
(2011) 07 JH CK 0010

In the Jharkhand High Court

Case No : Criminal Miscellaneous P. No. 459 of 2011

Karun Kant Dave and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 158, 162, 173, 173(2), 173(8)
Explosive Substances Act, 1908 — Section 6(A)
Explosives Rules, 1983 — Rule 47(3)
Penal Code, 1860 (IPC) — Section 279, 286, 304, 304(A), 34

Citation : (2012) 1 JCR 227

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—Petitioners have invoked the inherent jurisdiction of this Court for quashment of the FIR, in connection with Ghagra PS Case No. 25/2011. corresponding to G.R. No. 240/2011. registered for the alleged offence under Sections 304/34 of the Indian Penal Code as also u/s 9(B) of the Explosive Substances Act, pending before the CJM, Gumla.

2. Prosecution story in short was that the informant Somari Devi i.e. opposite party No. 4 herein- had delivered her fardbeyan before the officer-in-charge of Ghagra police station on 15.3.2011 at about 14:30 hours at Ghagra narrating therein that her husband Manglu Lohra (since deceased) was a Welder in Hindalco Industries Limited, who used to do work in Hindalco Industries Limited, as per his trade. On 8.3.2011, he was asked by the officers of the Hindalco Industries Limited to accompany the driver Sushil Kujur to carry explosive substance in the explosive van of the Company, though it was not the part of the duty of her husband. On 8.3.2011 there held explosion in the explosive van as a result of which the driver and her husband died and for that the officers of the Hindalco Industries Limited. i.e. the petitioners viz, Karun Kant Dave, Brijesh Kr. Jha. Rudra Baksh Singh, Prakash Kumar, Mukesh Kumar Pandey, Sapan Dev @

Swapna Sen and other officers were held responsible, who in furtherance of common intention, committed murder of her husband who in contravention of the provisions of Explosive Act sent her husband. The case was registered under Sections 304/34 of the Indian Penal Code as also u/s 9(B) of the Explosive Substances Act against the petitioners and investigation was initiated.

3. The learned counsel Mr. Sen submitted that on 8.3.2011 explosive vehicle of Hindalco Industries Limited was carrying explosive under valid licence from Ranchi to Sherengdag mines. Husband of the informant was khalasi in the explosive van. The van was being driven rashly and negligently by its driver as a result of which it caused explosion, which resulted into death of the driver and the Khalasi to which immediately an FIR was lodged being Ghagra PS Case No. 24/2011 on the Jardebayan of the village chaukidar Kauleshwar Gope of Ghagra Police Station for the alleged offence under Sections 279/286/304(A) of the Indian Penal Code against the driver of explosive van No. BR 42-G 0040. Village chaukidar Kauleshwar Gope narrated that on 8.3.2011 there held explosion at about 11:30 a.m. near chulhamati turning and he was apprised by the villagers that an explosive van of Hindalco Industries Limited was exploded, which resulted into fire which broke out therein and consequently, two persons died. Dead body of one person was there inside the explosive van, whereas dead body of another was found lying at the distance of about fifty meters on the flank of the road. The informant was further apprised by the villagers that the driver of the explosive van was driving the vehicle rashly and negligently on uneven road as a result of which the driver and another died in such accident. After institution of the case, the police initiated investigation, but subsequently the instant case was lodged on 15.3.2011, in spite of the fact that criminal law was set in motion in Ghagra PS Case No. 24/2011 on 8.3.2011 itself for the same set of occurrence. Instant case was instituted after about seven days from the date of accident on the statement of the widow of the deceased Somari Devi, who could have been the witness to the circumstances of the death of her husband in such accident. Her statement cannot be held to be an independent statement for lodging a fresh case for the same occurrence and therefore, her status would be determined as a witness and not of an informant and similarly, subsequent institution of the case on her statement would be treated as the statement u/s 162 of the Code of Criminal Procedure for the reason that it was the duty of the Investigating Officer not merely to investigate the cognizable offence disclosed in the FIR but also other connected offences found to have been committed in the course of the same transaction.

4. In *Babubhai v. State of Gujarat and others*, reported in 2010 (4) East Cr C 176 (SC) : [2011] ACR 144, Supreme Court of India, the Apex Court of India in similar situation observed:

13. In *T.T. Antony Vs. State of Kerala and Others*, , this Court dealt with a case wherein in respect of the same cognizable offence and same occurrence two FIRs had been lodged and the Court held 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. The investigating agency has to proceed only on the information about commission of a cognizable offence which is first entered in the Police Station diary by the officer-in-charge u/s 158 of the Code of Criminal Procedure, 1973 (hereinafter called the Cr PC) and all other subsequent information would be covered by Section 162, Cr PC for the reason that it is the duty of the Investigating Officer not merely to investigate the cognizable offence report 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 Investigating Officer has to file one or more reports u/s 173, Cr PC. Even after submission of the report u/s 173(2), Cr PC, if the Investigating Officer comes across any further information pertaining to the same incident, he can make further investigation, but it is desirable that he must take the leave of the Court and forward the further evidence, if any, with further report or reports u/s 173(8), Cr PC. In case the officer receives more than one piece of information in respect of the same incident involving one or more than one cognizable offences such information cannot properly be treated as an FIR as it would, in effect, be a second FIR and the same is not in conformity with the scheme of the Cr PC.

5. In *Upkar Singh Vs. Ved Prakash and Others*, , the Apex Court had considered the judgment recorded in *T.T. Antony's case* (supra), and explained that the judgment in the said case did not exclude the registration of a complaint in the nature of counter claim from the purview of the Court, What had been laid down by the Apex Court in the aforesaid case was that any further complaint by the same complainant against the same accused, subsequent to the registration of a case, was prohibited under the Code of Criminal Procedure because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence, -not sustainable, the learned counsel Mr. Sen added. However, it was held by the Apex Court in *Upkar Singh's case* (supra) that this rule would not apply to a counter claim by the accused in the first complaint or on his behalf alleging a different version of the said incident.

6. Admittedly, the complainant in these two cases were not the same person but everything was common in both the complaint except some development made in the statement of Somary Devi wherein she had introduced the names of the petitioners, though it was well within the Jurisdiction of the Investigating Officer of Ghagra PS Case No. 24/2011 to find out the culpability of the accused for the alleged offence u/s 304(A) and other allied sections of different penal laws wherein the case was instituted against the deceased-driver of the explosive van and therefore, in that manner, the statement of Somari Devi would be covered by Section 162 of the Code of Criminal Procedure and cannot be treated as the statement for lodging the subsequent FIR for the same accident.

7. By filing a counter-affidavit, the learned APP has tried to impress that the

deceased Manglu Lohra and Sushil Kujur were not the skilled persons to handle explosives. Sushil Kujur was a Dumper Operator and Manglu Lohra was a welder, not competent at all to act like driver and cleaner respectively of the explosive carriage van and thereby, the management of Hindalco Industries Limited violated the provisions of Section 6-A(a) of the Indian Explosive Substances Act, 1884. It was further stated in the counter-affidavit that licence of explosive van bearing No. BR 42-G 0040 was renewed till 31.3.2009 and at the relevant time of explosion, it was not carrying valid licence. The learned APP further submitted that the information regarding transportation of explosives was also not given either to the Ghagra Police or to the SDPO, Gumla and in that manner petitioners contravened the Rule 47(3)(c) of the Explosive Rules. The name of the person, whose dead body was lying about fifty meters away from the exploded van, was not disclosed by the village chaukidar, who was the informant of Ghagra PS Case No. 24/2011 and the detailed information was supplied by Somari Devi, who identified that it was the dead body of her husband died in explosion of van and therefore, FIR, based upon substantive information, was required to be lodged on the basis of the statement of Somari Devi and thereby, no illegality was caused.

8. The main thrust in this petition is as to whether in the given facts and circumstances, subsequent FIR vide Ghagra PS Case No. 25/2011 was maintainable for the same cause, when the earlier case being Ghagra PS Case No. 24/2011 was instituted on the statement of the village chaukidar for common cause, being the occurrence which took place in the explosive van of Hindalco Industries Limited carrying explosives. To my view, Investigating Officer of Ghagra PS Case No. 24/2011 was not precluded and his jurisdiction was not restricted by virtue of any information supplied by Somari Devi, which shall be treated as her statement recorded u/s 162 of the Code of Criminal Procedure. Law is settled by the Apex Court, in T.T. Antony Vs. State of Kerala and Others, and Babubhai v. State of Gujarat and others, reported in [2011] ACR 144, Supreme Court of India, referred to hereinbefore, that the investigating agency has to proceed only on the information about commission of a cognizable offence which is first entered in the police station diary by the officer-in-charge u/s 158 of the Code of Criminal Procedure, 1973 and all other subsequent information would be covered by Section 162 of the Code of Criminal Procedure as the duty of the Investigating Officer was not merely to investigate the cognizable offence but also other connected offences found to have been committed in the course of the same transaction and the complicity of the accused found therein.

9. For the reasons stated above, I find and hold that institution of subsequent FIR vide Ghagra PS Case No. 25/2011 against the named accused persons is not maintainable and therefore, the same is quashed and this petition is allowed.