

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 541 of 2016

Arising out of P.S. Case No. - null Year - null Thana - null District - PATNA

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Yogendra Singh, Son of Late Dhanu Singh @ Chandu Singh, Resident of Village -
Kala Diyara, P.S. - Salimpur, District - Patna

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Home, Government of Bihar, Patna
3. The Director General of Police, Patna, Bihar
4. The Superintendent of Police, District - Patna
5. The Station House Officer, Salimpur Police Station, Barh, Patna
6. The Law Secretary, Patna
7. Kapildeo Singh, Son of Late Ramgulam Singh, resident of village - Kala
Diyara, P.S. - Salimpur, District - Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Nageshwar Prasad Sinha, Advocate
Mr. Kishun Chand Kumar Sinha, Advocate
For the Pvt. Res. No. 7: Mr. Virendra Kumar, Advocate
For the State Res. : Mr. Lokesh Kumar Singh, Advocate

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CORAM: HONOURABLE SHRI JUSTICE BIRENDRA KUMAR

CAV JUDGMENT

Date:14-09-2017

The petitioner is named accused in Salimpur P.S. Case No. 38 of 2015 as well as in Salimpur P.S. Case No. 47 of 2015 for an occurrence dated 08.03.2015 committed at the same place. In other words, according to the petitioner both the FIRs aforesaid are for the same occurrence. Hence, subsequent FIR bearing Salimpur P.S. Case No. 47 of 2015 be quashed as it is well settled that the petitioner or any accused cannot be put to double jeopardy.

2. For consideration of the aforesaid point and prayer, it would be necessary to go through the two FIRs. The first FIR i.e. Salimpur P.S. Case No. 38 of 2015 was lodged on 08.03.2015 itself for the occurrence



dated 08.03.2015 committed in the village Kala Diyara, Police Station Salimpur, district Patna on the written report of Devendra Rai, Assistant Sub-Inspector of Police, Salimpur Police Station. According to FIR, when the police was on patrolling duty, the local people informed that two groups one led by Krishna Singh and another led by Kapildeo Singh (informant of Salimpur P.S. Case No. 47 of 2015) have attacked, variously armed against each other, resulted in injuries to several persons of both side. Further allegation is that the members of the two groups (petitioner was member of the group of Krishna Singh) fired against each other. When the police reached there one of the injured Kapildeo Singh was found who was taken to hospital (Public Health Centre, Bakhtiyarpur). The FIR further discloses that both sides are quarrelsome people and in the past also, the referred criminal cases were lodged against each other. A copy of the aforesaid FIR is Annexure-1.

3. The second FIR was lodged on the fardbeyan of Kapildeo Singh i.e. member of one of the groups disclosed in Salimpur P.S. Case No. 38 of 2015. The fardbeyan was recorded by the Sub-Inspector, S. Pandey of Pirbahore Police Station at Patna Medical College & Hospital on 22.03.2015. Hence, by necessary implication, the injured was referred from Primary Health Centre, Bakhtiyarpur to Patna Medical College & Hospital for better treatment. In this FIR Kapildeo Singh alleged that named persons including the petitioner variously armed, came to his house and committed assault causing injury at different parts of the body



as well as commission of theft etc. Old dispute and enmity is stated as reason for the occurrence.

4. Learned counsel for the petitioner submits that both the FIRs were in respect of the same occurrence and the petitioner is named as accused in both the FIRs, hence, fundamental right to protection against double jeopardy is attracted. Therefore, subsequent FIRs is fit to be quashed against the petitioner.

5. Though respondent no. 6 appeared in this case but did not file any counter affidavit nor appeared at the time of hearing. However, the State-respondents have filed their separate counter affidavit stating therein that after investigation, the allegations in Salimpur P.S. Case No. 38 of 2015 as well as in Salimpur P.S. Case No. 47 of 2015 have been found true against the named accused persons. However, the Senior Police Officers have directed the Investigation Officer to file appropriate petition before the learned Magistrate for amalgamation of both the cases and for joint trial.

6. Learned counsel for the petitioner has placed reliance on case of **Anju Chaudhary vs. State of Uttar Pradesh & Anr.** reported in **(2013) 6 SCC 384** in support of his submission that there cannot be more than one FIR for the same occurrence.

The Hon'ble Supreme Court, while holding that two FIRs of the same occurrence are not permissible, observed in paragraph 15 of the judgment as follows:-



“15. It has to be examined on the merits of each case whether a subsequently registered FIR is a second FIR about the same incident or offence or is based upon distinct and different facts and whether its scope of inquiry is entirely different or not. It will not be appropriate for the court to lay down one straitjacket formula uniformly applicable to all cases. This will always be a mixed question of law and facts depending upon the merits of a given case.”

7. Keeping the aforesaid proposition in mind, what I find in the present case is that in the first FIR i.e. Salimpur P.S. Case No. 38 of 2015, the informant is not an eye-witness of the occurrence nor he disclosed the name of the person who had informed to the police regarding the occurrence, allegedly, committed by the named two groups. However, the FIR clearly reveals that informant of Salimpur P.S. Case No. 47 of 2015 was an injured of the occurrence. The FIR of Salimpur P.S. Case No. 47 of 2015 clearly discloses the name of the assailant of the informant. Therefore, the same principle is not applicable in the facts and circumstances of this case that the subsequent FIR is fit to be quashed. Hence, the prayer of the petitioner for quashing of the subsequent FIR is refused.

8. Since charge sheet has been submitted in both the cases following directions are issued to the trial court.

- (i) Trial of both the cases shall simultaneously go on before one court.



(ii) The accused persons charge sheeted in Salimpur P.S. Case No. 47 of 2015 shall face trial in Salimpur P.S. Case No. 47 of 2015 only and not in Salimpur P.S. Case No. 38 of 2015 even though they have been charge sheeted in that case.

(iii) Other accused of Salimpur P.S. Case No. 38 of 2015 shall be treated as accused of the counter case and shall face trial, according to law in Salimpur P.S. Case No. 38 of 2015.

9. Learned counsel for the petitioner has placed reliance on the cases of **Upkar Singh vs. Ved Prakash & Ors.** reported in (2004) 13 SCC 292, **Ram Lal Narang vs. State (Delhi Administration)** reported in (1979) 2 SCC 322, **Babubhai vs. State of Gujarat & Ors.** reported in (2010) 12 SCC 254 and **Chirra Shivraj vs. State of Andhra Pradesh** reported in (2010) 14 SCC 444.

10. The aforesaid case laws are not applicable in the present facts and circumstances of the case.

11. Accordingly, this writ application stands disposed of with the above direction.

(Birendra Kumar, J)

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AFR/NAFR	A.F.R.
CAV DATE	23.09.2017
Uploading Date	14.09.2017
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