

Ashwini Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-17-1997

Reported in : 1997CriLJ813

Judge : S.C. Mital, J.

Acts : Narcotics Drugs and Psyshotropic Substances Act, 1985 - Sections 8, 18 and 59(2); Opium Act - Sections 4 and 9; Code of Criminal Procedure (CrPC) , 1974 - Sections 173(8), 190(1), 319 and 482; Indian Penal Code (IPC) - Sections 120(B), 218, 409 and 420

Appeal No. : Cr. Misc. Petn. No. 579 of 1996

Appellant : Ashwini Kumar

Respondent : State of Rajasthan

Advocate for Def. : K.L. Jasmatia, Addl. Adv. General

Advocate for Pet/Ap. : M.D. Purohit and; R.K. Charan, Advs.

Disposition : Petition allowed

Judgement :

ORDER

S.C. Mital, J.

1. The petitioner Ashwini Kumar has filed this Misc. Petition under Section 482, Cr.P.C. for quashing the FIR No. 198/96, Police Station, Aakola, District Chittorgarh, under Sections 8/18, 59(2), Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and investigation proceedings of the aforesaid FIR.

2. The brief facts for the disposal of the petitioner may be stated as under:-

The petitioner was Sub-Inspector Narcotics Bureau, Chittorgarh. On 29-11-85 along with other staff he saw two persons in a Nala with a she-camel. On being questioned these persons fired and an encounter took place. However, those two persons managed to run away under the cover of darkness leaving behind one automatic revolver and a she-camel with three bags containing opium weighing 86 kg. and 660 grams. The opium was sealed after taking the sample and the petitioner lodged a report at Police Station, Aakola resulting in a case No. 169/85 under Sections 4/9 Opium Act. The contraband articles were deposited by the petitioner in the Malkhana at the Police Station, Aakola on 30-11-85. The accused persons could not be apprehended and a final report was submitted on 25-3-86 and it was accepted by Judicial Magistrate, Kapasan and ordered to deposit the seized opium with the excise officer, Udaipur on 30-1-87, these sealed bags were taken to excise officer, Udaipur who found that the opium was adulterated with the smell of goorh. He refused to accept the bags and it were again deposited in the malkhana of Aakola Police Station. An inquiry was conducted and samples were taken in the Court of Judicial Magistrate and got analysed by FSL. The chemical examination revealed that the article contained a very less morphine. A case FIR No. 82/93 was, therefore, registered against the petitioner and other officials on 2-5-93 under Sections 409, 420 and 120 (B), IPC and a challan was submitted on 15-5-1995, and Criminal case No. 6/95 is pending before the learned Judicial Magistrate, Kapasan.

3. Dy S. P. Pratapgarh submitted an application on 18-7-1996 before the learned Judicial Magistrate that the S. P., Chittorgarh has directed for further investigation in the matter by adding offence of 8/18 NDPS Act and Section 218 IPC in the earlier FIR No. 82/93 and therefore, the petitioner should be given to police for

investigation. The learned Judicial Magistrate rejected this petition on 20-7-96. The petitioner was on bail in the criminal case No. 6/95 (FIR No. 82/93), an application was submitted by the prosecution for cancellation of bail which was dismissed by learned Additional Sessions Judge No. 1, Chittorgarh. The said application was filed on the ground that the offences under NDPS Act have been added and investigation is proceeding for the offences against the petitioner and therefore, the bail should be cancelled. In the above circumstances, on the dismissal of the application for cancellation of bail in criminal case No. 6/95 (FIR No. 82/93), the police registered a fresh FIR No. 198/96 at Police Station, Aakola under the offence of NDPS Act and wants to arrest the petitioner under that FIR to keep a petitioner in the Police custody. Aggrieved by the said FIR the petitioner has come up through this Misc. Petition praying for quashing the FIR No. 198/96.

4. The learned counsel for the petitioner has vehemently argued that the registration of FIR No. 198/96 at Police Station, Aakola on the direction of S. P. is illegal, without jurisdiction and also malafide. This amounts to abuse of process of law. It is submitted that the police wants to multiply the cases against the petitioner and registered false and frivolous cases even by reopening or restarting the investigation of the cases which have already been submitted in the Courts. The police wants to harass the petitioner by implicating him and other members of the family in number of false cases. Secondly, the concerned FIR has been given after a lapse of long time in a matter for which already an FIR No. 82/93 was registered and after thorough investigation the challan was filed and regular criminal case No. 6/95 is pending against the petitioner under Section 409, 420 and 120(B) IPC. Therefore second FIR on the same facts or the incident which has already been investigated and a challan has been filed cannot be registered. The FIR cannot be registered for the same incident or matter by way of adding new offences when investigation has been completely done and the police submitted challan for the aforesaid offences.

5. I have been referred to 1996 Cri LR (Raj), 245 (Harbans Lal v. State of Rajasthan) in which it has been laid down that the law does not permit the investigating agency or the police to register a second FIR on the same allegations against the same persons on the basis of the same facts. In the above

circumstances, it was found just and proper to quash the second FIR though ordinarily Courts are reluctant to interfere under the inherent powers under Section 482, Cr.P.C. In 1985 Cri LR (Raj) 417, Bag Singh v. State of Rajasthan, this Court held that after applying the mind to the police report to take cognizance of the offences against some accused persons, there cannot be reconsideration of the same police report again for taking cognizance against other accused persons because if it is allowed to be done there would be no end to the reconsideration of the police papers. It was held that the stage of Section 190(1) (B) had passed and further action could be taken only at the stage under Section 319 Cr.P.C.

6. The learned Additional Advocate General submitted that the Court has to examine the facts in which the second FIR was registered in the instant case. The opium was taken out and goorh was mixed. A report was lodged against the petitioner and other officials FIR No. 82/93 and after investigation chargesheet was submitted only for the offences 409, 420 and 120 (B) IPC. No Challan was filed for the offences under the NDPS Act. It is strenuously argued that there is no legal bar in registering the second FIR because it is a separate incident. The police is empowered to further investigate the matter under Section 173(8) Cr.P.C. There is no case of prejudice to the petitioner or double jeopardy. The offences under the NDPS Act are tried by the Special Court established under this Act and cannot be tried by Judicial Magistrate Court. Therefore, if after investigation of the second FIR, the chargesheet is submitted then there will be no occasion for conflicting judgments. It is also argued that the investigation is in progress on the second FIR. The police has right to investigate and to collect the evidence. Therefore, powers of the police to investigate should not be interfered with in exercise of the inherent powers. The FIR discloses the commission of a serious and cognizable offence. There is no bar on the investigation in two separate FIR with respect to the same matter. In 1995 Cri LR (SC) 15, (State of Rajasthan v. Aruna Devi), the Hon'ble apex Court has held that Section 173 (8) Cr.P.C. permits further investigation in respect of an offence after a report under sub-section 2 has been submitted. If further report is forwarded after further investigation that an offence has been committed, it would be open to the Magistrate to take cognizance on that material. Hence, the cognizance taken by the Magistrate after accepting the final report on the basis of a report after further investigation was

held proper and legal. In (1990) 2 Rajasthan LR 265 (Baldev Kishan v. State of Rajasthan) it was decided that order passed on a final report is a judicial order and if the magistrate comes to the conclusion that no offence is made out then finality is attached to the order.

7. I have given my anxious consideration to the rival contentions. In the present case, I find that earlier FIR No. 82/93 was registered and after complete investigation the challan was filed against the petitioner and others for the offences under Sections 409, 420 and 120(B) IPC. Thereafter, no second FIR was lodged or no further investigation was pending. It is only in 1996 that second FIR No. 198/96 has been registered for the offences of NDPS Act on the same facts given in earlier FIR No. 82/93. For referring the facts FIR No. 82/93 has been referred in the second FIR 198/96. The second FIR was lodged because the S. P. directed for further investigation as the offences under the NDPS Act were also alleged to have been committed by the petitioner on the basis of the facts in FIR No. 82/93. The learned judicial Magistrate and the learned Additional Sessions Judge refused to cancel the bail on the ground that no case was pending under investigation or in the Court against the petitioner for the offences under the NDPS Act. The learned Special Judge (Additional Sessions Judge No. 1, Chittorgarh) observed that no FIR has been received in his Court about the commission of the offences under the NDPS Act and no case is pending investigation and the bail granted to the petitioner in the case pending against him under Sections 409, 420 and 120(B) IPC could not be cancelled thereby rejected the application in this regard filed by the prosecution. The application was filed on behalf of the prosecution that further investigation was being made in FIR No. 82/93 Police Station Aakola from the contents of which offences under the NDPS Act also appeared to have been committed by the petitioner. I am of the view that police can make further investigation under Section 173 (8) Cr.P.C. pertaining to the matter FIR No. 82/93 and after further investigation report can be submitted to the Special Court about the commission of the alleged offences for which already the aforesaid FIR is in existence. Further I am of the view that if any FIR is required according to law to be sent to the special Court then the FIR No. 82/93 can be forwarded to the Court which according to the police now reveals the commission of the offences under the NDPS Act. However, on the same facts which have been investigated under

FIR No. 82/93 and challan has been filed, the registration of second FIR is unjust and not permissible under the law though the police has a right to conduct further investigation and submit further report about the commission of the alleged offences.

8. I have perused FIR No. 82/93 and the impugned FIR No. 198/96 and I find that these contain identical fact because the earlier FIR No. 82/93 has been mentioned for the facts allegedly disclosing the offences under the NDPS Act. I am inclined to agree with the learned counsel for the petitioner that when a FIR is lodged then the police is expected and required to investigate about all the offences disclosed on the basis of the facts of the FIR and it is not permissible to register separate FIRs for separate offences. In *Ram Narayan Devda v. State of Rajasthan* (supra), view has been taken that there is no bar on the investigation being conducted into separate first information reports with respect to the same matter. But this case is of no avail to the non-petitioner in the facts of this case because here the investigation has already been completed and has resulted in challan of the first FIR and then the second FIR has been registered on the same facts for other offence which was being disclosed in the first FIR also and the investigation was also made for the same. Therefore, I am of the view that on the same facts on which investigation has been made, and result submitted, registration of second FIR is unjust and not permissible under the law. If such procedure is allowed then it will prejudice the accused and his right to remain on bail passed by the Court during investigation of the first FIR. This right shall be adversely affected on his arrest during the investigation of the second FIR though on identical facts and the first FIR was disclosing the offences alleged in second FIR. The police can exercise its right to further investigate under Section 173(8) Cr.P.C. and at any appropriate stage may move for cancellation of the bail in accordance with law. However, I do not find sufficient material on record to appreciate the allegations of the petitioner about registration of the cases for harassment or due to malafide.

9. If the FIR discloses the commission of cognizable offence and justify the investigation then this Court should not exercise the powers under Section 482 Cr.P.C. for quashing the FIR. But in the circumstances of this case as discussed above I find it an appropriate case to quash the second FIR to prevent the abuse

of the process of the Court and to secure the ends of justice.

10. In the result this Misc. petition is allowed and the FIR No. 198/96 Police Station Aakola District Chittorgarh is hereby quashed. However, this order will not effect the right of the police to further investigate under Section 173 (8) Cr.P.C. in FIR No. 82/93 of Police Station, Aakola.

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