

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.983 of 2022

Arising Out of PS. Case No.-3165 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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Rajesh Kumar Jaiswal Son of Late Jai Narayan Jaiswal Resident of
Jagarnnathpuri, Barmasia, P.O. and P.S.- Katihar, Dist.- Katihar (Bihar)

... .. Petitioner/s

Versus

1. The State of Bihar, Through Additional Chief Secretary Home, Sardar Patel Bhawan, Bailey Road, Patna, Bihar
2. His Excellency The Governor of Bihar, Through Principal Secretary, Raj Bhawan, Patna.
3. Chief Secretary, Govt. of Bihar, Old Secretariat, Patna - 800015.
4. The Director General of Police Govt. of Bihar, Sardar Patel Bhawan, Bailey Road Patna.
5. The Senior Superintendent of Police, Patna District, Patna.
6. The Station House Officer, P.S.- Sachiwalaya Patna - 800015

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Jaiswal, (in person)
For the Respondent/s	:	Mr. Sr. Adv. P. K. Shahi, (A.G.)
		Mr. Prabhu Narain Sharma, (Ac to Ag)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 10-04-2023

Heard Mr. Rajesh Kumar Jaiswal, petitioner in
person and learned Senior Advocate, Mr. P. K. Shahi, A.G.,
Bihar alongwith Mr. Prabhu Narain Sharma, for the State.

The present criminal writ petition has been filed for
the following relief(s):

*“(a) For issuance of an appropriate writ(s),
order(s), direction(s) including a writ in the
nature of mandamus directing the Office of*

the Hon'ble Governor of Bihar through Principal Secretary who is the competent authority to grant sanction for prosecution for his failure to decide the application submitted by the petitioner seeking sanction to prosecute, filed in compliance to the order dated 16.03.2021 passed in Cr. W.J.C. No. 453 of 2019; while petitioner's interalia is dismissed.

(b) For issuance of an appropriate writ(s), order(s), direction(s), including a writ in the nature of mandamus directing a fair investigation pursuant to the registration of First Information Report as directed by the Court of Learned owing to the Chief Judicial Magistrate, Patna vide its order dated 31.10.2015, whereby the learned Magistrate owing to the facts, circumstances and nature of the offence alleged in the Complaint Case No. 3165 of 2015 transferred the said complaint for investigation to the concerned police station under Section 156(3) of Code of

Criminal Procedure.

(c) For issuance of an appropriate order(s), direction(s) to the Officer-Incharge/ Station House Officer of the Sachiwalaya Police Station, Patna for registration of First Information Report under Sections 166, 167, 420, 467, 468, 120(B) and 34 of the Indian Penal code in compliance of the order 31.10.2015 passed by the learned Chief Judicial Magistrate, Patna in Complaint Case No. 3165 of 2015.”

Counsel for the petitioner submits that an order has been made in favour of the petitioner for lodging an F.I.R. vide order dated 31.10.2015 by Chief Judicial Magistrate, Patna in Complaint Case No. 3165(C) of 2015, **Rajesh Kumar Jaiswal Vs. Nitish Kumar & Ors.** in which the following order has been passed.

“Heard and perused the complaint petition.

The facts, circumstances and the nature of the offence mentioned in the complaint petition, the copy of the complaint petition is ordered to be send to the Sachiwalaya P.S.

*under Section 156(3) of Cr.P.C through the
S.S.P., Patna.*

*The complainant is directed to file six
copies of the complaint petition within
fourteen days, failing which, it will be
assumed that the complainant is not
interested to proceed with the case and the
further proceeding of the case will be
stopped automatically.”*

Counsel for the petitioner submits that the order dated 31.10.2015 was not complied, thereafter the petitioner has preferred Cr. W.J.C. before this Court bearing Cr. W.J.C. No. 916 of 2017 which was rejected by this Court, vide order dated 25.01.2018, thereafter the said order was challenged before the Hon’ble Supreme Court in S.L.P. (Criminal) No. 1586 of 2018 which was dismissed on 05.03.2018.

Counsel has thereafter started filing different applications before the Chief Judicial Magistrate, Patna on 05.01.2018, 10.04.2018, 04.05.2018, 15.05.2018, 10.07.2018, 25.07.2018 & 08.08.2018. On all the petitions, the Court of Chief Judicial Magistrate, Patna have passed one order on 29.10.2018.

The petitioner, thereafter filed another writ petition before this Court bearing Cr. W.J.C. No. 454 of 2019 (***Rajesh Kumar Jaiswal Vs. The State of Bihar through Secretary Home, Main Secretariat Patna & Ors.***) with total six prayers which are as follows:

- “i. For issuance of an appropriate writ/order/direction, including a writ in the nature of certiorari quashing and setting aside the order dated 29.10.2018 passed by the learned Chief Judicial Magistrate, Patna in Complaint Case No. 3165(C)/2015 by which he has by a common order rejected the applications dated 5.1.2018, 10.4.2018, 4.5.2018, 15.5.2018, 10.7.2018, 25.7.2018 & 8.8.2018 filed by the petitioner; and/or*
- ii. For issuance of an appropriate writ/order/direction, including a writ in the nature of Patna High Court CR. WJC No.454 of 2019 dt.16-03-2021 2/31 certiorari quashing and setting the application dated 14.12.2017 filed by the SHO, Sachivalaya P.S. (Respondent No.4) in the court of*

learned Chief Judicial Magistrate, Patna by which he has erroneously returned the Complaint Case No. 3165(C)/2015 under Section 157-1(b) of the Code of Criminal Procedure; and/or

iii. For issuance of an appropriate writ/order/direction, including a writ in the nature of mandamus directing the learned Chief Judicial Magistrate, Patna to decide the applications dated 29.10.2018 & 29.11.2018 filed by the petitioner in accordance with law; and/or

iv. For issuance of an appropriate writ/order/direction, including a writ in the nature of mandamus directing a fair investigation pursuant to the registration of First Information Report as directed by the Court of learned Chief Judicial Magistrate, Patna vide its order dated 31.10.2015 whereby the learned Magistrate owing to the facts, circumstances and nature of the offence alleged in the complaint Case No.

3163(C)/2015 transferred the said complaint for investigation to the concerned police station under Section 156(3) of Code of Criminal Procedure; and/or

v. For issuance of an appropriate writ/order/direction to the Officer-in-Charge/Station House Officer of the Sachivalaya Police Station, Patna for registration of first information report under Sections 166, 167, 420, 467, 468, 120B/34 of the Indian Penal Code in compliance of the order dated 31.10.2015 passed by the learned Chief Judicial Magistrate, Patna in Complaint Case No. 3165(C)/2015; and/or

vi. For issuance of an appropriate order/direction to the Respondent Nos. 2 & 3 to punish the erring Patna High Court CR. WJC No.454 of 2019 dt.16-03-2021 3/31 officers for deliberate violation of a judicial order.”

including setting aside the order dated 29.10.2018, setting aside the application dated 14.12.2017 filed by the S.H.O.,

Sachiwalay Police Station by which he has returned the Complaint Case No. 3165(C) of 2015, directing the Chief Judicial Magistrate, Patna to decide different applications, directing for fair investigation and also directing the registration of the F.I.R. and further to punish the Officers who alleged to violate the judicial order. In the said Cr. W.J.C. No. 454 of 2019, this Court has discussed the entire matters in detail and categorically discussed in paragraph 27 of the said order dated 16.03.2021 passed in Cr. W.J.C. No. 454 of 2019 which is as follows:

“Now coming to the present case, this Court finds that earlier the learned C.J.M. has passed an order under Section 156(3) Cr.P.C. but as it appears from the records, at the relevant time he had not applied his judicial mind and simply referred the complaint petition for registration of the First Information Report. The circumstances under which the F.I.R. was not lodged and it was returned to the learned C.J.M. are well discussed earlier, those were also subject to challenge before this Court in the first round

of litigation in Cr. W.J.C. No. 916/2017. The judgment of this Court was under challenge before the Hon'ble Apex Court in SLP (Crl.) No. 1586/2018 which was dismissed. The fact remains that no F.I.R. has been lodged as no previous sanction was produced by the complainant. In such circumstance, if the complaint is pressed by the complainant – petitioner and the learned Magistrate decides to take up the private complaint, while doing so, he can definitely look into the statements made in the complaint petition and find out at the first instance as to the given nature of the allegations made against the public servants. The learned C.J.M. is well within his jurisdiction to see whether the case may proceed without a previous sanction. In the case of Matajog Dobey (supra) the Hon'ble Apex Court has held that there must be a reasonable connection between the act and discharge of the official duty; and the act must bear such

relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.”

Lastly, the Co-ordinate Bench of this Court has reached on a conclusion that the Cr. W.J.C. No. 454 of 2019 is devoid of merit and it is dismissed accordingly.

In the present criminal writ petition, the petitioner has challenged and seeking a direction to the Governor of Bihar through Principal Secretary, Raj Bhawan, Patna to grant sanction in compliance of order dated 16.03.2021 passed in Cr.W.J.C. No. 454 of 2019. He further seeks another relief directing a fair investigation after filing of F.I.R. under Section 156(3) of Cr.P.C and also to punish the erring officers for deliberate violation of a judicial order.

Learned A.G., Bihar himself appeared in this case and humbly requested this Court to look into the content of the compliant. The initial complaint filed by the petitioner was Complaint Case No. 2437 of 2015 filed before the Chief Judicial Magistrate, Katihar which was subsequently transferred to the Chief Judicial Magistrate, Patna and numbered as Complaint Case No. 3165(C) of 2015 in which following four

persons were made accused whose names are as follows:

(i). Sri Nitish Kumar, aged about 62 years, son of not known to the complaint, Minister-cum-Chief Minister, Dept. of Personnel, Govt. of Bihar, District- Patna.

(ii). Sri Aamir Subhani, aged about 53 years, son of not known to the complaint, the then Secretary, Dept. of Personnel, Govt. of Bihar, P.S.- Sachiwalay, District- Patna.

(iii.) Sri Govind Narain Akhouri, aged about 62 years, son of not known to the complaint, the then Secretary, Bihar Public Service Commission, Bailey Road, P.S.- Sachiwalay, District- Patna.

(iv). Sri Sharad Chandra Jha, aged about 62 years, son of Late Maheshwar Jha, Resident of Muhalla- Shivpuri, P.S.- Shastrinagar, District- Patna, the then Controller of Examination-cum-Deputy Secretary, Bihar Public Service Commission, Bailey Road, District- Patna.

Learned A.G., Bihar submits that the allegation in crux made in the Complaint Case was that the petitioner wants

to test and take cognizance on the statements made at the floor of legislative assembly by the State during the question and its reply which is made in paragraph 5 of the complaint which is as follows:

“5. That same issue with regard to denial of reservation to the backward castes was raised for the 47th Combined (P.T.) Examination even in the Legislative Assembly of the State by way of starred question against which a reply was given by the Hon’ble Chief Minister Sri Nitish Kumar as in-charge Minister of Dept. of Personnel, Govt. of Bihar on the advice and report of the accused no. 1, then Secretary, Dept. of Personnel, Govt. of Bihar, Patna by which they tried to mislead not only to the Hon’ble Legislative Assembly of the State and the Hon’ble Members but the general public of the State of Bihar by their assertions that there was no violations of the reservation policy of the State whereas the cut of marks

supplied by the Commission itself to the complainant is self explanatory and admittance of denial of reservation to the complainant as well as other similarly situated persons which entails the penal provisions of the Bihar Reservation of Vacancies in the Post and Services (For Scheduled Caste, Scheduled Tribe and Other Backward Classes) Act 1991 and Amended Act of 1994.”

Learned A.G., Bihar submits that the questions and answers that is to say, during the discussion which took at the floor of the Legislative Assembly cannot be the matter of cognizance for the Court. He submits that it has already been held in case of ***Keshav Singh Vs. Speaker, Legislative Assembly U. P. and Ors. reported in 1965, Allahabad 349.***

Counsel for the State (A.G., Bihar) further submits that by paragraph 27 of order dated 16.03.2021 passed in Cr.W.J.C. No. 454 of 2019, it is very much clear that being aggrieved and dissatisfied with the order of cognizance dated 31.10.2015 passed in Complaint Case No. 3165(C) of 2015 by Chief Judicial Magistrate, Katihar (initial Complaint Case No.

2436 of 2017 at Katihar after new no.) the petitioner had preferred criminal writ petition bearing Cr. W.J.C. No. 916 of 2017 which was dismissed and thereafter it was tested before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide its order dated 05.03.2018 passed in S.L.P. (Criminal) No. 1586 of 2018 has already dismissed the application of the petitioner and affirmed the order passed in Cr. W.J.C. No. 916 of 2017. Thereafter, the petitioner has preferred the Cr. W.J.C. No. 454 of 2019, which was again dismissed on 16.03.2021 and subsequently, the petitioner has filed the present criminal writ petition with almost the same main prayer *i.e.* to register F.I.R., initiate investigation and punish Judicial Officer, therefore, this present criminal writ petition should also be dismissed.

Upon perusal of the documents, affidavits and counter affidavit of the parties and hearing the arguments of the petitioner and learned A.G. for the State of Bihar, it transpires to this Court that petitioner has firstly filed a complaint petition bearing Complaint Case No. 2437 of 2015 at Katihar which was subsequently transferred to Patna and complain case was numbered afresh in Patna as Complaint Case No. 3165(C) of 2015 in which vide order dated 31.10.2015, Court has referred this matter before Sachiwalay Police Station under Section

156(3) of Cr.P.C. without entering into merit-demerit of case. Being aggrieved and dissatisfied with the non-compliance of order dated 31.10.2015 passed by Chief Judicial Magistrate, Patna in Complaint Case No. 3165(C) of 2015, the petitioner has preferred Cr. W.J.C. No. 916 of 2017 which was decided on 25.01.2018 and after full discussion, the said writ petition was dismissed. The petitioner being aggrieved and dissatisfied with the order dated 25.01.2018 passed in Cr. W.J.C. No. 916 of 2017 has preferred S.L.P. No. 1586 of 2018 which was finally decided on 05.03.2018 and the case of petitioner was dismissed there.

Thereafter, petitioner has started second round litigation and preferred Cr. W.J.C. No. 454 of 2019 which was again dismissed on 16.03.2021 being devoid of merit.

Thereafter, the petitioner has not preferred/ challenged this order before any higher Court and subsequently, filed the present writ petition. This is third time when petitioner filed present writ bearing Cr. W.J.C. No. 983 of 2022 with the same basic prayers made *i.e.* to register F.I.R. in compliance of order dated 31.10.2015 passed by Chief Judicial Magistrate, Patna in Complaint Case No. 3165(C) of 2015, to lodge the F.I.R. which has been tested up to the Supreme Court.

It is further important to describe here Article 194

of the Constitution of India which deals about power, privileges, etc. of the Houses of Legislatures and of the members and committees thereof states as follows.-

“(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be

defined by the Legislature by law, and, until so defined, [shall be those of that House and of its members and committees immediately before the coming into force of Section 26 of the Constitution (Forty-fourth Amendment) Act, 1978.]

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.”

It is crystal clear from Article 194(2) of the Constitution of India that no member of the Legislature of a State shall be liable to any proceedings in any Court in respect of anything said by him in the legislature.

In this view of the matter, direction for lodging F.I.R. under Section 156(3) of Cr.P.C. by the Chief Judicial Magistrate, Patna vide its order dated 31.10.2015 in Complaint Case No. 3165(C) of 2015 is itself void in law and therefore, the

said order which has been passed by Chief Judicial Magistrate, Patna in the teeth of Article 194(2) of the Constitution of India is hereby set aside.

This Court is of the view that petition is devoid of merit and filed repeatedly for gaining cheap popularity.

Therefore, the present criminal writ application is **dismissed** with a cost of Rs.25,000/- upon petitioner, payable to the BSLSA (Bihar State Legal Service Authority, Bihar at Patna).

sadique/-

(Dr. Anshuman, J.)

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	