the dispute as revealed in the police inquiry, the remedy of the petitioner lies before a court of competent jurisdiction and such dispute cannot be gone into in a criminal writ application. So far as the grievance of not lodging the FIR is concerned, it seems that the



petitioner did not file any application under Section 156(3) Cr.P.C. in the court of learned Chief Judicial Magistrate, Patna and directly moved this Court under Article 226 of the Constitution of India for a direction to lodge the FIR. In view of the judgment of the Hon'ble Constitution Bench of the Apex Court in the case of **Lalita Kumari versus Govt. of U.P.** reported in **(2004) 2 SCC 1**, the petitioner should have applied for his remedy in accordance with law for lodging of the FIR which has not been done.

**11.** This Court is, therefore, of the considered opinion that the writ application need not proceed further. It is being disposed of keeping open the remedies available to the petitioner and as may be advised to him.

**(Rajeev Ranjan Prasad, J)**

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