
(2007) 03 PAT CK 0160

In the Patna High Court

Case No : Criminal Miscellaneous No. 8249 of 2007

Dina Nath Sah

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 120(B), 120B, 201, 302, 34

Citation : (2007) 3 PLJR 328

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Advocate : Tilak Sao, for the Appellant; Gopesh Kumar for the State, for the Respondent

Final Decision : Dismissed

Judgement

Ghanshyam Prasad, J.—This application u/s 482 of the Code of Criminal Procedure has been filed to quash the order of cognizance dated 24.12.2005 passed by the Chief Judicial Magistrate, Saharsa in Sadar Saharsa Rs. Case No. 340/2000, which is pending in the court of Fast Track Court No. 7, Saharsa bearing Sessions Trial No. 169/ 06, thereby and thereunder cognizance has been taken under Sections 364, 365, 120(B) and 201 of the Indian Penal Code against the petitioner and others. The facts which emerge from two police station cases bearing Sadar Saharsa Rs. Case No. 340/2000 and Phulwarisarif Rs. Case No. 313 of 2000 are as follows:

The husband of Opposite Party No. 2, Mahanti Sharma, was driver in transport business of Kuldeep Jaiswal and Sandeep Jaiswal of Saharsa. He had some dues as wages against the owner of transport business. On 27.8.2000 the aforesaid accused persons sent Mahanti Sharma as driver and Manoj Sharma as Khalashi with truck loaded with Sisam log bearing registration No. WB. 03A/7416 to Mirzapur. Thereafter, they did not return. Opposite Party No. 2 suspected their kidnapping and murder at the hands of the accused persons in order to

misappropriate dues. Ultimately Opposite Party No. 2 filed a complaint case on 19.10.2000 before the court of the Chief Judicial Magistrate, Saharsa under sections 364, 302 and 120B of the Indian Penal Code. The same was forwarded to Sadar Saharsa police station for institution and investigation. The police on 4.11.2000 registered a case against the aforesaid two accused persons under Sections 364, 365 and 120B of the Indian Penal Code and after investigation submitted charge-sheet against them including this petitioner also. The learned Chief Judicial Magistrate vide impugned order took cognizance.

2. It appears that the aforesaid loaded truck was seized by Phulwarisarif police on 1.9.2000 and also forwarded this petitioner and one other to jail custody. The Officer-in-charge Phulwarisarif registered a case against three persons including this petitioner u/s 414/34 of the Indian Penal Code. Later on Sections 364/ 379 of the Indian Penal Code were also added. The Police after investigation submitted charge-sheet upon which the learned Chief Judicial Magistrate, Patna took cognizance on 1.12.2000 against the petitioner and others under the above Sections which is now pending in the Fast Track Court No. III, Patna bearing Sessions Trial No. 517 of 2001.

3. Learned Counsel for the petitioner submits that there cannot be two first information reports for the same offence. The earliest statement of the occurrence can be treated as first information report. The police has no power to institute the separate case and make investigation on the basis of subsequent statement with regard to same occurrence. Therefore, taking cognizance on the basis of the investigation made in subsequent first information report is abuse of process of the court and hence it must be quashed.

4. It is well settled principle of law that there can be no second first information report for the same incident or occurrence. The police has no power to make investigation on the basis of such first information report (See 2001 SC 2637-T.T. Anthony vs. State of Kerala). However in order to operate bar the statement of both the first information reports must be identical. There must be identical date of occurrence as well as place of occurrence as also the identical narration of events.

5. In this case on careful consideration of two first information reports it would appear that there is no identical place of occurrence or narration of events. Both first information reports are in relation of separate incidents. The first information report of Phulwarisarif is basically in respect of seizure of loaded truck from possession of this petitioner suspected to be stolen, whereas the first information report of Sadar Saharsa Police station is in respect of suspected kidnapping and murder of the husband of Opposite Party No. 2. The name of accused in both cases are different. Witnesses of both cases are also different. The similarity is only in respect of truck number. Thus, it is quite clear that the facts of the aforesaid two first information reports are different in truth and substance. Therefore, the first information report of Sadar Saharsa Police station cannot be treated as subsequent or second first information report of the same

occurrence.

6. Accordingly, this application stands dismissed. The court below is directed to expedite the trial.