

(2015) 08 PAT CK 0031

In the Patna High Court

Case No : Criminal Miscellaneous No. 17196 of 2015

Kushami Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Constitution of India, 1950 — Article 20(2)
Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 155 (2), 156(3), 162
Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 323, 34, 379, 498A, 504

Citation : (2015) 08 PAT CK 0031

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Advocate : Manoj Kumar Jha and Sugandha, for the Appellant; Jharkhandi Upadhyay, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Aditya Kumar Trivedi, J—Heard learned counsel for the petitioners, learned counsel for the O.P. No. 2 as well as learned Additional Public Prosecutor.

2. Whether institution of second FIR is permissible under guise of Section 154 of the Cr.P.C. is the moot question involving under the present controversy. If so, what will the status of second FIR. In order to proper appreciation of the points so involved, first of all, factual matrix is to be taken up. O.P. No. 2 Sunita Devi filed an application before Superintendent of Police, Madhubani on 3.10.2013 disclosing therein that she has been tortured at her sasural by her husband and other family members for fulfillment of demand of dowry. It has also been disclosed that on 9.7.2013 all the accused persons directed her to collect Rs. 51000/- from the place of her father and, on her refusal having snatched ornaments appertaining to Rs. 40,000/- as well as one bag. She has been ousted from the place. It has also been incorporated in the detailed, that on earlier occasion an application was filed before him (S.P.) which was sent to local police

who, without investigating the case properly, done the table work and then, except three, exonerated others (Annexure-1).

3. The Superintendent of Police, Madhubani directed the Officer-in-Charge, Bhairo Asthan Police Station to register FIR and ensure legal action whereupon Bhairo Asthan P.S. Case No. 92 of 2013 has been registered under Section 498A/34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. After concluding investigation charge sheet has been submitted whereupon vide order dated 25.3.2014 cognizance of an offence punishable under Section 498A/34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act has been taken simultaneously directing the petitioners to face trial by the learned Additional Chief Judicial Magistrate, Jhanjharpur which happens to be the order under challenge.

4. It is also apparent, apart from having properly disclosed under the written report as referred above, Complaint Case No. 948 of 2013 was filed on 20.7.2013 (Annexure-2) by the same complainant Sunita Devi against the same accused showing same date of occurrence as well as same place of occurrence containing same allegations save and except the demand was for providing motorcycle as well as it has also been disclosed that on 15.7.2013 written report was submitted before S.P. Madhubani under registered cover as well as copy thereof was also handed over but as no step has been taken, on account thereof complaint has been filed over which, as is evident, learned Chief Judicial Magistrate directed the local police for registration as well as investigation whereupon Mahila P.S. Case No. 66 of 2013 was registered under Sections 498A, 323, 379, 504 and 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act on 30.8.2013 while the complaint was filed on 20.4.2013.

5. It is further evident that Mahila Police after registration of a case bearing Mahila P.S. Case No. 66 of 2013, proceeded with the investigation and after completion of the same submitted charge sheet against the husband, mother-in-law as well as father-in-law.

6. It has been submitted on behalf of the petitioners that complainant is the same, date of occurrence is the same, allegations are the same, then in that event, petitioners should not be allowed to face trial with regard to subsequent prosecution because of the fact that the same would appear nothing but an abuse of the process of the court. Therefore, the second FIR, that means to say, relating Bhairo Asthan P.S. Case No. 92 of 2013 along with order of cognizance dated 25.3.2014 should be quashed. In support thereof reliance has been placed upon Lalit Kumar Singh and Others Vs. The State of Bihar and Another .

7. O.P. No. 2, in spite of having her presence, was non-represented.

8. Learned Additional Public Prosecutor controverted the submissions made on behalf of the petitioners and submitted that there happens to be no legal impediment in institution of 2nd FIR because of the fact that Cr.P.C. does not prohibit institution of cases, even subsequently, by the same Complainant/

informant, against the same accused following same allegations relating to same place of occurrence as well as relating to same occurrence. Whenever there happens to complete absence of such provision barricading the event then, in that event, subsequent institution of a case would not attract its quashing. Then it has been submitted that there is no question of double jeopardy as the trial of both the cases or either of two is yet to commence. Therefore, protection provided under aforesaid section under section 300 Cr.P.C. as well as under Article 20(2) of the Constitution of India will not be available which will come into play only after conduction as well as completion of trial, unstirred with its result. Hence the instant petition is fit to be dismissed.

9. Institution of a case irrespective of its nature being cognizable or non-cognizable offences, has been recognized by two methods. The first one approaching the police, giving statement leading to registration of a case in terms of Section 154 of the Cr.P.C. However, in case of non-cognizable offence, investigation put forth on obligation after taking permission from the Magistrate in accordance of Section 155 (2) of the Cr.P.C. Another option is to file complaint or making oral allegation before the learned Magistrate in accordance with Section 200 of the Cr.P.C., whereupon Magistrate has so many options available including directing the police to register and investigate as provided under section 156(3) Cr.P.C. Whenever a case is instituted, statements of the witnesses are to be recorded along with other kinds of activities to be taken up in accordance with law and after concluding investigation, police report has to be submitted in terms of Section 173 of the Cr.P.C. During aforesaid procedural activity, one barrier is found in terms of Section 162 of the Cr.P.C. which lays down that statements of the witnesses would not be signed by them as well as the aforesaid statements remain only for corroboration as well as contradiction save and except a statement recorded under Section 32 of the Evidence Act.

10. That being so, whenever a case is registered, that could be on the fard-beyan or written report bearing signature/LTI of the informant and then thereafter, there happens to be complete prohibition getting signature of witness over their statement which they made during course of investigation.

11. In case, there happens to be registration of another subsequent case by the same informant against the same accused for the same occurrence then, in that event, it happens to be of same sequence and in that event, presence of informant over subsequent fard-beyan or written report will nothing but the statement having made subsequently and on account thereof, is found completely barred in terms of Section 162 Cr.P.C.

12. At the present moment, it could not forget to perceive the event whereunder two cases are drawn up at the behest of two distinct person having two different version of the occurrence and in that event, as the narration have been different, accused are different, is found permissible because of the fact that in that case, there would be no application of Section 162 Cr.P.C. The Apex Court identified this event as cross-case or counter case.

13. That happens to be reason behind that the Hon"ble Apex Court at an earlier occasion in T.T. Antony Vs. State of Kerala and Others, AIR 2001 SC 2637 : (2001) CriLJ 3329 : (2001) 3 Crimes 276 : (2001) 5 JT 440 : (2001) 4 SCALE 348 : (2001) 6 SCC 181 : (2001) 3 SCR 942 : (2001) AIRSCW 2571 : (2001) 5 Supreme 131 as well as Babubhai Vs. State of Gujarat and Others, (2010) 9 JT 177 : (2010) 12 SCC 254 : (2010) 10 SCR 651 : (2010) 8 UJ 3896 took notice thereof and held that on the basis of similar allegation two FIRs should not be allowed to survive. The aforesaid view has further been ret-iterated in Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation and Another, (2013) 3 ABR 1116 : (2013) 4 AD 449 : AIR 2013 SC 3794 : (2013) CriLJ 2313 : (2013) 2 Crimes 171 : (2013) 4 JT 333 : (2013) 2 RCR(Criminal) 819 : (2013) 5 SCALE 407 : (2013) 6 SCC 348 : (2013) AIRSCW 2353 : (2013) 2 Supreme 705 as well as Anju Chaudhary Vs. State of U.P. and Another, (2013) CriLJ 776 : (2013) 1 CTC 714 : (2012) 12 JT 582 : (2013) 1 RCR(Criminal) 686 : (2012) 12 SCALE 619 : (2013) 6 SCC 384 : (2013) AIRSCW 245 .

14. In Amitbhai Anilchandra v. CBI (supra), the Apex Court has further laid following criteria in order to distinguish the events taking into account the earlier judicial pronouncement on this score.

"(i). In case the FIRs are not in respect of the same cognizable offence or the same occurrence giving rise to one or more cognizable offences nor are they alleged to have been committed in the course of the same transaction or the same occurrence as the one alleged in the first FIR. Rameshchandra Nandlal Parikh Vs. State of Gujarat and Another, AIR 2006 SC 915 : (2006) 2 BC 178 : (2006) CriLJ 964 : (2006) 1 CTC 489 : (2006) 194 ELT 140 : (2006) 1 JT 326 : (2006) 1 SCALE 254 : (2006) 1 SCC 732 : (2006) 1 UJ 586 : (2006) AIRSCW 319 : (2006) 1 Supreme 195 .

(ii). Where the incident is separate and the offences are similar or different, or where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first. Anju Chaudhary Vs. State of U.P. and Another, (2013) CriLJ 776 : (2013) 1 CTC 714 : (2012) 12 JT 582 : (2013) 1 RCR(Criminal) 686 : (2012) 12 SCALE 619 : (2013) 6 SCC 384 : (2013) AIRSCW 245 .

(iii). Where several distinct offences/incidents have been reported. In such a case the investigating agency should issue separate FIRs under Section 154(1) Cr.P.C. M/s. Jagathi Publications Ltd. Vs. Central Bureau of Investigation, Hyderabad, (2012) 2 ALD(Cri) 762 : (2012) 2 ALT(Cri) 285 : (2013) CriLJ 118 .

(iv). To cryptic, anonymous or oral messages which do not clearly specify a cognizable offence and cannot be treated as an FIR. No exception can be taken if, upon receipt of proper information, another detailed FIR is recorded, and the detailed FIR is treated as the FIR. Tapinder Singh Vs. State of Punjab and Another, AIR 1970 SC 1566 : (1970) CriLJ 1415 : (1970) 2 SCC 113 : (1970) 1 SCC(Cri) 328 : (1971) 1 SCR 599 . Vikram and Others Vs. State of Maharashtra,

(2007) CriLJ 3193 : (2007) 7 JT 215 : (2007) 6 SCALE 698 : (2007) 7 SCR 185 : (2007) AIRSCW 3392 : (2007) 4 Supreme 698 .

(v). Where, for an earlier period, there was an FIR which was duly investigated into and culminated in a final report which was accepted by a Competent Court. M. Krishna Vs. State of Karnataka, AIR 1999 SC 1765 : (1999) CriLJ 2583 : (1999) 1 Crimes 109 : (1999) 1 JT 540 : (1999) 1 SCALE 561 : (1999) 3 SCC 247 : (1999) 1 SCR 780 : (2000) 1 SLJ 106 : (1999) AIRSCW 1500 : (1999) 2 Supreme 222 .

(vi). Where the earlier complaint was decided on insufficient material or was passed without understanding the nature of the complaint, or where complete facts could not be placed before the court and the applicant came to know of certain facts after the disposal of the first complaint. In such cases the test of full consideration of the complaints on merits must be applied. Shiv Shankar Singh Vs. State of Bihar and Another, (2012) 1 Crimes 16 : (2011) 13 JT 319 : (2012) 1 RCR(Criminal) 14 : (2011) 13 SCALE 75 : (2012) 1 SCC 130 .

(vii). In cases where there are different versions, they are in respect of two different incidents/crimes, and when new discovery is made on factual foundations. Discoveries may be made by the police authorities at a subsequent stage and can also surface in another proceeding. Nirmal Singh Kahlon Vs. State of Punjab and Others, AIR 2009 SC 984 : (2009) CriLJ 958 : (2008) 12 JT 331 : (2008) 14 SCALE 639 : (2009) 1 SCC 441 : (2009) 2 SLJ 371 : (2009) AIRSCW 60 : Babubhai Vs. State of Gujarat and Others, (2010) 9 JT 177 : (2010) 12 SCC 254 : (2010) 10 SCR 651 : (2010) 8 UJ 3896 .

(viii). even in cases where the first complaint is registered and investigation initiated, it is possible to file a further complaint based on the material gathered during the course of investigation. (Upkar Singh Vs. Ved Prakash and Others, AIR 2004 SC 4320 : (2004) CriLJ 4219 : (2004) 7 JT 488 : (2004) 7 SCALE 563 : (2004) 13 SCC 292 : (2004) AIRSCW 5017 : (2004) 6 Supreme 528 : (Ram Lal Narang Vs. State (Delhi Administration), AIR 1979 SC 1791 : (1979) CriLJ 1346 : (1979) 2 SCC 322 : (1979) SCC(Cri) 479 : (1979) 2 SCR 923).

(ix). Where two FIRs are lodged in respect of the same incident having materially different allegations of commission of different cognizable offences. (T.T. Antony Vs. State of Kerala and Others, AIR 2001 SC 2637 : (2001) CriLJ 3329 : (2001) 3 Crimes 276 : (2001) 5 JT 440 : (2001) 4 SCALE 348 : (2001) 6 SCC 181 : (2001) 3 SCR 942 : (2001) AIRSCW 2571 : (2001) 5 Supreme 131 : Upkar Singh Vs. Ved Prakash and Others, AIR 2004 SC 4320 : (2004) CriLJ 4219 : (2004) 7 JT 488 : (2004) 7 SCALE 563 : (2004) 13 SCC 292 : (2004) AIRSCW 5017 : (2004) 6 Supreme 528 .

(x). to a counter claim by the accused in the first complaint, or on his behalf, alleging a different version of the said incident. In case there are rival versions in respect of the same episode, it would be treated as two different FIRs and investigation can be carried under both of them by the same investigating

agency. Upkar Singh Vs. Ved Prakash and Others, AIR 2004 SC 4320 : (2004) CriLJ 4219 : (2004) 7 JT 488 : (2004) 7 SCALE 563 : (2004) 13 SCC 292 : (2004) AIRSCW 5017 : (2004) 6 Supreme 528 ; Kari Choudhary Vs. Most. Sita Devi and Others, AIR 2002 SC 441 : (2002) CriLJ 923 : (2002) 1 Crimes 11 : (2002) 1 DMC 318 : (2001) 10 JT 361 : (2001) 8 SCALE 445 : (2002) 1 SCC 714 : (2002) 1 UJ 206 : (2001) AIRSCW 5051 : (2001) 8 Supreme 706 : Ashok Kumar Tiwari and Others Vs. State of U.P. and Another, (2008) CriLJ 4668 .

(xi). Where the FIRs are regarding independent and distinct offences, registration of a subsequent FIR can not be prohibited on the ground that some other FIR had been filed against the petitioner in respect of other allegations made against him. Rameshchandra Nandlal Parikh Vs. State of Gujarat and Another, AIR 2006 SC 915 : (2006) 2 BC 178 : (2006) CriLJ 964 : (2006) 1 CTC 489 : (2006) 194 ELT 140 : (2006) 1 JT 326 : (2006) 1 SCALE 254 : (2006) 1 SCC 732 : (2006) 1 UJ 586 : (2006) AIRSCW 319 : (2006) 1 Supreme 195 .

(xii). In cases where the same group of people commit offences in a similar manner in different localities falling under different jurisdictions. Even if these incidents are committed in close proximity of time, there can be separate FIRs. (Anju Chaudhary Vs. State of U.P. and Another, (2013) CriLJ 776 : (2013) 1 CTC 714 : (2012) 12 JT 582 : (2013) 1 RCR(Criminal) 686 : (2012) 12 SCALE 619 : (2013) 6 SCC 384 : (2013) AIRSCW 245)."

15. In the aforesaid facts and circumstance of the case, the subsequent prosecution lodged by virtue of Bhairo Asthan P.S. Case No. 92 of 2013 along with the order impugned dated 25.3.2014 passed by the Additional Chief Judicial Magistrate, Jhanjharpur is hereby quashed.

16. Petition is allowed.

17. However, it will be opened to the O.P. No. 2 to invoke jurisdiction under Section 319 of the Cr.P.C. in case there happens to be material at her end during course of trial against the non-sent-up accused in connection with Mahila P.S. Case No. 66 of 2013 and if so prayed, the learned lower court will pass appropriate order in accordance with law without being influenced by the instant order.