

(2009) 01 PAT CK 0080
In the Patna High Court
Case No : Cr.WJC No. 8 of 2008

Harish Kumar Chaudhary

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 173(8)
Penal Code, 1860 (IPC) — Section 120B, 302, 307, 324, 326

Citation : (2009) 2 PLJR 600

Hon'ble Judges : Samarendra Pratap Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Samarendra Pratap Singh, J.—In the instant writ petition the petitioner prays for calling for the records of the impugned F.I.R. registered by the C.B.I. dated 12.10.1998 being R.C.(S) 98/ N/No. as well as Charge-Sheet No. 1/99 dated 10.9.1999 and supplementary charge-sheet dated 7.3.2007 and to declare the S.T. No. 1230 of 2007 pending in the Court of 11th Additional Sessions Court-cum-CBI Court, Patna as illegal, void and bad in law. The facts of the case in brief are that one Ajit Sarkar and two others were killed in course of indiscriminate firing on 14.6.1998 at 2.30 P.M. Furthermore one Ramesh Oraon, the bodyguard of Ajit Sarkar also sustained injuries. On the written statement of one Kalyan Chandra Sankar, K. Hat P.S. Case No. 230 of 1998 was registered u/s 302/34 and other allied sections of the Penal Code against five named accused persons and some unknown persons. On 20.9.1998 charge sheet was submitted under Sections 302, 307, 324, 326 and 120B of the Penal Code and Section 27 of the Arms Act against named accused persons and investigation was kept pending against 11 persons including this petitioner.

2. On 28.9.1998 the Union of India issued notification u/s 5 of the Delhi Special Police Act, 1946 with consent of State of Bihar extending the powers and

jurisdiction of the Members of the Delhi Police Establishment to the whole of the State of Bihar for investigation of offence of Case No. 230 of 1998 relating to murder of late Ajit Sarkar, MLA. Pursuant to the aforesaid notification the Deputy Superintendent, CBI registered the instant case as R.C. Case incorporating the F.I.R. of K. Hat P.S. Case No. 230 of 1998 under Sections 302, 307, 326, 324, 120B of the Penal Code read with Section 27 of the Arms Act. One Rajesh Ranjan @ Pappu Yadav filed Criminal Writ bearing Cr. W.P. No. 268 of 1999 before the Delhi High Court for quashing the notification dated 28.9.1998 which was dismissed. The Delhi High Court observed that C.B.I. is not disentitled to do further investigation of the matter, merely because in the first instance the investigation in respect of offence was carried out by the State Police and incomplete challan was filed in the Court of Chief Judicial Magistrate, Purnea. The Delhi High Court further observed that an accused cannot object to the Agency which is selected to further investigate the case. The C.B.I. after investigation filed Charge-Sheet No. 1/99 before the Special Judicial Magistrate, CBI, Patna. On 16.7.1999 the Special Judicial Magistrate, CBI took cognizance of offence as has been stated in paragraph 9 of the petition.

3. Learned counsel for the petitioner submits that on 15.9.1999 the Investigating Officer, CBI requested the Special Judicial Magistrate, CBI, Patna to discharge the accused charge-sheeted by the local Police and to call for the records of the case from the Chief Judicial Magistrate, Purnea. He further submits that F.I.R., witnesses namely B.C. Sarkar, brother of Ajit Sarkar was not examined.

4. It is submitted by the petitioner that the aforesaid cognizance was taken ignoring the earlier cognizance taken by the Chief Judicial Magistrate, Purnea dated 23.9.1998 for the same very offence.

5. The case was committed to the 11th Additional Sessions Court, CBI vide ST. No. 976/99. Furthermore the supplementary charge-sheet dated 7.3.2007 was filed by the C.B.I. against the petitioner giving rise to S.T. No. 1230 of 2007. The petitioner submits that the CBI had suppressed the entire material facts including the case registered by the local police as well as charge-sheet and cognizance dated 23.9.1998.

6. The petitioner assails the S.T. No. 1230 of 2007 pending against him on the ground that two F.I.Rs. and two parallel proceedings in respect of the same occurrence is impermissible in view of law laid down by the Apex Court in the case of T.T. Antony vs. State of Kerala, 2001 S.C. 2637.

7. Learned counsel for the petitioner submits that charge-sheet No. 1/99 dated 10.9.1999 and supplementary charge-sheet dated 7.3.2007 were filed pursuant to the institution of R.C.(S)98/9/N/No. by the C.B.I. on 12.9.1998. The Special Judicial Magistrate, CBI did not have any jurisdiction to discharge the named accused persons against whom cognizance was already taken by the Chief Judicial Magistrate, Purnea. He further submits that the offences have to be tried at one place and in one court which took cognizance first on the report of the

local police. In support of his contention, he relied upon a decision in the case of *Surendra Nath Singh vs. State of U.P.*, 2001 Cr.LJ.1745.

8. Mr. Bipin Kumar Sinha, learned counsel for the CBI submits that the submission of the petitioner that there were two different F.I.Rs., one of the local police and another by the C.B.I. is misconceived. He submits that on the request of the State Government the Government of India vide notification dated 28.8.1998 entrusted the investigation of K. Hat PS. Case No. 230/98 to the C.B.I. He further submits that pursuant to the aforesaid notification, the C.B.I. incorporated the contents of the earlier F.I.R. No. 230/98 and registered the same as R.C.-12(S)/98/SCR-III/ND for identity purpose. He submits that submission of incomplete charge sheet does not disentitle the C.B.I. for making further investigation u/s 173(8) of Cr.P.C. He submits that the C.B.I. after investigation submitted charge-sheet before the competent court which was the Court of Special Judicial Magistrate, CBI. Patna, which called for the records from the Court of the Chief Judicial Magistrate, Purnea vide order dated 15.9.1999. He submits that the C.B.I. in course of investigation found the accused earlier charge-sheeted by the local police as innocent. The C.B.I. as such filed a petition for their discharge which was duly accepted by the competent C.B.I. court. He submits that some of the issues which have been raised by the petitioner was raised by a co-accused Rajan Tiwary in Cr. Misc. No. 24843 of 2000 which was rejected by this court.

9. It would appear from the very submissions made by learned counsel for the parties that the C.B.I. took over the investigation of K. Hat PS. Case No. 230/ 98. The C.B.I. incorporated the contents of the F.I.R. and registered the aforesaid R.C.-12(S)/98 for the purpose of identification. Once the C.B.I. took over the investigation, the jurisdiction of local police ceased. The responsibility of further investigation was now in the hands of C.B.I. Thus the submission of the petitioner that there was two parallel F.I.Rs. and proceedings is misconceived.

10. The case incorporated by the C.B.I. by taking over the contents of the earlier police case and giving number of the case for the purpose of identification does not constitute a second F.I.R. and as such the decision rendered by the Apex Court in the case of *T.T. Antony (supra)* would not be applicable in the facts of this case. Furthermore, pursuant to the notification by the Union Government, the C.B.I. started further investigation which it is fully entitled to make even after submission of charge-sheet in view of the statutory provisions as well as the decision rendered in the case of *State of A.P. vs. A.S. Petter*, reported in 2008 AIR SCW 637.

11. As noticed earlier the Delhi High Court held, as has also been stated in paragraph 7 of the writ petition that incomplete charge-sheet filed by the local police cannot disentitle the C.B.I. from making further investigation. As such this court does not find any fault in respect of institution of R.C. Case incorporating the contents of the earlier police case and the subsequent charge-sheet dated 7.3.2007 against the petitioner giving rise to ST. No. 1230/07 which are very

much in accordance with law.

12. The other argument of the petitioner that the order dated 15.9.1999 discharging the F.I.R. named accused on a petition of C.B.I., though cognizance was taken against them by the Chief Judicial Magistrate, Purnea on basis of chargesheet submitted by the local police earlier is bad in law.

13. The submission of learned counsel for the petitioner is fit to be rejected on two grounds; firstly the petitioner himself being an accused, is in no way prejudiced by the discharge of the accused, whom, the C.B.I. had found to be innocent. Secondly, the impugned order is of the year 1999 and the same cannot be allowed to be challenged after nine years and that too by a person who could not be aggrieved in any manner. The Division Bench of this court in the case of Sunil Singh @ Captain Sunil Vs. The State and Others has doubted the correctness of the decision of the learned Single Judge of Allahabad High Court rendered in the case of Surendra Nath Singh (supra) reported in 2001 Cr.L.J. 745 and as such this court does not find any merit in the submission of learned counsel for the petitioner for declaring the S.T. No. 1230 of 2007 as illegal and bad in law. Consequently, the prayer of the petitioner to call for the records of R.S. (S)98/N/No. and subsequent charge sheets filed by the C.B.I. and to declare the Sessions Trial No. 1230/2007 void and illegal is fit to be rejected. For the reasons stated above, I do not find any merit in this application. It is accordingly dismissed.