

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2427 of 2018

Arising Out of PS. Case No.-4 Year-2017 Thana- VIGILANCE District- Patna

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Santosh Kumar Son of Shambhu Prasad, resident of Village- Sarsu, Police Station- Atri, District- Gaya.

... .. Petitioner/s

Versus

1. State Of Bihar
2. The Vigilance Department, through Dy. S.P. Vigilance Investigation Beuro, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Umesh Kumar Verma, Advocate
For the Vigilance : Mr.Arvind Kumar, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 26-04-2024 Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner is an accused in connection with Patna Vigilance P.S. Case No. 04/2017 dated 12.01.2017 registered under Sections 7/13(2) along with Section 13(1)(D) of the Vigilance Act, 1988 as well as Neemchak Bathani P.S. Case No. 07/2017 dated 12.01.2017 under Sections 224, 323, 353 of the I.P.C.

3. It is contended on behalf of the petitioner that in respect of both the cases the *de facto* complainant is the same. The occurrence or offence is also the same and identical and therefore, the second FIR dated 12.01.2017 at 11:00 p.m. in



respect of Nigrani P.S. Case No. 04/2017, dated 12.01.2017 is not maintainable and liable to be quashed.

4. It is submitted by the learned Advocate for the petitioner that one Md. Jamiruddin, Deputy Superintendent of Police-cum-Incharge attached to Vigilance Investigation Bureau, Patna received an information to the effect that one Santosh Kumar posted as Assistant, Indira Awasb Yojna at Maniyara Panchayat within Neemchak Bathani Block demanded bribe of Rs. 7,000/- from one Smt. Bindi Devi in order to release second installment of the fund for construction of house under Indira Awasb Yojna. On receipt of such information, Md. Jamiruddin constituted a raiding team and went to the office of the said Santosh Kumar. They were waiting outside the gate of the Block Office from 11:00 A.M. At about 11:15 A.M., the said Santosh Kumar came there by his motorcycle and met Vijay Singh, complainant. Vijay Singh gave him a sum of Rs. 7,000/- in the following denomination:-

(i) Two numbers of Rs. 2000/-
currency notes bearing no. (1) 8CE181679
(2) 8CE164298 (3) 8CE164299

(ii) Five numbers of Rs. 500/-
currency notes bearing no. (1) 7AC-690163



(2) 7AC-690178

5. Santosh Kumar received the said bribe money from Vijay Singh, then immediately the raiding party caught hold of the said Santosh Kumar and seized his mobile phone.

6. In the meantime, Santosh Kumar over-powered the informant and other police officers and fled away from the spot along with the bribe money.

7. After the incident, Md. Jamiruddin, Deputy Superintendent of Police, Vigilance Investigation Bureau lodged a written complaint, on the basis of which Neemchak Bathani P.S. Case No. 07/2017 dated 12.01.2017 under Sections 224/323/353 was registered on 12.01.2017 at about 03:00 P.M. Again on the identical allegation, the same Deputy Superintendent of Police, Vigilance Investigation Bureau lodged a complaint before the Officer-in-Charge Nigrani Police Station under Section 7/13(2) read with Section 13(1)D of the Prevention of Corruption Act.

8. On the basis of the said complaint, Nigrani P.S. Case no. 04/2017 dated 12.01.2017 was registered by one Shiv Kumar Jha, on-duty police officer at 11:00 P.M. on 12.01.2017.

9. It is contended on behalf of the petitioner that the second FIR is barred under Section 154 read with Sections 161



and 162 of the Code of Criminal Procedure and the second FIR has to be quashed, if required.

10. Learned Advocate on behalf of the Vigilance Investigation Bureau submits that the contents of the above-mentioned FIRs are different. In the first FIR, the police officer made a complaint under Sections 224/323/353 of the I.P.C. Section 224 is a penal provision for causing resistance or obstruction by a person to his lawful apprehension. Section 323 is the penal provision for causing hurt and Section 353 is the penal provision for assault on criminal force to deter public servant from discharge of his duty.

11. Since the petitioner over-powered the raiding party and pushed the complainant and another police officer as a result of which they fell down on the ground and the accused fled away, hence, Neemchak Bathani P.S. Case No. 07/2017 was lodged.

12. On the other hand, Nigrani P.S. Case No. 04/2017 was instituted under the penal provisions of the Prevention of Corruption Act. These two cases are different and, therefore, second FIR cannot be quashed.

13. Learned counsel for the petitioner submits that the second FIR for the same incident is declared to be barred by the



Hon'ble Supreme Court in the case of **T.T. Antony vs. State of Kerala & Ors.** reported in **2001 S.C. 2637**. Paragraphs '18', '20' and '27' are relevant for the purpose of this case and the same are quoted hereunder :-

"18. It is quite possible and it happens not infrequently that more informations than one are given to a police officer-in-charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 of Cr.P.C. apart from a vague information by a phone call or cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer-in-charge of police station is the First Information Report - F.I.R. postulated by Section 154 of Cr.P.C. All other information made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the First Information Report and entered and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 of Cr.P.C. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the



scheme of the Cr.P.C.

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](#) of Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfied the requirements of Section 154 Cr P.C. Thus there can be no second FIR and consequently there can be no fresh investigation or 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 on 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 of the Cr.P.C.

27. In our view a case of a 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 underway 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](#) Cr.P.C. or under Article 226/227 of the Constitution. "

14. Learned counsel for the petitioner also refers to a decision of a learned Co-ordinate Bench of this Court in **Md. Abdul Halim vs. State of Bihar**, reported in **2018 (2) PLJR 886**. It is observed by this Court that the second FIR about the same occurrence between the same persons and with similarity of scope of investigation cannot be registered, if the same is not in the nature of counter case. However, where in respect of the same occurrence between the same persons, more than one piece of information is given to the Officer-in-Charge of a Police Station about the cognizable offence, under such circumstances, only the earliest or the first information with regard to commission of cognizable offence would satisfy the requirement of Section 154 and all other information given to the police would be statements covered under Section 162 of the Cr.P.C.

15. On the basis of subsequent information about the cognizable offence, the police may validly institute FIR till certain circumstances. In order to examine the impact of one or more FIRs the court has to rationalize the facts and circumstances of each case and then apply the test of



"sameness" to find out whether both FIRs relate to same incident and to the same occurrence or are regard to incident which are two or more parts of the same transaction or relate completely to two different occurrences. Matter as to whether there exists sufficient good and valid ground for further investigation is entirely for the consideration of the investigating officer. There cannot be a second FIR in respect of the same offence because whenever any further information is received by the investigating agency, it is always in furtherance of the first report registered by the police. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case.

16. In Amitbhai Anilchandra Shah vs. CBI and another reported in **2013(2) PLJR 373**, the Hon'ble Supreme Court found on consideration of facts of two FIRs that abduction and murder of one Tulsiram Prajapati was part of the same series of acts (abduction and murder of Sohrabuddin and his wife) and are arising out of same conspiracy as alleged in the first FIR. Thus, a second FIR in the given facts and circumstances is unwarranted, instead filing of a supplementary



chargesheet in this regard will suffice the issue.

17. I have carefully gone through the decisions referred to by the learned Advocate on behalf of the petitioner and I have also perused the written complaints submitted by Md. Jamiruddin, Dy. S.P. in connection with Neemchak Bathani P.S. Case No. 07/2017 and Nigrani P.S. Case No. 04/2017, contents of both the complaints are absolutely same and identical. Particularly on the basis of the complaint filed by Md. Jamiruddin in Neemchak Bathani Police Station, the police could have registered FIR also under Section 7/13(2) read with Section 13 (1) D of the Prevention of Corruption Act. However, the police officer did not register such FIR. Subsequently, Md. Jamiruddin filed a second complaint on facts and circumstances before the on-duty police officer at Nigrani Police Station and the case under penal provisions of Prevention of Corruption Act was instituted being Nigrani P.S. Case No. 04/2017.

18. For the reasons stated above, the statement of the complainant on the basis of which the second FIR was instituted, cannot be considered as a statement under Section 154 of the Cr.P.C. The statement being a subsequent statement is hit by Section 162 of the Cr.P.C., therefore, the second FIR is to be quashed and set aside.



19. Accordingly, it is ordered that FIR being Vigilance P.S. Case No. 04/2017 dated 12.01.2017 registered under Sections 7/13(2) read with Section 13(1)D of the Prevention of Corruption Act is quashed.

20. However, the investigating officer of Neemchak Bathani P.S. Case No. 07/2017 shall make necessary prayer before the concerned Magistrate to include Sections 7/13(2) read with Section 13(1)D of the Prevention of Corruption Act in the former FIR and investigation of Neemchak Bathani P.S. Case No. 07/2017 shall be taken up by the Vigilance Investigation Bureau in order to establish the allegation under Sections 7/13(2) read with Section 13(1)D of the Prevention of Corruption Act as well as Sections 224/323/353 of the Indian Penal Code against the petitioner.

21. With the above observations/directions, the instant writ application is disposed of.

(Bibek Chaudhuri, J)

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