

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.649 of 2014

Arising Out of PS.Case No. -537 Year- 2012 Thana -Sitamarhi District- SITAMARHI

1. Sumitra Devi Wife of Shiv Shankar Prasad Resident of Mohalla - Sitaram Chowk, Ward No. 10, Main Road, P.S. - Sitamarhi, district - Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar through Home Secretary, Govt. of Bihar
2. The Public Prosecutor, Sitamarhi
3. The Superintendent of Police, Sitamarhi null null
4. The Station House Officer, P.S. - Sitamarhi, District - Sitamarhi
5. Sanjiv Kumar Son of Late Kashi Prasad Resident of Mela Road, Bhavdepur, Ward No. 22, P.S. - Sitamarhi, District - Sitamarhi

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa, Adv.
For the State : Mr. Prashant Pratap, GP-6
For Respondent No.5 : Ms Madhubala Verma, Adv.
Mr. Ajay Kumar Verma, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-03-2015

Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for respondent no.5.

In this application filed under Articles 226 and 227 of the
Constitution of India, the prayer of the petitioner in paragraph- 1 is as
follows :-

1. That the present writ application is being filed U/A 226 and 227 of the Constitution of India for issuance of appropriate writ(s) directing the respondent authorities and the court below :
 - i. To ensure that sessions trials arising out of Sitamarhi P.S.Case No. 303 of 2012 and Sitamarhi P.S. Case No.537 of 2012 be tried

together by the same court and the judgments may be pronounced in both the cases on the same day one after the other.

- ii. To ensure that the investigation in connection with Sitamarhi P.S.Case No.303 of 2012 does not continue to remain pending for no good reason.
- iii. To take all necessary steps to secure free and fair trial of the both the parties.”

One Sanjiv Kumar (Respondent No.5) submitted a written report to the Officer-in-Charge, Sitamarhi Town Police Station on 06.05.2012 pursuant to which Sitamarhi P.S.Case No. 303 of 2012 was registered under section 302 read with 34 of the Indian Penal Code and 27 of the Arms Act against the petitioner and others unknown. It has been alleged in the written report submitted by respondent no.5 Sanjiv Kumar that on 06.05.2012 at around 7.30 p.m. the petitioner and two other unknown criminals intercepted his father while he was proceeding towards the northern lane on his motorcycle after collecting the revenue from Gudri Bazar, Sitamarhi. It is said that on receiving instructions from the petitioner, other two unknown criminals took out pistol from their pocket and fired 3-4 rounds of gun shots on the chest of Kashi Prasad (father of respondent no.5 Sanjiv Kumar) whereupon he fell down. The informant further claimed that since he was following his father, he could witness the occurrence and identify the petitioner. He further claimed that he can also identify other two unknown criminals as he had seen them in the lights of the



shops situated at the place of occurrence. The informant has also attributed the motive for the alleged incident against the petitioner. He has stated that apart from the contract of Gudri Bazar the deceased also used to deal in sale and purchase of land. In this connection his ten lakhs rupees was due against the petitioner and since his father was asking for payment of the aforesaid sum, the petitioner designedly got him murdered with the intent to misappropriate the aforesaid amount of rupees ten lakhs.

In respect of the same incident, i.e. the murder of father of respondent no.5, namely, Kashi Prasad, a complaint case, bearing Complaint Case No.C1-719 of 2012 was filed on 08.05.2012 by the petitioner stating therein that on 06.05.2012, when she had gone to Gudri Bazar, she saw Jitendra Prasad, Randhir Prasad, Pawan Prasad, Ashok Kumar Gupta, Dharmendra Prasad, Pappu Prasad, Sanjiv Kumar and others surrounding one Kashi Prasad (deceased) and abusing him for becoming witness in a case lodged by the petitioner. The aforesaid accused persons were also threatening to kill him. In the meantime, Sanjiv Kumar, son of Kashi Prasad took out a pistol saying that he should not have taken the contract of Gudri Bazar, whereafter he fired upon him. As a result, Kashi Prasad fell down and other accused persons also started firing upon him and when people gathered on hearing the noise of firearms, the accused persons fled



away by resorting to repeated firing. It has been further alleged in the complaint that some dispute was going on between Kashi Prasad and his son Sanjiv Kumar for quite some time. In fact, Sanjiv Kumar had made several attempts to kill Kashi Prasad, whereafter he had to leave his house and stay as a lessee of the petitioner. The accused persons were also enraged with Kashi Prasad as his name figured as a witness in a criminal case instituted by this petitioner against accused persons, who had unauthorisedly occupied her house. These accused persons also aided Sanjiv Kumar in applying for tender of Gudri Bazar against his own father Kashi Prasad. Sanjiv Kumar was ready to pay upto Rs. 10 lakhs to get the contract, which was finally given to his father Kashi Prasad on account of his offer of Rs.16.5 lakhs. This tender rivalry further aggravated the dispute between the two. This being the backdrop, Sanjiv Kumar and others designedly murdered Kashi Prasad to gain immediate control of Gudri Bazar and other properties as well. Since Kashi Prasad always rescued the petitioner, his murder had also emboldened the accused persons to consolidate against her. The petitioner first approached the police in this regard but when they refused to lodge the case on the statement of the petitioner, she ultimately filed the complaint petition in the court of learned Chief Judicial Magistrate, Sitamarhi.

The aforesaid complaint was forwarded by the learned



Chief Judicial Magistrate, Sitamarhi to the police under section 156(3) of the Code of Criminal Procedure (in short 'the Code') for investigation and, accordingly, the police registered formal F.I.R. in the matter bearing Sitamarhi P.S.Case No. 537 of 2012 under sections 147, 148, 149 and 302 of the Indian Penal Code against respondent no.5 Sanjiv Kumar and six others.

On conclusion of investigation of Sitamarhi P.S.Case No.537 of 2012, the police submitted final report on the ground of "error of law", stating therein that since Sitamarhi P.S. Case No.303 of 2012 had already been registered earlier for the same occurrence, no second F.I.R. is maintainable in the eye of law.

After taking into account the materials collected in course of investigation by the police, the learned Chief Judicial Magistrate, Sitamarhi refused to accept the final report submitted by the police in Sitamarhi P.S.Case No.537 of 2012 and took cognizance of the offence punishable under sections 302, 120-B of the Indian Penal Code and section 27 of the Arms Act against all the accused persons vide order dated 11.09.2013.

As the offence punishable under section 302 of the Indian Penal Code is exclusively triable by the court of Sessions, learned Chief Judicial Magistrate, Sitamarhi committed the case to the court of Sessions for trial and disposal. Learned Sessions Judge,



Sitamarhi transferred the record of the case to the court of Adhoc Additional Sessions Judge-II, Sitamarhi for trial. Accordingly, charges were framed in Sessions Trial No.414 of 2013 arising out of Sitamarhi P.S.Case No.537 of 2012 against the accused persons, whereafter a couple of prosecution witnesses have also been examined till date.

It is to be noted that in the first case, i.e. Sitamarhi P.S.Case No.303 of 2012, the police arrested one Chanchal Kumar. He was remanded to judicial custody and on conclusion of investigation against him charge sheet has also been submitted in the court vide Charge sheet No.151 of 2013 dated 25.02.2013. However, the investigation was shown to be pending against the petitioner and others in the report submitted under section 173(2) of the Code.

Learned counsel for the petitioner has submitted that from the recitals of the two F.I.Rs., it would be apparent that the two cases are in the form of case and counter case and, as such, law mandates that fair procedure of trial should be adopted in such cases. He has submitted that if the trial of the case and the counter case is not done by the same court and case and counter case are allowed to be tried by two different courts separately, likelihood of passing of conflicting judgments cannot be ruled out. He has further submitted that though Sitarmarhi P.S.Case No. 303 of 2012, in which the



petitioner has been made accused, was instituted on 6th May, 2012, but till date the police have not been able to conclude the investigation of the case. According to him, such an inordinate, unexplained and unaccountable delay put serious question mark on the effectiveness of the entire criminal trial and criminal justice administration.

On the other hand, learned counsel for the State has submitted that subsequent case instituted on the basis of complaint is patently bad in the eye of law. According to him, there cannot be two F.I.Rs. in respect of the same occurrence. As Respondent no.5 Sanjiv Kumar had already reported about the murder of his father to the police on 6th May, 2012 itself, the subsequent F.I.R. i.e. Sitamarhi P.S.Case No.537 of 2012 dated 03.08.2012 was not maintainable in the eye of law and thus the police submitted final report on the ground of “error of law”. However, he concedes that once the Magistrate has differed with the police report and taken cognizance of the offence, it would be desirable that both the cases be heard by the same Judge.

Learned counsel appearing for respondent no.5 has also adopted the arguments advanced by learned counsel for the State. She has submitted that initially a case was instituted by respondent no.5 with regard to murder of his father in which name of the petitioner was given in the First Information Report itself. However, two months later, the petitioner instituted a complaint that it was

respondent no.5 and few others, who had killed his father.

The fact of lodging the complaint by the petitioner after two months of the occurrence has strongly been contested by the learned counsel for the petitioner. He has submitted that the learned counsel appearing on behalf of respondent no.5 has not been correctly instructed as the complaint case was filed by the petitioner only two days after the alleged incident i.e. on 08.05.2012 and not after two months.

Be that as it may, at least there is no dispute regarding the fact that both the F.I.Rs. i.e. Sitamarhi P.S.Case No.303 of 2012 and Sitamarhi P.S.Case No. 537 of 2012 relate to the murder of one Kashi Prasad. It is well settled that two different versions in respect of the same occurrence can always give rise to institution of two separate F.I.Rs. In such a case, both the F.I.Rs. shall be permissible in law. Hence, apparently there was no “error of law” in registering the second F.I.R. pursuant to the direction given by the court in exercise of powers conferred under section 156(3) of the Code and investigating the same. Learned counsel for the petitioner is also correct in his submission that inordinate, unexplained and unaccountable delay puts serious question mark on the effectiveness of the entire process of criminal trial and criminal justice administration. It is the bounden duty of the police to investigate the



case without any delay. A sensitive and committed investigating agency is indispensable to the criminal justice system. The police cannot sit tight over the matter for an indefinite period in the name of ongoing investigation, specially, when the offence alleged is serious in nature. I am also in agreement with the learned counsel for the petitioner that the case and counter case should be tried by the same Judge.

In **Krishna Pannadi Vs. Emperor [A.I.R. 1930 Madras 190]**, a Bench of Madras High Court held that it is a generally recognized rule that a case and counter case should be tried in quick succession by the same Judge, who should not pronounce judgment till the hearing of both cases is finished.

In **Nathi lal & Ors. Vs. State of U.P. & Anr. [1990 (Supp) Supreme Court Cases 145]**, the Hon'ble Supreme Court held in paragraph 2 as under :-

“2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case, The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the case, he can rely only on the evidence



recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.”

Regard being had to the facts and circumstances of the present case, I direct the Superintendent of Police, Sitamarhi to personally look into the investigation of Sitamarhi P.S.Case No.303 of 2012. He shall ensure that ongoing investigation of the said case be concluded as early as possible preferably within three months from the date of receipt/production of a copy of the order.

In the light of the law laid down by the Hon’ble Supreme Court in the case of **Nathi Lal & Ors.** (Supra), I direct the learned Sessions Judge, Sitamarhi to ensure that Sitamarhi P.S.Case No.303 of 2012 and Sitamarhi P.S.Case No. 537 of 2012 corresponding to Sessions Trial No. 414 of 2013 be assigned to the same Judge and the court to which the cases would be assigned shall hold the trial of both the cross cases one after the other. After recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter, he must

proceed to hear the cross case and after recording of the evidence, he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into nor can the Judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of evidence which would be placed on record in that particular case without being influenced in any manner by the evidence or arguments advanced in the cross case. But both the judgments must be pronounced by the same learned Judge one after another.

With the aforesaid directions, the application is allowed.

Registry is directed to transmit a copy of this order to the Superintendent of Police, Sitamarhi.

(Ashwani Kumar Singh, J)

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