

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1476 of 2023

Arising Out of PS. Case No.-716 Year-2023 Thana- BIHTA District- Patna

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VINAY KUMAR S/O- LATE RAMA NAND SINGH R/O- VILLAGE-
PARASA, P.S.- NAUBATPUR, DIST.- PATNA.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH ADDITIONAL CHIEF SECRETARY,
HOME DEPARTMENT, PATEL BHAWAN, PATNA. BIHAR, PATNA
2. DIRECTOR GENERAL OF POLICE, PATEL BHAWAN, PATNA. BIHAR,
PATNA
3. SENIOR SUPERINTENDENT OF POLICE, PATNA. BIHAR, PATNA
4. CITY SUPERINTENDENT OF POLICE (WEST), PATNA. BIHAR,
PATNA
5. SUB-DIVISIONAL POLICE OFFICER, DANAPUR, DIST.- PATNA
BIHAR, PATNA
6. OFFICER INCHARGE, BIHTA POLICE STATION, DIST.- PATNA
BIHAR, PATNA
7. MUKESH KUMAR PASWAN, SUB-INSPECTOR-CUM-
INVESTIGATING OFFICER, BIHTA POLICE, DIST- PATNA. BIHAR,
PATNA

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Pratap Sharma

For the Respondent/s : Mr. Suman Kumar Jha, A.C. to A.A.G.-3

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 15-04-2025 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

2. The present petition has been filed for arresting the
accused persons in connection with Bihta P.S. Case No. 716 of
2023 registered on 13.07.2023. The informant who is the
present petitioner had in the written complaint stated that his
daughter was married to one Rajesh Kumar according to Hindu



rites and rituals in the year 2019. It is alleged by the informant that after the marriage of his daughter the in-laws and family members of his son-in-law started demanding dowry of rupees two lakhs and were torturing the daughter of the informant. It is further alleged by the informant that upon instance of his daughter the informant on 10.07.2023 the informant went to the matrimonial house of his daughter and saw that his daughter was being assaulted by the family members of his son-in-law. Thereafter the informant states that he gave rupees one lakh to the family members of his son-in-law. On 13.07.2023 at about 05:00 AM when the informant rang the mobile of his daughter, the mobile phone of his daughter was switched off, thereafter he tried reaching out to the family members at the matrimonial house of his daughter however their mobile phones were also switched off. Thereafter the informant reached the matrimonial house of his daughter and found that the house was locked. Upon enquiring from the neighbours, he came to know that his daughter was killed by her husband, in-laws and other family members and relatives (*gotia*) of her husband. It was also alleged by the informant that the accused persons after killing his daughter had disposed of the body of the deceased and the body of the deceased had not been recovered.



3. Based on the aforesaid complaint, the police had registered Bihta P.S. Case 716 of 2023 dated 13.07.2023 under sections 304(B), 201 read with section 34 of the IPC against seven accused persons.

4. The petitioner had made several representations before the superior police officials stating that proper investigation was not being carried and had requested that the investigating officer of the case may be reassigned.

5. The present petitioner by way of a supplementary affidavit has brought on record the supervision report vide memo no. 2599 dated 29.07.2023 and also a representation dated 14.08.2023 made by the petitioner on the aforesaid supervision report.

6. Furthermore, by way of another supplementary affidavit the petitioner has brought on record the direction issued to the S.S.P, Patna by the Department of Home vide memo no. 3157 dated 15.03.2024. The petitioner has also brought on record the supervision report issued by City S.P. Patna (West) vide memo no 757 dated 03.04.2024.

7. A counter affidavit sworn by the S.D.P.O-II, Danapur, Patna has been filed on behalf of the respondents no. 3 to 6 wherein it is stated that on the basis of the investigation,



supervision report, Report-2, Report-3 and Report-4 the case has been found true against the accused Rajesh Kumar (husband of the deceased), and Meghnath Singh (father-in-law of the deceased) under sections 304(B), 201 and section 34 of the IPC and also against eight non-F.I.R named accused persons. It is further submitted that during the course of investigation, the husband of the deceased was arrested and was sent to judicial custody on 20.07.2023. Furthermore, after completion of investigation against the aforesaid accused, i.e., the husband of the deceased the police had filed a charge sheet on 13.01.2023 and the Trial Court vide order dated 19.10.2023 had taken cognizance against the accused Rajesh Kumar. The accused Meghnath Singh (father-in-law of the deceased) had surrendered before the Trial Court on 10.07.2024 and was remanded to judicial custody and charge sheet against accused Meghnath Singh was filed on 06.10.2024. The respondents have in the aforesaid counter affidavit further submitted that the other eight non-F.I.R named accused persons have been served with notice under section 41A of the Cr.P.C. It is emphasized by the respondents that after detailed investigation, the complicity could not be established for the other five accused named in the F.I.R i.e., Ram Jyoti Devi mother-in-law of the deceased; Rina



Devi and Anni Devi the two sister-in-laws of the deceased and the two *gotiyas* namely Bhulan Kumar and Neha Devi.

8. It is also submitted by the respondents that the D.I.G-cum-S.S.P, Patna vide memo no. 1946 dated 02.09.2023 had sought a report from the S.D.P.O, Danapur-II (Bihta), Patna regarding the updated status of investigation in connection with the present case and pursuant to the aforesaid, a report contained at memo no. 3610 dated 15.11.2024 was submitted.

9. I have heard the parties and perused the materials on record.

10. It has come in the counter affidavit that the chargesheet was submitted only against the husband and the father-in-law of the deceased. The Magistrate vide order dated 19.10.2023 had taken cognizance against the husband.

11. The Hon'ble Supreme Court in the case of ***Sakiri Vasu vs. State of U.P.*** reported as ***(2008) 2 SCC 409*** had observed as under –

“27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Criminal Procedure Code simply because a person has a



grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Criminal Procedure Code before the Magistrate or by filing a criminal complaint under Section 200 Criminal Procedure Code and not by filing a writ petition or a petition under Section 482 Criminal Procedure Code.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere”
(Emphasis supplied)

12. The ratio was reiterated in ***Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhange*** reported as (2016) 6 SCC 277

4. The prosecution has already filed charge sheet against two accused persons named in the F.I.R and also has found complicity of certain persons who have not been mentioned in the column of accused persons in the F.I.R. If the petitioner desires, a protest petition against the final form/closure report can be preferred at an appropriate stage. The law on summoning additional accused under section 319 of the Cr.P.C. is also well settled as laid down by the Hon’ble Supreme Court in the case of Hardeep Singh vs. State of Punjab reported as (2014) 4 SCC 92.

13. Recently the Hon’ble Supreme Court in the case of ***Akhilesh vs. State of Uttar Pradesh & Ors*** reported as 2025 SCC OnLine SC 727 has observed as under –

10. This Court in Rajesh v. State of



Haryana, (2019) 6 SCC 368 in regard to Section 319 CrPC had noted that:

"(i) the Court can exercise the power under Section 319 CrPC even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC. provided from the evidence (may be on the basis of the evidence collected in the form of statement made in the examination -in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial." (emphasis supplied)

Further, Rajesh (Supra) took note of this Court's judgment in S. Mohammed Ispahani v. Yogendra Chandak, (2017) 16 SCC 226, where this Court had observed as follows:

"35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular



person should be summoned as accused, even though not named in the charge-sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet. Once that stage has gone, the Court is still not powerless by virtue of Section 319 CrPC. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused."

Thus, powers under Section 319 CrPC¹ are wide and if, during the trial or inquiry, any person, who appears to be involved in the commission of a crime but not brought before the Court as an accused, can be summoned by the Court to face the trial and such a person can be tried together with the other accused being tried before the Court.

14. Considering the fact that the trial has begun in the present case and therefore at this stage when the trial is proceeding the same can take its due course and no intervention from this Court at this stage is warranted as such this Court is not inclined to pass any further direction to the respondents, however if the prosecution files any application under Section 319 Cr. P.C. during the trial, the same shall be considered by the trial Judge in accordance with law and in view of the recent judgments of the Hon'ble Supreme Court passed in the case of



Satbir Singh vs. Rajesh Kumar & Ors reported as ***2025 SCC OnLine SC 694*** and ***Akhilesh vs. State of Uttar Pradesh & Ors*** reported as ***2025 SCC OnLine SC 727***.

15. This petition is disposed of with the aforesaid liberty to the petitioner.

16. The trial is directed to be expedited.

17. Let a copy of the order be communicated to the District Judge, Patna through FAX/e-mail forthwith for compliance of the order.

(Sandeep Kumar, J)

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