

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 466 of 2016

Arising out of P.S. Case No. - 18 Year - 2015 Thana - Bela District - MUZAFFARPUR

- =====
1. Ashwani Kumar @ Ashwani Chaudhary, Son of Shashi Bhushan Chaudhary @ Nathuni Chaudhary, resident of mohalla Bela Chhapra, P.S. - Bela, District - Muzaffarpur
 2. Shashi Bhushan Chaudhary @ Nathuni Chaudhary, Son of Late Yogendra Chaudhary
 3. Pramila Devi, Wife of Shashi Bhushan Chaudhary @ Nathuni Chaudhary,
Resident of 2 7 3 mohalla Bela Chhapra, P.S. - Bela, District - Muzaffarpur
- Petitioners

Versus

1. The State of Bihar through Director General of Police, Patna
 2. Prabhat Kumar, Son of Ramashray Singh, Resident of Mohalla - Bela Industrial Area, Phase – I, P.S. - Bela, Muzaffarpur
 3. Sneha, wife of Ashwini Kumar, resident of mohalla Bela Chhapra, P.S. - Bela, District - Muzaffarpur, presently resides with her father namely Ramashray Singh, resident of Fulelpur, P.S. - Athamalgola, District - Patna
- Respondents

With

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Criminal Writ Jurisdiction Case No. 1245 of 2015

Arising out of P.S. Case No. – 125 Year - 2015 Thana - Athamalgola District - PATNA

- =====
1. Shashi Bhushan Chaudhary @ Nathuni Chaudhary, Son of Late Yogendra Chaudhary
 2. Pramila Devi, wife of Shashi Bhushan Chaudhary @ Nathuni Chaudhary
 3. Aman Kumar, Son of Shashi Bhushan Chaudhary @ Nathuni Chaudhary
- All are resident of mohalla Bela Chhapra, P.S. - Bela, District - Muzaffarpur
- Petitioners

Versus

1. The State of Bihar through Director General of Police, Patna
2. Sneha, wife of Ashwini Kumar, resident of mohalla Bela Chhapra, P.S. - Bela, District - Muzaffarpur, presently resides with her father namely Ramashray



Singh, resident of Fulelpur, P.S. - Athamalgola, District - Patna

.... Respondents

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Appearance :

(In Cr. WJC No. 466 of 2016)

For the Petitioners : Mr. Rajeev Ranjan, Advocate

For the Respondents : Mr. Jawahar Pd. Karn, A.A.G.IV

(In Cr. WJC No. 1245 of 2015)

For the Petitioners : Mr. Bela Singh, Advocate

For the Respondents : Mr. S. Raza Ahamad, A.A.G-IX

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
C.A.V. JUDGMENT

Date: 18-03-2017

In both the writ applications aforesaid common question has been raised that on the basis of same facts two FIRs are not permissible in view of the settled principles of law and prayer is for quashing of one out of the two FIRs.

2. Learned counsel for the petitioners submits that for matrimonial dispute between the parties Athamalgola Police Station Case No. 125 of 2015 was registered on the complaint of Sneha the wife of petitioner Ashwani Kumar and Bela Police Station Case No. 18 of 2015 was registered on the written report of Prabhat Kumar the full-brother of Sneha. A bare perusal of both the FIRs would reveal that for same matrimonial dispute both the cases have been lodged, hence, continuance of both would be an abuse of the process of the court.

3. On the other hand, learned counsel for the respondents submits that when two FIRs relates to different offences committed against different set of persons on different dates and at different places and were lodged by two different persons it cannot be quashed only for



the reason that there is matrimonial dispute. A bare perusal of both the FIRs makes it abundantly clear that both relates to different offences committed on different dates against different sets of persons. The petitioners of Cr.W.J.C. No. 1245 of 2015 are accused in connection with Athamalgola Police Station Case No. 125 of 2015 registered on 02.06.2015 on the basis of Complaint Case No. 373C of 2015 filed on 21.05.2015 by respondent no. 2 Sneha. The learned Magistrate directed institution of a police case and investigation of the same in exercise of power under Section 156(3) Cr.P.C. The complaint was for offences under Sections 323, 406 and 498A of the Indian Penal Code as well as Sections 3/4 of the Dowry Prohibition Act against her husband and other in-laws for the occurrence, allegedly, committed from 13.03.2012 onwards i.e. from the very next day of marriage on 12.03.2012 with co-accused Ashwani Kumar.

4. The petitioners of Cr.W.J.C. No. 466 of 2016 are accused in connection with Bela Police Station Case No. 18 of 2015 filed on 20.05.2015 for offences under Sections 341, 323, 379, 504, 498A and 34 of the Indian Penal Code on written report of respondent no. 2 Prabhat Kumar the full-brother of respondent no. 3 Sneha for the alleged occurrence committed on 19.05.2015.

5. According to FIR of Bela Police Station Case No. 18 of 2015 informant Prabhat Kumar along with his wife and sister went to the



house of Sneha, on receiving SMS from Sneha that she is likely to be killed. When the informant and others reached there on 19.05.2015 all the named accused persons started assaulting them with lathi etc. Further allegation is of commission of theft of ornament.

6. According to the complaint petition filed by Sneha she was married with petitioner Ashwani Kumar (of Cr.W.J.C. No. 466 of 2016) on 12.03.2012, thereafter she went to her Sasural on 13.03.2012. On the same day, the husband, the mother-in-law and the Dewar started torturing her alleging that she is daughter of a beggar and has not brought a four wheeler. Subsequently, the husband started a business of Ultrasound Centre along with co-accused Seema Verma and this time also rupees twenty lacs was demanded from the complainant by the husband, mother-in-law and the Dewar. For non-fulfilment of dowry demand, the aforesaid three persons used to assault the complainant of and on. Subsequently, the husband married with co-accused Seema Verma i.e. his business partner on 19.05.2015. Seema Verma poured kerosene oil and the husband attempted to burn her to death. However, the brother of the complainant and others were there who took the complainant to her parents' house.

7. Cr.W.J.C. No. 466 of 2016 has been filed for quashing the FIR of Bela Police Station Case No. 18 of 2015 on the ground of



existence of another of FIR for the same occurrence i.e. complaint based FIR i.e. Athamalgola Police Station Case No. 125 of 2016

8. A bare perusal of the two FIRs would reveal that both relates to offence committed against two different persons on different dates and to some extent at different places of occurrence. Therefore, there is no merit in the submission that both the FIRs relate to the same offence. The law is well settled that in the matter of quashing of FIR mala fides of the informant is immaterial because the matter is to be investigated by and independent conclusion is to come from the police.

9. Hence, in my view, there is no merit in Cr.W.J.C. No. 466 of 2016. The same, accordingly, stands dismissed.

Cr.W.J.C. No. 1245 of 2015

10. Cr.W.J.C. No. 1245 of 2015 has been filed to quash the complaint based FIR i.e. of Athamalgola Police Station Case No. 125 of 2015 on the ground of another FIR i.e. Bela Police Station Case No. 18 of 2015 for the same occurrence.

11. As discussed above, I do not find any merit on the submission that both FIRs relate to the same occurrence. Hence, one of the same is fit to be quashed, for the reason that both the FIRs were lodged by different persons against different nature of offences committed against different set of people on different dates.



12. However, the perusal of the complaint based FIR reveals that direction for institution of FIR is result of non-application of judicial mind by the learned Magistrate. The perusal of the complaint petition annexed with the FIR would reveal that the same is not on affidavit. There is no prayer for sending the complaint case for institution as a police case. Nor there is averment that the complainant had approached the police for registration of an FIR or had complained to the higher authorities in pursuance of provisions under Section 154(3) Cr.P.C.

13. The law is well settled that at the stage of issuing a direction under Section 156(3) Cr.P.C. the Magistrate is required to apply its judicial mind to satisfy that a cognizable offence is disclosed in the complaint petition and the statutory requirement has been fulfilled to warrant a direction for institution of an FIR under Section 156(3) Cr.P.C. Reference may be made to the case **Mrs. Priyanka Srivastava & Anr. vs. State of U.P. & Ors.** reported in **2015(3) PLJR SC 78**.

Paragraph 25 to 27 of the judgment is relevant to be reproduced here:-

“25. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants, like the respondent no.3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, he had prosecuted the



earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of the appellant No.1, who is presently occupying the position of Vice-President, neither the loan was taken, nor the default was made, nor any action under the SARFAESI Act was taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present appellant No.1. We are only stating about the devilish design of the respondent No.3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) Cr.P.C. is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance of Section 154(3), indicating it has been sent to the Superintendent of police concerned.

26. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.



27. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption



cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

14. The perusal of the complaint petition would further reveal that there is no whisper of any allegation against petitioner no. 1 Shashi Bhushan Chaudhary who is father-in-law and has been arrayed as an accused at serial no. 5 of the column of the accused. If the learned Magistrate would have carefully gone through the contents of the complaint petition he would not have decided to direct institution of FIR against petitioner no. 1 Shashi Bhushan Chaudhary. Moreover, there was no material at all to substantiate that the allegation was based on affidavited complaint. There was no prayer for sending the complaint case for institution of a police case. Hence, in view of the judgment of the Hon'ble Apex Court in Mrs. Priyanka's case (**supra**), the FIR of Athamalgola Police Station Case No. 125 of 2015 is fit to be quashed and the same, accordingly, stands quashed.

15. The opposite party no. 2/complainant would be at liberty to bring fresh complaint case on affidavit and the court below shall be at liberty to proceed on the complaint itself if there is no prayer for direction to the police to register a police case of that complaint. In the event of such prayer or suo motu exercise of discretion, the learned



Magistrate is required to ensure compliance of other requirements of law.

16. With the aforesaid observation Cr.W.J.C. No. 1245 of 2015 stands allowed.

(Birendra Kumar, J)

Kundan

AFR/NAFR	A.F.R.
CAV DATE	07.03.2017
Uploading Date	18.03.2017
Transmission Date	18.03.2017

