

---

**(2009) 08 PAT CK 0030**  
**In the Patna High Court**  
**Case No : Criminal WJC No. 290 of 2009**

|                           |    |            |
|---------------------------|----|------------|
| Uma Kant Singh            | Vs | APPELLANT  |
| State of Bihar and Others |    | RESPONDENT |

---

**Date of Decision :** 26-08-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 154(3)

**Citation :** (2011) 1 PLJR 1019

**Hon'ble Judges :** Mridula Mishra, J

**Bench :** Single Bench

**Final Decision :** Allowed

---

## Judgement

Mridula Mishra, J.—This application has been filed for a direction to the Respondents, Senior Police Officials of the State of Bihar at Patna as well as the Officer-in-charge of Shastri Nagar Police Station for instituting an F.I.R. on the basis of his written report, disclosing cognizable offence.

2. Petitioner is a practicing Advocate of Patna High Court. His grievance is that his written statement, disclosing commission of cognizable offence was not accepted by the Officer-in-charge of Shastri Nagar Police Station for instituting an F.I.R., simply a Sanha entry made on the basis of his written statement and instead of investigating the case, the matter was closed then and there.

3. Facts as revealed in this application is that that in the night of 24.9.2008, some persons in police uniform knocked at the door of the Petitioner. They claimed to be the raiding police party. Petitioner, who had recently undergone brain surgery became disturbed on account of this sudden knock at his door. The family members and children in the family became apprehensive. Due to this chaotic situation Petitioner became unconscious and latter on suffered paralytic attack. In the night itself Petitioner telephonically informed his well wisher and also to the Chairman, Bihar State Bar Council regarding this unpleasant happening at his residence. Next day, in the morning, he went to Police station

for instituting F.I.R. but no F.I.R. was instituted. Petitioner has assailed the act of the Officer-in-charge of the police Station stating that non-institution of F.I.R. on the basis of an information disclosing cognizable offence amounts dereliction of duty. Petitioner thereafter sent information to Senior Superintendent of Police, Patna and other police officials as provided u/s 154(3) Code of Criminal Procedure However, no action was taken by the Senior Police Officers also and having no other recourse he has filed this application for a direction to the Respondents to institute F.I.R. and to investigate the case.

4. Counsel for the Petitioner submits that Petitioner being a citizen of India has got fundamental right to get protection under the law and benefit of such remedy which are available for safety and security of one's life. Inaction of the Officer-in-charge of Shastri Nagar Police Station has infringed his right of protection under the law as available under the Constitution. By not instituting the F.I.R., the Officer-in-charge has delayed investigation of a cognizable offence and also given protection to the accused persons.

5. Counter affidavit has been filed on behalf of Officer-in-charge of Shastri Nagar Police Station. In the counter affidavit it has been admitted that in the night of 23/24.9.2008 the police party had gone at the residence of the Petitioner, but it was not to harass or disturbed the Petitioner. The Police Officials of Shastri Nagar Police Station had gone there to assist Police Personnel of Rupaspur Police Station who had warrant of arrest with them for arresting Satyendra Kumar. Satyendra Kumar, brother of the Petitioner, an accused in Rupaspur P.S. Case No. 87 of 2008. The Police Officials of Rupaspur Police Station had information that Satyendra Kumar is residing in the same house where the Petitioner resides. The police party wanted to arrest the accused Satyendra Kumar and that was the reason that they wanted to enter into the house of the Petitioner. Since the doors did not open the police party returned back. It has also been stated that the allegation regarding paralytic attack suffered by the Petitioner are not known to the Respondents as in support of this statement no documents have been annexed with the petition.

6. Counsel for the Petitioner in reply to the statement made in the counter affidavit has stated that Petitioner's brother Satyendra Kumar in fact was named as accused in a case relating to property dispute. Seriousness of the offence was not such, in which the police party had to raid the house of the Petitioner in the dead of night specially when Satyendra Kumar had already been granted anticipatory bail by the Sessions Court prior to 24.9.2008. The police in the name" of investigation of the case had committed an offence of criminal trespass, as the accused had already been granted anticipatory bail by the Sessions Judge.

7. It is well settled and also the law of the land that a police officer has no other option except to enter the substance thereof in the prescribed form and register F.I.R., if any information of cognizable offence is made before him. The condition which is sine qua non for recording F.I.R. is that there must be information

disclosing cognizable offence. In the present case on the basis of written report submitted by the Petitioner, the Officer-in-charge of the police station had no option but to institute an F.I.R. Petitioner has also stated that he took recourse of the provisions available u/s 154(3) Code of Criminal Procedure by sending information to the Superior Police Officials, since the Officer-in-charge refused to institute F.I.R. Section 154(3) provides that any person aggrieved by refusal on the part of Officer-in-charge 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 cognizable offence, shall either investigate the case himself or direct investigation to be made by Police Officer subordinate to him. Since this option was exercised by the Petitioner, it was incumbent on the Senior Superintendent of Police, Patna to take proper action in this regard. No counter affidavit has been filed on behalf of Sr. Superintendent of Police, Patna denying the statement made in the writ application.

8. Considering the pleadings and submissions made by the parties, the Senior Superintendent of Police, Patna is directed to enquire into the matter as to why the Officer-in-charge of Shastri Nagar Police Station did not institute the F.I.R. on the basis of written report of the Petitioner. The Station House Officer, Shastri Nagar Police Station is directed to institute F.I.R. on the basis of written statement of the Petitioner, annexed as Annexure-4 to the writ application and to investigate the case. This application is allowed.