

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.496 of 2022

Arising Out of PS. Case No.-403 Year-2021 Thana- DEEPNAGAR District- Nalanda

ASHISH KUMAR son of Ram Pravesh Prasad Resident of Village- Arjun Sarthua, P.s.- Khudaganj, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Old Secretariat Building, Patna, Bihar
2. The Principal Secretary, Home old Secretariat Building Patna. Bihar.
3. The Director General of Police, Bihar, Patna. Bihar
4. The Inspector General of Police, Patna Region, Patna. Bihar
5. The Superintendent of Police, Nalanda. Bihar
6. The S.D.P.O. , Sadar, Biharsharif. Bihar
7. The officer In- Charge, Deep Nagar Police Station, Biharsharif Nalanda. Bihar
8. The Investigating officer (I.O.), Sri Vijay Kumar Upadhyay, S.I., Deep Nagar police Station, Bihar -sharif, Nalanda, Bihar.
9. Sri Chandra Mauli Verma, S.I. Deep Nagar Police Station, Biharsharif, Nalanda. Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Lal Babu Singh, Advocate Mr. Ashish Kumar Jha, Advocate
For the Respondent/s	:	Mr. M. Nasrul Huda Khan, SC-1 Mr. Md. Irshad, AC to SC-1

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

7 11-03-2024 Heard learned advocate for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner has invoked the extra ordinary jurisdiction under Article 226 of the Constitution of India praying for quashing of the F.I.R. vide Deepnagar P.S. Case No.403 of 2021 dated 08.11.2021 registered under Section 182,



186, 187, 385, 420 and 120-B of the Indian Penal Code and subsequent proceedings by issuance of writ of certiorari. I have purposefully recorded all subsequent proceedings because of the fact that during the pendency of the instant writ petition, police submitted charge sheet against the petitioner under the above mentioned penal provisions and by filing an Interlocutory Application the petitioner has prayed for quashing of the charge sheet too.

3. The petitioner has been working as Assistant Executive Engineer in Super Grid Transmission, Biharsharif. He has been residing with his wife at Government Staff Quarters at Biharsharif. On 05.11.2021, he left the house with his motorcycle at about 06:00 P.M. but when he did not return his house till 10:30 P.M. and his mobile phone was found switched off, his wife Smt. Pushpa Kumari submitted a written complaint before the S.H.O., Deepagar Police Station alleging the said fact and also the fact that she heard from her husband for few times back that he was being harassed by some officers in his office. On the basis of said complaint, police registered Deepnagar P.S. Case No.396 of 2021 dated 05.11.2021. Till the morning of 07.11.2021 the petitioner remained unnoticed. At about 08:00 A.M. on 07.11.2021 the informant Smt. Pushpa Kumari



received an information that her husband was admitted to the Sub-Divisional Hospital, Rajauli. The informant and other family members rushed to the said hospital and found the petitioner in unconscious state. It was informed by the police in the hospital that the husband of the said Smt. Pushpa Kumari was recovered in an unconscious state at Village-Simarkoil near old bridge, besides the road by police attached to Rajauli Police Station. The police brought him in an unconscious state to the Sub-Divisional Hospital, Rajauli. The wife of the petitioner also came to know that the petitioner was administered poison i.e. some kind of poison was sprinkled in his body and he became unconscious and fell down on the ground. The petitioner recovered his sense at the Sub-Divisional Hospital after treatment. In the meantime police attached to Deepnagar Police Station came to the spot and brought immediately took away the petitioner to Deepnagar Police Station despite the fact that the medical officer had advised the police not to take away the patient as he was not well and required further treatment. During the midnight of 07.11.2021 and 08.11.2021 at about 01:30 A.M., the condition of the petitioner deteriorated at Deepnagar Police Station. He was brought to Lifeline Care Hospital. The doctor advised him for admission but police



authority insisted upon the doctor to give medicine and release him under their custody. Again he was taken to police station. Police attached to Deepnagar Police Station also did not allow the wife of the petitioner and his other family members to meet him.

4. On 09.11.2021, the petitioner was produced before the Court of the learned Magistrate and it was informed that the petitioner was arrested in connection with Deepnagar P.S. Case No.403 of 2021 under Section 182, 186, 187, 385, 420, 120-B of the Indian Penal Code. The petitioner initially filed the instant writ petition for quashing of the said F.I.R. Subsequently, however, in hot haste police submitted charge sheet against the petitioner under the above mentioned penal provision.

5. The petitioner has also prayed for quashing of the charge sheet filed against him by filing an Interlocutory Application.

6. In the instant case, Deputy Superintendent, Traffic, Biharsharif, Nalanda has filed a counter affidavit on behalf of respondent no.5, Superintendent of Police, Nalanda. It appears from the said counter affidavit that while investigating into Deepnagar P.S. Case No.396 of 2021 under Section 363 of the I.P.C. the Investigating Officer found on examination of CCTV



footage that the petitioner came to Dev Super Market riding on motorcycle, parked his motorcycle outside a Super market and entered into a shop at about 5:52 P.M. then he came out of the Super Market after purchasing some cakes and sweets, then again he entered inside the market, during that time he was talking constantly over his mobile phone with some person. At about 06:00 P.M. he boarded a bus near Kargil Chowk and proceeded towards Nawada.

7. During investigating of the above mentioned P.S. Case No.396 of 2021 the Investigating Officer recorded the statement of Executive Engineer, namely, Shri Shishir Shankar who stated before the police officer that the petitioner used to ignore his official duties on pretext of his illness. The behavior of the petitioner with the Junior Engineer of the office was also not proper and the Junior Engineer made a departmental complaint against the petitioner. The petitioner also threatened their colleagues to commit suicide and implicate them. It is also reported that on 07.11.2021 statement of the petitioner was recorded under Section 161 of the Cr.P.C. the petitioner made allegation upon his office colleagues that he was kidnapped by a Bolero Vehicle under their conspiracy and later on released at Rajauli. On the basis of the above information and statements



the Investigating Officer came to a finding that it is the petitioner who was hatching conspiracy against his colleagues and diverted the investigating officer to proceed with the investigation in a wrong direction. The counter affidavit filed on behalf of the respondent no.6 to 9 also depicts the same factual circumstances. It appears from the stand taken by the police authority in their counter affidavits that while investigating into Deepnagar P.S. Case No.396 of 2021 the above mentioned facts came to the notice of the Investigating Officer and the Investigating Officer lodged a separate complaint against the petitioner and Deepnagar P.S. Case No.403 of 2021 was registered.

8. The learned advocate for the petitioner at the outset submits that second F.I.R. on the self same cause of action or on certain events that took place in course of same transaction is barred and the same is required to be quashed. It is also submitted by him that the consequent charge sheet is also bad in law and liable to be quashed.

9. The question whether registration of a fresh case which in the nature of Second F.I.R. under Section 154 of the Cr.P.C. was valid and put form the basis of fresh investigation while investigating into another F.I.R. case or in other words,



the first F.I.R. came up for consideration before the Hon'ble Supreme Court in *T.T. Antony Vs. State of Kerala and others* reported in **(2001) 6 SCC 181**. In para 35 of the said report the Hon'ble Supreme Court held :

“.....the registration of the second FIR under Section 154 CrPC on the basis of the letter of the Director General of Police as Crime No. 268 of 1997 of Kuthuparamba Police Station is not valid and consequently the investigation made pursuant thereto is of no legal consequence, they are accordingly quashed. We hasten to add that this does not preclude the investigating agency from seeking leave of the Court in Crimes Nos. 353 and 354 of 1994 for making further investigations and filing a further report or reports under Section 173(8) CrPC before the competent Magistrate in the said cases. In this view of the matter, we are not inclined to interfere with the judgment of the High Court under challenge insofar as it relates to quashing of Crime No. 268 of 1997 of Kuthuparamba Police Station against the ASP (R.A. Chandrasekhar); in all other aspects the impugned judgment of the High Court shall stand set aside.”

10. Thus, it was held by the Hon'ble Supreme Court that second F.I.R. in respect of investigation of a particular case



and on ascertainment of certain fact is not permissible under the law.

11. In *Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and another* reported in (2013) 6 SCC 348, the Hon'ble Supreme Court held under what circumstances second F.I.R. is permissible. When it is found that different offences committed in same transaction or offence arising as consequence of prior offence, applicability of 'consequence test' laid down in *C. Muniappan & Others Vs. State of Tamil Nadu* reported in (2010) 9 SCC 567 is required to be applied. In other words, when several offences are committed in course of the same transaction, the police has the jurisdiction to investigate into the case in one F.I.R. only because of the fact that there was discovery of some fact other than the allegation contained in the F.I.R., lodging of second F.I.R. is not permissible

12. In *Surender Kaushik and others Vs. State of U.P. and others* reported in (2013) 5 SCC 148 the Hon'ble Supreme Court made a guideline in order to consider as to whether second F.I.R. is applicable under particular facts and circumstances of the case and the said guideline is "sameness test/principle" alleging the same/improved version in respect of the same incident/offence in a second F.I.R. was held to be not



permitted. In *Babubhai Vs. State of Gujrat and others* reported in *(2010) 12 SCC 254*, the Hon'ble Supreme Court reiterated the principle of test of sameness. When two F.I.Rs. in respect of same transaction is filed, subsequent to the registration of an F.I.R. any further complaint in connection with the same or concocted offence relating to the same incident or incidents which are parts of the same transaction, is held to be not permissible.

13. The law of this subject was developed from the case of *Ram Lal Narang Vs. State (Delhi Administration)* reported in *(1999) 2 SCC 322*.

14. In the instant case, the police authority has taken a plea that during investigation of Deepnagar P.S. Case No.396 of 2021, the Investigating Officer came to know that the petitioner was not kidnapped by some unknown person. On the other hand he boarded a bus towards Nawada and it is ascertained from his statement under Section 161 of the Cr.P.C. as well as the statement of his senior officers and colleagues that the petitioner made a concocted story of abduction, only to make the police authority to proceed with a wrong direction.

15. In *Manoj Kumar Vs. State of Uttarakhand* reported in *(2019) 5 SCC 667*, the Hon'ble Supreme Court held



that an F.I.R. is neither a piece of substantive evidence nor does it form the spine of a criminal case. It basically sets the criminal law into motion for purpose of investigation relating to an offence or offences with regard to an incident. It is noticeable that a particular incident can have a number of offences forming a different part of same transaction and sometimes may constitute distinct crimes which would come in a larger spectrum. That apart, there can be chain of events. In certain cases counter F.I.Rs. are lodged, there is no illegality in lodging a counter affidavit as per the pronouncements of T.T. Antony (supra) and ***Upkar Singh Vs. Ved Prakash & Others (2004) 13 SCC 292***. An investigation can be carried out in that regard. What is observed in certain case, is that when an investigation continues on the basis of second F.I.R., pertaining to the same transaction, on being challenge the investigation is quashed. There can be no shadow of doubt that registration of an F.I.R. or a second F.I.R. is done by the police authorities. The informant or victim in reality brings certain facts which he comes to know at a later stage to the knowledge of the investigation agency and investigation agency without recording the statement under Section 161 of the Cr.P.C. or treating it as part of material collected through the investigation records an F.I.R. As it seen if



an investigation proceeds on that basis it has been made liable for quashment. The last decision on this point is ***Vijay Kumar Ghai and others Vs. State of West Bengal and others*** reported in ***(2022) 7 SCC 124***.

16. Bearing the principles of law in mind let us now scan the instant case. Deepnagar P.S. Case No.396 of 2021 was instituted under Section 363 of the I.P.C. on the basis of an F.I.R. submitted by one Smt. Pushpa Kumari when she found her husband missing. Indisputably the petitioner being the husband of Pushpa Kumari was found by Rajauli Police on 07.11.2021 lying by the side of the road in unconscious state. It is also an admitted fact when he was taken to Sub-Divisional Hospital at Rajauli for medical treatment, even at that point he was unconscious. The medical examination report, Annexure-2 shows that he was unconscious and it was a case of suspected poisoning. He was first medically examined at 10:30 A.M. Subsequently, at 5:45 P.M. it was recorded by the Medical Officer that patient was comfortable, apprehensive needs thorough physical examination and psychological evaluation. In spite of such medical report, S.H.O. Deepnagar took him to his custody and brought him to the police station. He was illegally confined in Deepnagar police station on 07.11.2021 and



08.11.2021. He was produced before the Magistrate on 09.11.2021. There is no explanation from the side of police as to why there was illegal detention in the police station in violation of the direction of the Hon'ble Supreme Court in D.K. Basu's case till 09.11.2021.

17. In the meantime, Deepnagar P.S. Case No.403 of 2021 was registered on 08.11.2021 though the accused was arrested on 07.11.2021 the said case was instituted on the basis of a purported statement under Section 161 of the Cr.P.C. made by the petitioner which he emphatically denied in the instant proceeding and on the basis of the statement of the Executive Engineer and Junior Engineer. Now what are the penal offences under which Deepnagar P.S. Case No.403 of 2021 was registered. At the risk of repetition, it is under Sections 182, 186, 187, 385, 420, 120-B of the I.P.C.

18. Section 182 of the I.P.C. is a penal provision for giving false information, with intent to cause public servant to use his lawful power to the injury of another person. Now since the police authority was directed to file a case against the petitioner the Investigating Officer forgot that the information which was given to Deepnagar Police Station was the information by Smt. Pushpa Kumari regarding abduction of his



husband on 05.11.2021. The said information was not stated to be false. Thus, it is not clear from the counter affidavit upon whose false information, the public servant used his lawful power to the injury of any other person.

19. Section 186 of the I.P.C. is the penal offence for obstructing public servant in discharge of his public function. There is nothing on record that the petitioner or the informant of Deepnagar P.S. Case No.396 of 2021 obstructed any police officer in discharge of their public function.

20. Section 187 of the I.P.C. is a penal provision for omission to assist public servant when bound by law to give assistance. There is no material as to whose assistance was sought for and who being bound by law to assist the public servant omitted to assist him.

21. Section 385 of the I.P.C. is extortion. There is absolutely no material of extortion against anybody. Police did not receive any complaint or counter complaint wherefrom the petitioner can be held to have committed an offence of extortion. Similarly, the ingredients of Section 420 of the I.P.C. is absolutely missing and so is section 120-B of the I.P.C. If the petitioner conspired to commit such offence there must be a second person to hatch conspiracy. Who is that person ? There is



no answer from the side of the respondents, it seems to this Court that the official respondents was premeditated to lodge a false complaint against the petitioner.

22. I am still afraid as to whether in the instant case, case diary would be tampered and something more would be inserted to implicate the petitioner.

23. For the reasons recorded above, F.I.R. vide Deepnagar P.S. Case No.403 of 2021 dated 08.11.2021 and the consequent charge sheet are quashed and set aside.

24. Since, respondent no.9- Chandra Mauli Verma, S.I. Deepnagar Police Station has lodged a false F.I.R. and false charge sheet against the petitioner and also had kept the petitioner in illegal custody without following the decision of ***Arnesh Kumar Vs. State of Bihar***, the petitioner would be compensated by payment of Rs.1,00,000/- (Rupees one lakh). The aforesaid amount shall be paid personally by Sri Chandra Mauli Verma, S.I. Deepnagar Police Station, Biharsharif, Nalanda-respondent No.9 and the Officer-In-charge,, Deepnagar Police Station, Biharsharif, Nalanda-respondent no.7 equally at the rate of Rs.50,000/- each from their earnings within three weeks from the date of this order, failing which the Superintendent of Police, Nalanda-respondent no.5 shall deduct



the said amount from the salary for the month of March, 2024 and make payment of the same to the petitioner within 07.04.2024 positively.

25. Accordingly, the instant writ petition is allowed on contest.

26. Copy of this judgment be sent to the Superintendent of Police, Nalanda, respondent No.5 for information and to cause information to Respondent No.7 and 9 for compliance.

(Bibek Chaudhuri, J)

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