

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1506 of 2018

Sanjay Kumar Sudhanshu Son of Padmanand Mandal Resident of Village -
Shankarpur Shiv Mandir Road, P.S. - Forbesganj, District - Araria, presently
posted as Inspector of Police cum SHO, Naugachia P.S., District - Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Bihar Human Right Commission, 9 Bailey Road, Patna, through its Secretary.
3. The Secretary, Bihar Human Right Commission, 9, Bailey Road, Patna.
4. The Deputy Secretary, Bihar Human Right Commission, 9 Bailey Road, Patna.
5. The Director General of Police, Bihar, Patna.
6. The Superintendent of Police, Naugachia.
7. The Superintendent of Police, Railway, Katihar.
8. The Assistant Superintendent of Police, Railway.
9. The Deputy Superintendent of Police, Naugachia.
10. The SHO, Rail P.S., Naugachia.
11. Binod Kumar Bhagat son of Brigunath Bhagat Beyahut Chowk, Naugachia.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vatsal Verma, Advocate
For the Respondent/s : Mr. Md. Raishul Haque -Sc10

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

5 15-09-2023 Heard the parties.

2. The present writ petition has been preferred for
following reliefs:

*(i) a writ of certiorari, or any
other appropriate Writ order be issued for
quashing of the order dated 15.09.2017, in
Case No. 2214 of 2016 (Annexure - 14)
passed by the Respondent No. 2 by which the
petitioner has been indicted for causing
delay in institution of the FIR, relating to the
theft of vehicle of Respondent No.11 and*



accordingly the Petitioner has been directed to pay a monetary compensation of Rs.70,000/-;

(ii) for quashing of the memo No. 20 dated 15.01.2018 (Annexure - 16) issued by the Respondent No.6. by which pursuant to the order dated 15.09.2017 has directed for recovery of Rs.7,000/- from the monthly salary of the Petitioner to be credited in the bank account of the Respondent No.11;

(iii) a consequential Writ of mandamus commanding the Respondent Authorities particularly the Respondent No.6 to stop the recovery from his monthly salary and to act strictly in accordance within the law.

3. In this case, while allowing the respondents to file counter affidavit, on 25.01.2018 the co-ordinate Bench of this Court had stayed the realisation of amount so far as the petitioner is concerned.

4. On 03.01.2023, learned Counsel for the respondent no. 11 had sought adjournment for filing counter affidavit which was allowed.

5. As per the office report dated 11.09.2023, no counter affidavit has been filed.

6. Since even after lapse of eight months, respondent



no. 11 has not filed reply.

7. The facts of the case is/are that:

8. One Binod Kumar Bhagat (Respondent No.11) on 23.11.2015 submitted an application before the Dy.S.P. Naugachia in connection with the theft of his vehicle being Mahindra Bolero Maxi Truck bearing registration no.BR-10G / 8006, from the barren land of the Railways, at Mill Tola, Naugachia on 19.11.2015 (Annexure-1 to the petition).

9. The Dy.S.P. upon receipt of the application dated 23.11.2015 of the Respondent No.11, directed the petitioner to take action vide his Memo no.3085 dated 23.11.2015.

10. The Petitioner accordingly in terms of the direction, enquired into the matter and took the Respondent No.11, along with himself to the place of occurrence, where upon enquiry it was found that the vehicle was stolen from the barren land of the Railways.

11. Accordingly, the petitioner vide his Memo no.2466 dated 24.11.2015, requested the Officer-in-Charge of Rail P.S. Naugachia (Respondent No.10). to institute an F.I.R., as the vehicle was stolen from the premises of the Railways (Annexure-2 to the petition).

12. However, the Rail P.S. did not institute the F.I.R.



in pursuance of the Memo No.2466 dated 24.11.2015 of the petitioner. Thereafter the Respondent No.11 on 26.11.2015 submitted an application before the Superintendent of Police, Naugachia (Respondent No.6) with regard to the theft of his vehicle (Annexure-3 to the petition).

13. It is further submitted that S.P. Naugachia vide his memo no.3850 dated 25.11.2015, asked for a report from the petitioner.

14. The petitioner in terms of the Memo: No.3850 dated 25.11.2015, submitted his explanation to the SP. Naugachia vide his Memo No 2492 dated 26.11.2015, bringing to his notice that the matter was enquired in terms of the direction of the Dy. S.P. contained in Memo no.3085 dated 23.11.2015 and the matter was referred to the Rail P.S. but they refused to take any action, as such the Rail P.S. be directed accordingly.

15. The Superintendent of Police, Naugachia, vide his Memo no.3888 dated 28.11.2015, sent the Application of the Complainant dated 26.11.2015, to the Officer-in-charge Rail P.S.. Naugachia (Respondent No.10), for instituting an F.I.R. and to start investigation.

16. Thereafter the Rail P.S. SHO, Naugachia vide his



Memo No.314 dated 03.12.2015, sought direction from the Rail S.P. Katihar, in view of the direction of the S.P. Naugachia, contained in Memo no.3888 dated 28.11.2015. Accordingly the Rail S.P. Katihar, vide his Memo No.1243 dated 08.12.2015, directed the A.S.P. Rail Katihar (Respondent No.8), to enquire into the matter in view of the direction sought by the SHO Rail P.S. Naugachia, as the SHO Rail P.S. has not found the place of occurrence within his jurisdiction.

17. Further, the ASP Rail Katihar submitted his report to the S.P. Rail, Katihar, vide his Memo No.496 dated 15.12.2015, holding that the P.O. falls within the jurisdiction of Adarsh P.S. Naugachia. accordingly the Rail S.P. vide his Memo no 1299 dated 21.12.2015, requested the S.P. Naugachia to get the F.I.R instituted with Adarsh P.S. Naugachia.

18. In pursuance of the Memo No.1299 dated 21.12.2015, of the Rail S.P., the S.P. Naugachia vide his Memo No.29 dated 03.01.2016, directed the S.D.P.O. Naugachia (Respondent No.9) to enquire into the matter. Accordingly the S.D.P.O Naugachia, enquired into the matter and submitted a detailed report to the S.P. Naugachia vide his Memo No.86 dated 12.01.2016, holding the P.O. to be under the Rail Police;

19. Accordingly, in terms of the Report submitted by



the S.D.P.O. Naugachia, the S.P. Naugachia vide his memo No.159 dated 15.01.2016, requested the S.P. Rail Katihar to get the F.I.R. instituted by Rail P.S. in view of the detailed report of the S.D.P.O Naugachia. Accordingly the SHO Rail P.S., Naugachia, instituted Rail P.S. Case No.02 of 2016 dated 04.02.2016 under Section 379 of the I.P.C, against unknown.

20. The case of the petitioner thus is that there was no laches on his part but only with ulterior motive, the respondent no. 11 filed the complaint before the Bihar Human Rights Commission, Patna (henceforth, for short, 'the Commission') alleging that he had approached on 19.11.2015 itself to the Adarsh P.S., Naugachia for lodging of the FIR but the same was refused.

21. He further submits that prior to this institution of complaint before 'the Commission', he had approached the Dy.S.P., Naugachia as also the S.P. of Naugachia but never ever the said allegation was made and in support of his contention, he has drawn attention of this Court to letters dated 23.11.2015 and 26.11.2015 (Annexure 1 and 3) respectively.

22. He further submits that subsequently, 'the Commission' took up the matter and as would reflect from the ordersheet dated 15.09.2017 (Annexure-14 to the petition) that



after incorporating the facts and accepting the words of the respondent no. 11, an order was passed.

23. 'The Commission' in its order held the petitioner responsible for the delay in institution of the FIR and directed the police authorities to recover Rs. 70,000/- from Naugachia P.S. as also Rs. 1,30,000/- from the Rail P.S., Naugachia with the direction that the same be realized from those responsible (Annexure-14 to the petition).

24. He submits that accordingly, the Superintendent of Police, Naugachia put him on notice on 04.01.2018 asking why the imposition of cost of Rs. 70,000/- be not debited from his salary. (Annexure-15 to the petition).

25. It is the case of the petitioner that he was granted only 48 hours to furnish reply and only then he came to know about the order passed by 'the Commission'.

26. Further, in a haste, the Superintendent of Police, Naugachia passed the order dated 15.01.2018 by which an order was passed for deduction of Rs. 7,000/- per month for next ten months from his salary (totaling Rs. 70,000/-, Annexure-16 to the petition).

27. He again took this Court to the petition submitted by the petitioner before the Superintendent of Police, Naugachia



and Dy.S.P. Naugachia to show that the contents incorporated in it clearly shows that the respondent no. 11 never approached the police station.

28. It is his submission that pursuant to the petition before the Dy.S.P., the matter was enquired and as stated above, the SHO Rail P.S. Naugachia, was requested to institute the FIR as the vehicle has been stolen from a place which comes under his jurisdiction.

29. In that background, the submission is that the order passed by the respondents pursuant to the order of 'the Commission' fixing responsibility on him and realizing the amount is an abuse of the process of law.

30. Learned Counsel for the respondent no. 11 has appeared and his contention is that the he had rushed to the petitioner who chose to look the other way. However, upon query, whether this was complained to the Dy.S.P. Naugachia when he made his complaint on 23.11.2015 or the S.P., Naugachia when he approached him, his answer is in negative. Further, despite providing opportunity to file counter-affidavit as stated above, no reply was filed. However, his contention is that he suffered due to the loss of his vehicle and delay in the FIR made it sure that the vehicle is never recovered.



31. Learned Counsel for the State submits that in compliance of 'the Commission's order, the S.P., Naugachia passed order fixing responsibility on both the S.H.O. Adarsh P.S. as also the Rail P.S. and accordingly directed realization of Rs. 70,000/- from the petitioner and Rs. 1,30,000/- from the Rail P.S.

32. Having gone through the facts on record, the submissions put forward by the parties, the following facts emerges:

(i) the vehicle (Bolero) was stolen on 19.11.2015;

(ii) as per the record, the respondent no. 11 for the reason best known for first time, after lapse of four days approached the Dy.S.P. Naugachia on 23.11.2015 (Annexure-1 to the petition);

(iii) subsequently, he moved before the S.P. Naugachia, Bhagalpur on 26.11.2015 (Annexure-3 to the petition). Meanwhile, a request had already been made to the Rail P.S. to institute the FIR on 24.11.2015 itself;

(iv) the matter thereafter moved before 'the Commission';

(v) 'the Commission' in turn passed an order for realisation of Rs. 70,000/- and Rs. 1,30,000/- as narrated from



the erring officials;

(vi) accordingly, the S.P., Naugachia after putting the petitioner on notice passed order vide memo no. 20 dated 15.01.2018 (Annexure-16 to the petition) by which he fixed the responsibility on both the others P.S. as also Rail P.S. and accordingly, directed realization of Rs. 70,000/- from the petitioner and Rs. 1,30,000/- from the Rail P.S.

33. In view of the aforesaid facts, it is clear that the petitioner acted bonafidely in the matter. Admittedly, as per the records as also the complaint of the respondent no. 11 before the Dy.S.P. Naugachia and S.P. Naugachia, he did not utter a single word about having approached the petitioner and/or the said P.S. immediately after the theft of the vehicle.

34. It has been insistence of the Rail P.S. that it does not fall under his jurisdiction and only after the intervention of Senior Officials, he finally instituted the FIR on 04.02.2016.

35. Thus, the Rail P.S. lodged the FIR only on 04.02.2016 i.e. almost two and half months later.

36. It is thus clear that the petitioner has unnecessarily been dragged in the matter.

37. Considering the aforesaid facts, the order by 'the Commission' dated 15.09.2017 (Annexure-14) memo no. 20



dated 15.01.2018 (Annexure-16) so far as the same relates to the petitioner stands quashed.

38. Any amount that has been realized from the petitioner, he is liable to get it back. The petitioner will be filing a representation alongwith the order within four weeks from today.

39. If such representation is filed, the same has to be decided and amount, if realized, be returned to the petitioner within three months.

40. The writ petition stands disposed of.

(Rajiv Roy, J)

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