

KamaruddIn Ansari. Vs. the State of Jharkhand.

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Court : Jharkhand Ranchi

Decided On : Feb-24-2011

Judge : Mr. Justice D.K.Sinha, J.

Acts : Code of Criminal Procedure (CrPC) (Cr.P.C) - Sections 482, 154(1), 173, 162, 169 173(2), 154, 156, 173(8); Indian Penal Code(IPC) - Section 414, 34, 279, 337, 338, 304(a); Constitution Of India - Articles 19, 21, 226, 227.

Appeal No. : Cr.M.P.No.709 of 2010.

Appellant : KamaruddIn Ansari.

Respondent : The State of Jharkhand.

Advocate for Def. : A.P.P, Adv.

Advocate for Pet/Ap. : Mr. P.P.N.Roy, Adv.

Judgement :

1. The petitioner has invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure for the quashment of the F.I.R. and the entire criminal proceeding in connection with Jamua P.S. Case No. 159 of 2009 registered on 01.09.2009, corresponding to G.R.No.1842 of 2009 being the second F.I.R. for the same cause of action though earlier First Information Report was lodged at the same Police Station vide Jamua P.S. Case No.111 of 2009 on 23.06.2009, corresponding to G.R.No.1313 of 2009 pending in the Court of the C.J.M., Giridih for the alleged offence under Sections 414/34 of the Indian Penal

Code.

2. Jamua P.S. Case No.111 of 2009 was lodged on 23.06.2009 for the alleged offence under Sections 279/337/338/304(a) of I.P.C. wherein the motorcycle rider Ram Chandra Mandal succumbed to his injuries in the accident caused by a "Maruti Van" bearing No.B.I.R. 6363 which was driven rashly and negligently and the case was instituted against unknown driver of the said Van, investigation to which was given to the A.S.I. Javed Siddiqui of Jamua Police Station.

3. The fact of the instant case giving rise to Jamua P.S. Case No.159 of 2009 was in continuation of the earlier police case vide Jamua P.S. Case No.111 of 2009 that when the informant of the instant case, i.e. the Investigating Officer of the earlier case detected that the driver of "Maruti Van" No. B.I.R. 6363 escaped leaving the vehicle there when the village "Chaukidar" tried to stop him, the vehicle was seized vide entry No.185 in the Station Diary on 10.06.2009. The driver of the said vehicle Yunus Mian surrendered in the Court on 30.06.2009 and obtained his bail. The informant further narrated that it could be detected that the said Maruti Van belonged to one Suleman Mian and his son Kamaruddin, who used to ply on freight but they could fail to produce any relevant document in support that they were the registered owner of the vehicle except their statements that they were plying the vehicle for the last one year and that no satisfactory answer could be given as to how they became the owners of the vehicle giving rise to reasonable suspicion to believe that the vehicle was stolen by Suleman Mian and his son Kamaruddin Mian.

4. Learned Senior Counsel Mr. P.P.N.Roy appearing on behalf of the petitioner submitted that the instant case vide Jamua P.S. Case No.159 of 2009 for the alleged offence under Sections 414/34 was the offshoot of the earlier Jamua P.S. Case No. 111 of 2009 which was related to the motor accident by collision between motorcycle and the "Maruti Van" No. BIR 6363. The petitioner was assumed to be the owner of the said vehicle by the informant of the instant case, who was the Investigating Officer of the previous case. In that situation there was no need for lodging a fresh F.I.R. because recovery of the said "Maruti Van" in the alleged accident was also the subject matter of investigation of the previous case

and hence the institution of fresh case against the owner of the vehicle for the same cause was unwarranted.

5. Mr. Roy, the learned Sr. Counsel relied upon a decision reported in (2001) 6 Supreme Court Cases 181 wherein the Apex Court in T.T.Antony Vrs. State of Kerela and others observed,

"An information given under sub-section(1) of Section 154 Cr.P.C. is commonly known as the first information report (FIR) though this terms 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 Cr.P.C., as the case may be, and forwarding of a police report under Section 173 Cr.P.C. It is quite possible and it happens not infrequently that more than one piece of information is 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 Cr.P.C. 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 Cr.P.C. 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 Cr.P.C. No such information/statement can properly be treated as an F.I.R. 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 Cr.P.C.

The scheme of Cr.P.C. is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 Cr.P.C. 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 Cr.P.C., as the case may be, and forward his report to the Magistrate concerned under Section 173(2) Cr.P.C. 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 Cr.P.C.

It was further observed:

"A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the exclusive power of the police to investigate a cognizable offence has to be struck by the court. The sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Section 154 and 156 Cr.P.C. ,nay, a case of abuse of the statutory power of investigation in a given case. A case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offences alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section, 173 (2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C. or Articles 226/227 of the Constitution."

6. Miss. Anita Sinha, learned A.P.P. submitted that the two F.I.R.s. which have been lodged were for the different cause of action, viz the earlier F.I.R. vide Jamua P.S. Case No. 111 of 2009 was related to a motor accident, which was instituted against the driver of the vehicle for his rash and negligent driving which caused death of the motorcycle pillion rider whereas subsequent F.I.R. was against the petitioner and his father of the instant case since he failed to produce any relevant

document and the registration book of "Maruti Van", hence the causes were distinct for institution of two different F.I.R.s.

7. Having regard to the facts and circumstances of the case, there appears substance in the argument advanced for and on behalf of the petitioner and relying upon the judgment delivered by the Apex Court in T.T. Antony's case (supra) I find that two First Information Reports in the facts and circumstances of the case were not maintainable because the subsequent case vide Jamua P.S. Case No.159 of 2009 lodged on 01.09.2009 by the Investigating Officer of the earlier case would be treated as the relevant materials under Section 162 of the Code of Criminal Procedure and the Investigating Officer of Jamua P.S. Case No.111 of 2009 would not be precluded to file final form under Section 173(2) of the Code of Criminal Procedure even against the petitioner on such materials. For the reasons stated above, the subsequent F.I.R. vide Jamua P.S. Case No. 159 of 2009 is not maintainable, having no force of law at all. Accordingly, the F.I.R. of Jamua P.S. Case No.159 of 2009 is set aside and this petition is allowed.

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