

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 1009 of 2014

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1. Panna Lal Gupta, Son of Late Ram Lal Sahu
 2. Usha Devi @ Usha Gupta, Wife of Panna Lal Gupta
 3. Raj Kumar Gupta, Son of Panna Lal Gupta
 4. Ajay @ Ajay Gupta @ Suraj Gupta, Son of Panna Lal Gupta,
All residents of Mohalla - Shitla Mandir Road, Chhoti Pahari, P.S. -
Bye-Pass Thana, Dist.- Patna
 5. Sheela Devi, Wife of Subodh Kumar, D/o - Panna Lal Gupta
 6. Chanda Gupta, Wife of Rajesh Kumar, D/o - Panna Lal Gupta,
Resident of - Station Road, Bakhtiyarpur, P.S. - Bakhtiyarpur, Dist.
- Patna
 7. Nandini Gupta @ Pinki Kumari, Wife of Prashant Kumar, D/o - Panna
Lal Gupta
Resident of Mohalla - Ratu Road, P.S. - Ratu, District - Ranchi
(Jharkhand)

.... Petitioners

Versus

1. The State of Bihar through Director General of Police, Bihar, Patna
2. Senior Superintendent of Police, Sasaram (Rohtas)
3. The Station House Officer, Sasaram Town, District - Sasaram (Rohtas)
4. Supriya Gupta, Wife of Raj Kumar Gupta, Daughter of Shri Lakhan
Prasad Gupta, Resident of Mohalla - Khilanganj, P.S. - Sasaram Town,
Dist. - Rohtas

.... Respondents

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Appearance :

For the Petitioners : Mr. Deepak Kumar Singh, Advocate
For the Respondents : Mr. Anshuman Singh, G.P. 24

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

6 26-06-2015 Heard learned counsel for the petitioners and

learned counsel for the State.

This is a petition for quashing the second First

Information Report in connection with Sasaram Town P.S.

Case No. 62 of 2014 for the offences registered under Sections

498A, 494 and 506/34 of the Indian Penal Code on the ground

that with regard to the same set of allegation the informant had



earlier instituted First Information Report against all the petitioners in connection with Sasaram Town P.S. Case No. 258 of 2012 dated 23.03.2012 for the offences registered under Section 498A of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act pending in the Court of learned Chief Judicial Magistrate, Sasaram (Rohtas).

However, it is not in dispute that earlier Sasaram Town P.S. Case No. 258 of 2012 has been filed.

It is stated that the informant for the same set of allegation instituted second First Information Report in connection with Sasaram Town P.S. Case No. 62 of 2014. The prosecution case of second First Information Report in nutshell is that earlier she had instituted a case in connection with Sasaram Town P.S. Case No. 258 of 2012 for the offences registered under Sections 498A of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act. The informant further claimed that on being compromised in Court she was living at matrimonial home but after one week she was ousted by her in-laws. The informant also claimed that she got information on 17.01.2014 that her husband was going to be married on 04.02.2014 with the daughter of one Nandu Lal working in transport.

The informant further alleged that she was threatened by her in-laws on telephone to kill her.

Counter affidavit has been filed on behalf of the State that the charge-sheet has been submitted against the petitioners which is pending before the Court of learned Chief Judicial Magistrate, Sasaram (Rohtas).

However, second First Information Report has been lodged with regard to the further occurrence in continuation of the first FIR and the police proceeded with the investigation on the basis of the second First Information Report and submitted charge-sheet.

However, it is pertinent to mention that police has a statutory right to investigate the case on lodging the First Information Report for cognizable offence under Sections 154 and 156 of the Cr.P.C. and also has a right of further investigation in respect of offence in which final report has been submitted. Hence, there is nothing wrong if the police submitted report on the basis of second First Information Report when the new fact about subsequent offence brought to light and this view is supported in the case of ***Ram Lal Narang v. State (Delhi Admn.)*** reported in ***A.I.R. 1979 SC 1791***.

It is relevant to quote paragraph 15 of the decision

in the case of **Ram Lal Narang (supra)**.

“15. The police thus had the statutory right and duty to 'register' every information relating to the commission of a cognizable offence. The police also had the statutory right and duty to investigate the facts and circumstances of the case where the commission of a cognizable offence was suspected and to submit the report of such investigation to the Magistrate having jurisdiction to take cognizance of the offence upon a police report. These statutory rights and duties of the police were not circumscribed by any power of superintendence or interference in the Magistrate; nor was any sanction required from a Magistrate to empower the Police to investigate into a cognizable offence. This position of law was well established, In King Emperor v. Khwaja Nazir Ahmed (1944) 71 Ind App 203), the Privy Council observed as follows:

"Just as it is essential that every one accused of a crime should have free access to a Court of justice, so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rules by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Courts to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure

Code to give directions in the nature of Habeas Corpus. In such a case as the present, however, the Court's function begin when a charge is preferred before it and not until then.....In the present case, the police have under Sections 154 and 156 of the Criminal Procedure Code, a statutory right to investigate a cognizable offence without requiring the sanction of the Court....."

Ordinarily, the right and duty of the police would and with the submission of a report under Section 173 (1) Criminal Procedure Code upon receipt of which it was up to the Magistrate to take or not to take cognizance of the offence. There was no provision in the 1898 Code prescribing the procedure to be followed by the police, where, after the submission of a report under Section 173 (1) Criminal Procedure Code and after the Magistrate had taken cognizance of the offence, fresh facts came to light which required further investigation. There was, of course, no express provision prohibiting the police from launching upon an investigation into the fresh facts coming to light after the submission of the report under Section 173 (1) or after the Magistrate had taken cognizance of the offence. As we shall presently point out, it was generally thought by many High Courts, though doubted by a few, that the police were not barred from further investigation by the circumstance that a report under Section 173 (1) had already been submitted and a Magistrate had already taken cognizance of the offence. The Law Commission in its 41st report recognized the position and recommended that the right of the police to make further investigation should be statutorily affirmed. The Law Commission said:

14. 23. A report under Section 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting the report under Section 173 comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the Magistrate concerned. It appears,



however, that Courts have sometimes taken the narrow view that once a final report under Section 173 has been sent, the police cannot touch the case again and cannot reopen the investigation. This view places a hindrance in the way of the investigating agency which can be very unfair to the prosecution and, for that matter, even to the accused. It should be made clear in Section 173 that the competent police officer can examine such evidence and sent a report to the Magistrate. Copies concerning the fresh material must of course be furnished to the accused".

Accordingly, in the Criminal Procedure Code, 1973, a new provision, S. 173 (8), was introduced and it says:

"Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-sec. (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

Section 173(8) of the Cr.P.C. gives jurisdiction to the police to further investigate if fresh fact comes to light and Section 173 of the Cr.P.C. does not mandate taking prior permission, though in some judicial decision, it is held that it would ordinarily be desirable that the police should inform the Court and seek formal permission for further investigation when fresh fact comes to light.

However, under the fact when second investigation started independent of first and report submitted the two cases may be tried together. This view is apparent from the decision in the case of **Ram Lal Narang (supra)** where the view appears that the two cases be tried together. It is relevant to quote paragraph 23 of the judgment in the case of **Ram Lal Narang (supra)**.

“23. As in the present case, occasions may arise when a second investigation started independently of the first may disclose a wide range of offences including those covered by the first investigation. Where the report of the second investigation is submitted to a Magistrate other than the Magistrate who has already taken cognizance of the first case, it is up to the prosecuting agency or the accused concerned to take necessary action by moving the appropriate superior Court to have the two cases tried together. The Magistrates themselves may take action suo motu. In the present case, there is no problem since the earlier case has since been withdrawn by the prosecuting agency. It was submitted to us that the submission of a charge-sheet to the Delhi Court and the withdrawal of the case in the Ambala Court amounted to an abuse of the process of the Court. We do not think that the prosecution acted with any oblique motive. In the charge-sheet filed in the Delhi Court, it was expressly mentioned that Mehra was already facing trial in the Ambala Court and he was, therefore, not being sent for trial. In the application made to the Ambala Court under Section 494 Criminal Procedure Code, it was expressly mentioned that a case had been filed in the Delhi Court against Mehra and others and, therefore, it was not necessary to prosecute Mehra in the Ambala Court. The Court granted its permission for the withdrawal of the

case. Though the investigating agency would have done better if it had informed the Ambala Magistrate and sought his formal permission for the second investigation, we are satisfied that the investigating agency did not act out of any malice. We are also satisfied that there has been no illegality.”

Hence, having regard to the aforesaid facts the two cases pending in the same Court be hard together.

With this observation, the petition is disposed off.

(Gopal Prasad, J.)

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