

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.357 of 2022

Arising Out of PS. Case No.-40 Year-2015 Thana- VIGILANCE District- Patna

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Sunil Kumar Son of Late Shri Krishna Resident of M.I.G.H. Flat No.- 250,
Lohia Nagar, Kankarbag Colony, P.S.- Kankarbag, District - Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Vigilance,
Government of Bihar, Bihar
2. The Vigilance Investigation Bureau, Through its Principal Secretary,
Department of Vigilance, Government of Bihar, Patna
3. The Director General, Vigilance Investigation Bureau, Patna Bihar
4. The Additional Director General, Vigilance Investigation Bureau, Patna
Bihar
5. The Superintendent of Police, Vigilance Investigation Bureau, Patna Bihar
6. Mahesh Kumar Son of Name Not Known, Investigating Officer-cum-
Inspector, Vigilance Investigation Bureau, Patna, Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Santosh Kumar Sinha 2, Advocate
For the Vigilance	:	Mr. Rana Vikram Singh, Advocate
For the State	:	Mr. Saroj Kumar Sharma, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 26-09-2025

The instant writ petition has been filed by the
petitioner seeking following relief(s):-

*"I. Issuance of a writ in the nature of
certiorari quashing the order dated
23.02.2022 passed by learned Special Judge,
Vigilance, Patna in Special Case No. 22 of*



2015 arising out of Vigilance P.S. Case No. 40 of 2015, whereby and whereunder petition dated 09.04.2021 relating to supply/providing entire relied upon documents under the mandate of Section 207 Cr.P.C. and read with 173(5) Cr.P.C. as well as Section 3(1)(a)/5(1) of Prevention of Corruption Act, 1988 has been dismissed.

II. Issuance of an appropriate writ, order or direction directing and commanding the respondents to supply/make available all relied upon documents by prosecution.

III. Other relief or reliefs to which the petitioner is found entitled for."

2. Apparently, the petitioner has approached this Court for setting aside the order dated 23.02.2022 passed by learned Special Judge, Vigilance, Patna in Special Case No. 22 of 2015, arising out of Vigilance P.S. Case No. 40 of 2015, whereby and whereunder the petition of the petitioner for supplying him with papers relied on by the prosecution has been denied.

3. Learned counsel for the petitioner submits that by the impugned order the fundamental right of the petitioner to have access of the police paper/prosecution paper has been denied by the learned trial court. Even the Criminal Court Rules



of the High Court of Judicature of Patna provides for supply of police papers to the accused. Learned counsel further submits that Rule 50-A of the Criminal Court Rules of the High Court of Judicature at Patna provides that every accused shall be supplied with the statements of witness recorded under Sections 161 and 164 Cr.P.C. and a list of documents, materials objects and exhibits seized during investigation and relied upon by the investigating officer in accordance with Sections 207 and 208 Cr.P.C. The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the investigating officer. Learned counsel further submits that the none of the materials exhibits and FSL report have been furnished to the petitioner jeopardizing his defence. Thus, the petitioner has lost his valuable right to defend himself. Learned counsel further submits that this Court has got power of superintendence over the working of the subordinate courts under Article 227 of the Constitution of India and the present petition has been filed under Article 226 and 227 of the Constitution of India and hence, the same is maintainable.

4. Perused the records.

5. It is well settled law that against a judicial



order, no writ would lie under Article 226 of the Constitution of India. The Hon'ble Supreme Court in the case of ***Radhey Shyam and Another Vs. Chhabi Nath and Others*** in (2015) 5 SCC 423 has held in paragraphs 18 and 25 to 30 which read as under:-

"18. While the above judgments dealt with the question whether judicial order could violate a fundamental right, it was clearly laid down that challenge to judicial orders could lie by way of appeal or revision or under Article 227 and not by way of a writ under Article 226 and 32.

25. It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our constitutional scheme. There is no parallel system of King's Court in India and of all other courts having limited jurisdiction subject to supervision of King's Court. Courts are set up under the Constitution or the laws. All courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of Tribunals or authorities or courts other than judicial courts. There are no precedents in India for High Courts to issue writs to subordinate courts. Control of working of subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional



powers or power of superintendence under Article 227. Orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by statutes, power of superintendence under Article 227 is constitutional. The expression "inferior court" is not referable to judicial courts, as rightly observed in the referring order in paras 26 and 27 quoted above.

26. The Bench in Surya Dev Rai also observed in para 25 of its judgment that distinction between Articles 226 and 227 stood almost obliterated. In para 24 of the said judgment distinction in the two articles has been noted. In view thereof, observation that scope of Article 226 and 227 was obliterated was not correct as rightly observed by the referring Bench in Para 32 quoted above. We make it clear that though despite the curtailment of revisional jurisdiction under Section 115 CPC by Act 46 of 1999, jurisdiction of the High Court under Article 227 remains unaffected, it has been wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions including Waryam Singh and another vs. Amarnath and anotherst, Ouseph Mathai vs. M. Abdul Khadir, Shalini Shyam Shetty vs. Rajendra Shankar Patil and Sameer Suresh Gupta vs. Rahul Kumar Agarwal. In Shalini Shyam Shetty, this Court observed :

"64. However, this Court unfortunately discerns that of late there is a growing trend amongst



several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.

66. We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in Surya Dev and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

67. As a result of frequent interference by the



Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon'ble High Court will follow the time honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly."

(emphasis added)

27. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.

28. We may also deal with the submission made on behalf of the respondent that the view in Surya Dev Rai stands approved by larger Benches in Shail, Mahendra Saree Emporium and Salem Advocate Bar Assn and on that ground correctness of the said view cannot be gone into by this Bench. In Shail, though reference has been made to Surya Dev Rai, the same is only for the purpose of scope of power under Article 227 as is clear from para 3 of the said judgment. There is no discussion on the issue of maintainability of a petition under Article 226. In Mahendra Saree Emporium, reference to Surya Dev



Rai is made in para 9 of the judgment only for the proposition that no subordinate legislation can whittle down the jurisdiction conferred by the Constitution. Similarly, in Salem Bar Assn. in para 40, reference to Surya Dev Rai is for the same purpose. We are, thus, unable to accept the submission of learned counsel for the respondent.

29. Accordingly, we answer the question referred as follows :

29.1. Judicial orders of civil court are not amenable to writ jurisdiction under Article 226 of the Constitution;

29.2. Jurisdiction under Article 227 is distinct from jurisdiction from jurisdiction under Article 226.

29.3. Contrary view in Surya Dev Rai is overruled."

30. The matters may now be listed before the appropriate Bench for further orders."

The enunciation of law by the Hon'ble Supreme Court makes it clear that judicial orders of subordinate court are not amenable to writ jurisdiction under Article 226 of the Constitution of India.

6. So far as the contention of the learned counsel for the petitioner that this Court should interfere with the impugned order in exercise of power under Article 227 of the Constitution of India, I am afraid, the said contention is misconceived. Article 227 of the Constitution is not a substitute for appellate or revisional jurisdiction. If a statutory remedy is



available against a judicial order, this Court could not entertain a petition under Article 227 of the Constitution. Time and again it has been held that power under Article 227 of the Constitution should be exercised sparingly only to correct manifest miscarriage of justice or the error that shocks the judicial conscience and should not be utilized to correct the mere mistakes of fact or law in the orders of the subordinate courts. This Court could not allow Article 227 of the Constitution to be used as a means to bypass specific statutory or procedural remedy. It goes without saying that the power under Article 227 of the Constitution could be exercised in very exceptional circumstances to prevent clear and gross miscarriage of justice or to interfere with a finding so perverse that it necessitates interference. A mere wrong decision by a subordinate court, however erroneous, would not be sufficient to invoke its extraordinary jurisdiction. Therefore, the submission that the present petition could be entertained under Article 227 of the Constitution is without any substance.

7. Having regard to the aforesaid discussion, I am of the considered opinion that the present petition has been filed by the petitioner under a misconceived appreciation of law and against the impugned order a petition under Article 226



or 227 of the Constitution of India is not maintainable.
Therefore, I am not inclined to entertain the present petition and
hence, the same is dismissed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.09.2025
Transmission Date	27.09.2025

