

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.210 of 2019

Arising Out of PS. Case No.- Year- Thana- District-

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Kalyani Mehta, aged about 41 years, gender- female, wife of Ramesh Mehta Resident of village-Bakarchak, Manikpur P.S -Suryagarha District-Lakhisarai, posted as A.N.M. Sub-divisional Hospital, Triveniganj, at P.O and P.S.Triveniganj, District-Supaul

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Main Secretariat, Patna
2. The Principal Secretary, Health Department Govt. of Bihar, Main Secretariat, Patna.
3. Regional Deputy Director, Health, Saharsa
4. Sri Ghanshyam Jha, Civil Surgeon, Supaul.
5. District Magistrate, Supaul
6. Deputy Superintendent, Sub-Divisional Office, Triveniganj, Supaul
7. S.D.M Triveniganj, Supaul
8. S.H.O, MahilaThana Triveniganj, Supaul
9. Dr. Prakash Kumar aged about 38 years (Male) son of Bhola Prasad Yadav, resident of village-Lalpatti, Ward No.3, P.O and P.S Triveniganj And District-Supaul

... .. Respondents

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Code of Criminal Procedure- Section 39, 154(1), 156(3), 190 and 200

The petitioner being aggrieved filed writ petition u/s 226 of the Constitution because her representation to the Civil Surgeon and her informatory petition under Section 39 of the Cr.P.C were not acted on.

Held that Section 154(1) of the Cr.P.C provides for the recording of F.I.R in case of cognizable offence..... As per Section 154(3) of the Cr.P.C, any person aggrieved due to refusal on the part of SHO to record FIR may send the substance of such information in writing by post to S.P., who if satisfied that such information discloses the Commission of cognisable offence, either investigate the case himself, or direct an investigation to be made by some other police officer.

Further held that petitioner has not availed the statutory remedy provided under Section 154(3).

It was further held that petitioner has also not taken any steps under Section 190 and Section 200 of Cr.P.C

Since the petitioner did not avail of the equally efficacious statutory remedy being available to her, the writ petition is dismissed.

(Para 7, 8 and 9)

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Appearance :

For the Petitioner/s : Mr. Daya Shanker Prasad, Advocate
 For the Respondent/s : Mr.Nagendra Pd. Yadav, SC-23

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 04-02-2019

Heard learned counsel for the petitioner and



learned counsel for the State.

2. The petitioner has prayed for issuance of a direction to the respondent nos. 5 to 8 to submit an action taken report on the complaint made by the complainant, as contained in Annexure-1 series to this writ petition. She has also prayed to call for a report from the respondents nos. 5 to 8 as to why a fact finding committee be not constituted on the complaint made against the respondent no. 9, as contained in Annexure-1 series and after having full proof probe book respondent no. 9 under various provisions of the Penal Code as well as Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

3. Learned counsel for the petitioner submitted that the petitioner is posted as an Auxiliary Nurse Midwife (ANM) at Sub-divisional Medical Hospital, Triveniganj, Supaul. In the same hospital, respondent no. 9 is also posted as a Medical Officer. He runs a nursing home in the name and style of Om Subhadra Hospital, which is situated in front of Sadar Hospital, Triveniganj. He puts pressure upon the petitioner to provide her services in his nursing home. As she does not find spare time, she has refused to work in his nursing home. Her refusal has caused annoyance to him. On



25.10.2018, he threatened the petitioner that she will be abducted, raped and killed, if she would not agree to his proposal. Being aggrieved by the aforesaid atrocious acts of omission and commission, at the hands of respondent no. 9, she submitted a representation to the Civil Surgeon, Supaul on 26.12.2018. She also filed an informatory petition under Section 39 of the Code of Criminal Procedure (for short 'CrPC') in the court of Sub-divisional Officer and an information in this regard was also given to the Officer-in-charge of Mahila Police Station, Supaul and the Incharge Deputy Superintendent, Sub-divisional Hospital Triveniganj, Supaul, but no action was taken by the respondents so far.

4. *Per contra*, learned counsel appearing for the State submitted that the reliefs prayed for in the instant writ petition are misconceived. In case, any cognizable offence has been committed by the respondent no. 9 and the Officer-in-charge of the Police Station has failed to register the first information report (for short 'FIR'), on receipt of a complaint, the statutory remedy to the petitioner is provided under subsection (3) of Section 154 of the CrPC. The petitioner ought to have brought it to the notice of the Superintendent of Police by intimating him the substance of allegation through registered



post. In case, he would have also failed to register the FIR, the petitioner ought to have filed an application under Sections 190 and 200 of the CrPC before the Jurisdictional Magistrate. He submitted that the petitioner having not availed of the statutory remedies available in law is not entitled to any relief under Article 226 of the Constitution of India.

5. I have heard learned counsel for the parties and perused the record.

6. It would appear from Annexure- 1 series that on 26.12.2018, the petitioner made a written complaint to the Civil Surgeon, Supaul regarding acts of omission and commission of respondent no. 9. However, no complaint has been made by the petitioner before any superior officer of the State Government after the complaint dated 26.12.2018. It would further appear that the petitioner made a compliant to the Officer-in-charge of Mahila Police Station, Supaul and the Incharge Deputy Superintendent, Sub-divisional Hospital Triveniganj, Supaul but there is no averment that on failure to institute any case by the Officer-in-charge of Police Station, the petitioner sent the substance of such information in writing and by post to the Superintendent of Police.

7. Section 154(1) of the CrPC provides that



every information relating to a commission of cognizable offence, if given orally to an Officer-in-charge of a Police Station, shall be reduced in writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

8. Sub-section (3) of Section 154 of the CrPC 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 the CrPC, and such officer shall have all the powers of an Officer-in-charge of the police station in relation to that offence.

9. Admittedly, the petitioner has not availed



of the statutory remedy provided under Section 154(3) of the CrPC for the redressal of her grievance. That apart, the petitioner has also not taken any steps under Sections 190 and 200 of the CrPC, as the CrPC empowers the Magistrate to take cognizance of an offence even without a police report on a complaint filed by the aggrieved person. The court of Magistrate, in appropriate cases, is also empowered to refer a complaint to the police for investigation in exercise of powers prescribed under Section 156(3) of the CrPC.

10. Since the petitioner has not availed of the equally efficacious statutory remedies being available to her, I am not inclined to entertain this application in extra-ordinary writ jurisdiction. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

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