

Sanjay Kumar Thakur Alias Sanjay Thakur Vs. The State of Jharkhand and Anr

Sanjay Kumar Thakur Alias Sanjay Thakur Vs. The State of Jharkhand and Anr

SooperKanoon Citation : sooperkanoon.com/69604

Court : Jharkhand

Decided On : Mar-28-2016

Appellant : Sanjay Kumar Thakur Alias Sanjay Thakur

Respondent : The State of Jharkhand and Anr

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr.M.P. No.2353 of 2015
----- Sanjay Kumar Thakur @ Sanjay Thakur, S/o late Basudeo Thakur,
Resident of Guest House Area, P.O. & P.S. Seraikella, District- Seraikella-
Kharsawan. ..Petitioner Versus 1. The State of Jharkhand.

2. N.D. Toppo, Sub Inspector of Police, Son of not known, resident of Chakuliya
Police Station, P.S. P.O. Chakulia, District- Singhbhum East. .Opposite Parties
----- Coram: HONBLE MR JUSTICE RONGON MUKHOPADHYAY ----- For the
Petitioner : Mr. R.S. Mazumdar, Sr. Advocate For the State : Mrs. Laxmi Murmu,
APP ----- 07/28.03.2016 In this application, the petitioner has prayed for quashing
the entire criminal proceeding in connection with Telco P.S. Case No. 209 of 2014
including the order dated 7.8.2015, passed by the learned Additional Chief Judicial
Magistrate, Jamshedpur, whereby and whereunder the cognizance order earlier
taken on 10.11.2014, has been made applicable for the petitioner and non bailable
warrant of arrest was directed to be issued against him.

2. An FIR was instituted by the opposite party no. 2 on the allegation that during investigation of Chakulia P.S. Case No. 28 of 2014, some of the arrested accused persons disclosed about the preparation of forged documents and the criminal conspiracy with the petitioner to falsely implicate one Prabhash Mishra by getting SIM No. 8407092840, which was used to make threats to the Director General of Police, the Chief Minister of the State and the Informant of Chakulia P.S. Case No. 28 of 2014.

3. Based on the aforesaid allegations, Telco P.S. Case No. 209 of 2014 was instituted.

4. After investigation, final form was submitted against the accused-Saukat Ali and the petitioner on the ground of deficiency of evidence. However, the learned Additional Chief Judicial Magistrate vide his order dated 7.8.2015 differing with the final form submitted by the investigating officer so far as petitioner is concerned, the cognizance order earlier taken on 10.11.2014 under Sections 465, 467, 468, 469, 471, 419, 420, 506, 120B/34 of the Indian Penal Code 2 was made applicable for the petitioner also.

5. Heard Mr. R.S. Mazumdar, learned senior counsel for the petitioner and Mrs. Laxmi Murmu, learned counsel for the State.

6. Mr. R.S. Mazumdar, learned senior counsel for the petitioner, has submitted that earlier also with respect to demand of levy from Block Development Officer, Chakulia, a case was instituted being Chakulia P.S. Case No. 28 of 2014. It has been submitted that admittedly in course of investigation of Chakulia P.S. Case No.28 of 2014, certain incriminating evidences were found against the accused persons leading to institution of Telco P.S. Case No.209 of 2014 and the subsequent case, which has been instituted is not permissible in law in view of the fact that for the same incident, two criminal cases cannot be lodged. It has further been submitted that even otherwise the allegations made in the FIR could not be proved resulting in submission of final form. In support of his contention, learned senior counsel has referred to the case of T.T. Antony Vs. State of Kerala and others reported in (2001) 6 SCC181 Babubhai Vs. State of Gujrat and others, reported in (2010) 12 SCC254 and Amit Bhai Anil Chandra Shah Vs. CBI &

Another, reported in (2013) 6 SCC348 7. Mrs. Laxmi Murmu, learned counsel for the State, has submitted that the learned Additional Chief Judicial Magistrate while differing with the final form in Telco P.S. Case No.209 of 2014 has given sufficient reasons and therefore no interference is warranted in the said order. It has further been submitted that incidents in Chakulia P.S. Case No. 28 of 2014 and Telco P.S. Case No. 209 of 2014 are quite distinct and different and therefore the principles laid down by the Honble Supreme Court in various judgments cannot be made applicable to the case of the petitioner.

8. It is an admitted fact that Chakulia P.S. Case No. 28 of 2014 was instituted by the Block Development Officer, Chakulia on the allegation that he had received a message in his mobile, in which threatening was given by the author of the message demanding Rs.5 lacs as levy claiming himself to be the Area Commandar from Gurabandha. The aforesaid allegation on being registered was investigated upon and in course of investigation certain incriminating materials were found against the accused persons and the petitioner 3 which resulted in institution of Telco P.S. Case No. 209 of 2014. Since there was no evidence to connect the petitioner with the allegation made in Telco P.S. Case No. 209 of 2014, final form was submitted but however cognizance was taken and non bailable warrant of arrest was also ordered to be issued against the petitioner as the learned A.C.J.M., Jamshedpur had differed with the final form so submitted. The main pillar of argument of learned senior counsel for the petitioner revolves around the similarity with Chakulia P.S. Case No.28 of 2014 and Telco P.S. Case No.209 of 2014. In order to appreciate the contentions advanced by the learned counsel for the parties, it would be appropriate to refer to various pronouncements of the Honble Supreme Court while dealing with similar issues.

9. In the case of T.T. Antony (supra), it was held as follows:- From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 Cr.P.C. only the earliest or the first information in regard to the commission of a cognizance offence satisfies the requirements of Section 154 Cr.P.C. 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 Cr.P.C.

10. In the case of Babubhai (supra), while dealing with the term sameness in the context of two FIRs being instituted, arising out of the same incident, it was held as follows:-

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 (supra), while relying on the judgments laid down in the case of T.T. 4 Antony(supra) as well as C. Muniappan & Ors Vs. State of Tamilnadu, reported in (2010) 9 SCC567 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 judgement 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 or murder Sohrabuddin. We are unable to accept the claim of the learned ASG. As a matter of fact, the aforesaid preposition 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. The subsequent FIR i.e. Telco P.S. Case No. 209 of 2014 admittedly is a fall out of the investigation, which was carried out in Chakulia P.S. Case No. 28 of 2014. Without instituting a second FIR, which contains the consequenceness of the earlier FIR being Chakulia P.S. Case No. 28 of 2014, the investigating officer should have very well included the materials, which had surfaced in course of investigation in the earlier case itself. There was no necessity for the investigating officer to institute a separate FIR as if the incident, which is the subject matter of the second FIR is a fresh incident or is in no way related to the earlier incident. The allegation made in the subsequent FIR is a fall out of the investigation of the earlier FIR and therefore the subsequent FIR, which is the second FIR, is illegal and against the settled preposition of law. Therefore by applying the principles of sameness and consequenceness in the factual matrix of the second FIR, it can lead to a conclusion that both the FIRs and the investigation carried on pursuant to the FIR is interwoven being a consequence of first FIR and such being the circumstance, the continuation of the criminal proceeding against the petitioner in Telco P.S. Case No. 209 of 2014 will be a miscarriage of justice.

13. Consequent to what has been discussed above, this application is allowed and the entire criminal proceeding in connection with Telco 5 P.S. Case No. 209 of 2014 including the order dated 7.8.2015, passed by the learned Additional Chief Judicial Magistrate, Jamshedpur, whereby and whereunder the cognizance order

earlier taken on 10.11.2014, has been made applicable for the petitioner and non bailable warrant of arrest was directed to be issued against him, is hereby quashed and set aside. (Rongon Mukhopadhyay,J) Rakesh/

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com