

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.216 of 2019

In
Civil Writ Jurisdiction Case No.14197 of 2018

=====

Rahul Kumar Pandey Son of Madan Pandey Resident of Village-Muraripatti,
P.S. Raghunathpur, District-Siwan Petitioner

Versus

1. The State of Bihar
2. Sharda Devi, Wife of Madhwachari Mishra, Resident of Village Khap
Dhanauti, P.S. Raghunathpur, District- Siwan.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Prashant Kumar, Advocate
For the Opposite Party/s : Mr.Shantanu Kumar, Advocate
For O. P. No. 2. :- Mr. Shekhar Singh, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 11-09-2019

The petitioner in the present case is seeking review and recall of the order dated 23.07.2018 passed by the Hon'ble Division Bench of this Court on 23.07.2018 in C.W.J.C. No. 14197 of 2018.

2. By the order under review the Hon'ble Division Bench of this Court took cognizance of a letter written by a senior citizen, who is opposite party no. 2 now in the present case, pointing out that she is being threatened by some persons against whom she had lodged a first information report bearing No. 79 of 2018 under Section 420, 467, 468, 471, 447, 120B read with 34 of the Indian Penal Code in Raghunathpur Police Station. She alleged that the



accused persons had created a forged and fabricated documents and got a Jamabandi created in respect of a piece of land which the opposite party no. 2 had purchased from her hard earned income and retirement benefits after her superannuation from service as a government teacher.

3. In her letter addressed to the Hon'ble the then Chief Justice of this Court of which cognizance was taken treating as a public interest litigation, the opposite party no. 2 alleged that the accused persons have with an intention to damage the reputation of the opposite party no. 2 and her family as also with an intention to put pressure upon her, lodged the Complaint Case no. 1407 of 2018 in which learned Chief Judicial Magistrate, Siwan had directed for lodging of the FIR in exercise of his power under Section 156(3) of the Code of Criminal Procedure.

4. As stated above the letter written by opposite party no. 2 was treated to be a public interest litigation and accordingly, it was registered as a writ application and matter was placed before the Hon'ble Division Bench presided over by Hon'ble the then Chief Justice. On the very first day when the matter was listed, the Hon'ble Division Bench passed the following order:-

“23.07.2018. Cognizance of the matter was taken on the basis of a letter written by a senior citizen, a lady, pointing out that by fabrication of document and by use of illegal means her land is being usurped by vested interest termed as local Mafias and Gundas of the area in



question in an illegal manner and her further complaint is that instead of getting the matter verified from the Collector and the Superintendent of Police, without considering the issues involved in the matter in the right perspective, the Chief Judicial Magistrate, Siwan has registered Complaint Case No. 1407 of 2018 against all the family members and referred the matter under Section 156(3) of the Cr.P.C. to the Superintendent of Police for registration of F.I.R. without causing a proper inquiry into the matter.

By producing overwhelming documents, the petitioner has tried to demonstrate before this Court that she is the rightful owner of the property. The documents are in her favour and in the past also when such complaints were made, the Superintendent of Police and the Collector have investigated into the matter and found her claim to be correct. Pointing out that in an illegal manner, she and her entire family is being harassed, this complaint was made.

Taking note of the grievance of the petitioner, we deem it appropriate to direct the District Judge, Siwan to himself examine the matter after calling for the file of Complaint Case No. 1407 of 2018 and a report from the Collector and the Superintendent of Police or entrust the matter to a senior Judge working under him for proper inquiry and after obtaining the report proceed in the matter in accordance with law. The District Judge shall also submit a report to the Registrar General of this Court with regard to the action taken in the matter. We are of the considered view that the aforesaid would be sufficient enough to comply with the requirement of justice with regard to the grievance of the petitioner. Till the District Judge or the nominated Judge does not conclude the enquiry, no further proceeding shall be held in the complaint case pending before the C.J.M., Siwan.

With the aforesaid, the writ petition stands disposed of.”

5. Now it appears that on receipt of the order dated 23.07.2018, the then District & Sessions Judge, Siwan deputed Additional District & Sessions Judge III, Siwan to inquire into the matter. Additional District & Sessions Judge III, Siwan issued



notice to the opposite party no. 2 to appear along with relevant documents, thereafter, notices were issued to the District Collector, Siwan and Superintendent of Police, Siwan. After some persuasion, on 05.07.2019, the S.D.P.O. submitted a report and on 06.07.2019, the incharge of the legal section of the District Collectorate submitted a report of the Circle Officer, Raghunathpur. Additional District & Sessions Judge III, Siwan recorded that “as per report submitted by SDPO (Headquarter) namely, Navin Kumar Mishra matter relating to land in dispute is subjudice before the court of Ld. Subjudge VI, Siwan as T. S. No. 1373/2018. So no criminal offence is attracted nor required to be registered on the basis of complaint filed by the complainant namely, Rahul Kumar Pandey.....”. Copy of the said report of Additional District & Sessions Judge III, Siwan has been forwarded to this Court by the learned District & Sessions Judge, Siwan vide his letter dated 8th day of July, 2019.

6. This review petition came to be filed before this Court on or about 27.06.2019. It was contended by learned counsel for the review petitioner that the order dated 23.07.2018 not only suffers from procedural error, inasmuch as, the same was passed without giving any notice to the review petitioner but the same is also liable to be recalled for the reason that the Hon’ble Division Bench



could not appreciate that the Code of Criminal Procedure contains exhaustive provisions to deal with the situation like the present one. It was submitted that at the stage of Section 156 (3) Cr.P.C. any order passed by the learned Magistrate does not adversely affect the right of any person. It is a pre-cognizance stage and the accused does not have any right to be heard at the stage of passing of the order under Section 156 (3) Cr.P.C. It was also contended that in the present case the FIR was yet to be registered and even before it could be registered, the opposite party no. 2 had no occasion to write a letter to the Hon'ble the then Chief Justice of this Court and such matters cannot be taken up in the public interest litigation jurisdiction of the constitutional court.

7. Noticing the contention of learned counsel for the petitioner, this Court issued notice to the opposite party no. 2. Opposite party no. 2 has entered appearance through her counsel on 14.08.2019, thereafter, the parties have exchanged their pleadings and the matter has been heard at length.

8. Mr. Prashant Kumar, learned counsel representing the review petitioner has while reiterating his submissions as mentioned above pointed out that the order passed by the Hon'ble Division Bench on 23.07.2018 has created a peculiar situation whereunder on one hand the FIR lodged by the opposite party no.



2 in Raghunathpur Police Station is being pursued against the review petitioner and others at the instance of the son of opposite party no. 2 who is an IPS Officer employed at Indore in the State of Madhya Pradesh, the complaint filed by the review petitioner in which the learned C.J.M., Siwan has passed order dated 10.06.2018 referring the matter to the Police under Section 156 (3)Cr.P.C. for registration of FIR has been brought to a halt by not allowing it to proceed in accordance with the provisions contained under the Code of Criminal Procedure.

9. Learned counsel submits that by no stretch of imagination, the Hon'ble Division Bench could have directed for conducting an inquiry in the matter by the learned District & Sessions Judge, Siwan when the FIR was yet to be registered and the Police had to investigate and submit a report to the court of learned Chief Judicial Magistrate, Siwan. The submission is that the procedure directed to be followed by the Hon'ble Division Bench is unknown to criminal jurisprudence hence, the order dated 23.07.2018 is result of an error committed by the Hon'ble Division Bench which is apparent on the face of the record. Relying upon the judgment of the Federal Court in the case of **Musammat Jamna Kuar Vs. Lal Bahadur and Ors.** reported in **AIR (37)1950 FC 131**, in the case of **Union of India Vs. Rajasthan**



High Court & Ors. reported in **(2017) 2 SCC 599, King Emperor Vs. Nazir Ahmad Khwaja** reported in **AIR 1945 PC 18** and judgment of the Hon'ble Division Bench in the case of **Father Thomas vs. State of U. P. & Anr.** reported in **(2011) 2 ALL Law Journal 217**, learned counsel has submitted before this Court that the error committed by the Hon'ble Division Bench is required to be corrected by recalling the order dated 23.07.2018.

10. On the other hand, learned counsel representing the opposite party no. 2 has contested the review petition. It is submitted that after the opposite party purchased the land, a criminal gang has put an eye to grab it. It is further submitted that those miscreants along with family members of the review petitioner have forcibly tried to put a hut on this land. It is alleged that one Sachidanand Pandey who happens to be the own brother of the review petitioner is leading the gang and is so powerful that they are having most sophisticated weapon like AK 47, they have attacked police force. Some case numbers have been provided in paragraph 7 of the counter affidavit to show that said Sachidanand Pandey is facing prosecution in those cases. It is submitted that by threatening they have put a hut on the land. As regards the complaint petition filed by the review petitioner, it has been submitted that a bare perusal of the complaint will show that it



does not constitute any criminal offence and it is further submitted that a civil suit is going on in respect of the land. It is further stated in paragraph '12' of the counter affidavit that the petitioner is very-very thankful to the Hon'ble Judges of this Hon'ble Court for treating a letter of the old lady as public interest litigation and ask a report from the report of the District Judge, Siwan while staying the criminal case. According to the opposite party no. 2, the order under review is well within the domain and powers of the Hon'ble Court and no prejudice has been caused to the review petitioner and as such the review petition is not maintainable.

11. In the aforementioned backgrounds of the facts and submissions when we consider the present review application it is found at first instance that C.W.J.C. No. 14197 of 2018 was registered on the order of the Hon'ble the then Chief Justice and *suo moto* PIL case was registered. On the very first date i.e. 23.07.2018 the order under review was passed. It is evident from the records that no notice whatsoever was issued to the present review petitioner who was the complainant before the learned Chief Judicial Magistrate, Siwan. Thus, on very first day when the matter was disposed of vide order dated 23.07.2018 it suffered from violation of the principles of natural justice and a procedural error has occurred which is apparent on the face of the record.



Further we find from the contentions and the materials available on the record, that this Court treated the letter of opposite party no. 2 as a public interest litigation which was an error apparent on the face of the record. The power of constitutional court to entertain a public interest litigation cannot be invoked in an adversarial litigation. In the present case the complainant-review petitioner had filed a complaint and that was referred to Police for registering an FIR, to investigate and submit a report. It was perfectly in accordance with the provisions of Section 156 (3) of the Cr.P.C. which reads as under:

“156. Police officer’s power to investigate cognizable case.- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this Section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.”

12. It is well settled that the order under sub-section (3) of Section 156 Cr.P.C. is a pre cognizance order. In this connection judgment of the Hon’ble Supreme Court in the case of **Suresh Chand Vs. State of Madhay Pradesh** reported in **(2001) 2 SCC 628 : AIR 2001 SC 571** may be referred. Paragraph 10 of the judgment of the Hon’ble Apex Court reads as under:

“10. The position is thus clear. Any judicial magistrate, before taking cognizance of the offence, can order investigation under Section 156(3)



of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer-in-charge of the police station as indicated in Section 154 of the Code. Even if a magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer-in-charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.”

13. It is only when the FIR is registered, it is open for the person against whom the FIR has been lodged to seek a remedy under Article 226 of the Constitution of India. In the present case, thus, we find that the Hon’ble Division Bench of this Court had no reason to scuttle the investigation even as FIR was yet to be registered. In the case of **M/s Pepsi Food India Limited vs. Special Judicial Magistrate** reported in **AIR 1998 SC 128** while considering a challenge to the summons issued to the accused persons by the Magistrate on a complaint petition the Hon’ble Supreme Court recorded in paragraph 22 as under:

“**22.** It is settled that High Court can exercise its power of judicial review in criminal matters. In *State of Haryana v. Bhajan Lal and Ors.* 1992 Supp (1)SCC 335, this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain



guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Article 226 and 227 may be referred to.”

14. In the case of **Musammat Jamna Kaur** (supra) the Hon’ble Federal Court has held that the High Court should have corrected the error on the review petition and whether the error occurred by reason of the learned counsel’s mistake or it crept in by reason of an over-sight on the part of the Court was not a circumstance which could affect the exercise of the jurisdiction of the Court to review its decision.



15. Recently in the case of **Municipal Corporation of Greater Mumbai vs. Pratibha Industries Ltd.** reported in **(2019) 3 SCC 203** the Hon'ble Supreme Court has held that the High Court being a constitutional Court of Record has got inherent power to recall its order.

16. In the facts of the present case, we are convinced that the Hon'ble Division Bench while treating the letter of the opposite party no. 2 a public interest litigation and thereafter, passing an ex-parte order dated 23.07.2019 has committed a mistake which is required to be corrected in the interest of justice. We, therefore, recall the order dated 23.07.2018 passed in C.W.J.C. No. 14197 of 2018.

17. As a result of this order, the inquiry conducted by the Additional District & Sessions Judge III, Siwan and the opinion reflected in his report addressed to this Court will be of no consequence. The order passed by learned Chief Judicial Magistrate, Siwan on 10.06.2018 in Complaint Case No. 1407 of 2018 shall be given effect to in accordance with law and without being influenced by the inquiry report of Additional District & Sessions Judge III, Siwan the investigation and other action shall follow and it will be open for the opposite party no. 2 and others involved in the said case to seek their remedy before the



appropriate court in appropriate jurisdiction as may be advised to them.

18. Let it be further recorded that neither the order dated 23.07.2018 passed in C.W.J.C. No. 14197 of 2018 nor the present order of recall shall in any way be taken as a reflection on the merit of the case.

19. The review application is allowed in terms of the observations made hereinabove.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

avin/-

AFR/NAFR	AFR
CAV DATE	04.09.2019
Uploading Date	11.09.2019
Transmission Date	

