(2016) 04 PAT CK 0107

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 730 of 2015; (Arising Out of PS.Case No. - 6 Year - 2015 Thana - Economic Offence Wing District - Patna)

Manish Kumar — APPELLANT

Vs

State of Bihar & Another — RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 154

Citation : (2016) 3 ECrC 84 : (2016) 3 PLJR 956

Hon'ble Judges : Mr. Ashwani Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Ramakant Sharma, Sr. Advocate and Mr. Rajesh Kumar, Advocate, for the Appellant; Mr. Vishwanath Pd. Sinha, Sr. Advocate and Ms. Soni Srivastava, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Ashwani Kumar Singh, J. (Oral) - The present application has been filed for quashing of the first information report (for short "FIR") of the Economic Offence P. S. Case No. 6 of 2015 registered on the basis of the written report submitted by one Alok Kumar Singh on the 8th of October, 2014 to the Inspector General of Economic Offence Unit, Bihar, Patna.

2. The informant Alok Kumar Singh claims to be the Managing Director of M/s Rajmani Property Private Limited having its registered office at Ashok Nagar, Kadaru, Ranchi. He has stated in his written report that he met the petitioner no. 1 Antika Kumari and the petitioner no. 2 Shyam Babu Singh at Ranchi in the course of collecting information for obtaining the tender of Ranchi Airport at Ranchi. The petitioner no. 1 introduced herself as one of the Directors of one Antika Construction & Suppliers Private Limited (for short "the Company in question"), and both the petitioners no. 1 and 2 informed him that for obtaining the tender of Ranchi Airport, huge amounts of money and also a lot of clout are

required. They told the informant that there is no possibility that he would succeed in obtaining the tender by himself. They also said that since the petitioner no. 2 is in police service and also has good political contacts, he would manage to obtain the tender in the name of the Company in question. However, they revealed that the only problem they were facing was that they did not possess enough money. They required Rs.3 crore as margin money for the said tender which was not available with them. They proposed to the informant that if he provided Rs.1.50 crores to the petitioners, they would give him interest at the rate of 18% on the aforesaid amount. They assured safe, sure and timely reimbursement of the entire principal amount as well as the promised interest within a three months period. However, they were not ready to issue any negotiable instrument in his favour and informed him that business relationships depends on mutual trust and faith. The informant has further alleged in his written report that the petitioner no. 2, Shyam Babu Singh, persuaded him to deposit the aforesaid amount in the accounts of his wife Antika Kumari (petitioner no. 1) and his son Manish Kumar (petitioner no. 3) who are the Managing Directors of the Company in question.

3. The informant has further stated that being a businessman, he thought that if the entire principal amount was paid by him to the petitioners through RTGS and cheques from his accounts, then that fact would be enough proof of the payment of the said principal amount to the petitioner no. 1 and to the Company in question, by him. He also thought that the words of assurance given by the petitioners no. 1 and 2 for repayment of the said principal amount and the interest thereon seemed genuine and reliable. Hence, he accepted the said proposal of the petitioners no. 1 and 2 and became ready to provide Rs.1.50 crore to them to obtain the said tender in the name of the Company in question, expecting to get a good return on his money which was lying idle. He made payment of the said money in instalments between 20.1.2014 and 12.05.2014 from his personal account, accounts of his family members and the account of his Company, Rajmani Property Private Limited, to the accounts of the petitioner no. 1, namely, Antika Kumari, and the Company in question. After receiving the aforesaid amount, the petitioners, especially the petitioners no. 1 and 2, again assured him of payment of good return on the said amount and safe, sure and timely repayment of the principal. He waited till the agreed period of three months for the said payments but when the payment was not made at the end of this time, he made representations before the petitioners for the same. Whenever he met them for payment of agreed interest amount and reimbursement of the principal amount, they assured him that they would make the payment by the next day fixed by them, but they never did so.

4. The informant further alleges in his written report that when a deeper enquiry was made by him, he came to know that the Company in question had not participated in the tender of the Ranchi Airport and thus no contract had been allotted to it. He also came to know that the entire deal was a conspiracy hatched up by the petitioners in order to cheat him. On 07.10.2014, when he

went to the office of the Company in question, he found all the petitioners sitting there and when he questioned them regarding the return of the aforesaid amounts, they said that they had taken the money with no intention of returning the same even at the time of taking the money, else they would have issued post dated cheques in his favour. When the informant said that the amount paid by him was his hard earned money, the petitioners became aggressive, abused him and ordered him to leave the office. They also threatened that if any case was filed against them, all the family members of the informant would be implicated in false and fabricated cases and his entire family would be ruined.

5. On the basis of the aforesaid information given by the informant Alok Kumar Singh, an inquiry was made by one Akhauri Bhupendra Sahay, an Inspector of Police, who submitted a report to the Superintendent of Police, Economic Offences Unit, Bihar, Patna. In his report, he contended that the inquiry revealed that the informant Alok Kumar Singh had transferred Rs.1.17 crore from his accounts maintained with Bank of India, Ranchi, Union Bank of India, Ranchi and Oriental Bank of Economic, Gurgaon to the account of the Company in question. Another Rs.2 lakhs were transferred from the account of the informant?s mother at Bank of India, Rs.24 lakh from the account of the informant?s father, and Rs.2 lakh from the account of the informant?s staff, Chandan Kumar Bhagat, to the account of the Company in question between 20.01.2014 and 12.04.2014 through RTGS, NEFT and by cheque, and a further Rs.5 lakh in cash was paid to the petitioner no. 2 without any due receipt. The inquiry report further discloses that the petitioner no. 2, Shayam Babu Singh, was a Government servant and his activities required a deeper investigation as he was the Chief Patron of the Company in question. On receipt of the aforesaid inquiry report submitted by the Inspector of Police, the aforesaid Economic Offence P. S. Case No. 6 of 2015 was registered and the investigation was taken up.

6. It has been contended by Mr. Ramakant Sharma, learned Senior Counsel for the petitioners, that the allegations made in the present case are identical to the allegations made in Doranda Argora P. S. Case No. 88 of 2015 registered on 04.02.2015 against the petitioners under Sections 403, 406, 420, 408 and 504/34 of the Indian Penal Code on the basis of complaint made by the aforesaid Alok Kumar Singh in the court of learned Judicial Magistrate, Ranchi vide Complaint Case No. 2914 of 2014, which was referred to the police under Section 156(3) of the Code of Criminal Procedure, 1973 (for short "CrPC") for investigation and pursuant to which an FIR was instituted. Mr. Ramakant Sharma further contended that the two FIRs filed in Ranchi, Jharkhand and Patna, Bihar are identical in all respects except language. The allegations in the case instituted in Jharkhand were made in English, whereas the allegations made in the present case are in Hindi. He has submitted that the instant FIR is thus in the nature of second FIR under Section 154 of the CrPC and is thus not valid in the eye of law.

7. On the other hand, Mr. Vishwanath Prasad Sinha, learned Senior Counsel for

the respondent- Economic Offences Unit, Bihar, Patna has contended that on the basis of aforesaid allegations made by the complainant Alok Kumar Singh, the Superintendent of Police, Economic Offence Unit, Bihar, Patna was directed by the Inspector General of Police, Economic Offence Unit to depute an Inspector Rank Officer to inquire into the allegations, and accordingly, Sri Akhauri Bhupendra Sahai was deputed to inquire into the complaint and report. The said officer held a detailed inquiry on each and every aspect of the matter and submitted a report to the Superintendent of Police, Economic Offence Unit on 24.02.2015 wherein he concluded that the petitioners, in the name of contract, had deceived and defrauded the complainant and got money transferred in the account of the Company in question. He also put forth that the petitioner no. 2 was instrumental in the entire transaction and was the overall in-charge of the affairs of the Company in question, and that he, even though a public servant, had earned disproportionate assets under the garb of a sham company. Accordingly, the Inquiry officer found the complaint to be prima facie true.

8. Mr. Sinha, learned Senior Counsel, admitted that the allegations made by the complainant Alok Kumar Singh in Doranda Argora P. S. Case No. 88 of 2015 and the present case (Economic Offence P. S. Case No. 6 of 2015) are one and the same except they are in different languages. He submits that though the provisions of Prevention of Corruption Act, 1988 (for short "PC Act") were not included in the aforesaid FIR, the Investigating Officer of the case had approached the learned Additional Chief Judicial Magistrate, Danapur, Patna by filing a petition on 24.06.2015, requesting the court to permit him to add Section 13(1)(e) read with 13(2) of the PC Act into the FIR. The investigation revealed that even though the petitioner no. 2, Shyam Babu Singh is a Sub Inspector of Police posted in the Special Branch of Police Department (at present under deputation to B.M.P.05) and thus a public servant, he had earned assets disproportionate to his known source of income. He contended that besides the fact that he has disproportionately acquired assets, he has been found to be the kingpin behind the entire fraud and cheating of the informant. Mr. Sinha argued that the investigation of the present case revealed a huge conspiracy and, hence, the present FIR cannot be held to bad in the eye of law.

9. In reply, Mr. Ramakant Sharma, learned Senior Counsel for the petitioners has contended that the petitioner no. 2 Shyam Babu Singh has no concern with the affairs of the Company in question. The Company in question is a juristic person. It is the petitioners no. 1 and 3, the wife and the son respectively of the petitioner no.2, who are the Managing Directors of the Company in question. He has contended that the Company in question has filed its return before the Registrar of the Companies and it has also filed its income tax return for the financial years 2013-14 and 2014-15 fully describing the transaction of the Company in the balance-sheet. He has also contended that the present case lodged by the Economic Offences Unit on the same subject matter and the same set of facts as the one lodged in Jharkhand is nothing but an abuse of the process of the Court. He has also contended that the application filed by the

Investigating Officer in the Court of ACJM, Danapur for adding Section 13(1)(e) read with 13(2) of the PC Act was rejected by the learned ACJM vide order dated 01.07.2015, and the same has not been challenged by the respondent-Economic Offences Unit before any Superior Court and, thus, the order passed by the learned ACJM is final in nature.

10. Mr. Satyawart Verma, learned counsel for the State of Jharkhand, submits that the State of Jharkhand has nothing to say about the merit of the case being investigated by the Economic Offence Unit, Bihar, Patna. However, he contends that from a bare perusal of the two FIRs, it would be apparent that the allegations made therein are identical in nature. He has submitted that the case at Ranchi was instituted on 04.02.2015 and is under investigation whereas the present case has been instituted at Patna subsequently on 03.04.2015.

11. I have heard learned counsel for the parties and carefully perused the record.

12. The rival parties are in agreement that the allegations made in the present case are identical except for the only difference that the FIR which was instituted at Ranchi, Jharkhand was in English and the present case is a translated version of it and is in Hindi.

13. In order to examine the legal issues raised by the rival parties, it would be appropriate to consider the relevant provisions of the CrPC, first.

14. Section 154 of the CrPC places a duty upon the Officer-in-Charge of the Police Station to register an FIR upon receipt of information about a cognisable offence. It is a settled principle of law that two FIRs cannot be registered for the same offence. The safeguard provided under the CrPC against institution of the second FIR is based on the principle akin to those of double jeopardy, rule of fair investigation and prevention of abuse of power by the investigating authority of the police. There is always a possibility that more than one piece of information may be given to the Officer-in-Charge of a Police Station in respect of the same incident. Under such circumstances, only the earliest or the first information with regard to the commission of a cognisable offence would satisfy the requirement of section 154 of CrPC and all other materials and information given to or received otherwise by the Investigating Officer would be statements made during investigation of the case. A second FIR may, however, be validly instituted only in certain circumstances such as : (a) where the incidents are separate and independent, or (b) where the offences, whether they may be similar or different, are committed in course of single incident, or (c) where the subsequent offence is of such a magnitude that it does not fall within the ambit and scope of the FIR recorded first. On coming to know about the commission of a cognisable offence, it is the duty of the Investigating Officer to commence investigation as provided under section 156 or 157 of the CrPC. On completion of investigation and on the basis of evidence collected, the Investigating Officer has to form an opinion under section 169 or 170 of the CrPC and forward his report to the Magistrate concerned under section 173(2) of the CrPC. Even after filing of such

report, if the Investigating Officer comes into possession of further information or material, there is no need to register a fresh FIR. He is empowered to make further investigations in terms of section 173(8) of the CrPC and submit a supplementary report to the Magistrate, notwithstanding the fact that the Magistrate has taken cognizance of the offence upon a police report submitted earlier.

15. Coming back to the facts of the present case, in the opinion of this Court that the allegations made in the Economic Offence P. S. Case No. 6 of 2015 do not make out any case separate and independent from the case instituted at Ranchi. It is true that the respondent- Economic Offences Unit has alleged that the preliminary inquiry has revealed certain misconduct on the part of the petitioners, specially petitioner no. 2, Shyam Babu Singh, who is a public servant posted in Bihar, which make out a case under Sections 13(1)(e) read with 13(2) of the PC Act against petitioner no. 2 which is not the subject matter of investigation of the case instituted at Ranchi. If that be so, the respondent-Economic Offences Unit could have instituted an appropriate case under the PC Act against the petitioners in the State of Bihar, which would have been independent from the allegations made in the case instituted at Ranchi. In that circumstance, there would have been no fetter on the police to investigate the case against the petitioners in Bihar and on completion of investigation to submit a report under Section 173(2) of the CrPC before the court. Unfortunately, the Economic Offences Unit has not chosen to do so. It has taken up the complaint made by the informant of Doranda Argora P. S. Case No. 88 of 2015 as the basis for institution of the FIR and started inquiry and investigation thereon. The subsequent application filed by the Economic Offences Unit in the court of ACJM, Danapur for adding the provisions of the PC Act into the FIR has been rejected as back as on 01.07.2015. There was no effort on the part of the Economic Offences Unit to challenge the said order and the order passed by the learned ACJM, Danapur thus attained finality.

16. It is further pertinent to note here that offences under the provisions of the PC Act are not triable by a court of Magistrate but are triable by the court of Special Judge. FIRs instituted under the provisions of the PC Act are also transmitted to the Jurisdictional Special Judge. A special Judge is deemed to be a Magistrate under Section 5(4) of the PC Act and is therefore clothed with all the Magisterial powers provided under the CrPC.

17. In the present case, the Economic Offence Unit neither instituted the FIR under the provisions of the PC Act, nor transmitted the same to the court of the Special Judge. On the contrary, the FIR which had been instituted under different provision of the Indian Penal Code has been transmitted to the court of Jurisdictional Magistrate. As noted above, since there is no controversy that the complainant Alok Kumar Singh had instituted his case first at Ranchi, this Court finds substance in the argument advanced by the learned Senior Counsel for the petitioners that the Economic Offence P. S. Case No. 6 of 2015 is in the nature of

second FIR.

18. In view of the well settled law that there can be no fresh investigation on receipt of every subsequent information in respect of the same cognisable offence, or the same occurrence or incident giving rise to one or more cognisable offence, the second FIR i.e. the Economic Offence P. S. Case No. 6 of 2015 cannot be sustained. Accordingly, the FIR of Economic Offence P. S. Case No. 6 of 2015 is set aside and quashed.

19. However, it is made clear that the State of Bihar and its Investigating Agency shall be at liberty to register a fresh FIR in respect of any act of omission or commission on the part of the petitioners amounting to criminal misconduct under the PC Act, and for that matter any material which the investigating agency may have collected against the petitioners during the investigation of the present case shall be saved and can be used during the investigation of such case.

20. With the aforesaid observations and directions, this writ petition stands allowed.