

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1169 of 2021

Arising Out of PS. Case No.-313 Year-2021 Thana- NAUBATPUR District- Patna

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DIPU SINGH @ BRAJ KISHOR Son of Late Nawal Kishore Resident of Village - Chiraura, Police Station - Naubatpur, Patna at present residing at Mourya Vihar Colony, Police Station - Phulwarisharif, District - Patna.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY, DEPTT. OF HOME, GOVT. OF BIHAR, PATNA. Bihar
2. The Director General of Police, Bihar, Patna. Bihar
3. The Senior Superintendent of Police, Patna. Bihar
4. The officer Incharge, Naubatpur Police Station, Patna. Bihar
5. The Investigation officer (Naubatpur P.S. Case No. 313/2021), Police Station, Naubatpur, Distt.- Patna, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kundan Kumar Sinha
For the Respondent/s : Mr.M. Nasrul Huda Khan

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

4 21-03-2022 Heard learned counsel for the petitioner and learned counsel for the respondents.

The instant application has been filed for quashing the First Information Report of Naubatpur P.S. Case no. 313 of 2021 registered on 27.6.2021 under sections 30(a), 38 and 41 of the Bihar Prohibition and Excise Act, 2016 ('the Act' in short).

The facts in brief are that for an occurrence said to have taken place on 25.6.2021 an FIR being Naubatpur P.S. Case no. 312 of 2021 was registered on 25.6.2021 under section 30(a) of the Act against the petitioner and three others. Thereafter on further recovery of liquor from the same premises, on 27.6.2021 Naubatpur P.S. Case no. 313 of 2021 was registered



under section 30(a), 38 and 41 against the petitioner and five others.

For the purpose of the instant application it would be relevant to narrate the contents of both the FIRs i.e. Naubatpur P.S. Case no. 312 of 2021 and Naubatpur P.S. Case no. 313 of 2021.

Naubatpur P.S. Case no. 312 of 2021

This FIR was registered on the statement of the informant namely Vijay Prasad, Assistant Sub-Inspector of Police, Naubatpur Police Station, Patna dated 25.6.2021 wherein he states that in course of patrolling duty on the same day information was received at 1310 hours to the effect that in the premises of the house of the petitioner, a temporary shed had been constructed wherein liquor was being stored and sold. A raid was conducted and the door of the temporary shed was found to be locked from inside and the persons who were inside the shed were not ready to open the door. After sometime the door was finally got opened and search was conducted in presence of the two accused persons namely Md. Vicky and Sanjay Kumar. A total of 3.375 litres of IMFL was found and the two accused persons disclosed that the liquor belonged to the petitioner and one Ravi Kumar who supplied the same to them for the purpose of sale. They further disclosed that on their coming, all of them also consumed liquor.

On the statement dated 25.6.2021 of the informant Vijay Prasad, Naubatpur P.S. Case no. 312 of 2021 was registered under section 30(a) of the Act.



Naubatpur P.S. case no. 313 of 2021

This FIR was registered on the self statement of the informant Samrat Deepak, Inspector of Police-cum-Officer In-charge, Naubatpur Police Station, Patna on 26.6.2021 at 11.15 pm wherein he states that on receiving information about liquor having been stored in the premises of the petitioner, various raids at different godowns of the petitioner were carried out on 24.6.2021 but nothing was recovered. On receiving further information from reliable sources on 25.6.2021 about liquor having been stored in the temporary shed/room inside the boundary wall of the land of the petitioner a raid was conducted and nine bottles of IMFL recovered, the accused Sanjay Kumar and Md. Vicky were taken into custody and for which Naubatpur P.S. Case no. 312 of 2021 was registered under section 30(a) of the Act. It was further stated that on 26.6.2021 the accused Sanjay Kumar gave his confessional statement disclosing the names of his accomplices i.e. Md. Vicky, Sonu Kumar, Netaji, Dipu Singh (petitioner herein) and Ravi Kumar. He further confessed that besides the liquor which had been recovered, at the same place of occurrence further liquor has been stored in a secret chamber. The informant states that on this information the informant along with the other police personnel as also the accused Sanjay Kumar and Md. Vicky proceeded to the place of occurrence where search started. On the disclosure of accused Sanjay Kumar and Md. Vicky, it is stated that in the same temporary shed/room, on removal of the TV table, a secret passage came in view which led to a secret chamber from



which, on search a total of 4645.44 litres of IMFL was recovered. A seizure list was prepared in presence of the independent witnesses as also in presence of the Circle Officer.

On the above self statement of the informant Samrat Deepak, a second FIR being Naubatpur P.S. Case no. 313 of 2021 was registered on 27.6.2021 under sections 30(a), 38 and 41 of the Act.

The contention of the learned counsel for the petitioner is that the first information report is a report which gives first information with regard to any offence and there cannot be any second FIR with respect to the same offence or event. Any further information received by the Investigating Agency is always in furtherance of the first FIR. In the instant case the second FIR being in consequence of the events which have taken place on 25.6.2021 when certain further information was extracted from the apprehended accused and which led to recovery of further IMFL in large quantity no second FIR could have been registered as the same was part of the same transaction i.e. the first FIR. As such it is submitted that the second FIR being Naubatpur P.S. Case no. 313 of 2021 be quashed. Learned counsel in support of his contention relies on the judgment in the case of Amitbhai Anil Chandra Shah vs. Central Bureau of Investigation and another [(2013) 6 SCC 348] .

Learned counsel for the respondents submits that on 25.6.2021 on a raid being conducted by the Naubatpur police in a place belonging to the petitioner, two persons were found seated inside the room and nine bottles of liquor containing



375 ml each were recovered and the two persons were taken into custody. The FIR being Naubatpur P.S. Case no. 312 of 2021 was registered under section 30(a) of the Act. In course of investigation the self statement of Sanjay Kumar was recorded wherein he disclosed about huge quantity of liquor having been kept in the secret godown. On raid being conducted on the information, 172.52 bottles of liquor totaling 4645.44 litres were recovered and Naubatpur P.S. Case no. 313 of 2021 was registered. It is submitted that the complainant of both the cases are different and both the FIRs have been registered under different sections of the Act. There was a difference of 34 hours in the registration of the two FIRs and the investigation having been completed, there being no merit in the instant application, the same be dismissed.

Having heard learned counsel for the parties and on going through the materials on record as also on reading of the contents of the two FIRs, it transpires that on a raid being conducted on the premises of the petitioner, the two accused Md. Vicky and Sanjay Kumar were taken into custody and 3.375 litres of IMFL was recovered. In course of investigation of the first case/FIR i.e. Naubatpur P.S. Case no. 312 of 2021, it transpires that on the confessional statement of the above stated two arrested accused persons, a further raid was conducted on the same premises and thereafter a total of 4645.44 litres of IMFL was recovered. Further from perusal of the second FIR (Naubatpur P.S. Case no. 313 of 2021) it transpires that from the very same room where the two accused persons were arrested, on their confessional



statement, on removal of the TV table a secret passage leading to a chamber was discovered from where the quantity of 4645.44 litres of IMFL is said to have been recovered. Thus, the Court is in no doubt that the so called occurrence or recovery of 4645.44 litres of IMFL is part of the same transaction for which the first FIR i.e. Naubatpur P.S. Case no. 312 of 2021 was registered.

Further on going through the judgment in the case of Amitbhai Anil Chandra Shah (supra), the Hon'ble Supreme Court has held as follows :

“37. This Court has consistently laid down the law on the issue interpreting [the Code](#), that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates [Article 21](#) of the Constitution. In T.T. Anthony , this Court has categorically held that registration of second FIR (which is not a cross-case) is violative of [Article 21](#) of the Constitution. The following conclusion in paragraph Nos. 19, 20 and 27 of that judgment are relevant which read as under: (SCC pp. 196-97 &200)

“19. The scheme of [CrPC](#) is that an officer in charge of a police station has to commence investigation as provided in [Section 156](#) or [157 CrPC](#) on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under [Section 169](#) or [170](#)



CrPC, as the case may be, and forward his report to the Magistrate concerned under [Section 173\(2\)](#) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of [Section 173](#) CrPC.

20. From the above discussion it follows that under the scheme of the provisions of [Sections 154, 155, 156, 157, 162, 169, 170 and 173](#) CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of [Section 154](#) CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the



FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in [Section 173](#) CrPC.

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of [Section 173](#) CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under [Section 173\(2\)](#) CrPC. It would clearly be beyond the purview of [Sections 154](#) and [156](#) CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a



counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under [Section 173\(2\)](#) has been forwarded to the Magistrate, may be a fit case for exercise of power under [Section 482](#) CrPC or under [Articles 226/227 of the Constitution.](#)”

The above referred declaration of law by this Court has never been diluted in any subsequent judicial pronouncements even while carving out exceptions.

58.3 Even after filing of such a report, if he comes into possession of further information or material, there is no need to register a fresh FIR, he is empowered to make further investigation normally with the leave of the Court and where during further investigation, he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports which is evident from sub-section (8) of [Section 173](#) of the Code. Under the scheme of the provisions of [Sections 154, 155, 156, 157, 162, 169, 170 and 173](#) of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of [Section 154](#) of the Code. Thus, there can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.



59. *In the light of the specific stand taken by the CBI before this Court in the earlier proceedings by way of assertion in the form of counter affidavit, status reports, etc. we are of the view that filing of the second FIR and fresh charge-sheet is violative of fundamental rights under Article 14, 20 and 21 of the Constitution since the same relate to alleged offence in respect of which an FIR had already been filed and the court has taken cognizance. This Court categorically accepted the CBI's plea that killing of Tulsiram Prajapati is a part of the same series of cognizable offence forming part of the first FIR and in spite of the fact that this Court directed the CBI to "take over" the investigation and did not grant the relief as prayed, namely, registration of fresh FIR, the present action of CBI filing fresh FIR is contrary to various judicial pronouncements which is demonstrated in the earlier part of our judgment.*

60. *In view of the above discussion and conclusion, the second FIR dated 29-04-2011 being RC No. 3(S)/2011/Mumbai filed by the CBI is contrary to the directions issued in judgment and order dated 08-04-2011 by this Court in Narmada Bai v. State of Gujarat and accordingly the same is quashed. As a consequence, the charge sheet filed on 04-09-2012, in pursuance of the second FIR, be treated as a supplementary charge sheet in the first FIR. It is made clear that we have not gone into the merits of the claim of both the parties and it is for the trial court to decide the same in accordance with law. Consequently, Writ Petition (Crl.) No. 149 of 2012 is allowed. Since the said relief is applicable to all the persons arrayed as accused in the second FIR, no further direction is required in*



Writ Petition (Crl.) No. 5 of 2013.

(emphasis supplied)

From perusal of the above judgment, relevant part of which is quoted herein above, the Court finds that the facts of the instant case are fully covered by the ratio of the judgment in the case of Amitbhai Anil Chandra Shah (supra).

Thus, in the facts of the case there could not have been a second FIR i.e Naubatpur P.S. Case no. 313 of 2021. The Court finds merit in the contention of learned Counsel for the petitioner. The FIR of Naubatpur P.S. case no. 313 of 2021 registered on 27.6.20221 under sections 30(a), 38 and 41 of the Act is hereby quashed .

The application is allowed.

The petitioner shall be released from custody if not required in any other case.

(Partha Sarthy, J)

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