

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1009 of 2017

Arising Out of Chhatauni P.S. Case No. 91 Year- 2017 Thana - Chhatauni
District- East Champaran (Motihari)

- =====
1. Ram Bihari Pandey, Son of late Kalika Pandey, Resident of Mohalla- Sri Krishna Nagar, Near L.N.D. College, Motihari, Post- Motihari, P.S.- Motihari Town, District- East Champaran Motihari.
 2. Bhola Nath Prasad Gupta, Son of Sri Sita Ram Prasad, Resident of Mohalla- Kolhuarwa, Ward No. 1, P.O.- Motihari, P.S.- Towan Police Station- Motihari, District- East Champaran, Motihari.

.... Petitioners

Versus

1. The State of Bihar.
2. The Principal Secretary, Home Police Department, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The District Magistrate, East Champaran Motihari.
5. The Superintendent of Police, East Champaran Motihari.
6. The Circle Officer, Sadar Motihari, District- East Champaran, Motihari.
7. The S.H.O. Chhatauni Police Station, East Champaran Motihari.
8. The Investigation Officer (SIT), Chhatauni Police Station, East Champaran, Motihari.
9. Purnima Kumari, Wife of Late Naresh Prasad Srivastava, Resident of Mohalla- Chini Mill Quarter, Chhota Bariyarpur, P.S.- Chhatauni, District- East Champaran, Motihari.

.... Respondents

With

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Criminal Miscellaneous No. 24537 of 2017



**Arising Out of PS.Case No. -91 Year- 2017 Thana -Chatouni District- East
Champaran (Motihari)**

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Bimal Kumar Nopani, Son of Late Mohan Lal Nopany, Resident of 14, Rowland Road, P.O. A.J.C. Bose Road, Kolkata 700020, P.S.- Ballygunge Place, District- Kolkata.

.... Petitioners

Versus

1. The State of Bihar.
2. The Principal Secretary, Home Police Department, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The District Magistrate, East Champaran Motihari.
5. The Superintendent of Police, East Champaran Motihari.
6. The S.H.O. Chhatauni Police Station, East Champaran Motihari.
7. The Investigation Officer (SIT), Chhatauni Police Station, East Champaran, Motihari.
8. Purnima Kumari, Wife of Late Naresh Prasad Srivastava, Resident of Mohalla- Chini Mill Quarter, Chhota Bariyarpur, P.S.- Chhatauni, District- East Champaran, Motihari.

.... Opposite Partys

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Appearance :

For the Petitioners s	:	Mr. P.K. Shahi, Sr. Advocate Mr. Ranjeet Kumar, Advocate
For the Respondents	:	Mr. Sandip Kumar, Advocate Mr. Vikash Kumar Pankaj, Advocate Mr. Anuj Kumar, Advocate
For the State	:	Mr. Utsav Kumar, A.C. to G.A.4

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT**

Date: 18-05-2018

Heard Mr. P.K. Shahi, learned Senior Advocate



assisted by Mr. Ranjeet Kumar, learned Advocate representing the petitioners in both these applications and Mr. Sandip Kumar, learned Advocate representing the informant-respondent no. 9 as also learned counsel representing the State.

2. Cr.W.J.C. No. 1009/2017 has been filed by Ram Bihari Pandey and Bhola Nath Prasad Gupta who are, though not named in the First Information Report under challenge but their names have transpired in course of investigation. Cr. Misc. No. 24537/2017 has been filed by Bimal Kumar Nopani who is named in the F.I.R. In both the cases the F.I.R. lodged by respondent no. 9 has been sought to be quashed. Both the cases have been clubbed together by virtue of order dated 12.07.2017 passed by learned co-ordinate Bench of this court in Cr.W.J.C. No. 1009/2017.

3. The First Information Report being Chhatauni P.S. Case No. 91/2017 registered for the offences under Section 147, 148, 149, 341, 324, 326, 307, 302, 353, 337, 338/120B of the Indian Penal Code has been sought to be quashed on the ground that with regard to the same occurrence Anchala Adhikari, Motihari had already lodged the F.I.R. being



Chhatauni P.S. Case No. 89 of 2017 under Section 147, 148, 149, 341, 323, 337, 338, 332, 333, 353, 307, 326, 427, 120B of the Indian Penal Code.

4. Learned senior counsel has drawn the attention of this court towards the principles of law enunciated by the Hon'ble Supreme Court in the case of **T.T. Antony Vs. State of Kerala** reported in **(2001) 6 SCC 181** to submit that a second F.I.R. for the same occurrence and the same incident cannot be allowed to be registered. Learned senior counsel has taken this court through the contents of the F.I.R. lodged by Choudhary Basant Kumar Singh, Anchal Adhikari, Motihari wherein according to learned senior counsel the entire sequence of occurrence which took place on 10.04.2017 have been narrated. It is his submission that a bare perusal of the written report submitted by Anchal Adhikari would show that he has disclosed how the husband of the informant received burn injuries and even some of the persons who were allegedly involved in the occurrence have been identified and their names have been disclosed.

5. Learned senior counsel submits that following the principles laid down by the Hon'ble Supreme Court in the



case of T.T. Antony (supra), the second F.I.R. is fit to be quashed.

6. On the other hand, learned counsel representing the informant (respondent no.9) as well as learned counsel representing the State have opposed the reliefs prayed for in the writ application. Mr. Sandip Kumar, learned Advocate representing the informant has placed before this court the judgment of the Hon'ble Supreme Court in the case of **P. Sreekumar vs. State of Kerala** reported in **2018(2) PLJR (SC) 293**. Learned counsel submits that the F.I.R. as contained in Annexure-1 lodged by the informant (respondent no.9) need not be quashed or need not be interfered with by this court only on the ground that it relates to the same occurrence.

7. It is submitted that the ratio of the judgment of the Hon'ble Apex Court in the case of **T.T. Antony** as canvassed by learned senior counsel representing the petitioners has to be understood in the light of the reasoned judgment of the Hon'ble Supreme Court in the case of **P. Sreekumar** (supra). Reliance has been placed by Mr. Sandip Kumar on paragraph 28 to 33 of the said judgment which are



quoted hereunder for ready reference:

“28. In our opinion, the law on the subject which governs the controversy involved in the appeal is no more res integra and settled by the decision of this Court (three-Judge Bench) in the case reported in **Upkar Singh vs. Ved Prakash & Ors.**, (2004) 13 SCC 292 and also by the subsequent decisions.

29. Their Lordships after examining all the previous case laws on the subject laid down the following proposition of law in the following words speaking through Justice N. Santosh Hegde:

"23. Be that as it may, if the law laid down by this Court in *T.T. Antony* case is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.



24. We have already noticed that in *T.T. Antony* case this Court did not consider the legal right of an aggrieved person to file counterclaim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter-complaint is permissible.

25. In the instant case, it is seen in regard to the incident which took place on 20-5-1995, the appellant and the first respondent herein have lodged separate complaints giving different versions but while the complaint of the respondent was registered by the police concerned, the complaint of the appellant was not so registered, hence on his prayer the learned Magistrate was justified in directing the police concerned to register a case and investigate the same and report back. In our opinion, both the learned Additional Sessions Judge and the High Court erred in coming to the conclusion that the same is hit by Section 161 or 162 of the Code which, in our considered opinion, has absolutely no bearing on the question involved. Section 161 or 162 of the Code does not refer to registration of a case, it only speaks of a statement to be recorded by the police in the course of the investigation and its evidentiary value."

30. The aforesaid principle was reiterated by this Court (Two Judge Bench) in **Surender Kaushik & Ors.**



vs. State of U.P. & Ors., (2013) 5 SCC 148 in the following words:

"24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in *Upkar Singh*, the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible."

31. Keeping the aforesaid principle of law in mind when we examine the facts of the case at hand, we find that the second FIR filed by the appellant against respondent No.3 though related to the same incident for which the first FIR was filed by respondent No.2 against the appellant, respondent No.3 and three Bank officials, yet the second FIR being in the nature



of a counter-complaint against 13 respondent No.3 was legally maintainable and could be entertained for being tried on its merits.

32. In other words, there is no prohibition in law to file the second FIR and once it is filed, such FIR is capable of being taken note of and tried on merits in accordance with law.

33. It is for the reasons that firstly, the second FIR was not filed by the same person, who had filed the first FIR. Had it been so, then the situation would have been somewhat different. Such was not the case here; Second, it was filed by the appellant as a counter-complaint against respondent No.3; Third, the first FIR was against five persons based on one set of allegations whereas the second FIR was based on the allegations different from the allegations made in the first FIR; and Lastly, the High Court while quashing the second FIR/charge-sheet did not examine the issue arising in the case in the light of law laid down by this Court in two aforementioned decisions of this Court in the cases of **Upkar Singh** (supra) and **Surender Kaushik** (supra) and simply referred three decisions of this Court mentioned above wherein this Court has laid down general principle of law relating to exercise of inherent powers under Section 482 of the Code.”

8. On the strength of the aforesaid view of the Hon’ble Supreme Court it is the submission of Mr. Kumar that at this stage when all the reasons stated by Hon’ble Supreme



Court in paragraph 33 of the judgment are available in the present case as well, it would not be just and proper to quash the second F.I.R. (Annexure-1).

9. Having heard learned senior counsel for the petitioners as well as learned counsel representing the State and the private respondent and after going through the judgments of the Hon'ble Supreme Court referred at the bar, I find that in the present case the second F.I.R. has been lodged by a person different from one who had lodged the first F.I.R. Further, I find that in the second F.I.R. the informant (respondent no. 9) has given a different version of the case and a different manner of occurrence which took place on the said date. Further she has made some specific allegations of conspiracy on the part of the management and accusations have been made naming one of the petitioners and others in the F.I.R. lodged by her which are not there in the first case registered at the instance of the Anchal Adhikari, Mothiari.

10. Having found that the respondent no. 9 has lodged the F.I.R. giving a totally different version and manner of occurrence as against the manner of occurrence reported by the Anchal Adhikari and the investigation is going on, I am of



the considered opinion that the ratio of the judgment of the Hon’ble Apex Court in the case of **P. Sreekumar** (supra) is duly attracted in the facts of the present case. This being the position. The court is not willing to quash the second F.I.R. (Annexure-1) on the ground stated-above.

11. The writ application stands dismissed and the interim orders stands vacated.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
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