

Lalit Kumar Singh and ors. Vs. the State of Bihar and anr.

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Court : Patna

Decided On : Aug-23-2006

Judge : Mridula Mishra, J.

Acts : Prevention of Corruption Act, 1998 - Sections 13(1) and 13(2); Railway Property Unlawful Possession Act - Sections 3; General Clauses Act - Sections 3(38); Indian Penal Code (IPC) - Sections 120B, 188, 379, 414, 420, 467, 468 and 471; Code of Criminal Procedure (CrPC) - Sections 154, 156, 162, 173, 173(2) and 173(8); [Constitution of India](#) - Article 20 and 20(3)

Appeal No. : Cr. Misc. Nos. 28311, 28312, 28580, 29553, 29857, 29988, 29989, 30147, 30697 and 31720 of 2006

Appellant : Lalit Kumar Singh and ors.

Respondent : The State of Bihar and anr.

Advocate for Def. : Lalit Kishore, A.A.G. III and Manish Kumar, A.P.P.

Advocate for Pet/Ap. : Chandrashekhar, S.N.P. Sinha and D.K. Sinha, Sr. Advs., L.B. Singh and Brijita Prakash, Advs.

Disposition : Application allowed

Judgement :

Mridula Mishra, J.

1. All these criminal miscellaneous applications have been filed for similar relief as such have been taken together and are being disposed of by this common order.

2. Petitioners in all these applications are Class- A-1 contractors doing contract work in various Central Government projects as well as the State Government projects including railway C.P.W.D. etc. They are alleged to have deposited the stolen National Saving Certificates (N.S.C) and Kishan Vikash Patras (K.V.P.) in connection with surety for contract. These NSCs. and KVPs. were stolen from railway wagon at Patna Railway Junction. G.R.P.S.Case No. 29 of 1998 was earlier registered on 24.2.1998 in connection with theft of crores of NSCs. and KVPs. The informant of this case was Laxman Dixit, S.I. G.R.P.F. F.I.R. was against unknown. During the course of investigation several persons were included in the list of accused including the petitioners as they furnished stolen NSCs. and KVPs as security for contract. Investigation in this case is going on though chargesheet has been submitted in case of some accused persons and cognizance has also been taken. So far the petitioners are concerned investigation against them is still continuing.

3. Petitioners have filed all these applications for quashing of the F.I.R. vide Patna Junction G.R.P.S.Case No. 225 of 2006 (Special Case No. 33 of 2004) dated 30.6.2006 under Sections 467, 468, 471, 414, 420, 120B of the Indian Penal Code, Section 13(1)(d)(1), 13(1)(c), 13(2) of the Prevention of Corruption Act, 1998 and Section 3 of the Railway Property unlawful Possession Act.

4. The prosecution case as disclosed in the written complaint by the informant Ramesh Prasad Verma, A.S.I. Patna Junction Rail Police is to the effect that he was I.O. in Rail P.S.Case No. 29 of 1998 dated 24.2.1998, and the D.I.G. (Rail) during the supervision of the case on 16.6.2006 and the office of the S.P. (Rail) issued order contained in Memo No. 1366 CR dated 24.6.2006. In compliance of these direction the informant recorded his statement as the conduct of the informant Sri Laxman Dixit, Inspector, R.P.F. (informant of G.R.P.S.Case No. 29 of 1998) was found to be suspicious. As per provision of Article 20(3) of the [Constitution of India](#), no one can be compelled to depose against himself hence Laxman Dixit could also not be compelled to depose evidence on behalf of the

prosecution. Earlier on the statement of Laxman Dixit case was instituted in which it is stated that out of parcels in the wagon certain parcels were required to be unloaded at its destination at Patna Junction and thereafter railway wagon was to be sent to Howrah after sealing it but instead of sending the wagon to Howrah after seal it remain stationed at Patna Railway Yard and the seal of the wagon was found broken on various dates at Patna Railway Yard and was resealed. As per the Rule the concerned officer was obliged to examine and take statutory action if the seal was broken but the wagon was re-sealed. If a public servant breaches any statutory provision of Rule and extends any financial gain to any person, such act is a punishable offence. The wagon was sealed on 25.12.1997 after un-loading at Patna Junction (Wagon No. CR 64037) was sealed on 25.11.1997 at Patna Junction Yard and thereafter on 22.1.1998, 2.2.1998, 8.2.1998, 10.2.1998, 16.2.1998 and 19.2.1998 its seal was found broken and was re-sealed. On 24.2.1998 Sri Laxman Dixit the then Incharge, RPF, Patna Junction informed that from the said wagon NSCs of postal Department worth Rs. 40 crores and Kishan Vikas Patra worth Rs. 40 crores have been stolen. This guess work of theft was as per entries in the loading guidance but from the fardbeyan it transpires that in the said wagon parcels packet beyond loading guidance was found which were booked from Patna to Gauhati, as such there were parcels beyond the loading guidance. The cost of security stolen may be more than 80 crores. When F.I.R. was instituted the informant was under suspension. During course of investigation it transpired that the wagon was tampered for the first time on 14.1.1998. As per the Rule at that point of time the RPF and the yard Master was required to examine jointly. The goods kept in the wagon should have been entered in the report after verification from the loading guidance. The Railway Protection Force in whose protection the wagon was kept in the railway yard its internal vigilance team suspended Sub Inspector, B.K. Singh, Constable, Dhamni Barman, Kameshwar Singh and other constables in connection with the theft on the said wagon. All these persons and the Laxman Dixit as well as the Chief Railway Yard Master Sri S.M. Sharma and Railway parcel Clerk Manoj Kumar were found guilty in this case. In course of investigation certain stolen securities of this case were used after using fictitious seal of post office for obtaining contract by depositing as security. Thus it revealed that the public servant of railway and railway protection

force committed breach of department rule and thus extended illegal financial gain to various persons. Bank loans were obtained by depositing there stolen securities. Investigation also revealed that out of OOEE Series NSC worth Rs. 7,90,000/- were seized from Golmuri, Jamshedpur for which Golmuri P.S. Case No. 182/2001 was registered on 4.9.2001 under Sections 379, 420, and 467 of the Indian Penal Code. The accused of the said case have obtained loan by depositing the stolen NSC in Union Bank of India. NSC of 19EE series KVP 46CC series were deposited in the Punjab and Singh Bank, Dhanbad for which RC 2A/01 (d) was registered. Jakkanpur P.S. Case No. 179/2004 was instituted in connection with obtaining loan from SBI, Mithapur Branch by depositing the stolen NSC and Bhagalpur Kotwali P.S. Case No. 737/2002 dated 1.11.2002 and Bhagalpur Kotwali (Ganga Bridge) P.S. Case No. 760 of 2002 dated 13.11.2002 was registered in connection with use of stolen NSC for obtaining loan from S.B.I. Tatarpur Branch, P.N.B Barari Branch and Bazar Branch. In the written report it is also mentioned that several persons were benefited out of the stolen national property and due to the enaction of the officers and personnel of railway and Railway Protection Force. The report No. 1 to 17 has already been submitted in G.R.P. P.S. Case No. 29 of 1998.

5. Chargesheet has been submitted against many persons and court has taken cognizance against certain persons but certain point escaped attention in this case and assistance of the informant could not have been obtained for prosecution aid in addition thereto, to ascertain such person who were instrumental in theft and directly or indirectly benefited out of such theft. The present case is being registered against 19 public servant including Laxman Dixit, Inspector, B.K. Singh, Sub Inspector and S.M. Sharma, Chief Yard Master and Manoj Kumar, Railway Parcel Clerk and other constables of RPF who are alleged to have committed offence under Section 188 and 120B of the Indian Penal Code and 13(1)(d)(1) and 13(1)(c) and 13(2) of the Prevention of Corruption Act. 42 persons who have illegally kept the postal security and used it and gained financially, they are charged under RPUP Act Section 3. Persons who have kept the security but have not taken step for encashing it they have been charged under Sections 467, 468, 471, 420 and 120B of the Indian Penal Code.

6. Prayer to quash the F.I.R. has been made on the following grounds:

(1) The written report has been made as per the dictate of officers of the railway for de-novo investigation of G.R.P.P.S.Case No. 29 of 1998.

(2) The written report is not for a different incident but for the same incident for which Patna Junction Rail P.S.Case No. 29 of 1998 was registered on 24.2.1998.

(3) This F.I.R. has been registered as corrective measures as per direction in the supervision note.

(4) In G.R.P.P.S.Case No. 29 of 1998 chargesheet has been submitted and cognizance has been taken against many persons as such the institution of second F.I.R is illegal. At best further investigation is permissible in law as provided under Section 173(8) Cr.P.C.

7. The institution of the second F.I.R. for the same incident is illegal and fit to be quashed.

8. Counter affidavit has been filed on behalf of the opposite party stating that the petitioners have tried to mislead this Court by projecting that in their case final report under Section 173(2) Cr.P.C. has been submitted and the police has registered a fresh case instead of further investigation under Section 173(8) Cr.P.C. after seeking due permission from the court. Interest of petitioners are not going to be affected by the institution of this case as no final form exempting them from any charge has been submitted in Patna G.R.P.S.Case No. 29 of 1998 rather investigation is continuing against them. Patna G.R.P.S.Case No. 225 of 2006 has been registered afresh, since the informant has become accused. Article 20(3) of the Constitution provides immunity to an accused from being compelled to be a witness against himself. The F.I.R. which forms the basis of the investigation, it is important for prosecution that the informant should say before the court that I being the informant registered the case to set the law in motion.

9. The evidence of Patna G.R.P. P.S.Case No. 29 of 1998 revealed that the informant did not give a complete picture or the dimension of the case and that was the reason that provisions of the Prevention of Corruption Act, 1988 were not

incorporated. The present court is not competent for the purpose of prevention of corruption act 1988 so far issuance of process, taking accused into judicial custody and cognizance of the offence is concerned. A large number of public servants are involved in the present case extend liability in terms of the provision of Prevention of Corruption Act. The matters need to be looked into by the court of Special Judge, Vigilance. If the prayer for addition of sections of the Prevention of Corruption Act would have been made before the Court of the Railway Magistrate, Patna it would have rendered the transfer of the case to the High Court. The trial/cognizance of the persons so far charge-sheeted, would have also got transferred to the Special Court, adding needless burden on the Special Court. Some questions relating to the jurisdiction and competence of the court could also have got raised.

10. In the counter affidavit it has been admitted that the present case is not a new case but simultaneously it has been said that since several facts get unearthed during investigation it gave a cause for instituting a fresh F.I.R.

11. Fresh F.I.R. has been instituted to facilitate the court so that the trials, cognizance and investigations could continue simultaneously in regard to different persons in different courts for different charges. It has also been stated that the petitioners have not been able to bring any such law which reveals registration of the fresh F.I.R. illegal when the circumstance so warrant. There is no bar to registration of cases when different views about the same incident are available. It has also been admitted in the counter affidavit that under Article 20(2) no person shall be prosecuted and punished for the same offence more than once. Till now in G.R.P. P.S. Case No. 29 of 1998 investigation is going on. Nothing has been done and nothing will be done in violation of law. It has also been stated that this Court may monitor the progress of the case.

12. From the pleading of the parties it is apparent that both G.R.P.S. Case No. 29 of 1998 and G.R.P.S. Case No. 225 of 2006 are related to the same incident, as admitted in para 15 of the counter affidavit. Point for consideration is whether second F.I.R. could, have been instituted for the same incident when investigation in the first case is still going on. The chargesheet has been submitted only against

some of the accused and so far investigation with regard to other accused including the petitioners is concerned, it is still going on.

13. The information given to the police officer of the cognizable offence and reduced to writing as required by Section 154 Cr.P.C. is known as first information. The word 'first information report' is not mentioned in the Cr.P.C. but it is understood to mean information recorded under Section 154 Cr.P.C. The object of the first information report is to set the criminal law in motion and from the point of view of the investigating authority, receiving such information about the alleged criminal activity, he can take suitable steps to press and bring guilty to picture. The F.I.R. need not contain each and every minute of the incident that occurred either prior to or subsequent to the offence. An information is sufficient to authorise the I.O. to unearth all connected matter, prior or subsequent, to the filing of the case.

14. Section 156 Cr.P.C. envisages the police officer to investigate cognizable offence. During investigation the Investigating Officer can examine the person acquainted with the facts of the case and reduce their statements in writing. Section 173 Cr.P.C. requires submission of a final report by the police officer to the Magistrate as soon as the investigation is complete. The final report submitted by the Investigating Officer is not final, where the Investigating Officer has not conducted the case properly, acted negligently, carelessly and there is material on the record that there is further scope for investigation. Such provision is there under Section 173(8) of the Cr.P.C. Final form is submitted under Section 173(2) Cr.P.C. However nothing contained in Section 173(2) of the Code precludes further investigation with respect to the offence after a report has been submitted to the Magistrate. The law does not preclude an I.O. to further investigate the case and collect further evidence. To meet such circumstances there is provision under Section 173(8) Cr.P.C. The I.O. can make further investigation even after the Magistrate takes cognizance of offence on submission of chargesheet. If there is necessity, and sufficient as well as valid ground for further investigation. So far the filing of the second F.I.R. for the same incident just to collect further evidence has been held illegal by the Apex Court in the Case of T.T. Antony v. The State of Kerala and Ors. A.I.R.2001(6) 181. In this case it has been observed 'there can be no second FIR and no fresh investigation on receipt of every subsequent

information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offence. Only information about commission of a cognizable offence which is first entered in station house diary by officer in charge of the police station can be regarded as FIR under Section 154. All such subsequent informations will be covered by Section 162 Cr.P.C. Officer in charge of the 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. Even if after conclusion of the investigation pursuant to filing of the FIR and submission of report under Section 173(2), the Officer in charge of the police station comes across any further information pertaining to the same incident, he can make further investigation, normally with the leave of the court and forward the further evidence, if any collected, with further report or reports under Section 173(8).'

15. In the present case admittedly the F.I.R. of G.R.P.P.S. Case No. 225 of 2006 relates to same incident and investigation so far the petitioners are concerned is still going on. No final form under Section 173(2) Cr.P.C. has been submitted, there is no reason for institution of the second F.I.R. in the facts and circumstances of the case. State though admitted in the counter affidavit that the present case is not a new case and it relates to the same incident in which already Railway P.S. Case No. 29 of 1998 has been registered, but has tried to justify the institution of the second F.I.R. stating that the other facts were unearthed during investigation making out offence punishable under the Prevention of corruption Act. The court of railway Magistrate is not competent to take cognizance for such offence or charge the accused for such offence or try them as such there was need for instituting second F.I.R. I do not find force in this submission. So far the offences under P.C. Act are concerned, it can be included in the same case, if evidence collected during investigation prima-facie makes out a case for such offences. If the Magistrate before whom the case is presently pending has got no jurisdiction for issuance of warrant, cognizance and trial, the case can be transferred to the court of competent jurisdiction. A prayer can be made in this regard in the pending cases for transferring the case to the court of competent jurisdiction. All offence with regard to which evidence has already been collected

can be included in that very case and warrant of arrest can be issued, cognizance can be taken and the accused persons can be tried by the court of competent jurisdiction. Filing of second F.I.R. for this purpose is neither justified nor legal. This exercise on the part of the State must be checked and restrained.

16. Counsel for the petitioners has advanced argument that the filing of the second F.I.R. is in contravention of their fundamental right under Article 20 of the Constitution. They cannot be prosecuted for the same offence and for the same cause of action twice. This argument has been countered by the counsel appearing for the State submitting that such ground is premature when the conditions for the application of Clause 2 of the Article 20 are that:

(a) There must have been previous proceeding before a Court of law or a judicial tribunal of competent jurisdiction.

(b) The person must have been 'prosecuted' in the previous proceeding.

(c) The conviction (or acquittal) in the previous proceeding must be in force at the time of second trial.

(d) the 'offence' which is the subject matter of the second proceeding must be the same as that of the first proceeding, for which he was 'prosecuted and punished'.

(e) The 'offence' must be an offence as defined in Section 3(38) of the General Clauses Act, that is to say, 'an act or omission made punishable by any law for the time being in force'. It follows that the prosecution must be valid and not null and void or abortive.

(f) The subsequent proceeding must be a fresh proceeding where he is, for the second time, sought to be 'prosecuted and punished' for the same offence.

17. These clauses have no application unless for the same offence a person has been tried convicted or acquitted. In the present case petitioners have not been either convicted or acquitted. Earlier case is also at the stage of investigation. So far the petitioners are concerned even final form under Section 173(2) has not been submitted as such they cannot take the plea that their fundamental right

under Article 20(2) of the Constitution is being infringed by institution of second F.I.R. I find substance in the argument of the counsel appearing for the State. This ground is not available to the petitioners so far stage of present case is concerned

18. Another argument which has been advanced by the Stater is with regard to speedy trial of different accused charged for different offences. If cases relating to of all accused persons is transferred before the Special Court trial will be deelayed. This cannot justify the institution of second F.I.R. with respect to same incident against same accused persons and putting them to in a circumstance, where they have to seek relief like anticipatory bail or regular in two proceedings and will have to face two trials before two courts. This is not permissible in the eye of law.

19. On consideration of these facts, the institution of second F.I.R. is illegal as held by the apex Court in the case of T.T. Antony v. The State of Kerala and Ors. A.I.R.2004 (6) S.C.181 as well as in the case of Ram Lal Narang v. The State (Delhi Admn) : 1979 CriLJ1346 . The F.I.R. of G.R.P. P.S.Case No. 225 of 2006 is quashed so far these petitioners are concerned. These application are allowed.

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