

(2023) 09 JH CK 0030

In the Jharkhand High Court

Case No : Writ Petition (Criminal) No. 240 Of 2021

Sachchidanand Singh And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 14-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 21

Indian Penal Code, 1860 — Section 34, 353, 504, 506

Citation : (2023) 09 JH CK 0030

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Ramawatar Choubey, Priya Shrestha

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Ramawatar Choubey, learned counsel for the petitioners and Mrs. Priya Shrestha, learned counsel for the State.
2. This petition has been filed for quashing the Chatra Sadar P.S. Case No.12 of 2021 registered under Sections 353/504/506/34 of the Indian Penal Code, pending in the court of the learned Chief Judicial Magistrate, Chatra.
3. Mr. Ramawatar Choubey, learned counsel for the petitioners submits that Chatra Sadar P.S. Case No.12 of 2021 was filed pursuant to Chatra Sadar P.S. Case No.11 of 2021. He refers to the contents of Chatra Sadar P.S. Case No.11 of 2021 and submits that in the said FIR itself, the police has recorded that for search of the house and objection made by the family members, another case is being lodged. By way of referring the said contents, he submits that it is an admitted position that Chatra Sadar P.S. Case No.12 of 2021 was registered pursuant to the same transaction. He further submits that the date of occurrence in both the FIRs is dated 19.01.2021 and the occurrence time at 19:50 hours is disclosed in the first FIR, which is reiterated in the second FIR. He submits that

Sanha No.32 of 2021 dated 19.01.2021 is the subject matter of both the FIRs. On these grounds, he submits that when FIR is already there, there was no occasion to register second FIR. He also submits that in view of the judgment passed by the Hon'ble Supreme Court in the case of T.T. Antony v. State of Kerala, reported in (2001) 6 SCC 181, second FIR may kindly be quashed.

4. Mrs. Priya Shrestha, learned counsel for the respondent-State opposed the prayer made by the petitioners and submits that both are different transactions and the first case is with regard to the Arms Act, which was found from the possession of one Manish Kumar Singh, however, in the second FIR, family members interfered with the investigation and they opposed the police, that is why the second FIR has been registered. She further submits that there are two different transactions. She also submits that the judgment relied by the learned counsel for the petitioners in T.T. Antony (supra) and other similar cases are not applicable in the facts and circumstances of the present case.

5. The court has gone through the contents of the first FIR being Chatra Sadar P.S. Case No.11 of 2021, dated 19.01.2021 and finds that the said FIR was registered on 19.01.2021 at 21:10 hours. In the contents of the first FIR, it has been disclosed that on 19.01.2021 at about 19:40 hours, search operation was made on the basis of recovery of certain arms and cartridges from the possession of Manish Kumar Singh, who informed the police that the pistol is kept in his house and in the said FIR, it has been further disclosed that for search of the arms, another FIR is being registered. In the said FIR, it has also been disclosed that the family members of Manish Kumar Singh have objected the search and opposed the investigating team of police.

6. Looking into the contents of Chatra Sadar P.S. Case No.12 of 2021, the court finds that the date of occurrence is disclosed on 19.01.2021 and proceeding of the police team is stated to be 19:50 hours. Half of the story in the first FIR is also made in the second FIR and in the second FIR, 7 persons have been made accused. It appears that the summum bonum allegation of the second FIR is already there in the first FIR. In the first FIR being Chatra Sadar P.S. Case No.11 of 2021 itself, it has been stated that for interfering with the investigation of the police, second FIR is going to be registered. Thus, it is an admitted position that for same transaction, second FIR being Chatra Sadar P.S. Case No.12 of 2021 has been registered.

7. It appears that the investigation in both the cases has not been completed as yet as there is no disclosure of the fact about completion of the investigation in the counter affidavit, filed by the respondent-State.

8. Identical was the situation in Amitbhai Anilchandra Shah v. C.B.I., reported in (2013) 6 SCC 348, wherein, the Hon'ble Supreme Court has held that if the case is arising out of the same transaction and two FIRs are there, both the cases can be amalgamated and investigation can go simultaneously. Paragraphs 38 and 60 of the said judgment are quoted hereinbelow:

"38. Mr Raval, learned ASG, by referring T.T. Antony [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] 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 [(2004) 13 SCC 292 : 2005 SCC (Cri) 211] , (2) Babubhai v. State of Gujarat [(2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336] , (3) Chirra Shivraj v. State of A.P. [(2010) 14 SCC 444 : (2011) 3 SCC (Cri) 757 : AIR 2011 SC 604] , and (4) C. Muniappan v. State of T.N. [(2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402] In C. Muniappan [(2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402] 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.

60. In view of the above discussion and conclusion, the second FIR dated 29-4-2011 being RC No. 3(S)/2011/Mumbai filed by CBI is contrary to the directions issued in judgment and order dated 8-4-2011 by this Court in Narmada Bai v. State of Gujarat [(2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526] and accordingly the same is quashed. As a consequence, the charge-sheet filed on 4-9-2012, in pursuance of the second FIR, be treated as a supplementary charge-sheet in the first FIR. It is made clear that we have not gone into the merits of the claim of both the parties and it is for the trial court to decide the same in accordance with law. Consequently, Writ Petition (Crl.) No. 149 of 2012 is allowed. Since the said relief is applicable to all the persons arrayed as accused in the second FIR, no further direction is required in Writ Petition (Crl.) No. 5 of 2013."

9. In view of the above ratio, second FIR being Chatra Sadar P.S. Case No.12 of 2021 is required to be treated as part of the first FIR being Chatra Sadar P.S. Case No.11 of 2021.

10. In view of the contents of both the FIRs, as has been noted hereinabove, it is crystal clear that both the FIRs are consequential offence lodged for the first FIR being Chatra Sadar P.S. Case No.11 of 2021 and in that view of the matter, the aforesaid judgment in the case of Amitbhai Anilchandra Shah (supra) is applicable in the facts and circumstances of the present case. In view of the

judgment passed in Amitbhai Anilchandra Shah (supra), second FIR being Chatra Sadar P.S. Case No.12 of 2021 is contrary to the direction issued by the Hon'ble Supreme Court in that case.

11. Accordingly, second FIR being Chatra Sadar P.S. Case No.12 of 2021, dated 19.01.2021 registered under Sections 353/504/506/34 of the Indian Penal Code, pending in the court of the learned Chief Judicial Magistrate, Chatra is quashed.

12. As a consequence, whatever materials till date has been collected in course of investigation by the police in Chatra Sadar P.S. Case No.12 of 2021, shall be made a part of the first FIR being Chatra Sadar P.S. Case No.11 of 2021 and in view of the above, the investigation shall proceed in the first FIR being Chatra Sadar P.S. Case No.11 of 2021, in accordance with law.

13. This petition is, accordingly allowed in above terms and disposed of.

14. Pending I.A., if any, is disposed of.

15. Interim order, if any granted by this Court, stands vacated.