

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1961 of 2023

Arising Out of PS. Case No.-61 Year-2023 Thana- KORMA District- Sheikhpura

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Jitendra Kumar, Son of Rameshwar Mahto, Resident of Village Murarpur, PS
Korma, Dist-Sheikhpura

... .. Petitioner/S

Versus

1. The State of Bihar Through Principal Secretary, Home Police Commissioner, Govt. Of Bihar, Patna Bihar
2. The Director General Of Police, Govt. Of Bihar, Patna Bihar
3. The Superintendent Of Police, Sheikhpura Bihar
4. The Station House Officer, Korma Police Station, Sheikhpura Bihar
5. Daymanti Devi Wife Of Late Jagdish Mahto Resident Of Village- Murarpur, P.S.- Korma, District- Sheikhpura

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dinesh Prasad Singh, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 19-04-2024 1. The petitioner has filed the instant writ petition for
the following reliefs:-

*(i) For quashing of proceeding in
S.Tr. /CIS.No. 70/2023 pending before Sessions
Court, Sheikhpura for trial after charges were
framed under sections 341, 323, 448 and 302 of
Indian Penal Code on 11.07.2023 arising out of
Korma P.S. Case No. 61/2023 dated 01.04.2023
under section 341, 323, 448, 302, 307, 324 and
326 of Indian Penal Code in the case (State
Versus Jitendra Kumar).*

*(ii) For the issuance of a writ of
Prohibition or a writ, order or direction in the*



nature of Prohibition, Prohibiting District and Session Judge/Session Judge to proceed further in the above mentioned case.

(iii) For the issuance of a writ of Mandamus or a writ, order or direction in the nature of Mandamus commanding the trial Session Judge not to proceed with case No. 61/2023 above mentioned during pendency of the aforesaid writ petition.

(iv) For issuance of any other appropriate writ, order or direction which this Hon'ble Court may deem just and necessary in circumstances of the case may also be passed.

(v) For all consequential relief/reliefs to which the petitioner is entitled to get including costs, in the facts and circumstances of the case.

2. It is the case of the petitioner that on 1st of April, 2023, a written report was lodged by one Daymanit Devi (Informant) to the Officer-in-Charge of the Korma Police Station in the District of Sheikhpura, stating, inter alia, that on 31st of March, 2023 at about 12.30 P.M. (Mid-Night) when her son, Sikandar Kumar was sleeping in his room, accused Jitendra Kumar entered into her house by scaling the wall of the house and went to the room. While he was sleeping, the petitioner assaulted the said Sikandar Kumar with the help of a knife causing bleeding injury on his person. Hearing his hue and cry,



the informant and her another son, namely, Dheeraj Kumar rushed to the room of Sikandar Kumar but the petitioner also assaulted the informant and her son. The informant managed to catch hold of the accused and raised alarm which attracted local people. They apprehended the petitioner. The injured son of the informant, namely, Sikandar Kumar was taken Sheikhpura Hospital where he was declared dead. Jitendra Kumar was handed over to the police and on the basis of a statement made by the informant, police registered Korma P.S. Case No. 61 of 2023 dated 1st of April, 2023, under Sections 341, 323, 448, 302, 307, 324 and 326 of the IPC.

3. The petitioner has prayed for quashing the said FIR on the ground that the alleged FIR registered on the basis of the statement made by the informant cannot be treated as FIR and the said statement of the informant being recorded subsequent to the first information obtained by police in the police station, the same is hit by Section 162 of the Cr.P.C.

4. In support of his contention, the learned Advocate for the petitioner refers to Paragraph No. 3 of the case diary, which runs as follows:-

*"उल्लेखनीय है कि दिनांक 01/04/2023
को समय करीब रात्रि 01:15 बजे सूचना मिली की
ग्राम मुरारपुर में सिकन्दर कुमार, पिता स्व. जगदीश*



महतो, सा० मुरारपुर को जितेन्द्र कुमार , पिता
रामेश्वर महतो, सा० मुरारपुर द्वारा चाकू से मारकर
जख्मी कर दिया है नाजुक है उक्त सुचना का
कोरमा थाना दैनिकी सं 123 दिनांक 01/04/2023
दर्ज किया "

5. Thus, it is contended on behalf of the petitioner that G.D. Entry No. 123, dated 1st of April, 2023 at about 01:15 A.M. contains the FIR, on the basis of which police ought to have registered a specific case against the petitioner. However, police registered Korma P.S. Case No. 61 of 2023 dated 1st of April, 2023, on the basis of a complaint made by Daymanit Devi, mother of the deceased.

6. It is also submitted by the learned Advocate for the petitioner that in the formal FIR, the Registering Police Officer did not state the specific time of receipt of the information by the police.

7. In support of his contention, the learned Advocate for the petitioner refers to the decision of the Hon'ble Supreme Court in the case of *T.T. Antony v. State of Kerala & Ors.*, reported in *(2001) 6 SCC 181*. It is held in the above-mentioned report that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. Only



information about commission of cognizable offence which is first entered in station house diary by Officer-in-Charge of the police station can be regarded as FIR under Section 154 of the Cr.P.C. All such subsequent information will be covered by Section 162.

8. Therefore, according to the learned Advocate for the petitioner Diary Entry No. 123 dated 1st of April, 2023, recorded at 01:15A.M. ought to have been considered as an FIR in connection with the alleged incident involving the petitioner. The statement of Daymanti Devi being a subsequent statement should be regarded as a statement under Section 161 of the Cr.P.C. and therefore, the statement is covered by Section 162 of the Cr.P.C. On the basis of the said statement, FIR No. 61 of 2023 could not be registered and accordingly, the said FIR case ought to be quashed.

9. Having heard the learned Advocate for the petitioner and on careful perusal of paragraph 3 of the case diary, it is found that on 1st of April, 2023 at about 01:15 A.M., the on duty Police Officer of Police Station, Korma received an information that one Sikandar Kumar was assaulted by Jitendra Kumar with the help of a knife. It is not recorded in the said information from whom the Police Officer received the



information.

10. It is needless to say that if the information does not disclose sufficient details, such information cannot be treated as FIR.

11. The decision of the Division Bench of Calcutta High Court in *Raghunath Dey v. State of West Bengal*, reported in *2003 Cri LJ 4592*, may be relied upon in support of my observation.

12. A telephonic message by a Police Constable on night patrol duty about the commission of an offence recorded in General Diary Book would not be treated as FIR and omission to state the names of the accused in the said message would not be fatal.

13. The view is taken by the Hon'ble Supreme Court in *Thaman Kumar v. State (UT of Chandigarh)* reported in *(2003) 6 SCC 380*.

14. In *Surajit Sarkar v. State of West Bengal*, reported in *(2013) 2 SCC 146*, the Hon'ble Supreme Court observed as hereunder :-

“37. In Ramsinh Bavaji Jadeja [(1994) 2 SCC 685 : 1994 SCC (Cri) 609] this Court relied on Tapinder Singh [(1970) 2 SCC 113 : 1970 SCC (Cri) 328] and Soma Bhai



[(1975) 4 SCC 257 : 1975 SCC (Cri) 515] and Dhananjoy Chatterjee v. State of W.B. [(1994) 2 SCC 220 : 1994 SCC (Cri) 358] to hold that a cryptic message given on telephone cannot be treated as an FIR merely because that information was first in point of time and had been recorded in the daily diary of the police station. It was also held that the object and purpose of a telephonic message is not to lodge a first information report but a request to the officer in charge of the police station to reach the place of occurrence. This view was reiterated in Mundrika Mahto v. State of Bihar [(2002) 9 SCC 183 : 2003 SCC (Cri) 1163] , State of A.P. v. V.V. Panduranga Rao [(2009) 15 SCC 211 : (2010) 2 SCC (Cri) 394] and Manu Sharma v. State (NCT of Delhi) [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] . We see no reason to take a view different from the one consistently taken by this Court in all these cases. We may only add that it is a matter of regret that despite the law on the subject being well settled, such an argument is raised once again.”

15. A bare reading of this Section makes it clear that even though oral information given to an Officer In-charge of a police station can be treated as an FIR, yet some procedural formalities are required to be completed. They include reducing the information in writing and reading it over to the informant



and obtaining his or her signature on the transcribed information.

16. In the case of a telephonic conversation received from an unknown person, the question of reading over that information to the anonymous informant does not arise nor does the appending of a signature to the information, as recorded, arise.

17. The above principle laid down by the Hon'ble Supreme Court with regard to treating an information under Section 154 of the Cr.P.C. is squarely applicable in this case.

18. In paragraph 3 of the case diary, it is not mentioned by the on duty Police Officer from whom the informant was received. It was also not possible to obtain the signature of the informant in the G.D. Entry No. 123, dated 1st of April, 2023. Therefore, such information cannot be treated as FIR.

19. As a result, the Korma P.S. Case No. 61 of 2023 dated 1st of April, 2023 cannot be quashed, holding, *inter alia*, that the statement of the Daymanti Devi was not an FIR.

20. Accordingly, the prayer made by the petitioner in the instant writ petition cannot be granted.

21. The writ petition is, therefore, dismissed, on



contest.

22. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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