

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1069 of 2021

Arising Out of PS. Case No.-422 Year-2021 Thana- MOTIHARI TOWN District- East
Champaran

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1. Shri Kishore Chandra Mishra Late Balbhadra Mishra Resident Of Village Karamwa, P.S. Sugauli, District- East Champaran
 2. Ashutosh Kr Mishra @ Suman Son Of Shashikant Mishra Resident Of Village Karamwa, P.S. Sugauli, District- East Champaran
 3. Mr. Sunil Mishra Son Of Late Ramchandra Mishra, Posted As Nazir Resident Of Village Karamwa, P.S. Sugauli, District- East Champaran
 4. Mr.Arun Mishra Son Of Late Ramchandra Mishra Resident Of Village Karamwa, P.S. Sugauli, District- East Champaran
 5. Mr. Sushil Chandra Mishra Son Of Late Nandan Mishra Resident Of Village Karamwa, P.S. Sugauli, District- East Champaran
 6. Shri Narayan Mishra Son Of Late Harish Chandra Mishra Resident Of Village Karamwa, P.S. Sugauli, District- East Champaran
 7. Mr. Rajnath Mishra @ Rajan Kumar Mishra Son Of Late Ramchandra Mishra R/O Village Karamwa, P.S. Sugauli, District-East Champaran
 8. Mr. Anil Kumar Mishra Son Of Late Shyam Chandra Mishra Resident Of Village Karamwa, P.S. Sugauli, District- East Champaran
 9. Shree Kishore Prasad Son Of Late Laxmikant Prasad R/O Moh-Belbanwa, P.S. Town, Dist-East Champaran
 10. Mr.Deepak Kumar Mishra @ Guddu Shrivastava Son Of Late Bansh Kishore Prasad Not Given
 11. Jitendra Kumar Son Of Late Bansh Kishore Prasad Not Given
 12. Mr. Kaushal Kishore Pd Son Of Late Naval Kishore Prasad R/O Moh-Belbanwa, P.S. Town, Dist-East Champaran
 13. Mr. Omprakash Srivastava Son Of Late Naval Kishore Prasad R/O Moh-Belbanwa, P.S. Town, Dist-East Champaran
 14. Mr. Shailendra Kumar Verma Son Of Late Jagat Narain Prasad Resident Of Mohalla Belwanwa, P.S. Town Thana, District- East Champaran, Motihari
 15. Mr. Chandan Upadhaya @ Chandan Kumar Journalist Son Of Sanjay Upadhaya R/O Belwanwa, P.S. Town Thana Motihari, District East Champaran, Motihari

... .. Petitioner/s

Versus

1. The State Of Bihar Through Chief Secretary, Govt. Of Bihar, Patna Bihar
2. The State Of Bihar Through The Principal Secretary, Home Department, Govt. Of Bihar, Patna Bihar
3. The State Of Bihar Through The Principal Secy., Dept. Of Revenue And Land Reform, Govt. Of Bihar, Patna
4. The State Of Bihar Through Director General Of Police, Govt. Of Bihar, Patna Bihar

5. The District Magistrate, East Champaran Bihar
6. Mr. Naveen Chandra Jha, Superintendent Of Police, Motihari Bihar
7. Inspector Vijay Prasad Rai, Station House Officer, Town Police Station, Motihari Bihar
8. Sub-Inspector Jitendra Kumar Singh, Investigating Officer, Town Police Station Motihari
9. Mr. Ashok Kumar Mishra Son Of Late Rudranath Mishra R/O Charkha Park Gali, Near Belbanwa Meddil School P.O.-Motihari, P.S-Town Thana,Motihari, Dist-East Champaran, Bihar
10. Mr. Kunjeshywar Kumar Mishra Son Of Late Murari Mishra R/O Charkha Park Gali, Near Belbanwa Meddil School P.O.-Motihari, P.S-Town Thana,Motihari, Dist-East Champaran, Bihar
11. Mr. Harinath Mishra Son Of Late Yugal Mishra R/O Banu Chapar Jha Tola, P.O-Banu Chapar, P.S-Town Thana, Motihari, Dist-East Champaran, Bihar
12. Mr. Rameshwar Kumar Mishra @ Ramu Son Of Late Hemnath Mishra R/O Charkha Park Gali, near Belbanwa Middle School, P.O-Motihari, P.S-town thana, Motihari, Dist-East Champaran, Bihar
13. Mr. Chandeshwar Mishra @ Chandu Mishra Son Of Late Hemnath Mishra R/O Charkha Park Gali, near Belbanwa Middle School, P.O-Motihari, P.S-town thana, Motihari, Dist-East Champaran, Bihar
14. Mr. Manoj Kumar Mishra Son Of Late Vijay Nath Mishra R/O Village-Sugauli, P.O.-Sugauli, P.S-Sugauli, Dist-East Champaran, Bihar
15. Mr. Surendra Kumar Mishra Son Of Late Prabhu Nath Mishra R/O Village-Madhopur Katamwa, P.O.-Madhopur Katamwa, P.S-Sugauli, Dist-East Champaran, Bihar
16. Mr. Saroj Kant Tripathi Son Of Shri Rama Shankar Tripathi R/O Sabalpur District- Saran, Chapra
17. Mr. Manoj Gautam Son Of Shri Sobha Kant Choudhary R/O Mohalla-Belbanwa, P.S. Town Thana Motihari District-East Champaran
18. Mr. Gyaneshwar Gautam Son Of Shri Sobha Kant Choudhary R/O Mohalla-Belbanwa, P.S. Town Thana Motihari District-East Champaran

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Amit Shrivastava, Sr. Advocate Mr. Abhinav Ashok, Advocate
For the State	:	Mr. Suman Kumar Jha, AC to AAG-3
For the Resp. Nos.9to15	:	Mr. Prabhakar Thakur, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

12 30-01-2024 On 22.01.2024, this Court once again adjourned this

 matter on the request of Mr. Shankar Kumar Thakur, learned

counsel who informed this Court that he will be filing a *vakalatnama* on behalf of the respondent nos.16 to 18 which was the second adjournment to enable learned counsel for the respondent nos.16 to 18 to file proper *vakalatnama* through their counsel and take appropriate steps. This Court had imposed a cost of Rs.5,000/- upon respondent nos.16 to 18.

2. Today, Mr. Prabhakar Thakur, learned AC to Mr. Baidyanath Thakur, learned counsel has appeared only to inform this Court that the respondent nos.16 to 18 have not made available their *vakalatnama*, though they have knowledge of the case and on earlier occasion at their instance he had prayed for an adjournment.

3. Mr. Amit Srivastava, learned senior counsel for the petitioners submits that the respondent nos.17 and 18 are the brothers. In such circumstance, Mr. Prabhakar Thakur, learned counsel has sought permission to withdraw himself from this case and he would not represent the respondent nos.16 to 18.

4. This Court has heard Mr. Amit Srivastava, learned senior counsel assisted by Mr. Abhinav Ashok, learned counsel for the petitioners and Mr. Suman Kumar Jha, learned AC to AAG-3 for the State. Mr. Prabhakar Thakur, learned AC to Mr. Baidyanath Thakur, learned counsel who has entered appearance

on behalf of the respondent nos. 9 to 15 is present.

5. Learned counsel for the parties have made their submissions. Although the case is listed under the heading 'For Orders (On Office Notes)', with the consent of the parties the matter has been heard on merit and is being disposed of accordingly.

6. Petitioners in the present writ application are seeking the following reliefs:-

“A. A writ in the nature of CERTIORARI or any other appropriate writ/s, order/s, direction/s:

(i) Quashing the F.I.R. in (a) P.S. Case No.422 of 2021 dated 25.06.2021 u/s 147, 148, 149, 341, 323, 307, 384, 386, 504, 506, 427, 327 of IPC and u/s 3(1)(a)(r)(s) of S.C./S.T. Act and (b) F.I.R. in P.S. Case No.211/2021 dated 22.03.2021 u/s 341, 323, 379, 504, 506/34 of IPC 1860 instituted by Mr. Ashok Kumar Mishra against the petitioners.

B. A writ in the nature of MANDAMUS or any other appropriate writ/s, order/s, direction/s directing the respondents for the following :

i. To direct and stay the arrest of Petitioners in F.I.R. in Town Police Station, Motihari P.S. Case No.422 of 2021 dated 25.06.2021.

ii. To hold and direct that the F.I.R. in Town Police Station, Motihari P.S. Case No.422 of 2021 dated 25.06.2021 is not maintainable in law and therefore is fit to be quashed by this Hon'ble Court.

iii. Directing the State to constitute a high-level committee, preferably headed by a retired High

Court Justice (as an added precaution) to conduct a proper, neutral, unbiased, fair and transparent investigation in connection with the nexus of Mr. Naveen Chandra Jha, I.P.S. (posted as the Superintendent of Police of Motihari) and Land Mafias. Also, transaction of various properties which took place during the tenure of Mr. Naveen Chandra Jha, Superintendent of Police, Motihari.

iv. Further directing the Respondent Authorities to take proper steps to ensure that petitioners are not harassed or threatened by the land mafia due to indifferent attitude of the police.

C. To any other relief/s which the petitioners are found entitled to.”

7. Learned senior counsel for the petitioners submits that the petitioners are in fact victims in the hand of land mafias who are demanding extortion and giving death threats to the petitioners for not fulfilling their demand of extortion. It is submitted that the petitioners are being sought to be dispossessed from the land which is in their possession by virtue of the judgment and decree of the competent court of law.

8. The grievance of the petitioners is that while the two cases lodged by the petitioners have not been properly investigated and the I.O. as well as the then S.P. being linked with the land mafias declared the cases lodged by the petitioners false and recommended a proceeding under Section 107 Cr.P.C. At the same time, it is alleged that the petitioners represented to

the then S.P., Motihari and complained about the misdeeds of the land mafias particularly respondent nos. 9 to 18, the then S.P., Motihari did not pay heed to the complaint and no action has been taken against them. It is submitted that instead of taking action against the land mafias the police has lodged two FIRs quashing of which has been sought in the present writ application.

9. Learned senior counsel submits that so far as the present writ application is concerned, it has been confined with respect to Motihari P.S. Case No.422 of 2021. No separate writ petition has been filed challenging the FIR in P.S. Case No.211 of 2021

10. Learned senior counsel has taken this Court through the pleadings on the record and submits that this being a case lodged with a malafide intention to harass the petitioners which is fit to be quashed.

11. On the other hand, Mr. Suman Kumar Jha, learned AC to AAG-3 for the State submits that on a bare reading of the allegations made in the FIR, it would appear that the allegations are disclosing commission of cognizable offences, hence the police has registered the FIR and the same is under investigation for the present. It is submitted that at this stage this Court in

exercise of its power under Article 226 of the Constitution of India need not scuttle the investigation as the truth will be revealed upon investigation of the case whereafter in case petitioners would have any grievance, they would be within their rights to seek their remedy in accordance with law.

12. Mr. Prabhakar Thakur, learned counsel for the informant (respondent nos.9 to 15) has also opposed the writ application. It is submitted that though the nature of the disputes between the parties are civil in nature, the allegations made in the FIR are disclosing the commission of cognizable offences. He has endorsed the submissions of Mr. Suman Kumar Jha, learned AC to AAG-3.

13. Having heard learned counsel for the parties and on perusal of the records particularly the FIR as contained in Annexure- '19' to the writ application without adding or subtracting anything out of the same, this Court finds that the allegations made therein are disclosing commission of cognizable offences. No fault may be found with the registration of the FIR.

14. In the case of **Lalita Kumari Vs. Government of Uttar Pradesh and Others** reported in **(2014) 2 SCC 1**, the Hon'ble Constitution Bench of the Supreme Court has

considered as to what is the FIR and it has been held that it is a mere entry of information furnished to the police in the general register of the police station and it precedes investigation.

15. This Court is of the considered opinion that in the given facts and circumstances where the police is still investigating the case and the truth is still to be found out, this Court need not interfere with the FIR at its inception and the extraordinary writ jurisdiction of this Court is not required to be exercised to scuttle the investigation.

16. Having said so, this Court is conscious of the right of the petitioners embodied under Article 21 of the Constitution of India to seek a proper and fair investigation of the case. The Hon'ble Supreme Court in the case of **Amar Nath Chaubey Vs. Union of India & Others** reported in **(2021) 11 SCC 804**, has, while emphasizing the need for proper investigation, observed as under:-

“11. The police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure. Investigation is the exclusive privilege and prerogative of the police which cannot be interfered with. But if the police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the court cannot abdicate its duties on the precocious plea

that investigation is the exclusive prerogative of the police. Once the conscience of the court is satisfied, from the materials on record, that the police has not investigated properly or apparently is remiss in the investigation, the court has a bounden constitutional obligation to ensure that the investigation is conducted in accordance with law. If the court gives any directions for that purpose within the contours of the law, it cannot amount to interference with investigation. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the police.”

17. In the light of the aforesaid observations of the Hon’ble Supreme Court, this Court is of the considered opinion that the cases lodged by the parties against each other are required to be investigated properly and all endeavours be made by the investigating agency to find out the materials which may or may not support the allegations made by the parties against each other. For this purpose, the present Superintendent of Police, East Champaran, Motihari shall personally review the investigation of the cases lodged by the parties against each other and he would also call upon the parties to take their statements and materials which may be brought by them. After doing this exercise within a period of four weeks from the date of communication of this order, the Superintendent of Police

shall issue required instructions to the investigating officer of the case. In all fairness, the investigation of the case must be completed within a reasonable period and an appropriate report be submitted in the court of learned jurisdictional Magistrate.

18. One of the contentions of learned senior counsel for the petitioners that in fact in this case the informant is not a member of the scheduled caste but he has lodged this case under various provisions of the IPC as well as under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 with malafide intention to harass this petitioner. This aspect shall also be looked into by the Superintendent of Police, Motihari in course of investigation.

19. Let it be recorded that this Court has not formed any opinion on the merit of the allegations and it is open for the Superintendent of Police to take an appropriate view on the basis of the materials which would be collected in course of investigation.

20. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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