

(2015) 02 JH CK 0082

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2854 of 2014

Mohammed Alamgeer and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 154, 155, 156, 157, 162

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 23

Penal Code, 1860 (IPC) — Section 120B, 370(5), 420, 465, 468

Citation : (2015) 02 JH CK 0082

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Amit Kumar and Ranjit Kumar, for the Appellant; V.S. Sahay, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J.—Heard Sri P.P.N. Roy, learned senior counsel appearing on behalf of the petitioners and Sri. V.S. Sahay, learned counsel appearing on behalf of the State.

2. In this application, the petitioners have prayed for quashing the entire criminal proceedings in connection with Mahagama P.S. Case No. 80 of 2014 corresponding to G.R. No. 780 of 2014 which has been registered for the offences punishable under Sections 370(5), 420, 465, 468 and 120B of the Indian Penal Code and Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

3. The prosecution story in the First Information Report which has been registered on the basis of a letter of the Superintendent of Police, Godda is with respect to illegal trafficking of children from Jharkhand to Kerala. It is alleged that as per letter dated 13.06.2014 addressed to the Superintendent of Police, Godda by Regional Deputy Superintendent of Police, CID, Ranchi a direction was

received for verification and needful action with respect to a news published in a newspaper about the illegal trafficking of children to Kerala. It has further been stated that the investigating officer went to Palakkad in the State of Kerala along with his team on 05.06.2014 and made a verification with the help of the local police about the rescue of 456 minor children from the train, all of whom belonged to the State of Jharkhand and Bihar.

4. In course of verification, it was disclosed that 226 boys and 230 girls totalling 456 in number were rescued on 24.05.2014 from coach No. S/9 to S/14 of Patna Arnakullam Express and the majority of the children were brought without ticket for which railway department had imposed a penalty of Rs. 1,25,000/- and which was deposited by some unknown person. In course of investigation, it was also detected that several persons including the petitioners on the pretext of giving good education had allured those children to Kerala. It was also alleged therein that the children had disclosed that Rs. 1,500/- per child were taken from their parents and they were made to travel in Patna Arnakullam Express without any ticket and on the basis of a false identity card and they were also not provided with food. In course of investigation, it also came to light that in the State of Kerala, there are many orphanages and the said orphanages get huge aid from the Government and foreign institutions for running the orphanages in a proper manner and for providing good education to the orphans admitted there. It was also alleged therein that children were kept in the orphanages in spite of the fact that their parents are alive in order to receive the grant from the various institutions.

5. Based on the aforesaid allegations, Mahagama P.S. Case No. 80 of 2014 corresponding to G.R. No. 780 of 2014 was registered against the accused persons including the petitioners for the offences punishable under Sections 370(5), 420, 465, 468 and 120B of the I.P.C. and Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

6. The learned senior counsel for the petitioners has submitted that the institution of Mahagama P.S. Case No. 80 of 2014 is contrary to the settled principles of law in view of the fact that with respect to the same allegations, an FIR had already been instituted in Railway Police Station Palakkad which has been registered as R.P.S. Palakkad P.S. Case No. 48 of 2014 dated 25.05.2014. The learned senior counsel thus submits that since an FIR was already registered on 25.05.2014, the police was precluded from registering a subsequent FIR based on the same allegations and as such the subsequent FIR being Mahagama P. S. Case No. 80 of 2014 deserves to be quashed. In this context, he has referred to the judgments of the Hon'ble Supreme Court delivered in the case of T.T. Antony Vs. State of Kerala and Others, , Babubhai Vs. State of Gujarat and Others, and Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation and Another, .

7. The learned counsel for the State, on the other hand, has submitted that merely because an FIR was instituted in Kerala the same does not prevent the

police from instituting another FIR as the law does not prohibit registration and investigation of two FIRs in respect of same incident having different versions of the event. In this context, he has referred to the judgment of the Hon'ble Supreme Court in the case of Shiv Shankar Singh Vs. State of Bihar and Another, .

8. After having heard the learned counsel for the parties and after going through the records, I find that with respect to the trafficking of children on 25.05.2014 when 456 children were rescued who were travelling without any valid ticket and out of whom several children had their identity cards which disclosed that they are residential students of Mukkam orphanage, Palakkad Railway P. S. Case No. 48 of 2014 was registered against the accused persons including the petitioners of the present case. The contents of the FIR with respect to the case instituted in the district of Palakkad in the State of Kerala and that of Mahagama Police Station in the district of Godda in the State of Jharkhand are virtually same and similar. Both the cases were instituted against the petitioners with respect to the same offence of illegal trafficking of children without their being any valid ticket from the State of Bihar and Jharkhand to the State of Kerala.

9. In the case of "T.T. Antony Vs. State of Kerala and others" (supra), while considering the feasibility of a second FIR on the same set of offences it was held thus:

"20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigating on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported 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 file one or more reports as provided in Section 173 CrPC." 10. In the case of "Babubhai Vs. The State of Gujarat and others" (supra) while considering the "sameness" with respect to two FIRs, it was held as under:

"21. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/ crimes, the second FIR is permissible. In case in respect of the same incident the

accused in the first FIR comes forward with a different version or counterclaim, investigation on both the FIRs has to be conducted." 11. In the case of "Amit Bhai Anil Chandra Shah Vs. CBI and another" (supra), while relying on the law laid down in "T.T. Anthony Vs. State of Kerala" (supra) it was held as follows:

"38. Mr. Raval, learned ASG, by referring T.T. Antony submitted that the said principles are not applicable and relevant to the facts and circumstances of this case as the said judgment laid down the ratio that there cannot be two FIRs relating to the same offence or occurrence. The learned ASG further pointed out that in the present case, there are two distinct incidents/occurrences, inasmuch as one being the conspiracy relating to the murder of Sohrabuddin with the help of Tulsiram Prajapati and the other being the conspiracy to murder Tulsiram Prajapati - a potential witness to the earlier conspiracy to murder Sohrabuddin. We are unable to accept the claim of the learned ASG. As a matter of fact, the aforesaid proposition of law making registration of fresh FIR impermissible and violative of Article 21 of the Constitution is reiterated and reaffirmed in the following subsequent decisions of this Court: (1) Upkar Singh V. Ved Prakash, (2) Babubhai V. State of Gujarat, (3) Chirra Shivraj V. State of A.P., and (4) C. Muniappan V. State of T.N. In C. Muniappan this Court explained the "consequence test" i.e., if an offence forming part of the second FIR arises as a consequence of the offence alleged in the first FIR then offences covered by both the FIRs are the same and, accordingly, the second FIR will be impermissible in law. In other words, the offences covered in both the FIRs shall have to be treated as a part of the first FIR." 12. In context of the judgments rendered by the Hon'ble Supreme Court referred to above, it has to be seen by applying the test of "sameness" as to whether the offences alleged in both the FIRs are from the same transaction or arose out of two different incidents. As has been discussed earlier, the case lodged at Palakkad in the State of Kerala was with respect to the illegal trafficking of children from the State of Bihar and Jharkhand and in course of checking 456 children were rescued who were travelling without any valid ticket and most of the said children did not even have any identity card with them. Accordingly, the FIR was instituted in which the name of the petitioners figure as accused. This FIR instituted on 25.05.2014 was followed by another FIR in Mahagama Police Station which was instituted on 15.06.2014. The allegations levelled in the FIR is in direct proximity with the incident which had taken place in Palakkad and the case registered as Mahagama P.S. Case No. 80 of 2014 includes a report of the Deputy Superintendent of Police, Crime Investigation Department which is on the basis of cursory investigation into the incident of illegal trafficking. The FIR instituted at Kerala is with respect to rescuing 456 children travelling by Patna Arnakulam Express without any valid tickets, but the second FIR is on the basis of a report which alleges as to how the accused persons on allurement of giving good education admitted them in the orphanages in Kerala which gets substantial aids from various institutions. The second FIR is on a wider canvas, although the basis of instituting both the FIRs are the same. Therefore, in such circumstances it would be appropriate to not

only apply the test of "sameness", but also the test of "consequence" as has been laid down by the Hon"ble Supreme Court in the case of C. Muniappan and Others Vs. State of Tamil Nadu, and which has been discussed in the case of "Amit Bhai Anil Chandra Shah" (supra) and which lays down that if the offence being part of the second FIR arises as a "consequence" alleged in the first FIR then offences covered by both the FIRs are the same and accordingly the second FIR will be impermissible in law.

13. Accordingly, on application of the test of "sameness" and the test of "consequence" in the facts of the present case it appears that the incident which led to the filing of the FIRs are one and the same whereas, in the second FIR that is, Mahagama P.S. Case No. 80 of 2014 further allegations have been levelled which is a consequence of the first FIR lodged in Kerala and therefore, the second FIR instituted against the petitioners is impermissible in the eye of law and the same is liable to be quashed.

14. Reverting back to the arguments of the learned counsel for the State that the law does not prohibit registration and investigation of two FIRs of same incident, he has referred to the case of Shiv Shankar Singh Vs. State of Bihar and Another, wherein it was held as follows:

"18. Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit." 15. The aforesaid judgment referred to by the learned counsel for the State is not applicable in the facts and circumstances of the case because the conditions in which a second FIR is permissible and which has been laid down by the Hon"ble Supreme Court in the decision of "Shiv Shankar Singh" (supra) is not fulfilled. Moreover, the incidents being the same, both the versions also being the same except for the fact that a preliminary investigation was carried out by the police before institution of the Mahagama P. S. Case No. 80 of 2014 and as been held above, the second FIR is a consequence of the first FIR and therefore, the same cannot be allowed to be sustained.

16. Regard being had to the discussions made above, this application is allowed. The entire criminal proceedings in connection with Mahagama P.S. Case No. 80 of 2014 corresponding to G.R. No. 780 of 2014 is quashed.