

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41874 of 2012

Arising Out of PS.Case No. -41 Year- 2012 Thana – Vigilance District- PATNA

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1. Ranjana Devi, wife of Shri Sujay Kumar Mishra, resident of village- Brahmpur, Police Station- Manigachi, District- Darbhanga
 2. Sujay Kumar Mishra, son of Shri Birendra Mohan Mishra, resident of Village- Brahmpur, Police Station- Manigachi, District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Department of Cabinet Vigilance through the Superintendent of Police, Vigilance, Patna.
3. Sri Naresh Prasad, son of Ram Lochan Prasad, resident of Village- Sripur Behta, Gram Panchayat- Brahmpur, Police Staion- Manigachi, District- Darbhanga.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Ms. Surya Nilambari, Advocate
For the Opposite Party No.2 : Mr. Rama Kant Sharma, Senior Advocate
Mr. Santosh Kumar Pandey, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 30-04-2015

The first petitioner functioned as the Mukhiya of Gram Panchayat Raj Brahmpur of Darbhanga District, during the year 2011, and the second petitioner is her husband. Alleging certain offences in the course of implementation flood reliefs operations, Mangachi P.S. Case No.13 of 2011 was registered on 07.11.2011 against the petitioners under Sections 409, 420, 467, 468, 471, 120B and 406 of the Indian Penal Code. The chargesheet is also filed in that case and the case is now pending before the learned Judicial Magistrate 1st Class, Darbhanga as Trial No.1957 of 2012.

Another case, being Vigilance Case No.41 of 2012



was registered on 24.03.2012 against the petitioners and some others in relation to the same incident. It is stated to be in compliance of the direction issued by this Court to undertake further enquiry. The names of the petitioners were included therein and the same provision of law that were mentioned in Manigachi P.S. Case No.13 of 2011 were repeated. The petitioners pray for quashing of the second F.I.R. being Vigilance P.S. Case No.41 of 2012.

Heard Ms. Surya Nilambari, learned counsel for the petitioners and Sri Ramakant Sharma, learned senior counsel for the Vigilance Department.

This Court is aware of the limitations for quashing of an FIR. It is only in exceptional and extraordinary circumstances that an FIR can be quashed. By and large, the matter needs to be decided on its own merits.

In the present case, the peculiar situation is noticed. The petitioners are shown as accused in Manigachi P.S. Case No.13 of 2011 which was registered on 07.11.2011. In case, any offences punishable under different provisions of law are noticed, albeit, with reference to the same set of facts, the prosecution can certainly seek modification of the FIR or alteration of the provisions of law. If, on the other hand, names of any other persons are noticed in the investigation into the matter, two options are open to the

prosecution. The first is to seek alteration of existing FIR for inclusion of the names of such persons, and the second is to file an independent FIR. If the second FIR is registered, it can be only against the persons whose names did not figure in the first one. However, without noticing this subtle difference, the names of the petitioners are included in the second FIR also, that too, by alleging almost the same offences. It may be a superfluous exercise. However, the petitioners cannot be subjected to two sets of prosecution on the same set of allegations.

The petition is allowed and the second FIR being Vigilance P.S. Case No.41 of 2012 insofar as it concerns the petitioners is quashed. It shall remain as regards the other accused shown in that FIR.

(L. Narasimha Reddy, CJ)

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