

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Writ Jurisdiction Case No.332 of 2021**

Arising Out of PS. Case No.-101 Year-2020 Thana- PIRI BAZAR District- Lakhisarai

MITHUN SHARMA @ MITHUN KUMAR S/O SHANKAR SHARMA R/O  
VILLAGE GARI MAHESHPUR PS PIRI BAZAR, DISTRICT-  
LAKHISARAI ... Petitioner

Versus

1. THE STATE OF BIHAR THROUGH THE SECRETARY, HOME DEPTT.  
OLD SECRETARIAT, PATNA
2. THE DIRECTOR GENERAL OF POLICE, BIHAR
3. THE DISTRICT MAGISTRATE, LAKHISARAI
4. THE SUPERINTENDENT OF POLICE, LAKHISARAI
5. THE DEPUTY SUPERINTENDENT OF POLICE, LAKHISARAI
6. THE S.H.O. PIRI BAZAR P.S. DISTRICT LAKHISARAI
7. THE SUB-INSPECTOR SANJAY KUMAR, I.O. OF THIS CASE P.S-PIRI  
BAZAR, LAKHISARAI
8. SONI KUMARI D/O PRABHU MAHTO R/O VILLAGE-GARI  
BISHUNPUR, P.S-PIRI BAZAR, DISTRICT-LAKHISARAI

... Respondents

**Appearance :**

For the Petitioner : Mr.Jai Prakash Singh, Adv.

For the Respondents : Mr.Sanjay Kumar, AC to SC VIII

**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN**

**ORAL ORDER**

2      23-03-2023                      Heard learned counsel for the petitioner and the State.

Counsel for the petitioner has filed the present writ petition for quashing the first information report of Piri Bazar P.S. Case No. 101 of 2020 (G.R. No. 1249 of 2020) lodged under Sections 323, 504, 506 and 354/34 of the Indian Penal Code and 66(A) and 67(A) of the Information & Technology Act, 2000 (hereinafter referred to as, 'the Act').

Counsel for the petitioner submits that from bare reading of first information report no office is constituted. He further submits that the investigation has been made by the Sub Inspector of Police which is in gross violation of Section 78 of



the Act. Counsel further submits that Section 66(A) of the Act has been added in the first information report which is not in existence in the light of **Shreya Singhal Vrs. Union of India reported in AIR 2015 SC, 1523.**

Counsel for the State submits that first information report can not be quashed, if investigation is defective then a direction may be given to follow Section 78 of the Act. So far as the judgment of the Hon'ble Supreme Court is concerned, every one living in this country is bond to follow the said judgment.

Upon hearing the parties and going through the contents of the first information report, it transpires that the direct allegation has been made by the informant against the petitioner by name and the petitioner is the named accused of this first information report, the offence has been lodged not only under Section 66A of the Act but in other Sections of the Indian Penal Code and Information & Technology Act, 2000.

The contention of the petitioner is correct that under Section 78 of the Act it is the person at Inspector rank shall have to conduct the investigation, but, if an investigation is conducted by the person below the rank of Inspector can not be ground for quashing the first information report. As per the position of law



when a non-cognizable case has been constituted, police is bound to lodge the first information report and also the matter is to be investigated.

In this view of the matter, I am not inclined to interfere in the first information report and this criminal writ application is hereby **rejected** on the point of quashing of the first information report.

But, so far as applicability of Section 78 of the Act is concerned, I hereby direct the Superintendent of Police, Lakhisarai, to look into this matter that compliance of Section 78 of the Act in the information technology act matter must takes place. Liberty is also granted to the petitioner that he may represent to the Superintendent of Police through his counsel in the light of the order passed by the coordinate Bench in Cr.W.J.C. No. 153 of 2017 (Surendra Singh Vrs. State of Bihar & Ors.) and analogous cases decided on 09.09.2022 within four weeks from today and the Superintendent of Police shall consider the representation and take appropriate action.

**(Dr. Anshuman, J)**

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