

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.40158 of 2019**

Arising Out of PS. Case No.-249 Year-2016 Thana- MITHANPURA District- Muzaffarpur

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1. PURUSHOTTAM ANAND @ PURSOTTAM ANAND @ VIPUL MISHRA  
Son of Ramesh Mishra Resident of Village-Majhauria, Dumaria, Ward  
No.10, P.S.-Bathnaha, District-Sitamarhi.
  2. Ramesh Mishra Son of Late Gulab Mishra Resident of Village-Majhauria,  
Dumaria, Ward No.10, P.S.-Bathnaha, District-Sitamarhi.
  3. Nirmala Devi Wife of Ramesh Mishra Resident of Village-Majhauria,  
Dumaria, Ward No.10, P.S.-Bathnaha, District-Sitamarhi.
  4. Prabhat Mishra Son of Ramesh Mishra Resident of Village-Majhauria,  
Dumaria, Ward No.10, P.S.-Bathnaha, District-Sitamarhi.
  5. Sudha Devi Wife of Prabhat Mishra Resident of Village-Majhauria,  
Dumaria, Ward No.10, P.S.-Bathnaha, District-Sitamarhi.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR Bihar
2. Rupa Kumari Daughter of Gopal Jha Presently residing with her father at  
Shastrinagar, Jai Prakash Path, Lane No.15, P.S.-Mithanpura, District-  
Muzaffarpur.

... .. Opposite Party/s

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**Appearance :**

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| For the Petitioner/s     | : | Mr. Talib Mustafa, Advocate  |
| For the Opposite Party/s | : | Mr. Aditya Narayan Singh.1   |
| For the O.P. No. 2       | : | Mr. Rajnath Sharma, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**ORAL ORDER**

2      09-07-2019                      Heard    the    learned    counsel    for    the

petitioners, the informant and the State.

The petitioners who are related to the husband of opposite party no. 2, have sought quashing of the subject FIR viz. Mithanpura P.S. Case No. 249 of 2016 dated 18.10.2016 which has been instituted for the offences under Sections 341,



323, 498A, 379 and 34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act and which is pending before the court of the learned Sub-Divisional Judicial Magistrate, East Muzaffarpur.

It has been alleged in the aforesaid FIR that the opposite party no. 2 got married to one Purshottam Anand @ Pursottam Anand @ Vipul Mishra. At the time of marriage sufficient cash and articles were given as part of dowry. However a demand of Honda City Car was made by the husband of opposite party no. 2 on the instigation of his relatives. When the opposite party no. 2 came to her matrimonial house, the demand was again put up and she was physically and mentally tortured. A Panchayat was held. According to the terms of Panchayati, opposite party no. 2 came back to her parental home. She gave birth to a baby child. At the time of the lodging of the FIR, the opposite party no. 2 was again pregnant but no care was taken by the



accused persons including the petitioners. On the basis of the aforesaid written report a case vide Mithanpura P.S. Case No. 249 of 2016 (subject FIR) was registered for investigation under various Sections of the IPC which has been noted above.

Learned counsel for the petitioners has submitted that on 19.09.2016, i.e. about a month prior to the lodging of the subject FIR, the brother of opposite party no. 2 also filed a case vide Bathnaha P.S. Case No. 153 of 2016 which was registered under Sections 341, 323, 379, 498A/34 of the IPC and Sections 3(A)(B) of the Domestic Violence Prohibition Act. It has been asserted that the allegations in the FIR lodged by the brother of opposite party no. 2 and the later FIR by opposite party no. 2 are exactly similar and therefore the second FIR ought not to have been registered and therefore it is liable to be quashed.

Chapter XII of the Code of Criminal



Procedure deals with information to the police and their powers to investigate. According to Section 154 Cr.P.C., every information relating to commission of a cognizable offence has to be registered. With the registration of the FIR, the criminal law is set in motion and investigation is taken up by the police.

The issue therefore is in the present petition is whether a second FIR relating to the same incident could be entertained. In ***T.T. Antony vs. State of Kerala & Ors. (2001) 6 SCC 181***, the Supreme Court has held that the second FIR which relates to the same offence between the same parties is not maintainable. In the aforesaid case, it was clarified by the Supreme Court that if the gravamen of the charge in the two FIRs – the first and second, is in substance the same, the second FIR would not be maintainable on the same set of facts.

In ***Upkar Singh vs. Ved Prakash (2004) 13 SCC 292***, the Supreme Court, by a larger Bench



clarified that the dictum in T.T. Anthony (supra) did not apply to counter case with rival version of the same occurrence.

The Supreme Court in several other cases viz. ***Pandurang Chandrakant Mhatre vs. State of Maharashtra 2009(10) SCC 773, Ramesh Baburao Devaskar & Ors. vs. State of Maharashtra 2007 (13) SCC 501*** and ***Vikram vs. State of Maharashtra (2007) 12 SCC 332*** has held that the earliest information with regard to commission of a cognizable offence is to be treated as the FIR, which sets the criminal law in motion and the investigation commences on that basis.

In ***Babubhai vs. State of Gujarat & Ors. (2010) 12 SCC 254*** several decisions of the Supreme Court over the issue of maintainability of second FIR was analyzed and it was opined that a court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness



is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence. The second FIR with respect to the same offence is liable to be quashed. [Also refer to ***Surender Kaushik & Ors. Vs. the State of U.P. & Ors. (2013) 5 SCC 148***]

Thus, the position of law being very clear that the two FIRs are not permissible with respect to one and same incident. The two FIRs in the present case clearly appear to be with respect to the same incident of opposite party no. 2 in the present case having been subjected to cruelty in her matrimonial home. It is quite different that the second FIR has been lodged by the so called victim herself. Thus no useful purpose would be served in allowing the second FIR to be continued to be investigated.

Thus the subject FIR via. Mithanpura P.S. Case No. 249 of 2016 dated 18.10.2016 lodged by opposite party no. 2 is quashed.



However, the materials, collected during course of investigation of the FIR viz. Mithanpura P.S. Case No. 249 of 2016, shall be treated to be part of investigation of the first case viz. Bathnaha P.S. Case No. 153 of 2016.

The investigating officer of Mithanpura P.S. Case No. 249 of 2016 shall provide the materials collected in course of investigation of the case to the investigating officer of Bathnaha P.S. Case No. 153 of 2016 who shall complete the investigation in right earnest.

The petition stands allowed accordingly.

**(Ashutosh Kumar, J)**

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