

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.850 of 2021

Arising Out of PS. Case No.-271 Year-2019 Thana- GANDHIMAIDAN District- Patna

Vandana Sinha Wife of Shri Shailendra Kumar Sinha, Resident of R.P.S. More, S.K. Puram, Lane No.2, (Near Arya Samaj Mandir), P.O.- Danapur Cantt., P.S.- Danapur, Distt.- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Deputy Superintendent of Police, Town, Patna.
5. The S H O Gandhi Maidan Police Station, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shankar Kumar, Adv.
For the Respondent/s : Mr. Manish Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 22-03-2023

Heard learned counsel for the petitioner and
learned counsel for the State.

The present Cr. Writ Petition has been filed
seeking direction to the respondents to complete the
investigation of Gandhi Maidan P.S. Case No. 271 of 2019
dated 20.06.2019 registered under Section 406 & 420 of I.P.C.
and also to arrest the accused persons of Gandhi Maidan P.S.
Case No. 271 of 2019.

Learned counsel for the petitioner submits that
Gandhi Maidan P.S. Case No. 271 of 2019 was filed under



Section 406 & 420 of Indian Penal Code but no report under Section 173 of the Cr.P.C. has been filed in this case.

Learned counsel for the State submits that investigation has completed but charge sheet has not been filed only due to the reason that accused is absconding from one place to another and his office is closed.

For the purpose of resolving the dispute which arisen in the present case one legal issue is necessary to be framed and answered, i.e.,

whether a charge-sheet can be filed only after arrested or person on bail or against other person(s) also who is/are not arrested and absconding?

With a view to answer this question the relevant provision of law as mentioned in Cr.P.C. are necessary to be ascertained. The relevant provisions are Section 170 and Section 173 (2) (e) of Cr.P.C.. Upon reading of these two provisions, Section 170 of Cr.P.C. talks about- Cases to be sent to Magistrate when evidence is sufficient. It is clear that upon sufficient evidence or reasonable grounds in an investigation, the police officer shall forward the accused under custody to a Magistrate in power to take cognizance



and to try accused or commit him for trial, whereas Section 173 of Cr.P.C. says that every investigation under Chapter-XII shall be completed without unnecessary delay (24 hours in general and within 90 days in case of offences with date imprisonment for life or imprisonment not less than 10 years and 60 days where the investigation relates to any other offences as per Section 167 of Cr.P.C.). In Section 173 (2)(e) of Cr.P.C. police report used to be filed in a prescribed format stating-

(a)

(b)

(c)

(d)

(e) *whether the accused has been arrested;*

(f)

(g)

(h)

It has also been mentioned that after completion of investigation the I.O. of police station shall forward to Magistrate empower to take cognizance of the offence on a police report and police report in the prescribed format of State Government in which details relating to whether accused has been arrested.

Upon bare reading, it transpires to this Court that



there is no bar in submitting the charge-sheet against an accused person without his arrest particularly when there are material to take cognizance against the said accused person.

In this regard, a reasoned judgment namely, **Siddharth vs. The State of Uttar Pradesh & Anr.** decided on 16th August, 2021 in Cr. Appeal No. 838 of 2021 (Arising out of SLP(Crl.) No. 5442 of 2021). The Division Bench of Hon'ble Supreme Court of India it has been held in paragraph 8 of this judgment:

“ We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 of the Cr.P.C. that it does not impose an obligation on the Officer-in-charge to arrest each and every accused at the time of filing of the chargesheet.”

This Court is of categorical view that there is no need of arresting of accused person for the purpose of filing of charge sheet. The high officials and the investigating agency are directed to take note that in case materials have come against the accused person in any criminal case, they are



bound to file charge sheet showing them as absconder. So far as the arrest of accused person is concerned, once charge sheet filed and the trial court after inquiry shall take cognizance against the accused persons including absconded accused, even then according to the Cr.P.C. the processes shall issue for securing his presence including issuance of BW/ NBW/ Section 82 & 83 of Cr.P.C. and lastly a permanent N.B.W. shall be issued against the absconded accused person.

In the light of above said discussions the present Cr. Writ Petition is allowed directing the respondent authorities to file charge sheet against all accused persons of Gandhi Maidan P.S. Case No. 271 of 2019 dated 20.06.2019 against whom material has come in the investigation, whether the said accused persons(s) has secured his appearance by taking bail or not.

The trial court is also directed to proceed further against all those persons who have not secured their appearance also following provisions of law for speedy trial.

It is directed to the Registry to circulate the judgment to Police Academy and Bihar Judicial Academy for appraisal of all the officials including S.H.Os. of Police Stations for whole Bihar.



With this direction, the present Cr. Writ Petition
stands allowed.

(Dr. Anshuman, J.)

Ritik/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	
Transmission Date	

