

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1168 of 2024

Arising Out of PS. Case No.-1365 Year-2023 Thana- AHIYAPUR District- Muzaffarpur

1. Sunil Shahi Son of Late Ram Lakshan Shahi Resident of Near Middle School (Sahwazpur), Shahbazpur urf Salempur, Police Station - Ahiyapur, District - Muzaffarpur, Pin 842004.
2. Rajnish Kumar @ Golu Kumar @ Golu @ Chhotu Son of Sunil Shahi Resident of - Sahwazpur, Police Station - Ahiyapur, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through it Secretary Department of Home Govt. of Bihar. Bihar
2. The Director General of Police, Bihar, Patna. Bihar
3. The Inspector General of Police, Bihar. Bihar
4. The Deputy Inspector General of Police, Muzaffarpur. Bihar
5. The Senior Superintendent of Police, Muzaffarpur Bihar
6. The D.S.P. (Muzaffarpur) East. Bihar
7. The S.H.O. of Ahiyapur Police Station Bihar
8. The I.O. of Ahiyapur Police Station (Ahiyapur P.S. case No. 1365 of 2023). Bihar
9. Anita Devi Wife of Late Bholanath Thakur Resident of - Sahwazpur, Police Station - Ahiyapur, District - Muzaffarpur.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 2162 of 2024

Arising Out of PS. Case No.-1365 Year-2023 Thana- AHIYAPUR District- Muzaffarpur

Shivam Kumar Mishra @ Shivam Mishra S/O Ashok Kumar Mishra R/O Village- Sahwazpur, P.S- Ahiyapur, District- Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar through it Secretary Department of Home Govt. of Bihar. Bihar
2. The Director General of Police, Bihar, Patna. Bihar
3. The Inspector General of Police, Bihar Bihar
4. The Deputy Inspector General of Police, Muzaffarpur. Bihar
5. The Senior Superintendent of Police, Muzaffarpur Bihar
6. The D.S.P (Muzaffarpur) East. Bihar



7. The S.H.O of Ahiyapur Police Station. Bihar
8. The I.O of Ahiyapur Police Station (Ahiyapur P.S Case No. 1365 of 2023) Bihar
9. Anita Devi W/O Late Bholanath Thakur R/O Sahwazpur, P.S- Ahiyapur, Distt.- Muzaffarpur.

... .. Respondent/s

Appearance :

(In Criminal Writ Jurisdiction Case No. 1168 of 2024)

For the Petitioner/s : Mrs. Smiti Bharti, Advocate

For the Respondent/s : Mr. Manoj Kumar Ambastha,7

(In Criminal Writ Jurisdiction Case No. 2162 of 2024)

For the Petitioner/s : Mrs. Smiti Bharti, Advocate

For the Respondent/s : Mr. Manoj Kumar Ambastha, S.C.26

Mr. Divit Vinod, AC to SC-26

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 30-01-2025 Both the writ petitions involved same set of facts and law. Therefore, the writ petitions have been heard analogously and this Court proposes to dispose of the writ petition in a common order.

2. Cr.W.J.C. No.1168 of 2024 is filed by one Sunil Shahi and Rajnish Kumar @ Golu Kumar @ Golu @ Chhotu, who are made accused in connection with Ahiyapur P.S. Case No.1365 of 2023 registered for committing offence under Sections, 302, 120B/34 of the Indian Penal Code read with Section 27 of the Arms Act, on the basis of a written complaint submitted by one Anita Devi, wife of the deceased.

3. The petitioners have approached this Court with a prayer for issuance of writ in the nature of certiorari for quashing the F.I.R. of the above-mentioned case on the



following factual grounds:-

“That on 17.10.2023 at about 08:40 P.M. the husband of the informant received gun shot injury in front of his house, police received information about the injury received by the husband of the informant on 17.10.2023 at about 09:00 p.m. The said fact was recorded in the G.D. Entry Book and the police officer visited the place of occurrence. The record reveals that on 17.10.2023 at about 09:15 p.m. police seized some open cartridges from the place of occurrence, when police appeared the place of occurrence, the injured person was taken to a private hospital where he was declared a dead. Postmortem examination was done over the dead body of the deceased and after initial investigation as aforesaid, the widow of the deceased lodged F.I.R. on 18.10.2023 at about 01:50 p.m.”

4. It is submitted by the learned Advocate for the petitioner that the so called information given by the widow of the deceased is hit by Section 161 and 162 of the Cr.P.C. and the same cannot be treated as F.I.R., because police started investigation of the case immediately on receipt of information which was reduced to writing in the Police Station G.D. Book,



the said information ought to be treated as F.I.R. However, police did not treat the same as F.I.R. but started investigation of the case on the basis of the information received in the police station, which was reduced to writing in the G.D. Book. In support of his contention, the learned Advocate for the petitioners refers to the seizure list in respect of fired cartridges from the place of occurrence, which was seized on 17.10.2023 at 09:15 p.m. but at the top of the seizure list it is recorded that the seizure list was prepared in respect of Ahiyapur P.S. Case No.1365 of 2023 dated 18.10.2023 under Sections 302, 120B/34 of the Indian Penal Code and Section 27 of the Arms Act. Thus, the learned Advocate on behalf of the petitioners has raised the question of efficacy of the seizure list in connection with Ahiyapur P.S. Case No.1365 of 2023 when no such case was instituted at the time of seizure of some materials.

5. It is further submitted by the learned Advocate for the petitioners that police did not proceed with initial investigation of the case by recording any U.D. case. Therefore, the investigation prior to initiation of Ahiyapur P.S. Case No.1365 of 2023 on one hand is bad in law and no credence should be given on such investigation and on the other hand, the statement made in so called F.I.R. implicating the accused



persons in both the writ petitions ought not to be taken into consideration because of the fact that the so called statement of the informant was actually a statement under Section 161 of the Cr.P.C. recorded by the Investigating Officer and is hit by Section 162 of the Cr.P.C.

6. It is further pointed out the learned Advocate for the petitioners that the subsequent statement of the informant suffers from concoction and manufacturing of a story against the accused persons/petitioners because of the fact that in the initial information no accused was meant as assailants of the deceased, but subsequent F.I.R. after a lapse of one day narrated an elaborate statement showing involvement of the accused persons.

7. Considering such fact of the matter, he invites this Court to hold that there is no F.I.R. against the petitioners in accordance with law and so called statement of the informant on the basis of which Ahiyapur P.S. Case No.1365 of 2023 was lodged being not an information under Section 154 of the Cr.P.C., ought to be quashed.

8. The learned Advocate on behalf of the State-Respondents in Cr.W.J.C. No.2162 of 2024, on the other hand, submits that the deceased during his life time lodged a



complaint in the local police station on the basis of which police registered Ahiyapur P.S. Case No.946 of 2023 dated 29.07.2023 against accused-Shivam Kumar Mishra and Md. Rehan. The said F.I.R. disclosed prima-facie that the relation between the deceased and the accused persons was inimical and subsequently, he was murdered by the said accused persons, as per the Investigating Report culminating to filing of the charge sheet.

9. The learned Advocate on behalf of the State in Cr.W.J.C. No.2162 of 2024 submits that in connection with Ahiyapur P.S. Case No.1365 of 2023 police has already filed charge sheet and the learned Magistrate has taken cognizance of offences against the accused persons. The accused persons did not challenged the order of cognizance in either of the writ petitions. Therefore, at this stage the instant writ petition is not maintainable.

10. On due consideration of the submissions made by the learned counsels for the parties and on careful perusal of the materials on record, this Court records at the outset that F.I.R. is not a substantive piece of evidence. It is the first information before the police to set the criminal administration in motion. However, it is expected that F.I.R. ought to be filed with utmost



promptitude so that they are may not be any concoction or manufacturing of false story over a particular incident. The stage whether the information on the basis of which Ahiyapur P.S. Case No.1365 of 2023 dated 18.10.2023 was registered ought to be treated as a statement of the wife of the deceased under Section 161 of the Cr.P.C. or the said F.I.R. is vitiated by concoction and false narration of the incident can only be determined at the time of trial on the basis of evidence on record. It is for the trial Court to consider which document, entry in the G.D. Book dated 17.10.2023 or the statement dated 18.10.2023 ought to be accepted as F.I.R.

11. In the instant case, on the basis of the evidence on record, the relevant G.D. Entry dated 17.10.2023 may also be accepted as first information because the first information is not required to be an encyclopedia of fact what is important to be stated in first information is that a cognizable offence was committed to which the police officer was required to take action commencing investigation

12. In the instant case, investigation was commenced and charge sheet was filed whether there is any loophole in the investigation can be decided during trial. The writ court is not empowered to deal with the disputed question of fact.



13. For the reasons stated above, I do not find any material in both the writ petitions and the writ petitions bearing Cr.W.J.C. No.1168 of 2024 and Cr.W.J.C. No.2162 of 2024 are dismissed on contest, however, there shall be no order as to cost.

(Bibek Chaudhuri, J)

mdrashid/-

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

