

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.212 of 2024

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

Nilam Devi @ Lilam Devi W/O Baiju Shah Village- Budhara, Barh, Ps. Athmalgola, Dist. Patna, At Present Residing At Village- Rukanpura, Tilaknagar, House Of Narendra Kumar Singh, Ps. Rupaspur, Dist. Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar, Through The Director General Of Police, Bihar, Patna Bihar, Patna
2. The Inspector General Of Police, Patna Bihar, Patna
3. The Senior Superintendent Of Police, Patna Bihar, Patna
4. The Superintendent Of Police, Patna Bihar, Patna
5. The Superintendent Of Police (West), Patna Bihar, Patna
6. The Additional Superintendent Of Police, Danapur, Patna Bihar, Patna
7. The Officer-In-Charge, Police Station- Rupaspur, Danapur, Dist. Patna Bihar, Patna
8. Sonu Kumar S/O Puna Sha Village- Ranisarai, Ps. Bakhtiyarpur, Dist. Patna
9. Vicky Kumar S/O Puna Shah Village- Ranisarai, Ps. Bakhtiyarpur, Dist. Patna, R/O Village- Ranisarai, Ps. Bakhtiyarpur, Dist. Patna.
10. Lalita Devi W/O Puna Shah Village- Ranisarai, Ps.- Bakhtiyarpur, Dist. Patna.
11. Puna Shah S/O Tufani Shah Village- Ranisarai, Ps. Bakhtiyarpur, Dist. Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rakesh Kumar, Advocate Mr. Rikesh Jha, Advocate
For the State	:	Mr. Madhaw Pd. Yadav, G.P.23 Mr. Rajesh Kr. Sinha, AC to GP-23

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 24-03-2025 A minor girl, aged about 13 years lodged a complaint before the S.H.O. Rupaspur Police Station on 22.12.2023 alleging, inter-alia, that his cousin brother had committed the offence of sexual assault and also took some objectionable photographs of the said minor and made it viral in social media



but police did not lodge any F.I.R. on the basis of the said complaint. Subsequently, on 27.12.2023 the victim made similar complaint to the Additional Superintendent of Police, Patna with copy to the Senior Superintendent of Police, Patna under registered speed post, even than no F.I.R. was lodged on the basis of the said complaint.

2. Finding no other alternative the petitioner has filed the instant writ petition under Article 226 of the Constitution of India for issuance of writ in the nature of mandamus directing the police authority to register the F.I.R. against the accused persons.

3. Having heard the learned counsels for the parties and on perusal of the writ petition and the counter affidavit, this Court finds that the official respondents have grossly violated the provision under Section 154 of the Cr.P.C. even in connection with an incident which reflects prima-facie an offence under the POCSO Act, since cognizable and non-cognizable.

4. In the counter affidavit as usual the State-Respondents took a plea that the petitioner had alternative remedy under Section 156(3) of the Cr.P.C., which she failed to adopt and take, and at this stage no relief can be granted to the



petitioner following the decision of the Hon'ble Supreme Court in ***Sakiri Vasu's*** case.

5. This Court has considered the decisions of ***Sakiri Vasu Vs. State of Uttar Pradesh*** and ***Kunga Nimalepcha & Ors. Vs. State of Sikkim & Ors.*** and other decisions on the line.

6. This Court of-course cannot take a different view from the ratio laid down by the Hon'ble Supreme Court.

7. At the same time, time has come to revisit the issue as to whether the police authority can take the advantage of the supervision of Section 156(3) of the Cr.P.C., even after their fault in registering F.I.R. inspite of disclosure of cognizable and non-bailable offence. If the Higher Courts follow the ratio laid down by the Hon'ble Supreme Court in a closed and confined mind, duty of the police officer in the matter of registration of F.I.R. will be reduced to obscurity.

8. In the instant case, a minor girl herself alleged that his cousin brother (मौसेरा भाई) used to come to her house and committed illicit act upon her. He also took some obscene photographs of the minor girl and circulated in social media even then, if the Constitutional Court thinks that duty of the police officer can be bypassed in view of the provision contained in Section 156(3) of the Cr.P.C., such decision in my



considered view would be aberration of justice, equity and blatant violation of fundamental rights.

9. It is contended on behalf of the respondents that though the petitioner filed complaint but the said complaint was misplaced in the police station.

10. Indisputably, the said complaint was not misplaced from the office of the Additional Superintendent of Police, and Senior Superintendent of Police, Patna but no action has been taken by the Higher Echelons of the Police Administration. It is not the fault of the Police Department but it is a fault of Home Department, Government of Bihar. It is also not disputed that the official respondents received the copy of the writ petition on 08.01.2024, there is no ground stated as to why F.I.R. was not lodged on the basis of the copy of the writ petition and the copy of the complaint annexed with the writ petition.

11. Under such circumstances this Court issues a writ of mandamus directing the S.H.O., Rupaspur Police Station to register F.I.R. against the offender under appropriate penal provisions forthwith. Since, the official respondents have, due to other callous attitude by misplacing the complaint taken away valuable time of administration of criminal justice system, the



Home Department, Government of Bihar is directed to release a sum of Rs.50,000/- in favour of the minor victim within three weeks from the date of this order.

12. For misplacing the complaint, departmental action be initiated against the then S.H.O. Rupaspur Police Station, departmental action under the Authority of Director General of Police, Bihar be also initiated against the then Additional Superintendent of Police and Senior Superintendent of Police, Patna for their dereliction of duty by not directing the S.H.O. Rupaspur Police Station to register F.I.R. on the basis of the complaint which was sent to them on 22.12.2023.

13. With the above direction, the instant writ petition is disposed of.

(Bibek Chaudhuri, J)

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