HIGH COURT OF PATNA

Bench: Justice Chandra Shekhar Jha

Date of Decision: 1st May 2024

CRIMINAL MISCELLANEOUS No. 15716 of 2016

Arising Out of PS. Case No.-52 Year-2013 Thana- CHAPRA TOWN District-Saran

SUNIL KUMAR SRIVASTAVA …PETITIONER(S)

VERSUS

1. **THE STATE OF BIHAR 2. CHIEF MANAGER SBI CHAPRA BRANCH, CHAPRA 3. OM JEE PRASAD 4. SHYAM SUNDAR CHAUDHARY …RESPONDENT(S)**

Legislation:

Sections 154, 156, 157, 162, 169, 170, 173, 482 of the Cr.P.C.

Article 226 of the Constitution of India

Subject: Criminal Miscellaneous application seeking quashing of orders relating to the lodging of a second FIR in a case of alleged misappropriation and fraudulent transactions involving the petitioner, a senior assistant at SBI.

Headnotes:

Criminal Law – Quashing of Second FIR – Criminal Miscellaneous Application – Quashing of the orders dated 05.03.2016 passed by the learned 5th Additional Sessions Judge, Saran at Chhapra, and the order dated 21.01.2015 passed by the learned Chief Judicial Magistrate, Saran at Chhapra, directing the lodging of a second FIR in connection with Chhapra Town P.S. Case No. 52 of 2013 – Application filed under Section 482 of Cr.P.C. citing the impermissibility of a second FIR for the same occurrence

– Supreme Court precedents including T.T. Antony v. State of Kerala (2001) 6 SCC 181 and State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 relied upon – Held that the second FIR and subsequent proceedings are an abuse of the process of law – Orders quashed. [Paras 1-12]

Second FIR – Legal Prohibition – Analysis – Held – The Supreme Court's judgments in T.T. Antony and Bhajan Lal cases clearly prohibit the lodging of a second FIR in respect of the same cognizable offense – The lodging of a second FIR would lead to a fresh investigation, which is not permissible – The court finds the actions to be manifestly attended with mala fide intentions and amounts to misuse of the judicial process. [Paras 8-10]

Decision – Quashing of Second FIR – Court quashes the orders directing the lodging of the second FIR and sets aside all consequential proceedings – Application allowed. [Para 11-12]

Referred Cases:

- T.T. Antony v. State of Kerala (2001) 6 SCC 181
- State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335

Representing Advocates:

Mr. Dineshwar Mishra, Mr. Rohan Priyam Sahay for the Petitioner

Mr. Anjani Kumar Mishra, Mr. Vijay Bardhan Pandey for SBI

Mr. Shailendra Kumar Singh for the Respondents

ORAL JUDGMENT

Date : 01-05-2024

1. This application preferred for quashing of the order dated 05.03.2016 passed in Criminal RevisionNo. 18 of 2015, as passed by the learned 5th Additional Sessions Judge, Saran at Chhapra and the order dated 21.01.2015 passed by learned Chief Judicial Magistrate, Saran at Chhapra in connection with Chhapra Town P.S. Case No. 52 of 2013.

2. The prosecution case in brief, as appears from Chhapra Town P.S. Case No. 52 of 2013, which was instituted on the written report dated 22.02.2013 of one Bhola Nath Gupta Chief Manager S.B.I., Chhapra Main Branch in which the copy of complaint made by the Opposite Party No. 2 to the Bank was also annexed, that during course of voucher verification on 07.02.2013, 14 vouchers were found missing and from enquiry it transpired that from Account No. 30180088441 of M/s. Brijwasi Bullians and Jewelers Private Limited at SBI, Lucknow Branch a total sum of Rs. 30,00,000/- (Thirty Lakhs) vide seven deposit vouchers was credited by the Petitioner (the then Senior Assistant at the SBI Chhapra Main Branch) and the entry was found authorized by Cash Officer Opposite Party No. 3 and it was further found that from another account of M/s. Brijwasi Bullians & Jewelers Private Limited bearing Account No. 18063757714 at SBI Lucknow Branch, a total sum of Rs. 30,00,000/- (Thirty Lakhs) had been debited vide seven debit vouchers, and the said debit and its approval was said to be done by the Petitioner and Opposite Party No. 3. It was further stated in the report that on 07.02.2013, M/s. Brijwasi Bullians & Jewelers Private Limited instituted a complaint by Fax in the Bank that the debited amount of Rs. 30,00,000/- (Thirty Lakh) from his account no. 10863757714 was unauthorized, as such the amount be credited in his said account. It has been further stated by the informant that on enquiry, no satisfactory reply was given by the Petitioner and Opposite Party no. 3 but on 11.02.2013, a sum of Rs. 30,06,000/- (Thirty Lakh & Six Thousand) has been got deposited in the over draft account no. 10318461651 standing in the name of Petitioner and on the same day that very amount was credited from account of Petitioner in the Account No. 10863757714 of M/s. Brijwasi Bullians & Jewelers Private Limited, whereafter complainant withdrew his complaint made to the Bank. It has been further stated that the petitioner did not follow the direction of the Bank and unauthorizedly acted and subsequently got deposited the debited amount which amount to misappropriation of Bank money. It has been further stated that one customer Omjee Prasad (Opposite Party No. 2) had filed a complaint received by Bank on 19.02.2013 in which he alleged that

he had handed over a sum of Rs. 41,60,000/- (Forty One Lakh & Sixty Thousand) to the Petitioner on 05.02.2013 for being deposited in Account No. 30180088441 which stood in the name of M/s. Brijwasi Bullians & Jewelers Private Limited but the amount was not credited in the said account. It has been said by the informant that although Opposite Party No. 2 had not shown the receiving voucher to the Bank.

3. In view of aforesaid factual allegations, Chhapra Town P.S. Case No. 52 of 2013 was lodged on 20.02.2013 which upon investigation found false and charge-sheet submitted by exonerating petitioner.

4. Learned counsel appearing for the petitioner submitted that the complainant personally lodged a criminal complaint case with same facts and allegations which was registered as complaint Case No. 338 of 2013 which was sent to police to investigate matter after lodging FIR under Section 156(3) of the Cr.P.C. It is submitted that FIR regarding same occurrence had already lodged by Bank which was registered as Chhapra Town P.S. Case No. 52 of 2013, where investigating officer of this case without registering the another FIR, as directed, investigate the complaint alongwith Chhapra Town P.S. Case No. 52 of 2013. This fact is very clear from Annexure-V, which is charg-sheet of Chhapra Town P.S. Case No. 52 of 2013, where it is clearly mentioned in the charge-sheet submitted by police that Complaint Case No. 338 of 2013 was also examined. It is submitted that the learned Additional Sessions Judge through impugned order upheld the order of learned C.J.M. Saran at Chhapra dated 21.01.2015 as to lodge FIR against complaint Case No. 338 of 2013 also which was sent to police by exercising the power under Section 156 (3) of the Cr.P.C., and if it become so, it would amount to lodging second FIR regarding same occurrence and also amounting to fresh investigation on receipt of subsequent information which is not permissible under law.

5. Learned counsel in support of his submissions referred the judgment of Hon'ble Apex Court as reported in the matters of **T.T. Antony vs. State of Kerala and others [(2001) 6 SCC 181]**. It is further submitted by learned counsel that the lodging of this FIR in terms of impugned order would only amount to misuse of the process of Court of law and is nothing but a malicious prosecution and therefore, the impugned order is fit to be quashed/set aside in terms of ratio as decided by Hon'ble Supreme Court in the case of **State of Haryana and Others vs. Bhajan Lal and Others** reported in **1992 Supp (1) Supreme Court Cases 335.**

6. Learned counsel appearing for the State Bank of India submitted that the cash in issue of complainant was received after six days. He also submitted that the petitioner is a bank employee, who was exonerated from allegation in departmental proceedings.

7. It would be appropriate to reproduce the paragraph no. 102 of the **Bhajan Lal Case (supra),** which reads as under: “102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made inthe first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontrovertedallegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of nay offence and make out a case against the accused.

(4) Where, the allegations in theFIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made inthe FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legalbar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestlyattended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. It would be appropriate to reproduce the paragraph nos. 18, 19 & 20 of **T.T.Antony Case (supra),** which read as under:

"18. An information given under sub-section (1) of Section 154 CrPC is commonly known as first information report (FIR) though this term is not used in the Code. It is a very important document. And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 CrPC. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the first information report — FIR postulated by Section 154 CrPC. All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 CrPC. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of CrPC. Take a case where an FIR mentions cognizable offence under Section 307 or 326 IPC and the investigating agency learns during the investigation or receives

fresh information that the victim died, no fresh FIR under Section 302 IPC need be registered which will be irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H — the real offender — who can be arraigned in the report under Section 173(2) or 173(8) CrPC, as the case may be. It is of course permissible for the investigating officer to send up a report to the Magistrate concerned even earlier that investigation is being directed against the person suspected to be the accused.

19. The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC.

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 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 CrPC."

9. In view of aforesaid factual and legal submissions, it appears that while submitting the charge-sheet in Chapra Towon P.S. Case No. 52 of 2013 dated 22.02.2013 police had also taken note of Complaint Case No. 338 of 2013 and thereafter, chargesheet was submitted on 30.10.2013 through charge- sheet no. 231 of 2013, any subsequent lodging of FIR in terms of impugned order of learned C.J.M., which was upheld by the order of Revisional Court vide order dated 21.01.2015 through impugned order would only amount to lodge subsequent FIR regarding same occurrence, which is not permissible under law as as per ratio settled by Hon'ble Supreme Court in **T.T. Antony Case** (supra).

10. In view of aforesaid, the impugned orderdated 05.03.2016 passed by the learned 5th Additional Sessions Judge, Saran at Chhapra in Criminal Revision No. 18 of 2015 and the order dated 21.01.2015 passed by the learned Chief Judicial Magistrate, Saran at Chapra in Chapra Town P.S. Case No. 52 of 2013, qua petitioner with all its consequential proceedings, are hereby quashed and set aside.

11. Hence, this application stands allowed.

12. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment, immediately.