

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1186 of 2022

Arising Out of PS. Case No.-9227 Year-2022 Thana- PATNA COMPLAINT CASE District- Patna.

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Sagar Prasad, Son of Late Balgobind Mahto, Resident of Village- Raice, P.O- Bhagwatipur Karmaur, P.S- Pandarak and presently residing at Quarter No. 100/34, L.I.G.H., Lohiya Nagar, Dist- Patna- 800020

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Home, Govt. Of Bihar, Patna.
2. The Secretary, Department of Home, Govt. of Bihar, Patna.
3. The Director General of Police, Govt. of Bihar, Patna
4. The Deputy Inspector General, Bihar, Patna
5. The Senior Superintendent of Police, Patna, Bihar
6. Ravi Shankar Singh, the Officer in Charge, Kankarbagh Police Station and Dist- Patna
7. Smt. Nisha, Female Inspector, P. S. and Dist- Patna
8. Dr. Sambhu Kumar, Son of Late Dhaneshwar Ram, Resident of Sub Divisional Hospital, Tenughat, Bokaro, Jharkhand- 829123
9. Shankar Kumar, Son of Late Dhaneshwar Ram, Resident of Sub Divisional Hospital, Tenughat, Bokaro, Jharkhand- 829123
10. Ravindar Kumar, Son of Late Ram Prasad, Resident of Quarter No. 100/43, L.I.G.H., Lohiya Nagar, Near Tampu Stand, Police Station- Kankarbagh, Dist- Patna- 800020
11. Devendra Kumar, Son of Late Ram Prasad, Resident of Quarter No. 100/43, L.I.G.H. Lohiya Nagar, Near Tampo Stand, P.S- Kankarbagh, Dist- Patna-800020

... .. Respondents

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Acts/Sections/Rules:

- *Section 41, 57 of Cr.P.C.*

Cases referred:

- *Lalita Kumari vs. Govt. of Uttar Pradesh & Ors. reported in AIR 2014 SC 187*
- *Joginder Kumar v. State of Uttar Pradesh reported in AIR 1994 SC 1349*
- *Shatrughna Atmaram Patil & Ors. Vs. Vinod Dodhu Chaudhary & Another reported in 2024 INSC 75*
- *Ravi Shankar Singh and Ors. versus The State of Bihar and Others reported in 2019 (1) PLJR 917*

Writ - filed for directing respondents to provide protection to petitioner and his family living in serious threat and as has been dispossessed from his dwelling house. Further, petitioner was detained by police illegally. A title suit is already going on.

Petitioner claimed that even after purchasing the house and living there for 14 years, he was forcefully evicted and had his valuables stolen.

In the present case, the detention of the petitioner in the Police Station is akin to an act of arrest if not an arrest in a strict legal sense. The freedom of the petitioner was curtailed by asking him to remain in the Police Station from morning to evening. This has resulted in infringement of the fundamental right guaranteed to the petitioner under Article 21 of the Constitution of India. (Para 37)

This Court has no iota of doubt that the petitioner was deprived of his liberty from morning to evening in the Police Station. This was wholly illegal. In the opinion of this Court, the Sub-Inspector of Police and the S.H.O. of the Police\ Station exceeded their authority conferred by law. It is a case of misuse of a drastic power conferred upon a Police officer. Such power could not have been exercised in a casual manner as has been done in the present case. For this unlawful detention of the petitioner in the Police Station, this Court would hold and declare that the State would be liable to pay a compensation of Rupees One Lakh to the petitioner. (Para 42)

Court is not persuaded to exercise its extraordinary writ jurisdiction to direct restoration of possession of the petitioner in the facts of the present case. (Para 45)

The title suit between the parties shall be decided by the learned court on its own merit without being influenced by the observations of this Court contained in any part of this order. (Para 46)

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9. Shankar Kumar, Son of Late Dhaneshwar Ram, Resident of Sub Divisional Hospital, Tenughat, Bokaro, Jharkhand- 829123
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11. Devendra Kumar, Son of Late Ram Prasad, Resident of Quarter No. 100/43, L.I.G.H. Lohiya Nagar, Near Tampo Stand, P.S- Kankarbagh, Dist- Patna- 800020

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Sudhanshu Trivedi, Advocate Mr. Vivek Anand Amritesh, Advocate
For the Respondent/s	:	Mr. M. Nasrul Huda Khan, SC-1 Mr. Md. Irshad, AC to SC-1
For the Resp. Nos. 8-11	:	Mr. Prabhakar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 23-02-2024

This writ application was initially filed praying for the following reliefs:-



“(i) In the nature of mandamus for directing and commanding the respondents authorities to provide protection/security to the petitioner and his family from the private respondents as the petitioner and his family is living in serious threat and as has been dispossessed illegally from his dwelling house.

(ii) In the nature of the mandamus for directing and commanding the respondent authorities to take proper legal action against the respondent no.6 to 10 who have not only dispossessed the petitioner and his family forcefully by throwing all his house hold things from his dwelling house but also beaten his in blue and black and even threatened the petitioner and his family to kill if he take any legal action against them.

(iii) In the nature of mandamus for directing and commanding the respondent authorities to lodge an FIR against the respondents number 6 to 10 and punish them after a free and fair investigation

(iv) For any other writ/writs, order/orders and direction/directions as your Lordships may deem fit and proper as the fact circumstances of the case.”

2. During pendency of the writ application, the petitioner filed an application seeking amendment of the writ application. The said Interlocutory Application being I.A. No.1 of 2022 was allowed *vide* order dated 22.12.2022. This Court directed that the reliefs prayed therein and the statements made are to be treated as part and parcel of the writ application. The



reliefs prayed in the I.A. No. 1 of 2022 are as under:-

“(i) For directing and commanding the respondent authorities to maintain “Status quo ante” by restoring the possession of the petitioner in the flat in question as he had before 17.08.2022.

(ii) For directing the concerned respondents to make payment of the lost cost to the petitioner due to the illegal act of the respondents and further to return the valuable items including Gold Jewelry and cash which was taken away by the respondents at the time of dispossessing the petitioner from the flat.

(iii) For directing the respondents to give compensation to the petitioner for physical/mental harassment and torture caused by the illegal act of the respondents.”

Case of the petitioner

3. It is the case of the petitioner that Dr. Sambhu Kumar (respondent no.8) had entered into an agreement with him for selling Flat No. 100/34 in L.I.G.H. Kankarbagh Colony, Near Tempu Stand, Lohiya Nagar, P.S.- Kankarbagh, District-Patna on 02.11.2008 for a consideration amount of Rupees Four Lakhs. Petitioner claims that he had paid Rs. 3,50,000/- and was put in possession of the flat. The rest of Rs. 50,000/- had to be paid at the time of registration. As per the agreement, the registration was to be done within two years.

4. It is the case of the petitioner that he along with his family started living in the said flat from 02.11.2008 itself. The petitioner continued to request respondent no.8 to execute the



registry but respondent no.8 was always taking an excuse that since the said flat is in the name of his father and the same has not been transferred in his name so it is not possible to transfer the flat in the name of the petitioner. Respondent no.8, however, assured the petitioner to live peacefully in the flat and as and when the said flat would be transferable, the same would be transferred to him.

5. It is alleged that surprisingly on 11.07.2022, one Ravindra Kumar (respondent no.10) and Devendra Kumar (respondent no.11) entered into the flat and asked the petitioner to vacate the flat as they claimed that they have purchased the same. The petitioner was threatened that if he would not vacate the flat, he would be forcefully evicted. The petitioner alleges that he tried to lodge a First Information Report in this regard in Kankarbagh Police Station but it was not registered by the Officer-in-Charge. Again on 25.07.2022 and 27.07.2022, respondent nos.10 and 11 came with some antisocial elements and threatened the petitioner to vacate the flat or be ready to face the consequences. The petitioner filed a complaint bearing Complaint Case No. 9227(C) of 2022 in the court of learned Chief Judicial Magistrate, Patna and also filed a Title Suit Case No. 389 of 2022.



6. It is stated that on 17.08.2022, at about 8 am, the respondent nos.10 and 11 along with 50-60 goons entered into the flat of the petitioner in presence of Ravi Shankar Singh, Officer-in-Charge of Kankarbagh Police Station (respondent no.6) and Smt. Nisha, the female Sub-Inspector of the same Police Station (respondent no.7). Allegedly, they threw out all the household things and took away all the valuable items including gold jewelry and Rs. 2,50,000/-. Respondent nos.6 and 7 took the petitioner to the Police Station and made him to sit there till 5 pm, had beaten him badly and set him free only after taking signature on a written compromise paper forcefully. Annexures '1' and '2' to the writ application are the photocopies of the complaint petition and the compromise paper which were allegedly got executed in the Police Station after keeping the petitioner inside the Police Station from 8 am till 5 pm.

7. The petitioner states that respondent nos.6 and 7 handed over the case to the respondent no.10 forcefully. Respondent no.8 even threatened the family of the petitioner to kill them if they take any steps or approach any authority to get the flat. He was also threatened that he would be falsely implicated in a case under the S.C./S.T. Act. It is alleged that all these acts were done under the protection of the Officer-in-



Charge and female Sub-Inspector of Kankarbagh Police Station.

8. Learned counsel for the petitioner submits that it is a glaring example of misuse of power by the police officials. The Officer-in-Charge and the Sub-Inspector of Kankarbagh Police Station indulged in throwing away the household goods from the dwelling house of the petitioner where he and his family were living for the last 14 years. The photographs annexed as Annexure '3' to the writ application have been placed before this Court to demonstrate that how the household articles were thrown on the road.

9. Learned counsel for the petitioner submits that the petitioner was so disturbed with the threat and use of force applied against him that he was feeling helpless. He claims to have approached all the higher officials of the Police department but nobody took pain to redress the grievances of the petitioner. In this regard, the representation filed by the petitioner to all the officials and authorities on 18.08.2022 has been annexed as Annexure '4' to the writ application.

10. Learned counsel for the petitioner submits that on perusal of Annexure '4', which is a copy of the representation written by the wife of the petitioner, it would appear that the petitioner has narrated the entire occurrence which took place



on 17.08.2022 at 8 am. He has specifically stated how he was taken to the Police Station and was detained there till 5 pm and was forced to execute a compromise. Petitioner has brought on record with his supplementary affidavit a copy of the agreement said to have been executed between respondent no.8 and the petitioner on 02.11.2008 and copy of the electricity bill issued by the South Bihar Power Distribution Company Limited which shows that the date of electricity connection is 19.09.2011 and it is in the name of the petitioner. In continuation of the statements made in the writ application, the petitioner, in his interlocutory application states that the petitioner and his family members are living under threat of losing their life. It is alleged that the official respondents have misused their power and acted like goons who have not only tortured the petitioner mentally and physically but have also harassed the petitioner socially and monetarily.

Stand of respondent nos. 5 and 6

11. The Senior Superintendent of Police, Patna and the then Officer-in-Charge, Kankarbagh Police Station are respondent nos. 5 and 6 respectively. The respondent no.5 has referred a detailed report submitted by respondent no.6 on 13.12.2022. With reference to the CCTV footage of the Police



Station, it has been informed to respondent no.6 that on 17.08.2022, the petitioner had not been taken into custody rather he was regular in touch with his friends/relatives and even the concerned Municipal Councillor had visited the Police Station. No coercive action had been taken against the petitioner in the Police Station and he was frequently visiting outside and inside of the Police Station in his own ways. It is stated that on receipt of the complaint of the wife of the petitioner on 17.08.2022, the S.H.O. had sent one Sub-Inspector, namely, Prabhu Nath Chaubey to inquire into the matter. The Sub-Inspector of Police after inquiring had taken preventive action and lodged a non-FIR No. 19 of 2022 dated 17.09.2022 and sent a report to the concerned Sub-Divisional Magistrate, Sadar, Patna. It is stated that neither the S.H.O. nor the Sub-Inspector of Police Nisha had ever talked to the accused of Kankarbagh P.S. Case No. 1139 of 2022 and in support of his claim, he submitted the call detail report of the respective official and personal mobile number. Respondent no.5 has stated that he personally visited Kankarbagh Police Station and himself examined the CCTV footage of the Kankarbagh Police Station and cross-checked the report submitted by the S.H.O. of Kankarbagh Police Station and found that the report submitted by the S.H.O. is true. It is



stated that the respondent no. 5 assured this Court that if any material would come during the course of investigation against the officials of Kankarbagh Police Station, an appropriate legal as well as disciplinary action shall be taken against them. The CCTV footage of the Police Station has been preserved. Respondent no.5 has only reiterated what have already been submitted by respondent no.6 in his counter affidavit. Respondent no.6 has submitted as per his report sent to respondent no.5.

Stand of respondent nos. 8 and 9

12. A counter affidavit sworn by one Shankar Kumar, who is younger brother of Dr. Shambhu Kumar, has been filed. It is stated therein that Flat No. 100/34 L.I.G.H. was allotted to his father Late Dhaneshwar Ram, under the Low Income Group. It was under an agreement between said Late Dhaneshwar Ram and the Government of Bihar entered into on 15th of July 1968. The allotment has been made on leasehold basis for 99 years. The flat was handed over to the father of respondent no.9, who had paid all the dues. The father of respondent no.9 died in the year 1990, the mother died earlier on 08.12.1984. Therefore after their death, the two sons, namely, Shambhu Kumar and Shankar Kumar being the legal heirs succeeded the said flat. It



is stated that the petitioner and his wife had illegally captured the house of the respondent no.8 along with all the household, including all the documents, ornaments and other valuable things. In paragraph '7' of the counter affidavit, it is stated that the petitioner of the present criminal writ application occupied the Flat No. 100/34 forcibly and unlawfully and whenever the deponent asked the petitioner to vacate his residence, the petitioner always threatened him with some words that "I won't leave the house...". The respondent no.9 denied execution of any agreement or receipt of a consideration amount. It is alleged that the deponent complained several times and even on 22.07.2022, the petitioner and his wife had beaten brutally, abused him using his caste name in abusive language, the deponent had lodged a complaint to several authorities but the Kankarbagh Police did not lodge his complaint.

13. As regards the occurrence which took place on 17.08.2022, it is the stand of respondent no. 9 that at about 8 am when the deponent reached at his residence L.I.G.H. 100/34, this petitioner and his wife including his nephew stopped him from entering, they verbally abused him and threw all his belongings on the street. As the situation escalated, people from the neighborhood gathered. Someone called the police and both



the petitioner and the deponent were taken to the Police Station where an agreement was executed between them before the witnesses which was written by Arvind Kumar Srivastava (friend of the petitioner). In the said agreement, a time of about more than a month was given to the petitioner to provide evidence/agreement/money receipt or to vacate the flat of deponent. It is alleged that on 04.09.2022, while returning to home after purchasing vegetables, the petitioner, his wife and his nephew along with three unknown persons abused him with his caste name and intentionally insulted/intimidated the respondent for which the respondent had given a complaint to the Police Station but till date nothing has happened on that. As regards the agreement dated 02.11.2008, it is stated that the brother of the deponent never entered into such agreement, it is a forged document and has been prepared with the help of computer.

Stand of respondent nos. 10 and 11

14. A counter affidavit has been filed on behalf of the private respondent nos. 10 and 11. It is stated that the writ petitioner had occupied the house of Late Dhaneshwar Ram forcibly and illegally. The petitioner and his family had assaulted the younger son of Dhaneshwar Ram who used to live



there. The petitioner had forcibly kicked/threw out Shankar from his house and illegally captured the house along with all the household including all the documents, ornament and other valuable things and made a forged sale agreement.

15. It is stated that on 17.08.2022, the petitioner and said Shankar Kumar had executed an agreement before the Ward Councillor in Kankarbagh Police Station in which respondent no.11 has signed as a witness and supported Shankar Kumar, due to which the petitioner has implicated him. It is stated that the allegation that the respondent nos. 10 and 11 had purchased the house is not correct as it is a flat of Housing Board and no one can sell or purchase the same without permission from the Housing Board.

Case Diary

16. In course of hearing of the writ application, the Assistant Superintendent of Police (A.S.P.), Patna has placed the case diary and the supervision note. This Court has been informed that in course of investigation, it has been found that the CCTV camera of Kankarbagh Police Station was running one hour twenty six minutes slow on 17.08.2022. According to the CCTV footage, at about 08:13:46, the police vehicle stops in front of the police station from which the Sub-Inspector of



Police Nisha along with armed forces, the petitioner and Shankar Kumar (Respondent No.9) were found coming and they entered into the Police Station premises and occupied their seats separately. The Police Sub-Inspector Nisha and OD Officer Sub-Inspector Ganesh Kumar were found talking with each other. The petitioner and Shankar Kumar both were seen talking to their friends/relatives on mobile. At 09:07:50 one friend of the petitioner enters into the Police Station, sits beside him and had a talk with him. At about 10:28:30, Ward Parshad Kumar Sanjit and two-three other persons came into the Police Station and one person was found talking with the petitioner. At 11:05:25, again Ward Parshad Kumar Sanjit along with other persons came and sat in the chamber of the S.H.O. and they were found talking with the S.H.O. Thereafter, ultimately at 15:19, one friend of the petitioner prepares a paper and the persons sitting there put their signature on the same which is a compromise document. On the said compromise document, the petitioner is found signing and thereafter all the parties were found leaving the Police Station.

Criminal antecedents

17. On perusal of the records, it appears that while there is no criminal antecedent of Shankar Kumar, son of Late



Dhaneshwar Ram, the private respondent, namely, Ravindra Kumar (respondent no.10), has got criminal antecedents vide Patrakarnagar P.S. Case No. 672 of 2018 under Sections 323, 341, 307 and 34 of the Indian Penal Code, Patrakarnagar P.S. Case No. 701 of 2018 dated 24.11.2018 under Sections 323, 341, 448, 504, 506 of the Indian Penal Code and Section 3(2) (va) of the S.C./S.T. Act.

Consideration

18. Having heard learned counsel for the parties, the A.S.P., Sadar, Patna and on perusal of the records, this Court may safely conclude that so far as the allotment of the flat in question in favour of Late Dhaneshwar Ram is concerned, the same is not in dispute. In course of investigation, the Executive Engineer of the Housing Board has vide his Letter No. 921 dated 29.08.2023 informed the A.S.P., Sadar, Patna that the flat in question has been allotted in the name of Dhaneshwar Ram but the allotment order and the copy of the agreement is not available in the Divisional Office-1. Upon death of Late Dhaneshwar Ram and his wife, respondent nos.8 and 9 claim that they, being legal owner, will be entitled to the said allotted flat. To this extent, there is also no issue at least in the present writ application.



19. From the pleadings available on the record, it is noticed that the possession of the petitioner in the said flat is admitted by respondent nos.8 and 9. In fact, in the counter affidavit filed by respondent no.9 for himself and his brother, statements have been made in paragraph '6' and '7' as under:-

“6. That the accused persons named above had occupied the house forcibly, had beaten brutally and tried to kill the deponent (who used to live there) with intention to grab his house and threw him out from his house. Mr. Sagar Prasad and his wife abused him with using the caste based abusing language several times. They are used to kick, beat, abuse him. They illegally captured the house of complainant along with all the households, including all the documents, Ornaments and other valuable things.

7. That the petitioner of present Cr.Writ/Sagar Prasad occupied the flat no-100/34 lighforcibly and unlawfully. whenever deponent asked petitioner to vacate his residence sagar Prasad always threatens with same words that ""I won't leave the house I have a lot of influence/power. If necessary, I'll even get the house documents also. It's in your best interest to take some money and transfer the house to me..”

20. In the whole counter affidavit of respondent nos.8 and 9, it is not disclosed as to when did the petitioner throw the said respondents out of the house. There is no statement as to whether they had lodged any complaint. It is an admitted case of respondent nos.8 and 9 that the petitioner had occupied the house, though it is alleged that the said occupation was forceful.



No suit or any other action was ever initiated by respondent nos.8 and 9 to evict the petitioner from the flat in question.

21. The counter affidavit of respondent nos.10 and 11 is nothing but a sheer support to respondent nos.8 and 9. Respondent nos. 10 and 11 admit that they were supporting respondent nos. 8 and 9. Respondent no. 10 has got criminal antecedents also. In the counter affidavit of respondent nos.8 and 9, there is no statement that they were living in any part or portion of the flat rather, it is their categorical statement that they had been thrown out of the house and the house was illegally captured by the petitioner. The electricity bill of the flat has not been disputed by the respondents. The bill is in the name of the petitioner and the connection was given in his name in the year 2011 itself.

22. From the pleadings of respondent nos.8 and 9, as also from the materials collected in course of investigation, it has crystallized that on 17.08.2022, at about 8 am, when respondent no.9 tried to enter into the flat, he was stopped by the petitioner and his family. Respondent no.9 was being supported by respondent nos.10 and 11 and there was a quarrel between the parties. At this stage, the S.H.O. of Kankarbagh Police Station (Respondent No.6) admits to have received a call



on his official number and he sent Smt. Nisha, a Sub-Inspector of the Police to the flat in question. Nisha (Respondent No.7) brought the petitioner and respondent no.9 in her police jeep to the Police Station. From morning till 4 pm the petitioner was kept in the Police Station. Ultimately the petitioner and respondent no.9 entered into a so-called compromise after several rounds of talk and intervention by the persons, including Ward Councillor, who visited there in the Police Station. Respondent no.11 is a witness on the agreement, thus his interest in the matter and presence in the Police Station are prima-facie evident.

23. The cameras of the Police Station were found slow by one hour twenty six minutes, the reason thereof is not explained, however the fact remains that from morning about 9 am till about 5 pm in evening, the petitioner was kept in the Police Station and, it is his case which is obvious from the materials on record that he was under command not to leave the Police Station. A guided stand of respondent nos.5 and 6 that the petitioner was allowed to talk and he was moving inside and outside in the premises of the Police Station talking to his relatives and friends would not lead to a conclusion that the petitioner was free and not under command of the Police. No



FIR was lodged against him and he was not facing any investigation in connection with any case.

24. It is the specific case of the petitioner in paragraph '10' of the writ application that the petitioner was harassed, tortured and threatened by respondent nos. 6 to 11. He was beaten by the Police officials very badly and was detained for the whole day. He remained disturbed for the whole day and was feeling helpless. He approached all the higher officials of the Police Department, but nobody took pain to redress the grievances of the petitioner. In this regard, he has placed on record his earliest version in his wife's representation to all the officials and authorities submitted on 18.08.2022 vide Annexure '4' to the writ application. A perusal of Annexure '4' would show that it is a complaint written by one Shweta Kumari, who is the wife of the petitioner. In her representation to the Police officials and the other authorities, she has specifically stated and alleged *inter-alia* that before throwing her entire households on the road, which would be evident from the photographs enclosed with the writ application, her husband was abused and badly assaulted by Rabindra Kumar, Devendra Kumar and Golu Kumar. He was forcibly caught and taken to Kankarbagh Police Station where he was detained till 5 pm. It is further alleged that



at the instance of Dr. Sambhu Kumar, his brother Shankar Kumar, Rabindra Kumar and Devendra Kumar, the Officer-in-Charge of the Police Station, namely Ravi Sankar Singh and Sub-Inspector Nisha, coerced and forced her husband to sign a compromise and one room of the flat was given in possession of Rabindra Kumar, son of Late Ram Prasad and after locking the room key of the room was handed over to Rabindra Kumar.

25. At this stage, this Court is conscious of the settled legal position that the issues which may require taking of evidences and for that purpose, all the parties shall be given an opportunity to adduce their respective evidences, need not be examined by this Court in its jurisdiction as the writ court would not act as a fact-finding court. This Court would therefore not examine as to in what capacity the petitioner was in possession of the flat in question? Whether he was in possession by virtue of an agreement to sell or in any other capacity would be subject matter of consideration in an appropriate proceeding but from the pleadings as noticed hereinabove, one thing is admitted that the petitioner was living in the flat in question with his family when the alleged occurrence took place on 17.08.2022.

26. It is an admitted position that Smt. Nisha Kumari, the Sub-Inspector of Kankarbagh Police Station was sent by the



Officer-in-Charge of the Police Station on some information received by him about the alleged occurrence but the fact that the Officer-in-Charge had received an information about the occurrence and he had instructed the Sub-Inspector Nisha to visit the place whereafter Nisha brought the petitioner and respondent no. 9 in the Police Station at Kankarbagh are not recorded in the station diary of the Police Station.

27. Being a constitutional court, this Court finds that the most disturbing feature of this case is the fact that when the Officer-in-Charge of the Kankarbagh Police Station got the written complaint/representation, as contained in Annexure '4' to the writ application, he did not mention the receipt of Annexure '4' in the records of the Police Station. In course of hearing of the case on 30.11.2022 and 01.12.2022, this Court noticed the serious kind of allegations made against the respondents including the respondent nos. 6 and 7. Respondent nos. 6 and 7 were called upon to appear and explain their positions. They were present in the hearing held on 01.12.2022 and this Court heard them. This Court was made available an audio clip of the talk between the petitioner and one Prabhunath Chaubey, an Inspector of Kankarbagh Police Station and respondent no.10. The voice of the persons talking in the audio



clip were not disputed. The audio clip was played in order to get the first impression of the matter. The audio clip of the talk between nephew of the petitioner and Ravindra Kumar (respondent no.10) has been made available and the same was played in this Court. This Court is not going deep into discussions which are revealing a prima-facie case of forceful eviction of the petitioner and is leaving it for the A.S.P. Sadar/investigating agency to examine all the audio clips in accordance with law and take a view thereon.

28. This Court called upon the S.H.O. to inform as to why a First Information Report was not lodged on the basis of information furnished by the petitioner with regard to the occurrence which had earlier taken place on 11.07.2022 and thereafter. The receipt of written complaint was not disputed but the Court found that the Police Inspector Prabhunath Chaubey was asking the petitioner to contact him for the purpose of registration but the petitioner being afraid of being implicated in a false case was showing his difficulties expressing in words that he was under threat of false implication by the Officer-in-Charge of the Police Station. It is only when the S.H.O. noticed that he had not registered the F.I.R. on the basis of information furnished by the wife of the petitioner which was in the teeth of



the mandate of the Hon'ble Supreme Court in the case of **Lalita Kumari vs. Govt. of Uttar Pradesh & Ors.** reported in **AIR 2014 SC 187**, he hurriedly lodged Kankarbagh P.S. Case No. 1139 of 2022 dated 01.12.2022 under Sections 147, 323, 447, 448, 506, 380, 427 and 504 Indian Penal Code.

29. This Court called upon the Senior Superintendent of Police, Patna to file a comprehensive counter affidavit after examining all aspects of the matter, the role of Officer-in-Charge of Kankarbagh Police Station and the lady Sub-Inspector, the C.C.T.V. of Kankarbagh Police Station of the given date as per complaint of the wife of the petitioner and the same was ordered to be preserved in custody of Senior Superintendent of Police, Patna. The Officer-in-Charge of Kankarbagh Police Station and the lady Sub-Inspector (respondents nos. 6 and 7) were directed to keep themselves away from the investigation of the case.

30. In the aforementioned background, the A.S.P. (Sadar), Patna was entrusted with the investigation of the case. It appears from the materials produced before this Court that the A.S.P. proceeded to record the statement of one Ravindra Kumar, Son of Late Jagdish Narayan and Devendra Kumar (respondent no.11). Even they have stated that this petitioner



was living in the flat in question. The other witnesses have also stated that this petitioner was living in the flat and on the alleged date of occurrence, the petitioner and Shankar Kumar were taken to the Police Station where both the parties entered into a compromise.

31. The investigation also revealed that with regard to the alleged occurrences, the wife of the petitioner had submitted her complaint and the Office of the Superintendent of Police had forwarded the same to the Kankarbagh Police Station but no action was taken thereon. On the copy of the representation dated 31.08.2022 submitted by the wife of the petitioner to the Additional Director General of Police (Law and Order), Bihar Patna, there is an endorsement at the top by the concerned Police Officer to the Senior Superintendent of Police, Patna to get the matter inquired through A.S.P. (Sadar) as the charges have been levied against the local S.H.O. Direction was to take urgent action but as stated above, no action was taken and only during the hearing of this case on 01.12.2022, the S.H.O., having understood his fault in not registering the F.I.R. and taking appropriate action, registered Annexure '4' as a First Information Report. This is how three months time lapsed without action and the things could proceed only after the



petitioner approached this Court. The inaction on the part of S.H.O. in not carrying the direction of his own departmental authority writs large on the face of it. Such inaction only strengthens the submissions of the petitioner that the S.H.O. was helping the accused persons in forceful eviction of the petitioner.

32. The fact that the petitioner was taken to the Police Station on 17.08.2022 by Smt. Nisha Sub-Inspector and then he was detained there till 5 pm is evident from the materials on the record. The only contention of the respondents would be that the petitioner was allowed to move within the premises of the Police Station and he was free to talk using his mobile. It is clear from the records that when the petitioner was brought in the Police Station by the Sub-Inspector, there was no written complaint against him. No station diary entry has been shown to this Court on the basis of any information received by the Officer-in-Charge of the Police Station. No interrogation was being done then why he was brought to the Police Station and asked to stay there for several hours may only be clear from the subsequent developments which took place inside the Police Station.

33. The A.S.P. (Sadar) has stated that no one from



amongst the accused had called the Officer-in-Charge of the Police Station on 17.08.2022 either on his official or private mobile numbers but at the same time it is stated that on his official number 9431822153, the Officer-in-Charge received information between 09:01 am and 09:05 am about the alleged occurrence whereafter he talked to S.I. Nisha on her private number. It is surprising that the investigation does not reveal as to who had informed the Officer-in-Charge of the Police Station. The A.S.P. (Sadar), Patna does not say that the named accused persons whose CDRs were received were not in touch with the Officer-in-Charge of the Police Station. No effort has been taken to find out as to whether Rabindra Kumar (Respondent No.10) and Devendra Kumar (Respondent No.11), who are said to be instrumental in the alleged occurrence, had been in contact with the Officer-in-Charge and/or Smt. Nisha, the Sub-Inspector from prior dates. The investigation says that a call had been received from an unknown number by the Officer-in-Charge but that unknown number and the holder of the said number has not been examined in course of investigation. It is not the case of the Investigating Officer that such unknown number or the identity of the person is not being disclosed for certain plausible reasons. In fact, the manner in which the investigation has been



done and a conclusion has been reached that the petitioner had himself vacated the house by virtue of the compromise it would not inspire confidence of this Court. A fair investigation is a part of fundamental right of a citizen under Article 21 of the Constitution of India. Whenever this Court, being a constitutional court, would find that the investigating agency is not carrying its duties to conduct a proper and fair investigation, an appropriate direction is liable to be issued.

34. This case raises a serious question as to whether a police officer is within his power to pick up any person, put him in the police jeep and bring him to the Police Station where he may be kept from morning 8 am to 5 pm without recording the reason for his taking to the Police Station and keeping him for such a long time. Can the role of the Police Station be extended to the extent that the Police will pick up a person who is having a property dispute with another person and then confine him within the premises of the Police Station and ultimately that would lead to a compromise signed in presence of the S.H.O. Can in the name of mere interrogation a person may be made to sit in the Police Station from morning to evening. This is not even a case where petitioner was picked up for purpose of interrogation in connection with a case.



35. This Court is aware that to resolve some local family property disputes, police is making efforts to conduct conciliation between the parties within the premises of the Police Station and is trying to resolve the dispute between the parties amicably. While this holding of a kind of mediation between the two parties who are family members/neighbours and co-villagers is a welcome idea but there is a limit to that. Mediation between the parties in presence of a trained Mediator inside the Police Station in presence of the public at large on a prior notified date would be one thing but to take a person in a police jeep, confine him in the Police Station from morning to evening and then setting him free only after a compromise is reached between him and the other side in the Chambers of the Officer-in-Charge of the Police Station would be quite different and distinct thing and the same would not be acceptable to a civilised society who believes in rule of law.

36. What would be the kind of mental agony from which a person would be suffering while being forcibly taken away to the Police Station in a police jeep and then being asked to remain inside the Police Station from morning 8 am to evening 5 pm even though there is no F.I.R. against him, may be well understood by any person who believes in the basic human



rights, the sufferance and harassment of that person cannot be understood by a police officer who is not willing to grant a human being, a basic 'right to be human'.

37. In the present case, the detention of the petitioner in the Police Station is akin to an act of arrest if not an arrest in a strict legal sense. The freedom of the petitioner was curtailed by asking him to remain in the Police Station from morning to evening. This has resulted in infringement of the fundamental right guaranteed to the petitioner under Article 21 of the Constitution of India. Power to arrest is the chief source of corruption in Indian Police. About 30 years back in the case of **Joginder Kumar v. State of Uttar Pradesh** reported in **AIR 1994 SC 1349**, the Hon'ble Supreme Court has taken note of the report of the National Police Commission and observed as under:-

“13. The National Police Commission in its Third Report referring to the quality of arrests by the Police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails. The said Commission in its Third Report at page 31 observed thus:

“It is obvious that a major portion of the



arrests were connected with very minor prosecutions and cannot, therefore, be regarded as quite necessary from the point of view of crime prevention. Continued detention in jail of the persons so arrested has also meant avoidable expenditure on their maintenance. In the above period it was estimated that 43.2 per cent of the expenditure in the connected jails was over such prisoners only who in the ultimate analysis need not have been arrested at all.”

38. The Code of Criminal Procedure (hereinafter referred to as the Cr.P.C.) nowhere provides that a Police officer may detain a person in the Police Station for a specified period without disclosing any reason thereof. The power of a Police officer to arrest a person and the procedures required to be followed while effecting an arrest are provided under Chapter V of the Cr.P.C. which contains Section 41 to Section 60. A Police officer is empowered to arrest any person without an order from a Magistrate and without a warrant in the circumstances enumerated under Sub-section 1 of Section 41 Cr.P.C. Section 57 Cr.P.C. reads as under:-

“57. Person arrested not to be detained more than twenty-four hours.—No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of



the time necessary for the journey from the place of arrest to the Magistrate's Court.”

39. In the present case, since the stand of the S.H.O. and the investigating agency is that the petitioner in this case was not arrested, therefore, this Court is required to consider whether the action of the Sub-Inspector of Police who made the petitioner to sit in the police jeep and then took him to the Police Station where he was left and as is obvious from the entire materials on the record, he was not allowed to leave the Police Station before signing the settlement/compromise would amount to detention of the petitioner without showing him “arrested” in the police records. The word “detention” in the context of the present case must mean keeping back the petitioner from his family or any other person with an intention to force him to enter into a settlement/compromise. No F.I.R. was lodged in this case alleging commission of a cognizable offence by the petitioner. In the records of the Police Station, there is no mention that the S.I. of Police was authorised by the S.H.O. to bring the petitioner to the Police Station and to keep him in the Police Station from morning to evening until a settlement/compromise is reached between the petitioner and the respondent no.9. The action of the S.I. of the Police and then tacit approval of the same by the S.H.O. have potential to



shaken the confidence of people at large in police administration. It has no sanction of law.

40. This Court would draw strength from a recent judgment of the Hon'ble Supreme Court in the case of **Shatrughna Atmaram Patil & Ors. Vs. Vinod Dodhu Chaudhary & Another** reported in **2024 INSC 75**. In the said case, the premises in question were in possession of the tenants. The owner of the property executed a sale deed on 27.10.2021 in favour of five persons and thereafter died having committed suicide on 08.03.2022. The property owner left a suicide note naming the tenants as abettors. A complaint was made to the local Police but only an accidental death case was registered but no F.I.R. was registered under Section 306 I.P.C.

41. On the very next day, i.e., on 09.03.2022, the tenants were called to the concerned Police Station, they were held for twenty four hours and in the meantime, the premises in question were demolished by the brother of the deceased-vendor, his widow and with support of the local Police. At the Police Station, the tenants were also forced to sign some documents, apparently giving their consent of vacating their premises voluntarily. The tenants lodged a complaint under Section 156(3) Cr.P.C. against the purchasers, the vendors and



some Police officers. The learned Magistrate ordered an inquiry under Section 202 Cr.P.C. confining it to the involvement of the brother of the deceased, widow of the deceased and five purchasers. This order was challenged by the tenants/complainants before the learned Sessions Judge who ordered that the complaint filed before the learned Magistrate be forwarded to the concerned Police Station for registration and investigation. The order of the learned Sessions Judge was challenged before the High Court. The High Court not only approved the order of the learned Sessions Judge but also issued further directions regarding investigation. The order of the High Court was under challenge before the Hon'ble Supreme Court at the instance of the brother of the deceased, the purchasers and the Police personnel. During pendency of the case before the Hon'ble Supreme Court, the complainant and the accused compromised whereunder the subsequent purchasers paid an amount of Rs. Ten lakhs to each of the tenants and, in lieu thereof, the tenants filed their affidavits stating that they do not wish to further prosecute their complaint. The Hon'ble Supreme Court did not interfere with the withdrawal of the complaint and was of the view that further investigation or trial would be an exercise in futility. But the Hon'ble Court, having noticed the



conduct of the police personnel, took a view that the Police personnel cannot be allowed to go scot-free in a case where they had an apparent role in conspiring and in abetting the crime of illegal detention of the tenants, coercing them to sign the documents against their will and getting the premises in question demolished without any order from a competent court. The Hon'ble Supreme Court observed in paragraph '9', '10' and '11' as under:-

“9. The compensation for the tenants has been given by the subsequent purchasers, as stated in the affidavits, apparently for the reason that they are now the owners of the property and they have been instrumental in carrying out the demolition illegally. The widow of the deceased (although not a party before us) and the brother may not be having any further interest inasmuch as the property had already been sold by the deceased four and half months prior to his death. However, what we are not satisfied with is why the police personnel have been allowed to go scot-free in a case where they had an apparent roll in conspiring and in abetting the crime of the illegal detention of the tenants, coercing them to sign the document against their will, and getting the premises in question demolished without any order from a competent Court.

10. We, accordingly, direct that the six police personnel will suffer a cost of Rs. 6.0 lacs for each of the two complainants. Out of the six police personnel, three are constables, one is a Head Constable, one is a Sub-Inspector, and one is an



Inspector. They shall suffer a cost of Rs. 50,000/- per Constable, Rs.1,00,000/- by the Head Constable, Rs. 1.50 lacs by the Sub-Inspector, and Rs. 2.0 lacs by the Inspector, totalling Rs. 6.0 lacs for each case with the above distribution. This amount shall be deposited in Account No. 90552010165915 of the Armed Forces Battle Casualties Welfare Fund, Canara Bank, Branch South Block, Defence Headquarters, within four weeks from today. After depositing the said amount in the aforesaid fund, they shall file proof of deposit with the Registry of this Court within six weeks and also before the Magistrate and the High Court. Upon deposit of the said amount, the proceedings of the two complaint cases shall stand quashed and closed.

11. We, however, make it clear that any observations made and also the direction to suffer compensation to the tenants by the six police personnel will not be treated as adverse to their interest in consideration of their promotions etc. that is to say that this order may not be kept in their service records”.

42. This Court has no iota of doubt that the petitioner was deprived of his liberty from morning to evening in the Police Station. This was wholly illegal. In the opinion of this Court, the Sub-Inspector of Police and the S.H.O. of the Police Station exceeded their authority conferred by law. It is a case of misuse of a drastic power conferred upon a Police officer. Such power could not have been exercised in a casual manner as has been done in the present case. For this unlawful detention of the petitioner in the Police Station, this Court would hold and



declare that the State would be liable to pay a compensation of Rupees One Lakh to the petitioner within a period of two months from the date of receipt/production of a copy of this judgment. In view of the judgment of this Court rendered in the case of **Ravi Shankar Singh and Ors. versus The State of Bihar and Others** reported in **2019 (1) PLJR 917**, the State shall realise this amount from the two erring officials as mentioned above in accordance with law. This Court would, however, observe that the direction to the State to realise the compensation amount from the two erring officials would not be treated as adverse to their interest in consideration of their promotions etc. After completion of investigation in this case, the competent authority may deal with the matter further in administrative side.

43. This Court is of the considered opinion that the investigation of this case has not progressed satisfactorily. Many aspects of the alleged occurrence have not been examined. The electronic evidences in form of audio clips which have been played in this Court have not been examined and no effort has been made by the I.O. of this case to find out as to whether the Officer-in-Charge of the Police Station and/or the S.I. of Police were in contact with the private respondents from prior to the



date of alleged occurrence and whether the action of the Police in this case in keeping the petitioner detained in the Police Station from morning to evening was result of a plan drawn by the private respondents with hand in glove with the Police officers in order to oust the petitioner from possession of the flat in question. The I.O. of this case is a responsible officer from Indian Police Service, therefore, this Court expects that the I.O. shall do the investigation from all angles and complete the same within a reasonable period.

44. This Court would not approve this kind of detention in the Police Station. A person may be detained in custody after his arrest in accordance with the provisions of the Cr.P.C. but a person against whom there is no F.I.R. disclosing commission of a cognizable offence and who is not required to be interrogated/investigated in connection with a case cannot be picked up by Police and kept in the Police Station from morning to evening. What has been done in this case is evident from the discussions hereinabove. The Director General of Police, Bihar shall examine this aspect of the matter and issue appropriate instructions to all the Police Stations. Such instruction must be issued within a period of two months from today.

45. Having said so, this Court is not persuaded to



exercise its extraordinary writ jurisdiction to direct restoration of possession of the petitioner in the facts of the present case. In this case, the allotment of flat in question by the Bihar State Housing Board in favour of the father of respondent nos. 8 and 9 is an admitted fact. The respondent nos. 8 and 9 have denied execution of any agreement to sale with the petitioner and the petitioner has already filed a Title Suit bearing No. 389 of 2022 in the court of learned Sub-Judge, Patna.

46. The title suit between the parties shall be decided by the learned court on its own merit without being influenced by the observations of this Court contained in any part of this order.

47. The writ application is disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Rishi/-

AFR/NAFR	AFR
CAV DATE	05.01.2024
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