

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.487 of 2018

Arising Out of PS. Case No.-151 Year-2017 Thana- RAMGARHWA District- East
Champaran

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Imteyaz Ahmad @ Imteyaj Ahmad Son of Md. Nazir Miyan @ Najeer Miyan,
Resident of Village - Bela, P.S. - Ramgarhwa, District - East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Patna, Bihar
2. The Central Bureau of Investigation, Tirhut Division, ACB, Patna, Dr. S.K. Singh Path Off. Bailey Road, Patna
3. The Superintendent of Police, East Champaran, Motihari.
4. The Station Head Officer, P.S. Ramgarhwa, District- East Champaran.
5. Mithilesh Kumar, Post Office Inspector, North Sub-Division, Raxaul, East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sangeet Deokuliar, Advocate
For the C.B.I.	:	Mr. Avanish Kumar Singh, Spl. P.P.
		Mr. Ambar Narayan, Advocate
For the U.O.I. (Resp. No. 5)	:	Mr. Ram Anurag Singh, C.G.C.
For the State	:	None

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

Date : 18-09-2023

1. Heard learned counsel for the petitioner, learned counsel for the C.B.I. and learned counsel for the Union of India. No one appears on behalf of the State.

2. The case was taken up on 12.09.2023 also when no one had appeared on behalf of the State.

3. The present writ application has been filed seeking quashing of the FIR dated 29.07.2017 being Ramgarhwa P.S. Case No. 151 of 2017 registered under Sections 420, 467, 468, 471, 472 and 120(B) of the Indian Penal Code on the written report of



Mithilesh Kumar, Post Office Inspector (respondent no. 5) dated 27.07.2017.

4. Learned counsel for the petitioner submits that the aforesaid FIR was instituted with an allegation that petitioner was appointed as Village Postman at Oriya Branch, Adapur, East Champaran on 31.05.2012 and that his appointment was made on the basis of marksheet of Bihar Sanskrit Shiksha Board but subsequently in the inquiry, the said marksheet was found to be forged for the reason that the examination of the year 2008 was cancelled.

5. It is further submitted that from perusal of the allegations as alleged in the FIR, it would manifest that there was absolutely no allegation with regard to any corrupt practices in the sense that the FIR was not instituted under the Prevention of Corruption Act rather was instituted under the aforesaid sections of the Indian Penal Code.

6. It is next submitted that prior to the institution of the present FIR, an FIR had already been instituted at the instance of the C.B.I. being CBI/ACB/Patna bearing No. RC0232016A0007 under Sections 120B, 420, 467, 468 and 471 of the Indian Penal Code read with Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 on the allegation that the petitioner entered



into a criminal conspiracy with unknown officials of the Postal Department at Motihari during the period 2008-2015, further, in pursuance of the said criminal conspiracy, the petitioner applied for appointment to the post of GDS Packer on the basis of a forged Madhyama marksheet of Bihar Sanskrit Shiksha Board showing his marks to be 630/700 in the examination of the Board held in the year 2008 while apparently the said examination was cancelled. It is further alleged that in furtherance of the said criminal conspiracy unknown officials of the Postal Department, by misusing their official position, dishonestly appointed the petitioner as GDS Packer on the basis of forged Madhyama marksheet.

7. Learned counsel for the petitioner thus submits that from perusal of the allegation as alleged in both the FIRs, it would manifest that the FIR instituted by the Postal Department alleges that petitioner secured appointment based on a forged and fabricated marksheet whereas the FIR instituted by the C.B.I. though alleges that petitioner secured appointment based on forged and fabricated marksheet but then further allegation is that the authorities of the Postal Department also connived with the petitioner in giving him appointment based on forged and fabricated document.



8. The learned counsel further submits that the C.B.I. instituted the aforesaid FIR on 26.04.2016 and after investigation submitted charge-sheet dated 28.06.2016 (R/1 series to the rejoinder affidavit of the petition) under Sections 420 and 471 of the Indian Penal Code only against the petitioner i.e. none of the officials of the Department of Post were implicated, based on connivance as alleged in the said FIR. It is next submitted that after the C.B.I. submitted charge-sheet against the petitioner, thereafter the present F.I.R. came to be instituted on 29.07.2017.

9. Learned counsel further submits that since the FIR instituted by the C.B.I. was also alleged against the officials of the Department of Post as such after investigation either the C.B.I. would have found the connivance of the officials of the Department of Post with the petitioner in giving him appointment or would have exonerated the officials in the investigation, as it manifests from the charge-sheet of the C.B.I. it is clear that only the petitioner has been charge-sheeted.

10. In sum and substance, the submission of the learned counsel for the petitioner is that what has been alleged in the FIR instituted by the C.B.I. gives enough room to the C.B.I. to investigate the case after taking into consideration the entire facts and circumstances of the case, whereas the FIR instituted by the



Postal Department would leave the police to investigate the case in a limited perspective.

11. Learned counsel for the petitioner next submits that Section 154 Cr.P.C. relates to providing information to the police either in writing or orally with regard to the commission of a cognizable offence as defined under Section 2(c) of the Cr.P.C. Cognizable offence is an offence where the police can arrest an accused even without warrant, it is submitted that once an FIR is instituted and criminal law is set in motion and the police takes up investigation, thereafter whether a second FIR relating to the same incident can be instituted by another person or not.

12. It is further submitted that under the scheme of the Code of Criminal Procedure what is permitted under Section 173(8) of the Cr.P.C. is further investigation and not fresh investigation and if the second FIR on the same set of allegation is permitted to continue, it will lead to a fresh investigation and not further investigation which clearly is not the mandate of the Code of Criminal Procedure.

13. Learned counsel for the petitioner next submits that institution of the second FIR against the same accused after registration of the first FIR is not mandated by the Code of Criminal Procedure, as investigation in pursuance of the first FIR



would have commenced and the second FIR against the same offence will amount to improving the facts alleged in the first FIR, hence, would be prohibited under Section 162 Cr.P.C.

14. It is next submitted that what is not in dispute is that there cannot be two FIRs against the same accused persons with regard to the same occurrence but when there are rival versions in respect of the same occurrence, then definitely two different FIRs can be instituted and investigated by the police.

15. It is further submitted that the Court has to appreciate the facts of the case giving rise to second FIR and test of sameness is to be applied to ascertain whether both the FIRs relate to the same incident in respect of the same occurrence or with regard to the incidents which have two or more parts of the same transaction, if the answer is yes, then second FIR is to be quashed but if the version in the second FIR is different and are in respect of the two different occurrences, the second FIR is permissible.

16. The learned counsel for the petitioner next submits that second FIR for the same cause of action is also prohibited under Article 20(2) of the Constitution of India on the principles of double jeopardy i.e. a person cannot be punished twice for the same offence, but fairly submits that if the offence alleged in the



second FIR is having distinct ingredients and overlapping features then definitely Article 20(2) of the Constitution of India cannot be resorted to.

17. Learned counsel for the petitioner submits that since the law prohibits institution of the second FIR in respect of the same cognizable offence, thus, submits that when there is a legal impediment for setting the criminal law in motion then reliance can very well be placed on the judgment of **State of Haryana and Ors. vs Bhajan Lal and Ors.** reported in (1992) Supp. (1) SCC 335.

18. Learned counsel for the petitioner relying on the case of **Bhajan Lal** (*supra*) submits that the Hon'ble Supreme Court in the said case also held that inherent power under Section 482 Cr.P.C. could be exercised either to prevent abuse of the process of the law or otherwise to secure the ends of justice and cases wherein the criminal proceeding is manifestly attended with *mala-fide* or where the proceeding is manifestly instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. It is further submitted that no doubt that the FIR in the present case has been challenged in the writ jurisdiction of this Court but then the principles enunciated in the case of **Bhajan Lal** (*supra*) that for



doing complete justice between the parties, the Court can exercise inherent jurisdiction under Section 482 Cr.P.C. can also be applied in the present case. It is further submitted that the power of the Court under Article 226 of the Constitution of India is wider, further if the Court based on the facts of the case and by applying the law comes to a clear conclusion that continuation of the proceeding would amount to an abuse of the process of the Court, the Court can strike.

19. The learned counsel for the petitioner thus summarises his submissions and submits that what is not in dispute rather stands admitted is that for the same cause of occurrence, the second FIR came to be instituted by the Department of Post nearly after a year of the filing of the charge-sheet by the C.B.I. against the petitioner with respect to the same offence having same materials, it is next submitted that the second FIR instituted by Mithilesh Kumar, an Officer of the Department of Post, was not mandated by law as second FIR on the same set of allegation with same ingredient could not have been instituted.

20. The learned counsel appearing for the C.B.I. fairly submits that the allegation in both the FIRs are same, but then the FIR instituted by the C.B.I. also incorporated within its ambit to investigate the connivance of the postal authorities though in the



second FIR the police had limited role to examine the allegations against the petitioner only. It is also submitted that since a charge-sheet has already been submitted by the C.B.I. against the petitioner, as such on the same set of allegation, the second FIR ought not to have been instituted.

21. The learned counsel appearing for the Union of India is not in a position to rebut the submissions made by the learned counsel for the petitioner.

22. Considering the submissions made by the learned counsel for the petitioner and the facts recorded hereinabove, the FIR dated dated 29.07.2017 being Ramgarhwa P.S. Case No. 151 of 2017 registered under Sections 420, 467, 468, 471, 472 and 120(B) of the Indian Penal Code including the entire proceedings arising from the said FIR is hereby quashed.

23. The rejoinder affidavit filed on behalf of the petitioner is taken on record.

24. The quashing application is thus allowed.

(Satyavrat Verma, J)

Rishi/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	19.09.2023
Transmission Date	N.A.

