

(2012) 04 JH CK 0034

In the Jharkhand High Court

Case No : Criminal Revision No. 54 of 2011

Prakash Chandra Gandharav and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Arms Act, 1959 — Section 25(1B)(a), 26, 35

Criminal Procedure Code, 1973 (CrPC) — Section 154, 157, 162, 169, 170

Penal Code, 1860 (IPC) — Section 323, 34, 341, 342, 406

Citation : (2012) 3 JCR 593

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Kailash Prasad Deo and Gourav Ashish Kumar, for the Appellant;
Sadhna Kumar, APP, for the State, for the Respondent

Final Decision : Allowed

Judgement

H.C. Mishra, J.—Heard Learned Counsel for the petitioner and Learned Counsel for the State. Petitioners have challenged the order dated 23.12.2010 passed by learned A.C.J.M. Dumka in G.R. No. 1546 of 2005/T.R. No. 105 of 2010, whereby the application filed by the petitioners u/s 239 of the Cr. P.C. for discharge, was rejected by the Court below.

2. It appears that one Jama P.S. Case No. 77 of 2001 dated 26.6.2001 was lodged by the petitioner No. 1 Prakash Chandra Gandharav, in which one Anil Sharma was made accused on the allegation that he along with three persons had come to the house of the informant for threatening to compromise an earlier case between the parties and he had threatened the informant with pistol, whereupon he was apprehended and produced before the police with a pistol, whereas the other persons accompanying the said Anil Sharma, had managed to flee away. It appears that the said case was investigated by police wherein final form was submitted by the police on 29.9.2001. The FIR of Jama P.S. Case No. 77 of 2001 and the final form filed in the said case have been brought on record

as Annexures-6 and 6/1 to this revision application. It appears that against the submission of the final form the petitioner Prakash Chandra Gandharav had filed a protest petition, which was treated as complaint case and ultimately, a prima facie case was found against the accused and the case is still pending.

3. For the occurrence of the same date. i.e. 26.6.2001, another Jama P.S. Case No. 78 of 2001 was instituted on the basis of the written application of Anil Maraiya, who is the same person Anil Sharma, making allegations against the petitioners for assaulting him and the case was instituted under Sections 341, 342, 323, 504/34 of the IPC. It appears that after the final form was submitted in Jama P.S. Case No. 77 of 2001 on 29.9.2001, application was filed on 27.11.2001, in Jama P.S. Case No. 78 of 2001 for adding Sections 406, 420 of the IPC and Section 25(1-B)(a)/26/35 of the Arms Act. on the allegation that the pistol, that was said to have been recovered from Anil Sharma, was actually planted by these petitioners. Accordingly, the investigation was taken up. However, it appears that the charge-sheet was filed in Jama P.S. Case No. 78 of 2001 only under Sections 341, 342, 323, 406, 420, 504/34 of the IPC, for which the petitioners were put to trial in G.R. Case No. 575 of 2001/T.R. No. 422 of 2008. After facing the trial, petitioners were acquitted by Judgment dated 3.6.2008, passed in the said case by learned S.D.J.M., Dumka, which has been brought on record as Annexure-5 to this application.

4. It further appears that subsequent to the filing of the charge-sheet in the said Jama P.S. Case No. 78 of 2001 wherein the charge-sheet was not submitted against the petitioners for the offences under the Arms Act, a separate case was instituted, on the basis of the written report submitted by the S.I. of Jama Police Station on 15.12.2005, that in Jama P.S. Case No. 77 of 2001, the pistol which was produced, was actually planted by these petitioners and accordingly, for the same offence, a separate police case was instituted which was registered as Jama P.S. Case No. 135 of 2005 corresponding to G.R. No. 1546 of 2005 for offence u/s 25(1-B)(a)/26/35 of the Arms Act. After investigation, the police submitted charge-sheet against the petitioners in this case on 31.5.2008. It appears that the cognizance has been taken by the learned A.C.J.M. Dumka by-order dated 22.8.2009 which has been brought on record as Annexure-3 to this application. Subsequently, the petitioners filed an application u/s 239 of the Cr. P.C. for discharge, which was rejected by the-Court below by the impugned order dated 23.12.2010, wherein the Court below has taken note of the aforementioned facts and had rejected the application for discharge of the petitioners on the ground that the petitioners had faced the trial in Jama P.S. Case No. 78 of 2001 for separate offence, whereas the present case lodged in Jama P.S. Case No. 135 of 2005. Is for altogether a separate offence. It also appears from the impugned order as well as the order taking cognizance contained in Annexure-3, that the charge-sheet was submitted by the police after expiry of the three years and the learned A.C.J.M. had taken cognizance u/s 25(1-B) (a) of the Arms Act after condoning the delay in filing the charge-sheet. However there was no limitation u/s 468 of the Cr. P.C., for taking cognizance for

the offence u/s 26 of the Arms Act.

5. Learned Counsel for the petitioners has submitted that the impugned order passed by the Court below is absolutely illegal in as much as, there is no provision u/s 468 of the Cr. P.C., for condoning of delay in submitting charge-sheet. It has also been submitted by the Learned Counsel that actually for the same offence, a second FIR has been instituted by the police against the petitioners, which is absolutely illegal and which could not have been allowed. Learned Counsel has also placed reliance upon the decision of the Supreme Court of T.T. Antony Vs. State of Kerala and Others, wherein it has been held that there can be no second FIR and consequently there can be no fresh investigation 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. Placing reliance upon this decision, Learned Counsel submitted that institution of the second FIR against the petitioners is absolutely illegal and accordingly, the subsequent criminal proceeding against the petitioners is fit to be quashed.

6. Learned Counsel for the respondent-State on the other hand has submitted that even though Sections 25(1-B)(a)/26/35 of the Arms Act were added in the Jama P.S. Case 78 of 2001, but the charge-sheet was not submitted for the offence under the Arms Act against the petitioners and accordingly a fresh case was instituted against the petitioners for the said offence in Jama P.S. case No. 135 of 2005. Learned Counsel submitted that they are separate offences and there was no illegality in institution of the second FIR against the petitioners for the offences under the Arms Act. Learned Counsel accordingly, submitted that there is no illegality in the impugned order worth interference in the revision Jurisdiction.

7. Having heard Learned Counsels for both the sides and upon going through the record. I find that Jama P.S. Case No. 78 of 2001 was instituted for the occurrence committed on 26.6.2001, initially for the offence under Sections 341, 342, 323 and 504 of the IPC and for the occurrence of the same date, there was another case instituted by the petitioner No. 1 which was Jama P.S. Case No. 77 of 2001 in which the accused Anil Sharma was produced before the police along with the said fire-arm alleging that he had threatened the informant with the said fire-arm. Upon investigation, final form was submitted in the said case, but the fact remains that protest petition filed by the petitioners in the said case, was treated as complaint case and the prima facie case has since been found against" the accused therein. Be that as it may, the police found that the said fire-arm was actually planted by the petitioners, and prayed for adding the offence under the Arms Act in Jama P.S. Case No. 78 of 2001, which was accordingly added by order dated 27.11.2001. No charge-sheet was filed against the petitioners in the said case for the offences under the Arms Act, and subsequently for the same occurrence and on the same allegation, another police case has been instituted against the petitioners which is Jama P.S. Case No. 135 of 2005 corresponding to

G.R. No. 1546 of 2005, out of which the present revision arises.

8. In T.T. Antony's case (supra), relied upon by the Learned Counsel for the petitioners, the Supreme Court has laid down the law as follows:--

20. From the above discussions it follows that under the scheme of the provisions of Sections 154, 755, 756, 157, 762, 769, 170 and 173, Cr PC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 54. Cr PC. Thus there can be no second FIR and consequently there can be, no fresh investigation 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. Cr PC.

(Emphasis supplied)

9. The said decision has again been relied upon and explained by the Apex Court in Babubhai Vs. State of Gujarat and Others, wherein it has been held as follows:--

20. Thus, in view of the above, the law on the subject emerges to the effect that an FIR u/s 154, Cr PC is a very, important document. It is the first information of a cognizable offence recorded by the officer in charge of the police station. It sets the machinery of criminal law in motion and marks the commencement of the investigation which ends with the formation of an opinion u/s 169 or 170. Cr PC, as the case may be, and forwarding of a police report u/s 173, Cr PC. Thus, it is quite possible that more than one piece of information be given to the police officer in charge of the police station in respect of the same incident involving one or more than one cognizable offences. In such a case, he need not enter each piece of information in the diary. All other information given orally or in writing after the commencement of the investigation into the facts mentioned in the first information report will be statements falling u/s 162, Cr PC.

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.

(Emphasis supplied)

10. Thus, from the law laid down by the Apex Court as aforementioned, it is apparent that in such cases, Court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied and if it is found that they relate to the same incident in respect of the same occurrence, the second FIR is liable to be quashed. In the present case also, I find that for the same allegation, that the petitioners had planted the fire-arm with accused Anil Maraiya @ Anil Sharma, who was produced before the Police in Jama P.S. case No. 77 of 2001, the offences under Arms Act were instituted against the petitioners In Jama P.S. Case No. 78 of 2001. Subsequently for the same offence, Jama P.S. Case No. 135 of 2005 has been instituted against the petitioners and in view of the law laid down by the Apex Court in T.T. Antony's case (supra) explained in Babubhai's case (supra), the same cannot be allowed to be continued and second FIR is fit to be quashed.

11. In view of the aforementioned discussions, I am of the considered view that the impugned order dated 23.12.2010 rejecting the application filed by the petitioners for discharge, as also the Institution of the second FIR in Jama P.S. Case No. 135 of 2005 corresponding to G.R. No. 1546 of 2005, against the petitioners, are absolutely illegal and wholly without jurisdiction and cannot be sustained in the eyes of law. As such, the impugned order dated 23.12.2010 passed by the learned A.C.J.M. Dumka In G.R. Case No. 1546 of 2005/T.R. No. 105 of 2010, as also the institution of the second FIR in Jama P.S. Case No. 135 of 2005 corresponding to G.R. No. 1546 of 2005, are hereby quashed. Consequently the petitioners, above named, stand discharged from the said case. This application Is accordingly, allowed.