

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.24 of 2015

Arising Out of PS.Case No. -520 Year- 2013 Thana -Sadar District- MUZAFFARPUR

1. Md. Sadrul Khan Son of Dr. Maqsood Alam Khan Resident 53/D, Tijala Road, Maqsood House, Kolkata - 700046, the Managing Director, Rawangi Food Products, 17(B), Babu Ji Nagar, Jadavpur, Kolkata - 92,

.... Petitioner/s

Versus

1. The State of Bihar through Collector, Muzaffarpur
2. Collector/District Magistrate, Muzaffarpur.
3. Superintendent of Police, Muzaffarpur.
4. Officer-in-Charge, Sadar Police Station, Muzaffarpur.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Pramod Kumar Singh, Adv.
For the Respondent/s : Mr. Binodji Verma, GP-17

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-09-2015

The present criminal writ petition has been filed by the petitioner seeking quashing of the First Information Report relating to Sadar P.S. Case No.520 of 2013 dated 06.12.2013 registered under Sections 302, 201 and 120-B of the Indian Penal Code (for short 'IPC').

2. On 06.12.2013, Sadar P.S.Case No. 515 of 2013 was registered under Sections 279 and 304-A of the IPC against an unknown vehicle driver for causing death by rash or negligent driving of a person whose dead body was found lying near the clinic of Dr. Arun Kumar Ojha.

3. After institution of Sadar P.S.Case No. 515 of 2013 the local police took up investigation of the case by drawing upon the inquest report. The body of the deceased was sent to Sri Krishna Medical College Hospital, Muzaffarpur for post-mortem examination where the post-mortem was performed on the person of the deceased. In the post-mortem examination, the Doctor found fracture of 4th to 6th rib on the right side of the chest and the death was opined to be caused within 12-24 hours.

4. However, on 08.12.2013 one Sudhir Chandra Jha gave his statement to the local police alleging therein that the petitioner and three others were responsible for the death of his deceased son Amarnath Jha whose dead body was found earlier on the basis of which Sadar P.S.Case No. 515 of 2013 was registered earlier under Sections 279 and 304-A of the IPC, and as such a case under Sections 302, 201 and 120-B of the IPC was drawn up giving rise to Sadar P.S.Case No. 520 of 2013.

5. Mr. Pramod Kumar Singh, learned counsel for the petitioner has submitted that the deceased in Sadar P.S.Case No.515 of 2013 and Sadar P.S.Case No.520 of 2013 is one and the same person, namely, Amarnath Jha. The facts stated in Sadar P.S.Case No. 515 of 2013 is an indication to the fact that the death of Amarnath Jha was accidental. He has submitted that so far as the present case i.e.

Sadar P.S.Case No.520 of 2013 is concerned, the same is with respect to the same deceased Amarnath Jha where the father of the deceased alleges of a homicidal death.

6. He has contended that the place of occurrence as given out in the two FIRs is the same, which is on the Rewa Road in front of the clinic of Dr. Arun Kumar Ojha at a distance of half kilometers from the Sadar Police Station. Hence, it can be said that for one occurrence two FIRs have been filed, one relating to an accidental death and the other relating to homicidal death. He has further contended that the FIR relating to Sadar P.S.Case No. 520 of 2013 is not an FIR in the facts and circumstances of the present case and will come within the purview of Section 161 of the Code of Criminal Procedure (for short 'the Cr.P.C.'), i.e. the statement of a witness during investigation of the case and as such the FIR in question is liable to be quashed.

7. In support of his submission, he has placed reliance on the decision of the Supreme Court in the case of ***T.T.Antony Vs. State of Kerala [(2001) 6 SCC 181]***. He has contended that in the said case the Supreme Court has held that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences.



8. On the other hand, Mr. Binodji Verma, learned GP-17 appearing for the State has submitted that there is no merit in this application as during course of patrolling a dead body was seen by the local Chaukidar at Rewa Road near the clinic of Dr. Arun Kumar Ojha and on such recovery, on the fardbeyan of Chaukidar, the S.H.O., Muzaffarpur Sadar Police Station had registered the case against unknown driver of an unknown vehicle, but when the family members of the deceased reached Sri Krishna Medical College Hospital, Muzaffarpur on 07.12.2013 and identified the dead body as of Amarnath Jha and the father of the deceased made a categorical statement in the FIR that the accused persons including the petitioner in conspiracy with each other committed murder of his son and in order to conceal the evidence threw the dead body at Rewa Road, a separate case was registered as the allegations were not identical. He has contended that during investigation allegations made in Sadar P.S.Case No.520 of 2013 have been found to be true against accused Vikash Kumar and Dilip Kumar and charge-sheet has already been submitted against them under sections 302/34, 201 and 120-B of the IPC vide charge-sheet no. 61 of 2014 dated 04.03.2014. However, investigation is still continuing as against the petitioner and one Ajay Bhaskar.

9. He has contended that in view of the subsequent



developments which took place, the Deputy Superintendent of Police has already directed the Investigating Officer to submit final report in Sadar P.S. Case No.515 of 2013 as 'mistake of fact'. He has contended that the first FIR was not on the basis of any concrete information and the same was instituted only on the basis of chance recovery of a dead body of an unknown person which was found lying on the road whereas the second FIR is based on concrete information regarding cognizable offence committed by the petitioner in respect of murder of son of the informant. Hence, it cannot be said that registration of the second FIR is bad in the eye of law.

10. I have heard respective counsel for the parties and perused the material available on record.

11. In order to examine the issue involved in the present case, it is necessary to examine the meaning, ambit and scope of an FIR. Sub-section (1) of Section 154 Cr.P.C. requires that every information relating to the commission of a cognizable offence, whether given orally or otherwise to the officer-in-charge of a police station, has to be reduced to writing by him or under the direction of such officer and shall be signed by the person giving such information. It reads as under :-

“154. Information in cognizable cases.-

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be

reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.”

12. On a plain reading of sub-section (1) of Section 154 Cr.P.C., it cannot be construed that there can be more than one FIR about an occurrence. The first information is that information which is given to the police first in point of time, on the basis of which the investigation commences. However, it has to be examined on the merits of each case whether subsequently registered FIR is second FIR about the same incident or the offence is based on distinguished and different facts and whether or not its scope of enquiry is entirely different.

13. In *T.T. Antony Vs. State of Kerala & Ors. [(2001) 6 SCC 181]*, the Supreme Court dealt with a case wherein in respect of the same cognizable offence and same occurrence two FIRs had been lodged and the Court held that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. The investigating agency has to proceed only on the information about commission of a cognizable



offence which is first entered in the Police Station diary by the Officer In-charge under Section 154 Cr.P.C. and all other subsequent information would be covered by Section 162 Cr.P.C. for the reason that it is the duty of the Investigating Officer not merely to investigate the cognizable offence report in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and the Investigating Officer has to file one or more reports under Section 173 Cr.P.C. Even after submission of the report under Section 173(2) Cr.P.C., if the Investigating Officer comes across any further information pertaining to the same incident, he can make further investigation, but it is desirable that he must take the leave of the court and forward the further evidence, if any, with further report or reports under Section 173(8) Cr.P.C. In case the officer receives more than one piece of information in respect of the same incident involving one or more than one cognizable offences such information cannot properly be treated as an FIR as it would, in effect, be a second FIR and the same is not in conformity with the scheme of the Cr.P.C.

14. In *T.T. Antony* (Supra), the Supreme Court further observed as under:-

“A just balance between the fundamental rights of the citizens under Articles 19 and 21 of



the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate..... However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution.”

15. In *Upkar Singh Vs. Ved Prakash & Ors.* [(2004) 13 SCC 292], the Supreme Court considered the judgment in T.T. Antony (supra) and explained that the judgment in the said case does not exclude the registration of a complaint in the nature of counter claim from the purview of the court. What had been laid down by the Supreme Court in the aforesaid case is that any further complaint by the same complainant against the same accused,



subsequent to the registration of a case, is prohibited under the Cr.P.C. because an investigation in this regard would have already started and further the complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence, will be prohibited under section 162 Cr.P.C. However, this rule will not apply to a counter claim by the accused in the first complaint or on his behalf alleging a different version of the said incident. Thus, in case, there are rival versions in respect of the same episode, the Investigating Agency would take the same on two different FIRs and investigation can be carried under both of them by the same investigating agency and thus, filing an FIR pertaining to a counter claim in respect of the same incident having a different version of events, is permissible.

16. The issue regarding maintainability of second FIR was considered by the Supreme Court as back as in 1979 in ***Ram Lal Narang Vs. Om Prakash Narang & Anr. [AIR 1979 SC 1791]***. In that case the Supreme Court considered a situation wherein two FIRs had been lodged. The first one formed part of a subsequent larger conspiracy which came to the light on receipt of fresh information. Some of the conspirators were common in both the FIRs and the object of conspiracy in both the cases was not the same. The Supreme Court while considering the question as



to whether investigation and further proceedings on the basis of both the FIRs was permissible held that no straitjacket formula can be laid down in this regard. The only test whether two FIRs can be permitted to exist was whether the two conspiracies were identical or not. After considering the facts of the said case, the Court came to the conclusion that both conspiracies were not identical. Therefore, lodging of two FIRs was held to be permissible.

17. In ***Rameshchandra Nandlal Parikh Vs. State of Gujarat & Anr. [(2006) 1 SCC 732]***, the Supreme Court reconsidered its earlier judgments including that of T.T. Antony (supra) and held that in case the FIRs are not in respect of the same cognizable offence or the same occurrence giving rise to one or more cognizable offences nor are they alleged to have been committed in the course of the same transaction or the same occurrence as the one alleged in the First FIR, there is no prohibition in accepting the second FIR.

18. In ***Nirmal Singh Kahlon Vs. State of Punjab & Ors. [(2009) 1 SCC 441]***, the Supreme Court considered a case where an FIR had already been lodged on 14.6.2002 in respect of the offences committed by individuals. Subsequently, the matter was handed over to the Central Bureau of Investigation (CBI), which during investigation collected huge amount of material and also recorded statements of large number of persons and the CBI came to



the conclusion that a scam was involved in the selection process of Panchayat Secretaries. The second FIR was lodged by the CBI. The Supreme Court after appreciating the evidence, came to the conclusion that matter investigated by the CBI dealt with a larger conspiracy. Therefore, this investigation has been on a much wider canvass and held that second FIR was permissible and required to be investigated.

19. In ***Nirmal Singh Kahlon*** (Supra) The Court observed as under:-

“The second FIR, in our opinion, would be maintainable not only because there were different versions but when new discovery is made on factual foundations. Discoveries may be made by the police authorities at a subsequent stage. Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature. If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, in our opinion, as and when the same surfaced, it was open to the State and/or the High Court to direct investigation in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged.”

20. In ***Babubhai Vs. State of Gujarat & others [(2010)12 SCC 254]***, the Supreme Court has approved the recording of more than one FIR in respect of same case committed on the ground that the police is required to register FIR on the basis of information

provided and that “where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible”.

21. Coming back to the facts of the present case, it would appear that when an accidental death was reported, there was no information regarding commission of murder. Since the dead body in question was found on the road by the Police Patrolling Party, it prima facie appeared to be a case of accidental death and hence an FIR against an unknown vehicle driver was registered under Sections 279 and 304-A IPC on the basis of statement of local Chaukidar. However, on the next date when the dead body was identified by the father and other family members of the deceased, the father of the deceased lodged a definite information making specific allegation against four persons including the petitioner who are alleged to have conspired together in order to commit the murder of the deceased and after commission of murder they threw the dead body on the road in order to create an impression of accidental death. The information given in the second FIR is not the same as given in the first FIR. The allegation made in the second FIR is different version of the said incident. In view of the ratio laid down by the Supreme Court in the judgments cited hereinabove, which have also taken into consideration the judgment in case of T.T. Antony (Supra), a second

FIR pertaining to different version or rival version in respect of the same incident is permissible in law.

22. In view of the discussions made hereinabove, I am of the opinion that in the present case the second FIR is legally permissible.

23. Accordingly, the application, being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J)

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