

(2019) 11 PAT CK 0070

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1459 Of 2019

Manoj Kumar Singh

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 08-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 36, 154(1), 154(3), 156(3), 190, 200, 482

Citation : (2019) 11 PAT CK 0070

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Sanjay Kumar, Siddharth Harsh

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the State Food Corporation.

2. This application has been filed by the petitioner for directing the respondents to register first information report (for short 'FIR') against the respondent no.7 for misappropriation of rice of the State Food Corporation (for short 'Corporation') in collusion with certain persons including the power of attorney holder of the petitioner.

3. The contention of the petitioner is that for the alleged act of misappropriation of rice of the Corporation, the petitioner had made a complaint before the respondent no.6, but he refused to register an FIR. Then the petitioner filed a representation before the Deputy Manager of the Corporation, Headquarter-Patna on 11.05.2019, but even then no action has been taken.

4. In view of the submission made above, learned counsel for the petitioner submitted that a direction be issued to the Officer-in-charge of Ghoghardiha Police Station, Madhubani to register an FIR on the basis of the complaint made

by the petitioner.

5. Per contra, learned counsel appearing for the Corporation submitted that the writ petition filed before this Court is a ploy to create defence by the petitioner. As a matter of fact, the petitioner is a transport agent of the Corporation and has misappropriated rice loaded on 7 trucks for which an FIR has already been instituted against him.

6. Be that as it may, from the application it does not appear that the petitioner has taken any steps under Sections 154(1) and 154(3) of the Code of Criminal Procedure (for short 'Cr.P.C'). Though it is pleaded in para 27 of the application that the written complaint was filed before the respondent no.6 but he refused to register the FIR, the copy of the written complaint to the respondent no.6 has not been brought on record.

7. Even if it is presumed that the petitioner had filed a written complaint before the Officer-in-Charge of the concerned police station regarding a cognizable offence and the FIR was not registered, the petitioner had a remedy open under Section 154(3) of the Cr.P.C, which provides that any person aggrieved by a refusal on the part of an officer-in-charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

8. Furthermore, the petitioner has yet another remedy for the redressal of his grievance. He can file a complaint and make a prayer under Section 156(3) of the Cr.P.C before the jurisdictional Magistrate empowered under Section 190 of the Cr.P.C to order the police to investigate a case.

9. The petitioner having not availed of the statutory remedies available under the Cr.P.C has approached this Court in extra ordinary jurisdiction under Article 226 of the Constitution of India on vague pleadings for directing the police to register FIR on his complaint and investigate the same.

10. In *Sakiri Vasu Vs. State of U.P.*, since reported in (2008) 2 SCC 409, the Supreme Court in para 27 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 CrPC 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 police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC."

11. Regard being had to the observations made above and the ratio laid down by the Supreme Court in *Sakiri Vasu* (Supra), I am not inclined to entertain the present application in exercise of extra ordinary writ jurisdiction.

12. The application is dismissed.