

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1322 of 2021

Arising Out of PS. Case No.-419 Year-2006 Thana- GARDANIBAG District- Patna

Drigonmeshwar, Son of Late Vaidya Sitaram, R/o Mohalla- Harding Road
Police Station - Sachiwalay, District - Patna.

... .. Petitioner

Versus

1. The State of Bihar
2. The Collector Cum District Magistrate Patna.
3. Senior Superintendent of Police, Patna.
4. Officer In-Charge, Sachiwalya Police Station, Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Indradeo Prasad, Advocate Ms. Pronoti Singh, Amicus
For the State	:	Mr. Suman Kumar Jha, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

18 09-02-2024 Mr. Indradeo Prasad, learned Advocate seeks

permission to enter appearance in this case on behalf of the

petitioner by filing *vakalatnama*.

2. Ms. Pronoti Singh, learned counsel who had been

appointed to assist this Court on behalf of the petitioner by the

Patna High Court Legal Services Committee is also present.

3. Since the petitioner has chosen a lawyer for

himself, this Court permits Mr. Indradeo Prasad to represent the

petitioner.

4. Heard Mr. Indradeo Prasad, learned counsel for the

petitioner, Mr. Suman Kumar Jha, learned AC to AAG-3 for the

State and Ms. Pronoti Singh, learned Advocate who has been

requested by this Court to assist as *Amicus*.

5. The petitioner in the present writ application is seeking the following reliefs:-

“a. That the respondent be commanded to pay compensation of worth Rs.60,00,000/- to the petitioner for embezzlement of the household articles including gold and silver jewelry of the petitioner that was seized by the Sachiwalya Police on 19.05.2006 in Gardanibag P.S. Case No. 419/06 from the petitioner house. In this regard, an order was passed by learned Judicial Magistrate 1st Class, Patna vide Annexure ‘2’.

b. For a direction to the respondent to reconstruct the house of the petitioner in which the petitioner is residing since the year 1911 from the time of his ancestor which had been demolished by the District Magistrate, Patna on 22.05.2006.

c. For staying the further proceeding in the Gardanibagh P.S. Case No. 419 of 2006 till the disposal of this petition.

d. For granting any other consequential or other appropriate relief/reliefs for which the petitioner may be found entitled to.”

6. After hearing the petitioner as back as on 17.10.2022, this Court passed the following order:-

“This case requires constitution of an inquiry into the matter relating to seizure of the ornaments as contained in the seizure list of Gardanibagh (Sachiwalya) P.S. Case No. 419 of 2006. The seizure list is very specific in saying that the gold and silver ornaments which were seized in presence of the witnesses are being safely kept in the

Malkhana of Sachiwalya Police Station. So far as the household goods are concerned, about them it is stated in the seizure list that those were left in the house of the petitioner under police lock.

The facts of the case as brought before this Court would reveal that despite there being an order of the learned Judicial Magistrate, Ist Class passed on 13.08.2010 for releasing the seized articles, the order has not been complied with and the seized articles have not been delivered.

Be that as it may, this Court directs the Senior Superintendent of Police, Patna to constitute an inquiry into the matter of seizure of the gold and silver ornaments and what happened to those seized articles. Let the inquiry begin as early as possible preferably within a period of four weeks from today and an inquiry report be submitted to this Court within a period of ten weeks from today.

The officers conducting the inquiry shall be competent to call upon the then Officer-in-Charge and other police officers who were involved in the seizure to co-operate in course of inquiry and shall also look into the records maintained by the Malkhana In-charge during the relevant period.

List this matter after ten weeks i.e. on 5th January, 2023.

Personal appearance of S.H.O, Sachiwalya Police Station is dispensed with.”

7. Pursuant to the aforesaid order, an inquiry has been

held. A copy of the inquiry report as contained in Letter No. 9657/2022 dated 30.12.2022 has been enclosed as Annexure 'A' to the counter affidavit filed on behalf of the Respondent No. 3.

8. It is stated that inquiry has been conducted in connection with Gardanibagh (Sachivalaya) P.S. Case No. 419 of 2006 in which the wife of the petitioner had been arrested. It is alleged that the petitioner was residing in a Government Residential Quarter No. 28 after having unauthorizedly occupied the same. The report reveals that in paragraph '43' of the case diary, the then Investigating Officer, namely, Nand Kishore has recorded that he had requested the Sub-Divisional Officer, Sadar to prepare an inventory of the articles of the house, a copy of the same was given to the Executive Engineer, Building Construction Department and other senior officers. In paragraph '48' of the case diary, it is stated that the Junior Engineer Shri Ram Briksha Prasad came to the police station and submitted in writing that when he went to the said House No. 28, he found that the sons of Kiran Devi had broken the bolt of the door and they had been taking away all the articles. It has been found that in the said case, no seizure list was prepared. There is no entry showing preparation of seizure list in the case diary.

9. The inquiry report has also revealed that on

23.05.2006, one case being Gardanibagh (Sachivalaya) P.S. Case No. 451 of 2006 dated 23.05.2006 has been registered under Sections 454/380 of the Indian Penal Code against the three sons of the petitioner who are Mukesh, Rajiv and Satya Prakash.

10. Learned counsel for the petitioner has on instruction submitted that only Satya Prakash is his son and he does not know about Mukesh and Rajiv.

11. Be that as it may, it is an admitted position that Gardanibagh (Sachivalaya) P.S. Case No. 419 of 2006 and P.S. Case No. 451 of 2006 both are pending trial in the learned court below.

12. At this stage, this Court has further noticed from the report that in course of inquiry, the Officer-in-Charge of Sachivalaya Police Station contacted the petitioner and called upon him to place his case. He was also noticed under Section 91 of the Cr.P.C. but the persons who were present at the residential address of the petitioner refused to accept the notice whereafter the petitioner was contacted on his mobile number. It is stated that the petitioner told that he was outside.

13. From Annexure '2' which is the order of the learned court below, it appears that at the time of passing of

Annexure ‘2’, no police report had been submitted. The order dated 13.09.2010 (Annexure ‘2’) shows that the order has been passed on the basis of the statements made by the petitioner alone.

14. This Court finds that in the present case, the respondents had disputing the very making of the seizure list. The existence of seizure list is being questioned and a different narrative has been set out in the subsequent case being Gardanibagh (Sachivalaya) P.S. Case No. 451 of 2006. The said case is also under trial. These are the disputed question of facts, therefore, the kind of reliefs prayed in this writ application cannot be granted by a Writ Court in exercise of its power under Article 226 of the Constitution of India.

15. Keeping it open to the petitioner to take up this issue, if so advised, in a court of competent jurisdiction where the parties can adduce their respective evidences, this writ application is being disposed of. All pleas are left open to the parties.

(Rajeev Ranjan Prasad, J)

lekhi/-

U		T	
---	--	---	--