

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1876 of 2017

Arising Out of PS. Case No.- Year-1111 Thana- District-

Neeraj Kumar Thakur, Son of Late Dhirendra Thakur, resident of Prema Kutir, Chandra Vihar Colony, Ashiana- Digha Road (West), P.S.- Rajeev Nagar, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Principal Secretary, Department of Home (Special), Government of Bihar, Patna.
4. The District Magistrate, Patna at Patna, District- Patna.
5. The Superintendent of Police, Patna at Patna, District- Patna.
6. The Superintendent of Police (City) Patna at Patna, District- Patna.
7. The Circle Officer, Patna Sadar, at Patna, District- Patna.
8. The Officer-in-Charge, Digha Police Station, Digha, District- Patna.
9. The Officer- in-Charge, Rajeev Nagar Police Station, Rajeev Nagar, District- Patna.

... .. Respondents

Appearance :

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

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 22-01-2024

Heard learned counsel for the petitioner and learned AC to AAG-3 for the State.

2. The petitioner in the present case is seeking quashing of the second and the third FIR being Digha P.S. Case No. 282 of 2017 (G.R. No. 5676 of 2017) and Digha P.S. Case No. 283 of 2017 (G.R. No. 5911 of 2017) respectively.

Brief Facts of the Case.

3. It is the contention of the petitioner that the first FIR with regard to the alleged occurrence which took place on 05.09.2017 has been lodged by an employee of the Bihar State Housing Board giving rise to Digha P.S. Case No. 281 of 2017 dated 05.09.2017 registered for the offences punishable under Sections 144, 145, 147, 148, 149, 323, 307, 353, 427, 332, 333, 336, 337 and 338 of the Indian Penal Code. This case was registered on 05.09.2017 at 18:05 hours. The time of occurrence as alleged in the FIR is 11:00 A.M. on 05.09.2017. It is alleged that when the deputed Magistrate and Officers together with the police force were engaged in the measurement work of the land situated at the corner of Polshan Road and Ghurdaud Road in front of Rajeev Nagar Police Station and they were demolishing the boundary wall for the purpose of handing over the land to the Videsh Bhawan and CBSE, all of a sudden, the local persons surrounded the place, they indulged in slogan shouting and when the Police Officers were trying to restore peace and make them to understand, the agitationists started stone throwing which caused injury to the Officer Incharge of the Digha Police Station. The agitationists also tried to kill the JCB Operator who somehow saved his life but the agitationists burned the three JCBs and one

jeep. The informant came to know that the persons involved in the alleged occurrence were the eight named accused and about 1000 unknown persons who had indulged in assault and setting the vehicles at fire. Learned counsel for the petitioner submits that the petitioner is not named in this first information report.

Submissions of the Petitioner

4. The grievance of the petitioner is with respect to the second and third FIR giving rise to Digha P.S. Case No. 282 of 2017 dated 05.09.2017 and Digha P.S. Case No. 283 of 2017 dated 05.09.2017 lodged under various Sections of the Indian Penal Code and the Arms Act. Learned counsel submits that the second FIR has been lodged by the Circle Officer, Patna, Sadar. In this FIR also, the place of occurrence and the time of occurrence is the same. The FIR contains names of 132 persons and further alleges that about 1000-1200 unknown persons were involved in the occurrence and they had placed the women and children at the front while committing the alleged act of assault on the police officers and setting the JCBs and police vehicles at fire. In the third FIR lodged by the Sub-Inspector of Police-cum-Assistant Officer Incharge of Digha Police Station again the place of occurrence and the time of occurrence is said to be the same and one. In the third FIR, altogether 134 persons have been named and

allegedly 800-900 unknown persons were involved in the alleged occurrence. It is alleged that the agitationists were instigated by the named accused persons for firing on the police force. They damaged the Government vehicles and the material exhibits which were kept in the *malkhana* of the Police Station. The agitationists also entered into the police station premises and assaulted the family members of the police personnel. They also engaged in snatching the arms of the police force.

5. Learned counsel for the petitioner submits that on a bare reading of the three FIRs, it would appear that the allegations in the three FIRs are the same and one, the place of occurrence and the time of occurrence is also the same and, therefore, in terms of the judgment of the Hon'ble Supreme Court in the case of **Babubhai versus State of Gujarat and Others** reported in (2010) 12 SCC 254 and **Surender Kaushik and Others versus The State of Uttar Pradesh and Others** reported in (2013) 5 SCC 148, the test of sameness stands satisfied. Prayer has, thus, been made to quash the second and third FIR.

Submission of the State

6. On the other hand, Mr. Suman Kumar Jha, learned AC to AAG-3 for the State submits that in fact in the first FIR, the petitioner is not named. The informant is an Officer of the Bihar

State Housing Board who has stated that he came to know that the eight persons named in the FIR and about 1000 unknown persons had committed the alleged occurrence. In the second FIR, however, the petitioner is specifically named. In this case, the informant is a Circle Officer and he was deputed on the spot, thus, he has narrated the entire occurrence which had taken place in his presence. In this FIR not only the occurrence which took place at the Polshan road and Ghurdaud road has been narrated but even the further act of the agitationists in making an attempt to snatch the arms of the police force, causing assault to the police personnel, putting a traffic jam at Digha Road and then, in course of the said occurrence, seventy one rounds of firing having taken place have also been narrated. Learned counsel for the State, therefore, submits that the second FIR not only names the petitioner but even the manner of occurrence as alleged have been narrated in a different way from the first FIR.

7. As regards the third FIR again it is the contention of learned counsel for the State that the petitioner is named in the said FIR which has been registered by Sub-Inspector of Police-cum-Assistant Officer Incharge of the Police Station who has stated that this petitioner was one among the named accused, the agitationists had been making rumors and they had indulged in firing on the

police personnel as also caused damage to the police premises and the *malkhana*. The second and third FIRs have been registered under different Sections of the Indian Penal Code and the Arms Act. Learned counsel for the State submits that in such circumstance where the three FIRs have been lodged by three different persons and the Officer present on the spot has lodged the second FIR in which the petitioner has been named and there are allegations against him, the same is not fit to be quashed.

8. Learned counsel for the State has also pointed out from the counter affidavit that the petitioner in the present case is involved in antisocial activities which would be evident from his criminal antecedents inasmuch as he has got five cases apart from the present three cases on his head and he is facing allegations which are serious in nature. The details of the cases lodged against the petitioner since the year 2013 have been mentioned in the counter affidavit in various paragraphs.

Consideration

9. Having heard learned counsel for the petitioner and the State as also on perusal of the records, this Court finds that even as the FIR has been lodged in respect of the same occurrence which initially took place at Polshan Road and Ghurdaud Road in course of measurement of land and demolition of wall, the

petitioner is not named in the First Information Report whereas in the second and third FIR which have been lodged by the Circle Officer who was deputed as a Magistrate and the Sub-Inspector of Police who was Assistant Officer Incharge of the Police Station in front of which the alleged occurrence had taken place, the informants are eye witnesses as claimed and they have specifically named this petitioner. The second and third FIR are giving the narratives of the alleged occurrences in different manners, the damage caused to the JCBs and police jeeps as also the Government properties are mentioned in the second FIR but the third FIR discloses that the named accused persons and the agitationists had entered into the police premises, damaged the police station and the material exhibits which were kept in the *malkhana* of the Police Station.

10. Learned counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court in the case of **Babubhai** (supra) and **Surender Kaushik** (supra). In the case of **Babubhai** (supra), the Hon'ble Supreme Court examined the facts of the case and held that both the incidents in the said case had occurred at the same place in close proximity of time, therefore, there are two parts of the same transactions and more so, the death of Ajitbhai Prahladbhai has been mentioned in both the FIRs. The

Hon'ble Supreme Court observed in paragraphs '20' and '21' of the judgment as under:-

“20. Thus, in view of the above, the law on the subject emerges to the effect that an FIR under Section 154 CrPC is a very important document. It is the first information of a cognizable offence recorded by the officer in charge of the police station. It sets the machinery of criminal law in motion and marks the commencement of the investigation which ends with the formation of an opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. Thus, it is quite possible that more than one piece of information be given to the police officer in charge of the police station in respect of the same incident involving one or more than one cognizable offences. In such a case, he need not enter each piece of information in the diary. All other information given orally or in writing after the commencement of the investigation into the facts mentioned in the first information report will be statements falling under Section 162 CrPC.

21. In such a case the 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 or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the accused in the first FIR comes

forward with a different version or counterclaim, investigation on both the FIRs has to be conducted.”

11. On a reading of the judgment in the case of **Babubhai** (supra), it would appear that in the said case, after lodging of the first FIR, Mr. M.N. Pandya, Sub-Inspector of Police had lodged the second FIR and there he had stated that he reached at the place of occurrence after receiving the information from the police station and found that the mob had already dispersed. The case of the prosecution was that when the police reached the place of occurrence of the first incident, the mob had already dispersed but it was held that the said version could not be correct for the reason that some of the witnesses had stated that the clash was going on when the police arrived.

12. In the case of **Surender Kaushik** (supra), the Hon’ble Supreme Court discussed the judgment of the Hon’ble Supreme Court in **Babubhai** (supra) case and held in paragraph ‘24’ as under:-

“**24.** From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of

the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in *Upkar Singh*⁹, the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible.”

13. From a bare reading of the conclusion reached by the Hon’ble Supreme Court in the case of **Surender Kaushik** (supra), it is evident that what is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code.

14. In this case, the petitioner is not named in the first FIR, therefore, it cannot be said that the second FIR in which the petitioner is named has been lodged against the same accused subsequent to the registration of the first FIR. So far as the third FIR is concerned, this Court finds on a bare reading of the second and third FIRs that the allegations contained in the third FIR are something which do not form part of the second FIR. As stated

9. [*Upkar Singh v. Ved Prakash*, (2004) 13 SCC 292 : 2005 SCC (Cri) 211]

above, in the third FIR, the informant has alleged that the agitationists had entered into the police premises, damaged the police station, Government vehicles and the material exhibits kept in the *malkhana*.

15. For these reasons, this Court is of the opinion that the test of sameness as laid down by the Hon’ble Supreme Court is not satisfied in the present case so as to warrant any interference with the second and third FIR.

16. This application has, thus, no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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