

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39251 of 2013

Arising Out of PS.Case No. -29 Year- 2008 Thana -PIPRAHI District- SHEOHAR

- =====
1. Sanjay Kumar @ Sanjay Mahto, son of Sri Sita Ram Mahto, resident of village
- Chhatauni, P.S. Piprahi, District - Sheohar

.... Petitioner/s

Versus

1. The State of Bihar
2. Yogendra Thakur, s/o late Manful Thakur, r/o village- Chhatauni, P.S.- Piprahi,
District- Sheohar.

.... Opposite Party/s

With

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Criminal Miscellaneous No. 47189 of 2013

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

- =====
1. Harendra Mahto, s/o Ram Deo Mahto,
2. Pramod Kumar Mahto, s/o Ram Govind Mahto,
3. Ram Lagan Mahto, s/o Sahdeo Mahto,
4. Chalitra Mahto, s/o Musan Mahto,
5. Rajesh Mahto, s/o Chanda Mahto, all resident of village- Chhatauni, P.S.-
Piprahi, District- Sheohar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Yogendra Thakur, s/o late Manful Thakur, r/o village- Chhatauni, P.S.- Piprahi,
District- Sheohar.

.... Opposite Party/s

With

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Criminal Miscellaneous No. 54268 of 2013

Arising Out of PS.Case No. -29 Year- 2008 Thana -PIPRAHI District- SHEOHAR

- =====
1. Kedar Mahaseth @ Kedar Mahto, s/o Bipin Mahto,
2. Lal Babu Kumar @ Lal Babu Mahto @ Lalu Mahto, s/o Deepa Mahto,
3. Amod Mahto @ Amod Kumar, s/o Kedar Mahto, all resident of village
Chhatauni, P.S. Piprahi, District Sheohar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Yogendra Thakur, s/o late Manful Thakur, r/o village Chhatauni, P.S. Piprahi,
District Sheohar.



.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.39251 of 2013)

For the Petitioner/s : Mr. Ravindra Kumar, Advocate

For the Opposite Party No.1: Mr. Jharkhandi Upadhaya, APP

For the Opposite Party No.2: Mr. Pramod Kumar Singh, Advocate
Mr. Virendra Kumar, Advocate

(In Cr.Misc. No.47189 of 2013)

For the Petitioner/s : Mr. Ravindra Kumar, Advocate

For the Opposite Party No.1: Mr. APP

For the Opposite Party No.2: Mr. Pramod Kumar Singh, Advocate
Mr. Virendra Kumar, Advocate

(In Cr.Misc. No.54268 of 2013)

For the Petitioner/s : Mr. Ravindra Kumar, Advocate

For the Opposite Party No.1: Mr. APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 21-08-2018

All these three applications have been heard together and are being disposed off by this common judgment as they arise out of the common order passed in Sessions Trial No.578 of 2010 arising out of Piprahi P.S. Case No.29 of 2008.

2. These applications under Section 482 of the Code of Criminal Procedure have been filed for quashing the order dated 29.07.2013 passed by the Additional Sessions Judge-I, Sheohar, in Sessions Trial No.578 of 2010 arising out of Piprahi P.S. Case No.29 of 2008 by which the learned Court below has dismissed the discharge petition filed on behalf of Petitioners for their discharge.

3. The prosecution case on the basis of the written report filed by one Yogendra Thakur before the police is that on 14.03.2007, his son, Snehi Thakur, was scrapping sugarcane in the



field of Jadu Singh. He was carrying sugarcane on the road and on the ridge of the field of Jadu Singh, he dashed with Rinku Kumari, daughter of Ramji Mahto. All the accused persons (Petitioners) named in the First Information Report levelled allegation against the son of Informant, Snehi Thakur, that he had indulged in eve teasing with Rinku Kumari and assaulted him with fists and slaps causing fracture injury in his ribs and also injury in his lungs. Accused persons brought Snehi Thakur and confined him in the house of Kedar Matho. Kedar Mahto lodged a case in which Snehi Thakur was sent to jail and he was released on bail.

4. The Informant further alleged that Snehi Thakur died due to the injuries after four months. The Informant brought dead body of his son at the door of Kedar Mahto. A *Panchayati* was convened in which accused persons agreed to give 1½ Bigha of land. Thereafter, dead body was cremated. The accused persons refused to transfer the land in favour of the Informant as assured.

5. The police on the basis of aforesaid written report lodged Piprahi P.S. Case No.29 of 2008 (instant case) for the offence under Section(s) 302/34 Indian Penal Code on 10.05.2008.

6. Counsel for the Petitioners has submitted that for the same occurrence Informant has earlier filed case vide Piprahi P.S. Case No.22 of 2007 dated 14.03.2017 for the offence under



Section(s) 147, 341, 342, 323, 324 Indian Penal Code. All the accused persons faced trial in that case and they have been acquitted by judgment dated 29.03.2011 except Ram Govind Mahto and Ramji Mahto, who were convicted for the offence under Section(s) 323 and 342 Indian Penal Code. They were released by giving benefit of Section 3 of the Probation of Offenders Act.

7. Xerox copy of First Information Report of Piprahi P.S. Case No.22 of 2007 is annexed with the petition as Annexure-2.

8. Counsel for the Petitioners further submits that from the First Information Report it appears that occurrence took place on 14.03.2007. Prior to filing of both the cases by the Informant i.e. Piprahi P.S. Case No.22 of 2007 and Piprahi P.S. Case No. 29 of 2008 (instant case), Rinku Kumari, daughter of Ramji Mahto had filed Piprahi P.S. Case No.21 of 2007 for the offence under Section(s) 376, 511, 354/34 Indian Penal Code against the son of the Informant, Snehi Thakur. Xerox copy of the First Information Report of Piprahi P.S. Case No.21 of 2007 is enclosed as Annexure-3.

9. The counsel for Petitioners further submits that from perusal of First Information Report of this case and entire case diary there is no direct or circumstantial evidence about the



involvement of these Petitioners in the murder of son of the Informant. The police has illegally submitted charge-sheet in this case against all these Petitioners, whereas, earlier Piprahi P.S. Case No.22 of 2007 was already filed by the informant against the accused persons for the same occurrence. The Court below instead of amalgamating both the cases has taken cognizance in this case on the basis of charge-sheet submitted by police, which is not permissible in law. The learned Magistrate has taken cognizance in mechanical manner on the basis of charge-sheet. Discharge petition has also been rejected by the learned Additional Sessions Judge without considering the correct proposition of law and facts.

10. Learned counsel for the State submits that there is no illegality in the impugned order.

11. From perusal of the impugned order, it appears that Petitioners have brought to the notice of the Trial Court that earlier Informant had filed Piprahi P.S. Case No.22 of 2007 for the same occurrence and after trial by the learned Sub-Divisional Judicial Magistrate, Sheohar, all the accused persons excluding Ram Govind Mahto and Ramji Mahto, were acquitted by judgment dated 29.3.2011. Accused Ram Govind Mahto and Ramji Mahto were convicted under Section(s) 323 and 342 Indian Penal Code.

12. Learned counsel for the Opposite Party No.2 has



submitted that the Informant had lodged Piprahi P.S. Case No.22 of 2007 and the present case for the same occurrence dated 14.03.007. In spite of protest by the Informant, the police did not name these accused persons in Piprahi P.S. Case No.22 of 2007. The accused persons named in Piprahi P.S. Case No.22 of 2007 and the instant case are different. The witnesses in the case diary have supported that accused persons assaulted son of the Informant on the date of occurrence and later on he died due to said assault.

13. This Court after hearing argument of both sides and looking into the impugned order as well as material available in the case dairy finds that it is admitted position that Informant has earlier filed Piprahi P.S. Case No.22 of 2007 for the same occurrence dated 14.03.2007. As per First Information Report, occurrence took place on 14.03.2007 and son of the Informant died on 12.08.2007. Present case has been lodged on 10.05.2008. It further appears that there is no postmortem report of the deceased in the instant case. Informant has stated in the written report itself that dead body of his son was brought at the door of Kedar Mahto and *Panchayati* was convened in which accused persons agreed to give 1½ Bighas of land. Accordingly, dead body was cremated, but the accused persons refused to transfer the land as stated above.

14. In this manner, from the First Information Report



itself, it appears that instant case has been filed by the Informant after such a long delay only to give pressure to the Petitioners to transfer the land as per *Panchayati* as mentioned in the written report.

15. Case diary along with lower court records have been received.

16. This Court perused the case diary as well as entire lower court records. From perusal of the case diary, it appears that police has submitted charge-sheet in this case on 12.07.2010 for the offence under Section(s) 302, 201/34 Indian Penal Code. The police has mentioned in para 104 of the case diary, which is supervision note of the Superintendent of Police, that the Informant earlier filed Piprahi P.S. Case No.22 of 2007 for the same occurrence in which charge-sheet has been submitted on 31.03.2007. It is mentioned in para 104 of the case diary that Investigating Officer was directed to inform the PP for taking steps to amalgamate the instant case with Piprahi P.S. Case No.22 of 2007.

17. From the order dated 22.07.2010 passed by the Sub-Divisional Judicial Magistrate, Sheohar, it appears that learned Magistrate has taken separate cognizance in the instant case against these Petitioners on the basis of charge-sheet submitted by the police for the offence under Section(s) 302, 201/34 Indian Penal



Code. There is no mention by the learned APP before the Magistrate at the time of taking cognizance that another case vide Piprahi P.S. Case No.22 of 2007 has been filed by the Informant for the same occurrence although there is mention in the case diary for amalgamating the instant case with Piprahi P.S. Case No.22 of 2007. Similarly, it appears that learned Magistrate without looking into para 104 of the case diary took separate cognizance in the instant case for the offence under Section(s) 302, 201/34 Indian Penal Code against the Petitioners without mentioning in the order of cognizance that earlier the Informant has also filed Piprahi P.S. Case No.22 of 2007 for the same occurrence and the same is pending in the Court for trial. The learned Magistrate without mentioning all these facts committed the case to the Court of Sessions by order dated 23.10.2010.

18. During hearing of the petition filed under Section 227 Cr. P.C., it was brought to the notice of the Trial Court that Informant has lodged Piprahi P.S. Case No.22 of 2007 for the same occurrence. It has also been submitted that there is no direct or indirect evidence in the case diary against these Petitioners in this case. They have been falsely implicated in this case. Earlier case filed by the Informant for the same occurrence vide Piprahi P.S. Case No.22 of 2007 was disposed off by judgment dated



29.03.2011 and all the accused named in that case except Ram Govind Mahto and Ramji Matho have been acquitted from the charge under Section(s) 147, 341, 342, 323, 324 Indian Penal Code. Accused Ram Govind Mahto and Ramji Mahto were convicted under Section(s) 323 and 342 Indian Penal Code.

19. This Court finds that the Informant has not given any valid explanation for filing instant case after delay of nine months from the date of death of his son, Snehi Thakur, (since deceased) i.e. on 12.08.2007. The occurrence is said to have taken place on 14.03.2007 i.e. about one year prior to the date of filing of the First Information Report of the instant case on 10.05.2008.

20. Section 173 (8) Cr.P.C. reads as follows:

“(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the Officer-in-charge of the Police Station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

21. In the instant case, from para 104 of the case dairy, it appears that police had prayed to amalgamate this case with Piprahi P.S. Case No.22 of 2007 filed by the Informant earlier so



that both the cases may proceed together. But learned Magistrate ignoring the facts mentioned in para 104 of the case diary, that earlier Informant has also filed Piprahi P.S. Case No. 22 of 2007 for the same occurrence, which is also pending, took separate cognizance in this case in mechanical manner on the basis of charge-sheet without giving reference of earlier case i.e. Piprahi P.S. Case No.22 of 2007 and also committed the instant case to Court of Sessions, wherein, also this fact was not mentioned, as a result of which Piprahi P.S. Case No.22 of 2007, lodged earlier by the Informant for the same occurrence, has been concluded and disposed off by judgment dated 29.03.2011 and all the accused named in that case except Ram Govind Mahto and Ramji Matho have been acquitted from the charge under Section(s) 147, 341, 342, 323, 324 Indian Penal Code. Accused Ram Govind Mahto and Ramji Mahto were convicted under Section(s) 323 and 342 Indian Penal Code. They were released under Section(s) 3 of the Probation of Offenders Act on furnishing the bond.

22. Therefore, this Court finds that illegality has been committed by the Magistrate at the very initial stage when he took separate cognizance in this case on the basis of charge-sheet submitted by the police by order dated 22.07.2010 without taking into consideration that earlier Piprahi P.S. Case No.22 of 2017 has



also been filed by the Informant for the same occurrence and both the cases should have been amalgamated and tried together. There is no provision in the criminal law to file two separate cases for the same date of occurrence involving different sets of accused and hold separate trial of accused persons in both cases.

23. Instant case has been filed by the Informant for the occurrence dated 14.03.2007 on 10.05.2008 alleging that these Petitioners assaulted the son of the Informant on 14.03.2007 on account of which he died on 12.08.2007, whereas, Informant has already filed case earlier vide Piprahi P.S. Case No.22 of 2007 for the same occurrence dated 14.03.2007 against eight accused persons as named in the First Information Report.

24. Learned Court below rejected the discharge petition only on the ground that the accused persons in Piprahi P.S. Case No.22 of 2007 and the instant case i.e. Piprahi P.S. Case No.29 of 2008 are different.

25. This Court is of the view that such reasoning given by the Trial Court for rejecting discharge petition is not in accordance with law. The Informant cannot be given liberty to file as many cases as he likes for the same date of occurrence separately involving as many persons as he desires and the Court will proceed against accused persons in all those cases separately.



26. The Hon'ble Supreme Court in the judgment reported in **(2018) 1 SCC 330** in the case of ***Chirag M. Pathak and others Vs. Dollyben Kantilal Patel and others*** has held that “*when on reading the FIRs, a sheer absurdity in allegations is noticed and when no prima facie cognizable case is made out on its mere reading due to absurdity in allegations or when facts disclose prima facie cognizable case and also disclose remarkable identity between two FIRs, as if the first FIR was filed second time with no change in allegations, then the Court may, in appropriate case, consider it proper to quash the second FIR*”.

27. There is clear provision in Criminal Procedure Code prescribed under Section 173(8) for further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the Officer-in-charge of the Police Station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed. It appears that neither the prosecution nor the Court below has taken into consideration the provision of Section 173(8) Cr.P.C. at the time of passing of order of cognizance in the instant case.

28. The police has, however, pointed out in the case diary in para 104 while filing charge-sheet to amalgamate the



instant case with Piprahi P.S. Case No.22 of 2007. The Court below instead of amalgamating both the cases has taken separate cognizance in this case on the basis of charge-sheet submitted by the police, and thereafter committed the case to the Court of Sessions.

29. In this manner, the Court below has committed illegality in passing the impugned orders. Therefore, impugned orders passed by the learned Court below are not sustainable in law.

30. In view of such, impugned order dated 29.07.2013 passed by the Additional Sessions Judge-I, Sheohar, in Sessions Trial No.578 of 2010 arising out of Piprahi P.S. Case No.29 of 2008 along with entire criminal proceeding against the Petitioners are hereby quashed. The Petitioners are discharged from the charges levelled against them.

31. These applications are, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/AFR	AFR
CAV DATE	29-06-2018
Uploading Date	25-08-2018
Transmission Date	25-08-2018

