

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.371 of 2017

Arising Out of PS. Case No.-514 Year-2016 Thana- DANAPUR District- Patna

RAKESH KUMAR @ BUILDER RAKESH KUMAR @ GUDDU Son of
Shri Shyam Narain Sinha, Resident of House No.-120, North Anandpuri,
West Boring Canal Road, P.S.- Srikrishnapuri, District- Patna.

... .. Petitioner

Versus

1. The State Of Bihar through The Director General Of Police, Bihar, Patna
2. The Superintendent of Police (West) , Patna.
3. The Sub Divisional Police Officer(Deputy Superintendent of Police) ,
Danapur, Patna.
4. The Officer-In-Charge, P.S.- Danapur, District- Patna.
5. Sumitra Yadav, Wife of Dr. Ramashray Yadav, R/o House No.1, Shivpuri,
P.O.P.S.- Shastri Nagar, District- Patna.

... .. Respondents

with

Criminal Writ Jurisdiction Case No. 447 of 2017

Arising Out of PS. Case No.-271 Year-2016 Thana- RUPASPUR District- Patna

Rakesh Kumar S/o Shri Shyam Narain Sinha R/o House No. 120, North
Anandpuri, West Boring Canal Road, P.S. - Sri Krishnapuri, District - Patna.

... .. Petitioner

Versus

1. The State Of Bihar through The Director General Of Police, Bihar, Patna
2. The Superintendent of Police (West), Patna.
3. The Sub Divisional Police Officer (Deputy Superintendent of Police),
Danapur, Patna.
4. The Officer-in-Charge, P.S. - Danapur, District - Patna.
5. Sumitra Yadav W/o Dr. Ramashray Yadav R/o House No.1, Shivpuri, P.O.
P.S. - Shastri Nagar, District - Patna.

... .. Respondents

Appearance :

(In Criminal Writ Jurisdiction Case No. 371 of 2017)

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

For the Respondent/s : Mr. Ajay Kumar, AC to AG

(In Criminal Writ Jurisdiction Case No. 447 of 2017)

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

For the Respondent/s : Mr. Suman Kumar Jha, AC to AAG 3

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 07-07-2022



The sole petitioner and the contesting respondent no. 5 are same in both the writ applications. On the request of learned counsel for the parties, both the matters have been taken up together for consideration.

Cr. W.J.C. No. 371 of 2017

2. In this case the petitioner is seeking quashing of the first information report being Danapur P.S. Case No. 514 of 2016 dated 12.12.2016 registered for the offences punishable under Sections 406 and 420 of the Indian Penal Code.

3. The brief facts of the case as per the informant-respondent no. 5 are as under:-

(i) That the informant is the wife of one Sri Ramashray Prasad Yadav (Ex-chairman of BPSC). A building named Shyam Residency has been constructed on her land. The petitioner who is the builder has given in writing that the respondent no. 5 will get 45% share in the constructed portion. Shop No. 25 fell in the share of respondent no. 5 but the builder sold the same to one Manoj Kumar unauthorizedly. The informant alleged that her share of parking lot has also been rented out by the builder to two muscle men (Bahubali) despite the fact that the Hon'ble High Court had directed vide order dated 24.03.2015 that none of the shares would be sold during the pendency of the matter before the Hon'ble High Court. The informant alleged that the builder Rakesh Kumar @ Guddu is having criminal antecedent.



4. Learned counsel for the petitioner has challenged the first information report on the ground of sameness of the case with that of the earlier case lodged by respondent no. 5 against the petitioner being Shastri Nagar P.S. Case No. 251 of 2012 under Sections 406, 420, 504 and 506/34 of the Indian Penal Code. Learned counsel submits that for the identical reason the said FIR was lodged. A copy of the FIR giving rise to Shastri Nagar P.S. Case No. 251 of 2012 has been placed on record as Annexure -2. In order to demonstrate that the present case is not on any fresh cause of action, learned counsel has taken this Court through the contents of the first information report (Annexure 2).

5. It is submitted that in the said case the informant alleged that first development agreement was executed with the builder Rakesh Kumar on 14.12.2007 but by playing fraud upon her, the builder got executed the second development agreement on 10.02.2010 and the same was registered. It is then alleged that the builder did not complete the share of the land owner for about five years in Shyam Arcade Apartment situated near RPS More then the informant made physical inspection of the spot and she gathered information that the builder had sold even the share of the land owner/informant to the buyers. He has forcibly possessed the under construction apartment and the commercial area which had fallen in the share of the land owner. He had opened a TVS Motorcycle show room and had closed the stairs portion just adjacent to the showroom. Respondent no. 5 alleged in the said FIR that she went on calling the builder to come and discuss but he



did not turn up, thereafter, the informant went to the under constructed apartment of Shyam Arcade on 26.08.2012 where the Manager of the Show Room acted in very indecent manner with her and threatened her and her husband to forcibly take possession of the entire property and the apartment. It is alleged that the builder Rakesh Kumar along with his three other muscle men came to the residence of the informant on 31.08.2012 at 7:30 p.m. and they started threatening the informant saying that they will not give a single rupaiya and an inch of the share and that the old woman and the old man cannot do anything to him as the entire police administration is in his hand. The informant has alleged that one boy of short height who was with the builder took out a pistol from his waist and was threatening the informant. It is also alleged that the builder Rakesh Kumar snatched the golden chain from the informant and placed the pistol on her and threatened her. The builder also pushed the husband of the informant down. It is alleged that the builder is conspiring to usurp the entire property of the informant with the help of Gunda elements.

6. Learned counsel submits that the said FIR was challenged in this Court in Cr. Misc. No. 15195 of 2014. An attempt was taken to amicably resolve the dispute and the matter was sent to the mediation center attached to this Court. On 24.04.2015 the learned court hearing the said criminal miscellaneous directed to put up the matter on 24.06.2015 with the report of the mediator and in the meanwhile both the parties were directed not to sell any of the flats during this period. It



is submitted that ultimately Cr. Misc. No. 15195 of 2014 was dismissed vide order dated 11.04.2018.

7. Learned counsel submits that on bare reading from the first information report it would appear that the allegation against the petitioner is that he has not handed over 45% share in the Shyam Residency and the petitioner has sold out shop no. 25 on 05.10.2016 in a totally unauthorized manner to one Manoj Kumar. According to him, these are the allegations which forms part of the earlier FIR (Annexure 2) and hence, no separate FIR could have been registered by police.

8. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **T. T. Antony Vs. State of Kerala And Others and others** reported in **(2001) 6 SCC 181** to submit that if the charges in two FIRs -the first and the second – is in truth and substance the same, registering the second FIR and make fresh investigation will be irregular and the court cannot take cognizance of the same. It is his submission that in the light of the said judgment the Investigating Officer can seek leave of the court in the earlier case for making further investigation and filing of a further report under Section 173(8) of the Cr.P.C. before the learned Magistrate in the said case.

9. Learned counsel has also relied upon the judgment of the Hon'ble Apex Court in the case of **Babubhai vs. State of Gujarat and Ors.** reported in **(2010) 12 SCC 254** and submits that the 2nd FIR in connection with the same or connected offence relating to the same incident or incidents which are part of the same issue is not



permissible. According to him, unless the two FIRs pertain to different incident/crime the 2nd FIR is not permissible.

10. Reliance has also been placed on the judgment in the case of **Amitbhai Anilchandra Shah vs. Central Bureau of Investigation and Anr.** reported in **(2013) 6 SCC 348** to support the contention that in this case the 2nd FIR (Annexure 1) is not permissible. Learned counsel then relied upon the learned co-ordinate Bench judgment of this Court in the case **Md Abdul Halim vs. The State of Bihar** reported in **2018 (2) PLJR 886** and in the case of **Anil Kumar vs. The State of Bihar & Ors.** reported in **2019 (2) PLJR 915**. In the case of **Anil Kumar** (supra) learned co-ordinate Bench of this Court held that where the incidents are separate or independent also or where the subsequent event is of such a magnitude that it does not fall within the ambit and scope of first FIR, the second FIR would be permissible.

11. Learned counsel raised another ground to assail the FIR. It is his submission that in any view of the matter bare perusal of the first information report would show that the dispute between the parties is of a purely civil nature which has been tried to be given colour of a criminal proceeding. Learned counsel submits that it is a case in which the land owner is claiming that her share of the constructed area has not been handed over to her in terms of the development agreement. According to him, the kind of allegations fall within the ambit of a purely civil dispute. He has, thus, prayed for quashing of the first information report on either of the two grounds.



Cr.W.J.C. No. 447 of 2017

12. In this case the petitioner has prayed for quashing of the first information report being Rupaspur P.S. Case No. 271 of 2016 registered for the offences punishable under Sections 406 and 420 of the Indian Penal Code. According to the first information report (Annexure 1), the informant (respondent no. 5) has alleged that Shyam Arcade Apartment has been constructed by builder Rakesh Kumar @ Guddu who is of criminal nature. Though, the builder had through a registered deed given the 4th floor of the Apartment in the share of the informant but he has forcibly handed over her share to one Impact Classes on rent basis. Respondent No. 5 prayed that appropriate action be taken against the builder Rakesh Kumar.

13. Learned counsel for the petitioner has assailed the FIR on the same two grounds which were raised to assail the FIR of Danapur P.S. Case No. 514 of 2016 dated 12.10.2016. For sake of brevity, this Court would not repeat the same submission.

Submission on behalf of Informant-respondent no. 5

14. Learned counsel for the informant -respondent no. 5 as well as learned counsel representing the State have opposed the writ applications.

15. Learned counsel for the informant submits that it is not a simple case of pure civil dispute. The criminality is prima-facie evident on a bare perusal of the allegations made in the first information report. Learned counsel has relied upon a judgment in the case of **Rajesh**



Bajaj vs. State NCT of Delhi & Ors. reported in (1999) 3 SCC 259 in which the Hon'ble Apex Court has held that in appropriate cases both the civil and criminal cases can go together.

16. Learned counsel submits that the respondent no. 5 is an old aged lady who has fallen prey to the evil design of the builder who runs a private limited company namely, M/s Khyati Construction Private Limited and is engaged in development of multi storied buildings/apartments. He is a man of criminal antecedents. Being total unaware of the evil design in the mind of the builder-petitioner the informant entered into a development agreement dated 14.12.2007 with regard to two plots of Mauza Saguna Mahal-Saguna Ishapur, Thana Danapur and Mauza Alalapur, Thana-Danapur both having area of 18 and 10 kathas respectively. The apartments which are to be constructed on the plots of Muza Saguna Mahal is 'Shyam Residency' while the apartment to be constructed on plot of Mauza Jalalpur was to be named as 'Shyam Arcade.'

17. In course of carrying on the construction work, a dispute arose between the parties giving rise to Shastri Nagar P.S. Case No. 251 of 2012 dated 01.09.2012 but later on the petitioner represented to the opposite party that he wants amicable resolution of dispute which the opposite party being an old aged lady instantly believed and the parties entered into a settlement. It was decided that both the parties shall enter into a fresh agreement and shall abide by the terms and conditions of the same. The compromise deed was signed by the parties



on 31.03.2013. The informant could not understand that the petitioner had agreed for the compromise in order to take advantage of the same in the pending anticipatory bail application filed by him being Cr. Misc. No. 49507 of 2012. He filed the said compromise in the court and vide order dated 02.04.2013 he was granted privilege of anticipatory bail by a learned co-ordinate Bench of this Court.

18. Learned counsel submits that after the first development agreement the petitioner made the respondent no. 5 to believe that a fresh development agreement is required to be executed. Accordingly, the respondent no. 5 executed a fresh development agreement on 10th day of February, 2010 in respect of the project of Shyam Residency. It is submitted that the petitioner executed a share division deed on 15.09.2011 in respect of the project Shyam Residency. Shop No. 25 and 4th floor fell in the share of the land owner/informant which is duly mentioned in the share division deed which is enclosed with the writ application (page 27 to 29 in Cr.W.J.C. No. 371 of 2017).

19. Learned counsel submits that the petitioner all through gave respondent no. 4 to believe that he will act in terms of the development agreement and the share division agreement but he had in his mind right from the beginning a plan to cheat the informant-respondent no. 5 and to usurp her share of the property unlawfully, therefore, the petitioner did not complete the share of the informant. It is his submission that the first information report being Shastri Nagar P.S. Case No. 251 of 2012 mentions that the builder had not constructed



the owner's share, the thrust of allegations are with respect to the alleged occurrence which took place on 26.08.2012 and 31.08.2012. On 31.08.2012 the builder along with his three muscle men had reached at the residence of the informant which fall in the jurisdiction of Shastri Nagar Police station and had threatened the informant and her husband, her husband was pushed down and they were abused by the builder and his musclemen. This occurrence was reported to the Police Station and the Police registered the case under Sections 406, 420, 341, 323, 379, 504, 34 of the Indian Penal Code. It was an occurrence which took place even before the owner's share were constructed.

20. Learned counsel submits that the FIR giving rise to Danapur Police Station Case No. 514 of 2016 has been lodged on 12.12.2016 i.e. after more than four years of the first FIR in which the respondent no. 5 has alleged that the builder had sold shop no. 25 unauthorizedly on 05.10.2016 to one Sri Manoj Kumar and this was done during existence of an order dated 29.04.2015 passed by the High Court directing that no part of building shall be sold during the period. It is submitted that the cause of action in this FIR is the execution of sale deed unlawfully and unauthorizedly by the petitioner on 05.10.2016 in favour of one Manoj Kumar. It is further submitted that in this FIR a further allegation has been made that the builder had converted the parking area into shops and has handed over the same to the musclemen. Learned counsel submits that these were not the allegations in the first information report of the year 2012. There were



certain developments after lodging of Shastri Nagar Police Station Case and during the period the petitioner represented the opposite party with an intention to cheat her which became evident when the informant got knowledge of execution of sale deed in respect of shop no. 25.

21. Learned counsel further submits that similarly the second FIR being Rupaspur P.S. Case No. 271 of 2016 has been lodged on 24.12.2016 and it is with respect to the unlawful act committed by the petitioner in respect of the Shyam Arcade Building. This time it has been reported that the builder Rakesh Kumar has forcibly given 4th floor which was in the share of the informant to one Impact Classes on rent. The petitioner does not deny this allegations in his writ petitions.

22. Learned counsel submits that the test of sameness would not succeed in the facts of the present case. He has relied upon the judgment of the Hon'ble Supreme Court in the case of **P. Sreekumar Vs. State of Kerala & Ors.** reported in **(2018)4 SCC 579** it is submitted that in this case the Hon'ble Supreme Court has considered the previous judgment in the case of **T. T. Antony (supra)** and several other judgments in the case of **Upkar Singh vs. Ved Prakash** reported in **(2004) 13 SCC 292**. He has further relied upon the judgment of the Hon'ble Supreme Court in the case of **Anju Chaudhary vs. State of Uttar Pradesh & Anr.** reported in **(2013) 6 SCC 384** and submits that the subsequent crime in this case are of such magnitude that it does not fall in the ambit and scope of the F.I.R. recorded first.



23. Learned counsel submits that there would be a distinction between a pure civil dispute and a case in which a builder in the garb of a development agreement entered into the land giving a belief in the mind of the land owner that he will construct an apartment on the land and will hand over 45% share in that to the land owner but once he assumes the charge on the spot, he ousts the land owner practically and usurp the same.

24. It is submitted that the present case is a case of misrepresentation, fraud and unlawful grabbing of the property of respondent no. 5. According to him it is a case of cheating by the petitioner. He induced the opposite party to believe something which he knew that he was not going to abide by. The informant reposed a trust and faith in the petitioner and had put him in possession for limited purpose of construction of the apartment but the petitioner has committed breach of trust and usurp the property of the informant -respondent no. 5.

25. Learned counsel for the State has also opposed these applications and endorsed the submission of learned counsel for the informant-respondent no. 5.

Consideration

26. This Court has heard learned counsel for the parties and perused the records. To this Court, it appears that the first information report being Shastri Nagar P.S. Case No. 251 of 2012 was lodged in the Shastri Nagar Police Station with respect to the occurrence which had



taken place on 31.08.2012 in which the builder and the three muscle men allegedly entered into the house of the informant, put pistol on her, threatened her, snatched her chain and then pushed down her husband. In the said FIR the informant has mentioned the reason for such occurrence. She has stated about the execution of the development agreement and then she alleged that on 16.08.2012 when she went to inspect the premises of Shyam Arcade Apartment she came to know from the neighbouring persons that the builder had sold the shares of the land owner and he had forcibly possessed the commercial area and opened TVS Motorcycle Show Room. This FIR is of 01.09.2012. In fact, after 01.09.2012 the petitioner had entered into a compromise with the respondent no. 5 and in this compromise he had agreed on 09.09.2013 that in lieu of 45% residential area share of the land owner in Shyam Residency he will provide commercial space to the owner and if the share of the land owner is not fulfilled in Shyam Residency, the builder will provide the same from his share of Shyam Arcade Building. Based on this compromise, the petitioner got stay of further proceeding in the same case vide order dated 11.04.2014 passed by the learned co-ordinate Bench of this Court in Cr. Misc. No. 15195 of 2014. He also got the privilege of pre-arrest bail but it appears from the records that the petitioner had no intention to act upon the compromise. The quashing application was ultimately dismissed with observation that if parties file the compromise in the learned court below, the same



will be considered. Since the compromise was not acted upon, the matter remained pending.

27. It further appears from a copy of the sale deed enclosed with the records that on 05.10.2016 the petitioner executed a sale deed in respect of shop no. 25 on the ground floor. He represented to the purchaser that the said shop no. 25 is in his share whereas the deed of share division brought on record by non-else then this petitioner with this writ application clearly shows that the shop no. 25 on the ground floor had fallen in the land owner's share.

28. In the FIR giving rise to the Danapur P.S. case No. 514 of 2016, the informant-respondent no. 5 has made this allegation specifically saying that shop no. 25 which was in her share has been unlawfully sold on 05.10.2016 to one Shri Manoj Kumar and even her share of parking has been converted into shops and have been given to some muscle men. These are new facts and occurrence took place about four years after lodging of the first F.I.R. The FIR is, thus, definitely against a fresh cause of action and cannot be quashed on the ground of principle of sameness.

29. In the case of **P. Sreekumar** (supra) the Hon'ble Supreme Court has inter alia held that "there is no prohibition under 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."



30. In the case of **Anju Chaudhary** (supra) the Hon'ble Supreme Court held:-

“14. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered.”

“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.”

31. To me, thus it appears that the two F.I.Rs. involved in two cases cannot be quashed on the ground of sameness.

32. At the same time, this Court is of the considered opinion that the contention of learned counsel for the petitioner that it is a purely civil dispute is far from truth. In the case of **Rajesh Bajaj** (supra) the Hon'ble Supreme Court has inter alia observed that :

10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from



such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Penal Code, 1860 [Illustration f] is worthy of notice now:

“(f) *A* intentionally deceives *Z* into a belief that *A* means to repay any money that *Z* may lend to him and thereby dishonestly induces *Z* to lend him money, *A* not intending to repay it. *A* cheats.”

33. Similarly this Court finds that the FIR giving rise to Rupaspur P.S. Case No. 271 of 2016 is in respect of forceful grabbing of the 4th floor of Shaym Arcade which is another building/apartment. In which 4th floor, which was in the share of the land owner, was forcibly handed over to one Impact Classes on rent by the builder. These are fresh cause of action alone for lodgment of the FIR by the informant/respondent no. 5.

34. The two FIRs involved in these two cases are thus, in respect of different buildings/apartments namely, Shyam Residency and Shyam Arcade and the magnitude of the subsequent crimes are such that those does not fall within the ambit of that first F.I.R. The subject matter of dispute is two different premises/apartments.

35. In course of hearing, learned counsel for the informant-respondent no. 5 has pointed out that the builder has done all kinds of illegal acts and one of them is that he has constructed two additional floors in the apartment without authority. In the opinion of this Court, in the present writ application the limited issue involved is as to whehter the two FIRs are fit to be quashed. So far as the other aspects are



concerned, it is open for the informant -respondent no. 5 to bring these facts to the notice of the competent authorities for appropriate action.

36. In the given facts and circumstances of the case, this Court is of the considered opinion that the petitioner is unable to make out a case for quashing of the first information report on the grounds pleaded before this Court. Both the writ applications are having no merit, hence they are dismissed accordingly by this common order.

37. The proceeding which was earlier stayed vide order dated 31.07.2019 shall proceed forthwith to it's logical end.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	AFR
CAV DATE	
Uploading Date	12.07.2022
Transmission Date	12.07.2022

