

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.900 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- KATIHAR

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Ajay Kumar Choudhary son of Late Rajendra Prasad Choudhary, resident of village- Ayodhyaganj, Police Station- Kursela, District- Katihar

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police Bihar, Patna
3. The Dy. Inspector General of Police, Katihar
4. The Superintendent of Police, Katihar
5. The Officer-in-charge, Kursela Police Station, Katihar
6. The Police Sub Inspector, Kursela Police Station, Katihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Advocate

For the Respondent/s : Mr. Lala S.N.Rais, A.C. to G.P.-6

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-03-2015

In this application filed under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for quashing of the first information report in Kursela P.S. Case No.156 of 2012 dated 7.12.2012 registered under sections 25(1-B)(a) and 26 of the Arms Act.

2. Heard Mr.Bindhyachal Singh, learned counsel for the petitioner and Mr. Lala S.N.Rais, Assistant Counsel to G.P.-6, for the State.

3. The petitioner is informant of Kursela P.S. Case No.114 of 2011 dated 3.8.2011 registered for the offences punishable under sections 452, 307, 380 read with 34 of the Indian Penal Code and



25(1-B)(a), 26 and 27 of the Arms Act against one Suman Kumar Sangam @ Pinku Choudhary. It has been alleged in the written statement submitted by the petitioner to the officer-in-charge of the police station that on 3.8.2011 at 8.40 p.m. 5-6 criminals entered into his house through roof of the building and captured his wife and mother. Thereafter, they were in search of the petitioner but somehow the petitioner managed to hide himself. When miscreants failed to locate the petitioner, they looted Rs.1,35,000/- and golden ornaments from Almirah kept in the house. One of the miscreants was shouting to kill the petitioner by taking his name. In the meantime, the petitioner somehow managed to reach to the *Varandah* of the house and raised alarm. Thereupon, co-villagers came. When the miscreants saw that the co-villagers were rushing towards the house of the informant, taking advantage of darkness, they fled away by making firing but one of the miscreants was caught by the villagers and he was identified as Suman Kumar Sangam @ Pinku Choudhary. He was armed with a country made pistol. A co-villager of the petitioner informed the police regarding the incident on phone whereupon the police came and the miscreant Suman Kumar Sangam @ Pinku Choudhary was handed over to the police along with the country made pistol.

4. The aforesaid police case was investigated upon by the police. The Investigating Officer and the Sub Divisional Police

Officer found the allegations made in the FIR to be true but the Superintendent of Police, who was supervising the matter came to the conclusion that the case was maliciously instituted by the petitioner. He directed the investigating officer of the case to submit final report in the case and to institute a separate case under the Arms Act against the petitioner.

5. Accordingly, the investigating officer submitted final report no.140 of 2012 dated 30.10.2012 in Kursela P.S. Case No.114 of 2011 and the accused Suman Kumar Sangam @ Pinku Choudhary was not sent up for trial.

6. In obedience to the directions given by the Superintendent of Police, Katihar, Mr. Bhagwan Das Murmu, a Sub Inspector of Police, who was investigating officer of Kursela P.S. Case No.114 of 2011, instituted a separate case being Kursela P.S. Case No.156 of 2012 on 7.12.2012 under sections 25(1-B)(a) and 26 of the Arms Act against the petitioner on the basis of his self written statement.

7. It has been alleged in the second FIR by the informant Mr. B.D.Murmu that in compliance with the direction issued by the Superintendent of Police, Katihar in Kursela P.S. Case No.114 of 2011, the case is being instituted. It has been alleged that it was found that the petitioner had produced one country made pistol along with Suman Kumar Sangam @ Pinku Choudhary on 3.8.2011 but during



course of inspection of the place of occurrence no empty cartridge was recovered. At the time of arrest of Suman Kumar Sangam @ Pinku Choudhary injuries were found on his body and, as such, he was treated in the Primary Health Centre, Kursela. In course of investigation, it transpired that accused Suman Kumar Sangam @ Pinku Choudhary had earlier eloped with the daughter of the petitioner and solemnized marriage for which Kursela P.S. Case No.67 of 2011 dated 17.5.2011 was registered under sections 365, 366 and 120-B read with 34 of the Indian Penal Code against him by the petitioner but after conclusion of investigation in the said police case final report bearing no.74 of 2011 dated 30.6.2011 was submitted.

8. It has further been alleged that charges levelled against the accused Suman Kumar Sangam @ Pinku Choudhary in Kursela P.S. Case No.114 of 2011 were maliciously false and it was found that local made pistol produced by the petitioner in that case belongs to him.

9. In the background of the facts mentioned above, learned counsel for the petitioner has submitted that two cases for the same offence are not maintainable. He has submitted that once after investigation the police submitted their report under section 173 (2) of the Code of Criminal Procedure (hereinafter referred to as “the Code”) before the court in Kursela P.S. Case No.114 of 2011, the matter had attained finality and fresh investigation or re-investigation by the



investigating agency upon registration of another FIR with regard to same occurrence is beyond the competence of the investigating agency. He has submitted that investigating agency may submit a report finding no material to support the allegation made in the FIR or even finding the complicity of the informant. There is nothing in the Code which prevents the police from submitting charge sheet against the informant of the case on whose information the FIR has been registered as in course of investigation, the duty of the police is to find out the actual culprit in respect of a cognizable offence and to bring him to book and not to multiply one case into several cases.

10. Learned counsel for the petitioner has further submitted that implication of the petitioner in a false case of recovery of illegal arm had already been initially investigated upon by the police in the first case bearing Kursela P.S. Case No.114 of 2011 and, as such, there was no occasion for the police to institute another FIR being Kursela P.S. Case No.156 of 2012 and investigate the same.

11. *Per contra*, learned counsel for the State has submitted that to hold investigation into a cognizable offence is the statutory right of the police. The allegations made in the FIR of Kursela P.S. Case No.156 of 2012 do constitute a cognizable offence and, hence, there is no fetter on the powers of the police to investigate the said case. He has submitted that in the first case the allegation is of possession of illegal arm by the accused Suman Kumar Sangam @

Pinku Choudhary but in the second case the allegation is not the same as the police found that a false story was planted against the accused Suman Kumar Sangam @ Pinku Choudhary and actually it was the petitioner who had framed him in a false case by planting a pistol in his possession which actually belongs to the petitioner.

12. He has also submitted that once investigation into a cognizable offence has commenced, it would not be proper for this Court to interdict investigation of the case at the initial stage. In any case, after conclusion of investigation, a report under section 173(2) of the Code has to be filed before the court of competent Magistrate and the learned Magistrate would then consider the desirability of taking cognizance of the offence or not on the basis of circumstances which would unfurl during investigation.

13. In order to examine the legal issue raised in the case, I would like to consider the relevant provisions of the Code first.

14. Under Chapter XII of the Code Section 173 relates to report of police officer on completion of investigation. The submission of a report under sub-section (2) of Section 173 of the Code does not preclude further investigation in a crime by the investigating Agency. A supplementary report can be submitted by the Investigating Agency to the Magistrate notwithstanding that the Magistrate has taken cognizance of the offence upon a police report submitted under this sub-section. The power of the police to conduct

further investigation, after submitting final report is recognized under Section 173(8) of the Code. The matter as to whether there exists sufficient and valid ground for further investigation is entirely for the consideration of the Investigating Officer.

15. Though the police has right of further investigation under Section 173(8) of the Code but it has no right of fresh investigation or re-investigation. In **Ram Lal Narang Vs. State (Delhi Administration)** reported in (1979) 2 SCC 322, the Hon'ble Apex Court in paragraph 20 held as under :-

“20. The criticism that a further investigation by the police would trench upon the proceeding before the court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a court and investigate every fresh fact that comes to light as if no cognizance had been taken by the court of any offence. We think that in the interests of independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and

institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light”.

16. While acknowledging the power of the police authorities to carry out further investigation in terms of section 173 of the Code, in **Ram Lal Narang case** (*supra*) the Hon’ble Apex Court in paragraph 21 observed as follows :-

“21. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation.”

17. In **K. Chandrasekhar Vs. State of Kerala & Ors.** reported in **1998(5) SCC 223** the Hon’ble Apex Court took into consideration the scope and ambit of section 173(2) and 173(8) of the Code and observed, inter alia, in paragraph 24 as follows :-

“24. The dictionary meaning of “further” (when used as an adjective)



is “additional; more; supplemental”. “Further” investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that sub section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a “further” report or reports – and not fresh report or reports – regarding the “further” evidence obtained during such investigation.”

18. At this stage, I would like to refer to the observations made by the Hon’ble Apex Court in **Mithabhai Pashabhai Patel and Others Vs. State of Gujarat** reported in (2009)6 SCC 332 in paragraph 13 of the said decision the Apex Court had observed as under :-

“13. It is, however, beyond any cavil that “further investigation” and “reinvestigation” stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a “State” to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction.”

19. Thus, from the discussions made, hereinabove, it is apparent that there is no fetter on the power of police to further investigate into an offence after submission of police report under section 173(2) of the Code but the police has no right under the Code for fresh investigation or re-investigation.

20. Based on the above proposition of law, it is to be seen, in the present case, as to whether the subsequent FIR i.e., Kursela P.S. Case No.156 of 2012, instituted by the police amounts to fresh investigation or re-investigation of the allegations made in Kursela P.S. Case no.114 of 2011. If the answer is in affirmative, the institution of second FIR and its investigation would be impermissible in law.

21. In **Anju Chaudhary Vs. State of U.P. and Anr.** reported in **2013(1) BBCJ IV-211**, the Hon'ble Apex Court after taking into consideration the judgments rendered in **Ram Lal Narang case (supra)**, **M. Krishna Vs. State of Karnataka** reported in **(1999)3 SCC 247**, **T.T. Antony Vs. State of Kerala** reported in **(2001)6 SCC 181**, **Upkar Singh Vs. Ved Prakash** reported in **(2004) 13 SCC 292**, **Rameshchandra Nandlal Parikh Vs. State of Gujarat** reported in **(2006) 1 SCC 732**, **Vikram vs. State of Maharashtra** reported in **(2007)12 SCC 332**, **Shiv Shankar Singh Vs. State of Bihar** reported in **(2012) 1 SCC 130**, **Babu Babubhai Vs. State of**

Gujarat & Ors reported in (2010)12 SCC 254 and **Chirra Shivraj**

Vs. State of Andhara Pradesh reported in (2010) 14 SCC 444 held

in paragraphs 41 and 42 as under :-

“41. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the Court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.

42. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the

same or different offences “committed in the course of the same transaction.”



22. It is, thus, obvious from the law laid down by the Hon’ble Apex Court that the court in order to examine the impact of one or more FIRs has to rationalize the facts and circumstances of each case and then apply the test of “sameness” to find out whether both FIRs relate to the same incident and to the same occurrence or are in regard to incident which are two or more parts of the same transaction or relate completely to two different occurrences. There cannot be a second FIR in respect of the same offence/event because whenever any further information is received by the Investigating Agency, it is always in furtherance of the first information report. If more than one FIR is instituted in respect of same incident and the same occurrence, the second FIR is liable to be quashed. However, the Hon’ble Apex Court has clearly held that it is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case.

23. Now, I would like to decide the present case in the light of the principles decided by the Hon’ble Apex Court in the judgments cited above.

24. From the facts of the case, I find that the implication of the accused persons in a false case of recovery of illegal arm had



already been investigated upon by the police in the first case and, as such, there was no occasion for the police to institute another FIR and investigate the same. Learned counsel for the petitioner has rightly submitted that there is nothing in the Code which prevents the police from submitting charge-sheet against the informant of the case on whose information an FIR is registered. If that step was not taken, at best, the police could have proceeded with the investigation after submitting the report under Section 173(2) of the Code in terms of Section 173(8) of the Code and submitted an additional report or supplementary report under section 173(2) of the Code instead of instituting a fresh case.

25. As noted above, from the plain reading of Section 173 of the Code it is evident that even after submission of police report under sub section (2), on conclusion of investigation, the police has a right of further investigation under sub section (8) but no “fresh investigation” or “reinvestigation”. Further investigation is continuation of the earlier investigation and, as such, permissible in law but “fresh investigation” or “reinvestigation” is not permissible. If law prohibits reinvestigation or *de novo* investigation by the Investigating Agency on its own, in my considered opinion, the same cannot be permitted merely by registering another FIR with regard to the same occurrence.

26. While saying so, I am conscious of the fact that a

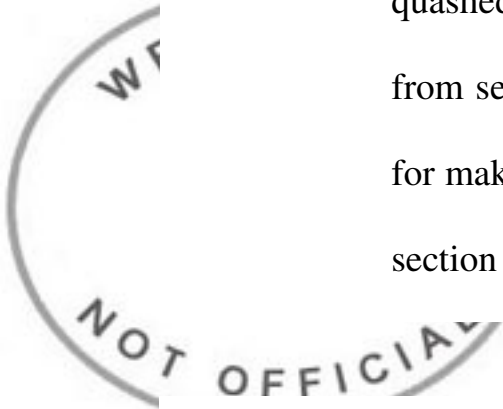


counter case giving two different versions in respect of the same occurrence can always give rise to institution of two separate FIRs. In such a case both the FIRs shall be permissible in law. However, in the present case, there is no counter FIR by the accused or any other person connected with the first FIR. The allegations made in the second FIR are, as a matter of fact, result of the investigation of the first case.

27. From the facts of the present case, I find that both the FIRs i.e., Kursela P.S. Case No.114 of 2011 and Kursela P.S. Case No.156 of 2012 relate to the same occurrence. The issue involved in both the FIRs is recovery of illegal arm. The petitioner had already reported about recovery of pistol in question to the police for which investigation was carried on. The investigating officer and the supervising authorities, in course of investigation and supervision, had already come to a conclusion that the accused person namely Suman Kumar Sangam @ Pinku Choudhary had falsely been implicated in Kursela P.S. Case No.114 of 2011 and it was the petitioner who was responsible for planting an illegal arm in order to frame the accused Suman Kumar Sangam @ Pinku Choudhary falsely in Kursela P.S. Case No.114 of 2011 and, as such, there was no occasion for the police to institute another FIR and investigate the same.

28. For the aforementioned reasons, registration of second FIR i.e., Kursela P.S. Case No.156 of 2012 dated 7.12.2012 and

consequent investigation by the police in that case are patently illegal. Accordingly, the FIR of Kursela P.S. Case No.156 of 2012 is quashed. However, this does not preclude the investigating agency from seeking leave of the court in Kursela P.S. Case No.114 of 2011 for making further investigation and filing further report/reports under section 173(8) of the Code.



Md.S./-

(Ashwani Kumar Singh, J)

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