

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1850 of 2019

Arising Out of PS. Case No.-294 Year-2019 Thana- KHAJANCHI HAT District- Purnia

1. Shankar Kushwaha @ Shankar Kumar Biswas, S/o Nebi Lal Vishwas @ Nebi Lal Kushwaha R/o village- Kochaili, Purnea, Barsauni, P.S.- Dagurwa Barsauni, District- Purnea
2. Ritesh Kumar S/o Sanjay Kumar Bishwas @ Sanjay Bishwas R/o village- Kochaili, P.S.- Dagurwa Barsauni, District- Purnea

... .. Petitioners

Versus

1. The State of Bihar through Principal Secretary, Home Police Department Govt. of Bihar, Patna
2. The Director General of Police, Bihar, Patna
3. The Inspector General of Police, Bihar, Patna
4. The I.G. Purnea Range, Purnea
5. The DIG Purnea Range, Purnea
6. The Superintendent of Police, Purnea
7. The SHO, K. Hat (Sahay) Police Station, District- Purnea
8. Pushpesh Kumar S/o Late Pankaj Singh R/o village- Sarsi, P.S.- Sarsi, District- Purnea
9. Suman Singh S/o Late Ashok Singh Resident of Housing Board, Purnea, P.S.- K. Hat, District- Purnea

... .. Respondents

with

Criminal Writ Jurisdiction Case No. 14 of 2021

Arising Out of PS. Case No.-294 Year-2019 Thana- KHAJANCHI HAT District- Purnia

SUMAN KUMAR @ SUMAN SINGH Son of Ashok Singh Resident of Village - Housing Board, P.S.- K. Hat, Dist.- Purnea.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary Home Deptt. Govt. Of Bihar Patna
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Purnea Range, Purnea.
4. The Superintendent of Police, Purnea.
5. The Deputy Superintendent of Police, Sadar, Purnea.
6. Office - Incharge, P.S.- K.Hat, Distt.- Purnea.
7. The Add. D.G. , C.I.D , Bihar, Patna.



8. Mr. Santosh Kushwaha S/O Nevi Lal Kushwaha @ Vishwas resident of Professor Colony, Rambag, Purnea

... .. Respondents

Appearance :

(In Criminal Writ Jurisdiction Case No. 1850 of 2019)

For the Petitioner/s : Mr. P.K. Shahi, Sr. Advocate
Mr.Ranjeet Kumar, Advocate

For the Respondent/s : Mr.Md. Nasrul Huda Khan, SC-1

For the Informant : Mr. Sunil Kumar Pathak, Advocate

(In Criminal Writ Jurisdiction Case No. 14 of 2021)

For the Petitioner/s : Mr.Sanjay Kumar, Advocate

For the Respondent/s : Mr.Saroj Kumar Sharma, AC to AAG-III

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date : 23-12-2022

Heard Mr. P.K. Shahi, learned senior counsel assisted by Mr. Ranjeet Kumar, learned Advocate for the petitioners in Cr.W.J.C. No. 1850 of 2019 and Mr. Nasrul Huda Khan, learned SC-1 for the State. Mr. Sunil Kumar Pathak, learned Advocate has argued on behalf of the informant.

2. Also heard Mr. Sanjay Kumar, learned counsel for the petitioner in Cr.W.J.C. No. 14 of 2021 for the petitioner and Mr. Saroj Kumar Sharma, learned AC to AAG-3 for the State.

3. Since both the writ applications have been heard together with consent of learned counsel for the parties, this Court is disposing of the same by this common order.

Cr.W.J.C. No.1850 of 2019 (Shankar Kushwaha @ Shankar Kumar Biswas and others Vs. State of Bihar and Anr.)



4. In this writ application the petitioners are praying for quashing of the First Information Report being K. Hat (Sahayak) P.S. Case No. 294 of 2019 dated 02.05.2019 registered for the offences under Sections 147, 148, 149, 341, 323, 325 & 307 of the Indian Penal Code, Section 302 I.P.C. has been added subsequently.

5. It is the case of the petitioners that at the instance of the injured (since deceased) one First Information Report giving rise to K. Hat (Sahayak) P.S. Case No. 292 of 2019 dated 01.05.2019 was registered.

6. Later on a second F.I.R. being K. Hat (Sahayak) P.S. Case No. 294 of 2019 dated 02.05.2019 under Sections 147, 148, 149, 341, 323, 325 & 307 of the Indian Penal Code, Section 302 I.P.C. has been added subsequently, has been registered at the instance of the respondent no. 8 & 9.

7. Learned senior counsel for the petitioners argued that in fact for the same occurrence altogether six F.I.Rs. were registered. From the deceased's side three F.I.Rs. have been lodged.

K. Hat (Sahayak) P.S. Case No. 292 of 2019 dated 01.05.2019 was registered under Sections 147, 148, 149, 341, 323 & 307 of the Indian Penal Code wherein Section 302 of the



I.P.C. was subsequently added, at the instance of respondent no. 8. In this case (i) Shankar Kushwaha (petitioner no. 1) (ii) Nilu Singh (iii) Ritesh Kumar @ Guddu (petitioner no. 2) and other 10-15 unknown persons were made accused. The prosecution story is that on 01.05.2019 at about 12:30 noon while the informant was going for panchayati along with his friend Nurul Khan on Scorpio vehicle, the named accused persons stopped his vehicle and thereafter petitioner no. 1 dragged the driver namely Aakash Kushwaha @ Mittu and assaulted him with Bamboo on his head in which he fell down and seeing the apprehension he started fleeing but was caught and assaulted.

8. K. Hat (Sahayak) P.S. Case No. 293 of 2019 dated 01.05.2019 under Section 147, 148, 149, 341, 323, 332, 353, 427 and 435 of the Indian Penal Code was lodged by one Amit Kumar who was officer-in-charge of the police station. In this case altogether 13 named and 100-150 unknown persons were made accused. The petitioners are not named in this F.I.R.

9. FIR of K.Hat (Sahayak) P.S. Case No. 294 of 2019 was registered on 02.05.2019 in respect of the alleged occurrence which took place on 01.05.2019 at 12:30 P.M. at Badi Hat beside Laxmi Mandir. The F.I.R. was instituted under Sections 147, 148, 149, 341, 323, 325 & 307 of the Indian Penal



Code. It is stated that vide order dated 08.05.2019 Section 302 I.P.C. was added. Informant of this case is one Suman Singh (respondent no. 9). The same informant is petitioner in Cr.W.J.C. No. 14/2021. In this case, there are three named accused including the two petitioners of this case and 10-15 unknown persons. As per prosecution story, on 01.05.2019 at 12:30 P.M. brother of the informant along with other were going for panchayati. It is alleged that named accused along with others stopped their car and Shankar Kushwaha (petitioner no. 1) and others assaulted the brother of the informant upon his head with Bamboo upon which he fell down. The others somehow managed to flee.

10. Since the present writ application is confined to the prayer of the petitioners to quash and cancel the F.I.R. of K. Hat (Sahayak) P.S. Case No. 294 of 2019, this Court is not going into the details of other F.I.Rs.

11. Learned senior counsel for the petitioners has argued that in both the F.I.Rs., the place of occurrence, time of occurrence and the manner of occurrence are the same and one. It is his submission that in such circumstance the second F.I.R. is liable to be quashed.

12. Reliance in this regard has been placed on the



catena of the judgments of the Hon'ble Supreme Court in the case of **T.T. Antony Vs. State of Kerala** reported in **(2001) 6 SCC 181**; **Upkar Singh Vs. Ved Prakash and others** reported in **(2004) 13 SCC 292**; **Babubhai vs. State of Gujarat and others** reported in **(2010) 12 SCC**; **Surender Kaushik and others vs. State of Uttar Pradesh and others** reported in **(2013) 5 SCC 145**; **Awaqdesh Kumar Jha alias Akhilesh Kumar Jha Vs. State of Bihar** reported in **(2016) 3 SCC 8**; **Sreekumar Vs. State of Kerala and others** reported in **(2018) 4 SCC 579**; **Anil Singh @ Anil Kumar Singh vs. The State of Bihar** reported in **2018 SCC Online Pat 1526**; **Neeharika Infrastructure Pvt. Ltd. vs. The State of Maharashtra and others** reported in **2021 SCC Online SC 315** and **Amish Devgan Vs. Union of India and others** reported in **(2021) 1 SCC 1**.

13. Mr. Sunil Kumar Pathak, learned Advocate as well as Mr. Sanjay Kumar, learned counsel for the informants in the above-mentioned two F.I.Rs. have vehemently opposed this application.

14. Learned counsel submit that it is a matter of record that investigation of these cases were under control of the Criminal Investigation Department (in short 'CID'). For one



reason or another the CID continued with the investigation in K. Hat (Sahayak) P.S. Case No. 294 of 2019. In the said case only step was taken to add Section 302 I.P.C. After death of the injured brother of the informant. In K. Hat (Sahayak) P.S. Case No. 292/2019 no step was taken to add Section 302 I.P.C. Learned counsel submitted that all the materials were collected in course of investigation in K. Hat (Sahayak) P.S. Case No. 294 of 2019 and a charge-sheet has been filed in the said case against the accused persons including the petitioners. Learned counsel submits that in such circumstance quashing of K. Hat (Sahayak) P.S. Case No. 294/2019 would prove fatal to the prosecution and the culprits may get benefit of the technicalities of law in absence of the materials in K. Hat (Sahayak) P.S. Case No. 292 of 2019.

15. Learned counsel has, however after due deliberations does not dispute that if the investigation of K. Hat (Sahayak) P.S. Case No. 294 of 2019 is amalgamated with K. Hat (Sahayak) P.S. Case No. 292 of 2019, it will serve the interest of justice.

Stand of Respondent No. 6

16. The Superintendent of Police, Purnea initially filed a counter affidavit through Dy.S.P. (Headquarter), Purnea. The



counter affidavit however does not specifically answers the issues raised in the writ application save and except to say that K. Hat (Sahayak) P.S. Case No. 294 of 2019 has been found true against 26 named (including the writ petitioners) and 100-150 unknown accused for the offences punishable under Sections 147, 148, 149, 341, 342, 323, 302 and 109 of the I.P.C.

17. In course of hearing of the writ application, a supplementary counter affidavit came to be filed on behalf of respondent no. 6. This affidavit was filed in compliance of the order dated 25.08.2022 passed by this Court wherein this Court called upon the State to file an affidavit clearly stating as to whether section 302 I.P.C. has been added in K. Hat (Sahayak) P.S. Case No. 292 of 2019. This Court further observed that in case it has not been added then the reason thereof and the stand of the investigating agency be placed before this Court.

18. In the light of the order of this Court, the Superintendent of Police has submitted that K. Hat (Sahayak) P.S. Case No.294 of 2019 and K. Hat (Sahayak) P.S. Case No. 292 of 2019 both were investigated by two different Sub-Inspectors of Police. The investigation of K. Hat (Sahayak) P.S. Case No. 292/2019 was going on, but, in the meantime, all the six F.I.Rs. were taken into the control of the Criminal



Investigation Department (CID) vide Memo No. 195/RD dated 17.01.2020 of the CID. The CID vide office memo no. 1010/C dated 04.08.2022, in the work scheme directed to investigate the K. Hat (Sahayak) P.S. Case No.294 of 2019 on 10 points and further directed to investigate K. Hat (Sahayak) P.S. Case No. 292 of 2019 on 8 points. As per direction the investigation of both the cases were going on by a competent police officer and on the direction of the CID a requisition has been sent to the court of learned C.J.M., Purnea for adding section 302 I.P.C. in K. Hat (Sahayak) P.S. Case No. 292 of 2019.

19. As the hearing of the case progressed, this Court called upon learned counsel for the State to seek instruction from ADG, CID as well as the Superintendent of Police, Purnea and submit a detail counter affidavit addressing the issues raised by learned counsel for the parties.

20. At this stage, a counter affidavit came to be filed on behalf of the respondent no. 2 & 7 sworn by the Superintendent of Police (C) CID. In paragraph '8' and '9' of the counter affidavit the CID has recorded as under:

“8. Therefore, in light of the above fact and circumstances which have surfaced during the course of investigation and as per the established proposition of law, it is necessary to amalgamate the investigation of case no. 294/2019 with Purnea K.Hat (Sahayak), P.S. case no. 292/2019. Thus the



Investigating Officer has been directed to submit a request in the concerned Learned Court praying for the amalgamation of entire record of Purnea K. Hat (Sahayak) P.S. Case No. 294 of 2019, including all the evidences collected, chargesheets submitted, into Purnea K.Hat (Sahayak) P.S. Case No. 292 of 2019.

9. That, the Superintendent of Police, Purnea has been instructed to constitute a Special Team to assist the Investigating Officer in order to ensure speedier investigation. The Superintendent of Police, Purnea & the Sub-Divisional Police Officer, Sadar, Purnea have been also been instructed to regularly review the progress of the investigation of these cases.”

21. In the last supplementary counter affidavit filed by Dy.S.P. (Headquarter), Purnea, this Court has been informed that in K. Hat (Sahayak) P.S. Case No. 294 of 2019 non F.I.R. accused Gautam Sah was arrested and charge-sheet being No. 02/2020 has been submitted against him. It is further stated that in the light of the order of the Hon’ble Patna High Court passed in Cr.W.J.C. No. 14 of 2021, in view of the materials collected against Pappu Sah, Amrendra Sah, Sanjay Sah, Anmol Yadav, they have been remanded in this case. Accused Shushant Kushwaha has been granted bail by learned Court. Sajan Bishwas, Chhotu Roy alias Vikky Kumar, Raja Yadav alias Raja Kumar, Appu Yadav @ Aakash Kumar have surrendered on 03.08.2020 in the learned court of C.J.M., Purnea. Nirmal



Kumar @ Nirmal Kumar Sah has surrendered on 05.08.2022. A supplementary charge-sheet bearing No. 397 of 2022 has been submitted on 26.10.2022. The warrant of arrest has been obtained against Shankar Kushwaha (petitioner no. 1) and Nilu Singh Patel but they are still absconding.

22. In paragraph '6' of the supplementary affidavit, it is stated that so far as K. Hat (Sahayak) P.S. Case No. 294 of 2019 is concerned, charge-sheet has been submitted against them and process under Section 82 Cr.P.C. has already been executed against non-FIR accused which includes these two petitioners. The supplementary affidavit further discloses that process under Section 83 Cr.P.C. is going to be obtained from the learned court.

In Cr.W.J.C. No. 14 of 2021 (SUMAN KUMAR @ SUMAN SINGH Vs. The State of Bihar and others)

23. The informant moved this court for a direction to the respondent authorities to apprehend the accused persons of K. Hat (Sahayak) P.S. Case No. 294 of 2019 who are said to be enjoying the patronage of a Member of the Parliament because the accused is full brother of a member of Parliament. In the said writ application, it is stated that the investigation officer has though completed the investigation and found the case true



against the accused persons but due to intervention of respondent no. 4 who is under undue pressure of local M.P. directed the I.O. to submit a police report only against apprehended accused namely, Gautam Sah and to keep the investigation pending against other persons.

24. In Cr.W.J.C. No. 14 of 2021, this Court vide its order dated 23.06.2022 called upon respondent no. 4 to file a counter affidavit. On 26.07.2022, this Court heard learned counsel for the petitioner on I.A. No. 01 of 2022 which was filed for making Mr. Santosh Kushwaha party respondent no. 8. The allegation against him is that he being an influential person has influenced the investigation and at his instance the Superintendent of Police, Purnea has tried to subvert the investigation conducted by the I.O. to favour the accused. This Court directed the Superintendent of Police, Purnea to execute the warrants within a period of one week, failing which he will be personally present with the records of the case on the next date fixed in the matter. The next date was fixed on 22nd of August, 2022. Before the said date, an intervention application was filed vide I.A. No. 03 of 2022 on behalf of Shankar Kushwaha @ Shankar Kumar Biswas. He prayed for recall of the order dated 26.07.2022 passed by this Court. On 22.08.2022,



when Cr.W.J.C. No. 14 of 2021 was taken up for consideration, this Court passed an order for listing the matter on the next date and directed learned A.A.G.-3 for the State to ensure service of copy of the counter affidavit on the other sides.

25. Thereafter, both the writ applications were heard with an understanding to dispose of both the writ applications together.

Consideration

26. In the aforementioned facts and circumstances of the case, this Court finds that admittedly the investigation has progressed in K. Hat (Sahayak) P.S. Case No. 294 of 2019 in which a charge-sheet has already been filed. The respondent no. 2 to 7 has made a statement in paragraph '8' of their counter affidavit that they have directed the I.O. to submit a request in the concerned court praying for amalgamation of entire records of K.Hat (Sahayak) P.S. Case No. 294 of 2019 including all the evidences collected and charge-sheet submitted into K. Hat (Sahayak) P.S. Case No. 292 of 2019. The said respondents have brought on record Annexure 'A' with their counter affidavit to show that the progress in respect of all the six cases have been reviewed and appropriate instructions have been issued to the Investigation Officer. This Court is, therefore of the considered



opinion that in view of the stand of respondent nos. 2 to 7 in paragraph '8' of their counter affidavit, this Court need not exercise it's extraordinary writ jurisdiction to quash the First Information Report being K. Hat (Sahayak) P.S. Case No. 294/2019. The amalgamation of K. Hat (Sahayak) P.S. Case No. 292/2019 and K. Hat (Sahayak) P.S. Case No. 294 of 2019 would serve the interest of justice. This Court, therefore, refuses to interfere with the First Information Report of K. Hat (Sahayak) P.S. Case No. 294 of 2019.

27. As regards the execution of warrants and process under Section 82 and 83 Cr.P.C., this Court, at this stage, would put a word of caution for the CID. It appears from the records that the case was brought under the control of the CID in the month of January 2020 but on record the Court finds that the CID reviewed the matter and issued instructions to investigate on certain points in both the cases only in the year 2022 when they realized that the writ applications have come up for consideration in this Court and the Court is passing orders in the writ application. The inaction on the part of the CID by sitting over the matter for more than two years is apparent on perusal of the records. This Court is further fortified in it's view on this issue upon looking into the case diary which has been brought



on record by learned counsel for the State. The Case diary has been written only up to 10.01.2020 (paragraph 150). It shows that this is yet another case in which the CID has not acted for over two years. This is one of the circumstances which indicate that the allegations of the petitioner in Cr.W.J.C. No. 14 of 2021 that the investigation of the case has not progressed under some influence needs to be looked into at appropriate stage if occasion so arises. For the present, it is an opportunity for the CID to show it's credibility by taking immediate steps to execute the warrants and process under Section 82 and 83 Cr.P.C. in it's true terms and spirit and ensure that the cases which are subject matter of discussions hereinabove proceed in accordance with law.

28. Both the writ applications are disposed of with aforesaid directions and observations.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	
CAV DATE	12.12.2022
Uploading Date	23.12.2022
Transmission Date	23.12.2022

