

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 1246 of 2011

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1. Arjun Rai
 2. Sunil Rai
 3. Virendra Rai,
 4. Mukesh Rai, All sons of Munar Rai
 5. Bhushan Rai, S/O Jai Narayan Rai
 6. Hiro Rai @ Dharmendra Rai, S/O Bhushan Rai
- All resident of Village - Mirpur Juara, P.S. - Awatarnagar,
District - Saran at Chapra

.... Petitioner/s

Versus

1. The State of Bihar through Director General of Police, Bihar Patna
2. The District Magistrate, Saran at Chapra
3. The Superintendent of Police, Saran at Chapra
4. The Office In-Charge (SHO), Awatarnagar Police Station, Saran at Chapra
5. Ramanand Manjhi, S/o Late Bhola Manjhi, R/o Village – Mirpur, Juara, P.S. – Awatarnagar, Distt. – Saran at Chapra
6. The Assistant Registrar (Law) National Human Rights Commission (Law Division), Farid Kot House, Copernicus Marg, New Delhi-110001

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dewendra Narayan Singh, Advocate
For the Respondent/s : Mr. Syed Arshad Alam, S.C. III
Mr. Mahtab Alam, A.C. to S.C. III

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

8 10-07-2015

Heard.

This is a petition for quashing of the First Information Report bearing Awatarnagar P.S. Case No. 74 of 2011 registered on 31.08.2011 under Section 3(xi)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act on the ground that with regard to the same allegation and same set of facts earlier First Information Report had been lodged being Awatarnagar P.S. Case No. 09 of 2005 on 05.02.2005 in which on



completion of the investigation the learned trial Court proceeded and the petitioners have already been convicted. Hence, learned counsel for the petitioners prays that on same set of facts second First Information Report having been lodged and investigation proceeded is not permissible in law as it amounts to re-investigation.

Learned counsel for the petitioners has raised two points for consideration whether the second First Information Report with regard to the same set of facts is permissible and further that once on the same set of facts a First Information Report had been lodged bearing Awatarnagar P.S. Case No. 09 of 2005 and after investigation trial proceeded and conviction recorded against the petitioners then whether further trial on second First Information Report is permitted in view of Section 300 of the Cr.P.C.

Learned counsel for the State, however, submitted that 2nd trial is prohibited but the second First Information Report was lodged on the direction of the National Human Rights Commission and further investigation is not prohibited under Section 300 of the Cr.P.C.

However, taking into consideration the fact that the first FIR was instituted on the allegation that the daughter of the



informant went to attend the call of nature in the field and at that time Arjun Rai attempted to commit rape by catching hold of her but on alarm being raised by victim, Suresh Manjhi and Anil Manjhi the son and nephew of the informant tried to catch hold of accused Arjun Rai but Arjun Rai escaped from the place of occurrence. Subsequently Sunil Rai, Birendra Rai, Mukesh Rai, Bhushan Rai, Heero Rai and others came armed with lathi, Bhala, Farsa and sword and ordered to kill and set the house of informant on fire. The informant Rama Nand Manjhi went to the police and lodged the First Information Report and the police after investigating the case submitted charge sheet under Sections 376/511, 342, 506/34 of the Indian Penal Code but no charge has been submitted under Section 3(xi)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and after trial the conviction recorded.

The second First Information Report which has been recorded as Awatarnagar P.S. Case No. 74 of 2011 registered on 31.08.2011 alleging therein that the First Information Report No. 09 of 2005 dated 05.02.2005 for the offence under Sections 376, 511, 342, 506/34 of the Indian Penal Code was lodged against Arjun Rai and five others and after investigation the charge-sheet has been submitted against Arjun Rai, Sunil Rai, Birendra Rai,



Mukesh Rai, Bhushan Rai, Hero Rai. However, the informant Ramanand Manjhi was the member of the Scheduled Castes but the provision of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has not been applied and charge sheet has not been submitted under Section 3(xi)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The case was instituted, investigated and tried by the Court of the learned Additional Sessions Judge in Sessions Trial No. 890 of 2005 but in pursuance of the direction of the National Human Rights Commission to lodge a case, Awatarnagar P.S. Case No. 74 of 2011 was lodged.

However, it is well settled that second First Information Report with regard to the same set of facts by same person is not permissible and the police has no right to lodge the First Information Report on same set of facts.

Moreover, allowing the same offence to be committed and allowing the investigation in respect of the second First Information Report to continue amounts to re-investigation of the same offence, which is not permitted in the Cr.P.C. However, it is only by a Superior Court under Article 226 or 32 of the Constitution of the India.

It is well settled in the case of *Arjun Chaudhary*

Versus State of Uttar Pradesh & Another reported in **2013(6) SCC 384** that no second First Information Report in respect of the same offence or subsequent occurrence of offence forming part of the same can be lodged if continuation of the first FIR is permitted.

However, the National Human Rights Commission in Case No. 3964/04/2004-05 WC/OC while passing the order took into consideration the fact about earlier case as well as investigation and conviction and did not order for institution of the fresh First Information Report but ordered for filing a supplementary charge-sheet which can be filed under Section 173(8) after taking permission from the trial Court.

However, though filing of second First Information Report is barred and there is no provision in the Code of Criminal Procedure for re-investigation though there is provision for further investigation under Section 173(8) Cr.P.C. It may be that in a given situation a superior court in exercise of its constitutional power under Arts. 226 or 32 of the Constitution of India may direct to get the investigation or further investigation by same or different agency. However, no such situation for re-investigation arises in this case. Direction for re-investigation forbidden in law in the case of *Mithabhai Pashabhai Patel & Others Versus State*

of Gujarat reported in decision **2009(6) SCC 332**. However, further investigation is permitted in law under Section 173(8) of the Cr.P.C.

It is well settled that second First Information Report is not permissible in law but as per the decision in the case of **Ram Lal Narang v. State (Delhi Admn.)** reported in **A.I.R. 1979 SC 1791** wherein it has been held that though second First Information Report is barred but subsequent institution of the First Information Report on the fresh material be deemed to be without the knowledge of the first set of facts as first set of case the charge-sheet having been submitted in second First Information Report be treated as report under the further investigation.

However, under the facts and circumstances of the case reported in **Ram Lal Narang** (supra) the investigation completed on fresh First Information Report on subsequent occurrence forming part of same transaction on fresh material but here under the facts and circumstances the fresh investigation is on lodging of the First Information Report on same fact is not permissible and is liable to be set aside.

Hence, if the police want to proceed for further investigation to file supplementary charge-sheet but to proceed for the further investigation as per decision reported in **Ram Lal**

Narang (supra) to be proceeded on permission of the Court. As per the decision in the case of *Ram Lal Narang* (supra), it is proper and in the interest of justice to take permission of the Court when the police wants to proceed for further investigation when it was brought to its notice that certain aspects of the matter have not been considered by him and police found further investigation necessary to be carried out from a different angle as observed in the case of *Kishan Lal Versus Dharmendra Bafna & Another* reported in *AIR 2009(7) SCC 685*.

However, having regard to the fact that the second First Information Report, i.e., Awatarnagar P.S. Case No. 74 of 2011 registered on 31.08.2011 under Section 3(xi)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act lodged with regard to same occurrence is not permissible as the second First Information Report is barred, the second First Information Report lodged by the police is not sustainable and hence, is hereby quashed.

The petition is, accordingly, allowed.

(Gopal Prasad, J.)

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