Awadesh Kumar Jha @ Akhilesh Kumar Jha & ... vs The State Of Bihar on 7 January, 2016

Equivalent citations: AIR 2016 SUPREME COURT 373, 2016 (3) SCC 8, AIR 2016 SC (CRIMINAL) 380, (2016) 1 UC 180, (2016) 1 ALLCRILR 721, 2016 CRILR(SC&MP) 62

Author: V. Gopala Gowda

Bench: V. Gopala Gowda, T.S. Thakur

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 15 OF 2016
(Arising out of SLP(CRL) No.975 of 2015)

AWADESH KUMAR JHA @ AKHILESH
KUMAR JHA & ANR. …APPELLANTS

Versus

THE STATE OF BIHAR … RESPONDENT

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted.

This criminal appeal is directed against the impugned judgment and order dated 14.10.2014 passed by the High Court of Judicature at Patna in Crl. Misc. No.13700 of 2014 whereby it has refused to interfere with the impugned orders therein. Both the appellants filed application under Section 239 of Code of Criminal Procedure, 1973 (for short the “Cr.P.C.”) before the learned Judicial Magistrate of first class, Kishanganj in relation to FIR No. 183 of 2008. The same was dismissed on the ground of being devoid of merit vide order dated 04.12.2013. The Court of Sessions, Purnea, in revision petition, has upheld the decision of the learned Judicial Magistrate of first class which has further upheld by the High Court. The correctness of the said order is challenged in this appeal urging

various grounds.

Brief facts of the case are stated hereunder to appreciate the rival legal contentions urged on behalf of the parties:-

> On 04.05.2008 FIR no. 111 of 2008 (for short the "first FIR") was registered at Kishanganj police station against both the appellants along with other persons for the offences punishable under Sections 3,4,5,6 and 7 of Immoral Traffic (Prevention) Act, 1956 (in short "the Act") on a written complaint made by Sub Divisional Police Officer Ravish Kumar, Kishanganj, Bihar. The allegation made therein was that on the telephonic information received from SDPO Phulwari sharif, Patna regarding the confinement of a minor girl Rubana Khatun, aged about 16 years, in red light area of Khagaria for the purpose of carrying out the flesh trade, the raiding party of police authorities conducted a raid in the house of Sisa Khalifa. In the course of such raid, the raiding party found six couples in objectionable position in six different rooms. Along with others the appellant no. 1 (Akhilesh Kumar Jha) and appellant no.2 (Ajit Prasad) were also arrested in the course of the raid and they were booked for offences punishable under Sections 3,4,5,6 and 7 of the Act.
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> The first FIR was investigated by the investigating officer and the report under Section 173 of Cr.P.C. was filed before the Chief Judicial Magistrate (for short "CJM") for taking cognizance of the offences alleged against them. The learned CJM, Kishanganj took cognizance of the alleged offences vide his order dated 06.08.2008.
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> In the meantime, both the appellants moved applications for grant of bail. It is alleged that in those bail applications both the appellants furnished wrong information regarding their names, father's name and address.
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> On the written complaint of Shri Arvind Kumar Singh, the Inspector of Police, Kishanganj police station another FIR No. 183 of 2008 (hereinafter referred to as the "second FIR") dated 03.07.2008 was registered against both the appellants for the offences punishable under Sections 419 and 420 of Indian Penal Code, 1860 (for short "IPC"). The allegations made therein were that both the appellants furnished wrong information to the investigating officer regarding their names, father's name and address during the course of investigation made on the first FIR and also in the bail applications filed by them before the learned CJM in the case arising out of first FIR.
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> The second FIR was investigated by the investigating officer and a report under Section 173 of Cr.P.C. was filed before CJM, Kishanganj for taking cognizance of the offences alleged against the appellants. The learned CJM took cognizance of the alleged offences vide order dated 11.09.2008.

The appellants filed revision petitions before the Additional Sessions Judge, Purnea against the first order of cognizance dated 06.08.2008, passed by CJM, Kishanganj. The learned Additional Sessions Judge, Purnea vide order dated 18.12.2010 has set aside the said order of cognizance passed by CJM, Kishanganj holding that no offence under Sections 3,4,5,6 and 7 of the Act as alleged in the first FIR is made out against the appellants.

Thereafter, the appellants filed an application under Section 239 of Cr.P.C. before Judicial Magistrate of first class, Kishanganj seeking their discharge from the offences alleged in the second FIR. The learned Judicial Magistrate of first class, Kishanganj after a perusal of material on record found no merit in the application under Section 239 of Cr.P.C. filed by them and accordingly dismissed the same vide his order dated 04.12.2013.

Being aggrieved of the order dated 04.12.2013 passed by the learned Judicial Magistrate of first class, the appellants approached the Court of Sessions, Purnea by filing the Criminal Revision Petition No. 12 of 2014. The learned Sessions Judge, Purnea concurred with the findings recorded in the impugned order passed by the learned Judicial Magistrate of first class, Kishanganj and dismissed the said revision petition vide order dated 03.02.2014.

The appellants being aggrieved of the order dated 03.02.2014 passed by learned Sessions Judge, Purnea filed Crl. Misc. No. 13700 of 2014 before the High Court of Judicature at Patna for quashing of the said order.

The learned Single Judge of the High Court of Patna vide order dated 14.10.2014 dismissed the said petition holding that at present case is surviving against the appellants which has arisen out of the second FIR and the criminal proceedings arising out of first FIR has already been set aside. The learned Single Judge did not find any merit in the said petition filed before her and she accordingly dismissed the same with a direction to the Trial Court to conclude the trial expeditiously. Hence, this appeal with request to set aside the same and allow the application made under Section 239 of Cr.P.C. by the appellants seeking their discharge of the offences alleged in the second FIR.

Mr. Akhilesh Kumar Pandey, the learned counsel on behalf of the appellants contended that the High Court has failed to appreciate the fact that offences under the second FIR were allegedly committed during the course of investigation made on the first FIR, thus, it forms the part of same transaction with the offences in respect of which the first FIR was registered. Therefore, instead of institution of the second FIR, a further investigation as provided under sub-Section (8) to Section 173 of Cr.P.C. should have been done in respect of the offences alleged under second FIR with the leave of the court. But, no such further investigation was conducted by the investigating officer in respect of the said offences. Thus, it is urged that the registration of second FIR is wholly untenable in law and therefore liable to be quashed.

It was further contended by him that the reasons given by the High Court in the impugned order in dismissing the Crl. Misc. Petition holding that the proceedings arising out of first FIR has already been set aside and at present one more case is surviving against the appellants arising out of second FIR is not tenable in law, for the reason that the offences under the second FIR are of the same transaction with the first FIR as they were allegedly committed in the course of investigation made on the first FIR. Thus, there was no need for the institution of second FIR against them. He further submitted that the registration of second FIR is illegal and void ab-initio in law as the same is in violation of Article 20(2) of the Constitution of India and also contrary to Section 300 of Cr.P.C. and Section 26 of the General Clauses Act, 1897.

He further vehemently contended that the High Court has erred in not appreciating the law regarding the impermissibility of registration of the second FIR against the appellants in respect of an offence or different offences committed in the course of same transaction. He placed strong reliance upon paras 37, 38 and 58.3 of the judgment of this Court in the case of Amitbhai Anilchandra Shah v. Central Bureau of Investigation & Anr.[1], which relevant paragraphs are extracted in the reasoning portion of this judgment.

He further submitted that the High Court has failed to appreciate the important aspect of the case that the second FIR registered against the appellants for the offences alleged to have committed forms the same transaction and therefore, registering another case against the appellants is not permissible in law as laid down by this Court in the case referred to supra and the same is against the principle of double jeopardy as enshrined in Article 20(2) of the Constitution of India. Thus, the impugned order passed by the High Court is vitiated in law and the same is liable to be set aside by this Court in exercise of its appellate jurisdiction.

It was further contended by him that the High Court has not appreciated the fact that even on merits both the appellants never furnished wrong information to the investigation officer about their identity. In this regard, he had submitted that during the course of investigation on the first FIR the investigation officer, after verification found the name of appellant no.1 to be Awadesh Kumar Jha and not Akhilesh Kumar Jha. Similarly, with regard to appellant no.2, his father's name was also found to be Late Ramanand, Prasad. The learned counsel urged that appellant no.1 Awadesh Kumar Jha is also known as Akhilesh Kumar Jha. The same fact has also been certified by Mukhiya, Gram Panchayat Sonma, Purnea district. Further, the father's name of appellant no.2, Ajit Prasad is Late Ramendra Prasad, who was also known as Late Ramananda Prasad. Therefore, both the appellants cannot be said to have furnished any wrong information to the investigation officer regarding their identity as alleged in the second FIR.

It was further contended by him that the High Court has failed to appreciate another important fact that both the appellants were not instrumental in creating any dubious document for the purpose of cheating the police as alleged in the second FIR. The first FIR was recorded by the police officer and thus, both the appellants should not be held responsible for wrong information written by the Police in the first FIR.

The learned counsel for the appellants prayed for allowing this appeal and requested this Court to set aside the impugned order passed by the High Court and requested for discharge of both the appellants for the alleged offences under the second FIR.

Per contra, Mr. Rudreshwar Singh, the learned counsel on behalf of the respondent-State sought to justify the impugned order passed by the High Court and the order passed by the learned Judicial Magistrate of first class dismissing the application under Section 239 of Cr.P.C. filed by the appellants for the alleged offences under second FIR on the ground that the same are well founded and are not vitiated in law. Therefore, no interference with the same by this Court is required in exercise of its appellate jurisdiction.

We have carefully examined the rival contentions urged on behalf of both the parties and the decision of this Court in the case of Amitbhai Anilchandra Shah case (supra) upon which the strong reliance is placed by the learned counsel for the appellants. The relevant paras of the abovesaid case cited by him read thus :-

> "37. This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T. Antony, this Court has categorically held that registration of second FIR (which is not a cross-case) is violative of Article 21 of the Constitution. The following conclusion in paras 19, 20 and 27 of that judgment are relevant which read as under: (SCC pp. 196-97 & 200) "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.
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> 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.
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> 27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court.

There cannot be any controversy that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, 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) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view 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 offence 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 CrPC or under Articles 226/227 of the Constitution." The abovereferred declaration of law by this Court has never been diluted in any subsequent judicial pronouncements even while carving out exceptions.

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 judgment 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 to murder Sohrabuddin. We are unable to accept the claim of the learned ASG. As a matter of fact, the aforesaid proposition 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.

xx xx xx 58.3. Even after filing of such a report, if he comes into possession of further information or material, there is no need to 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 which is evident from sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. 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." The second FIR was registered against the appellants on a written complaint of Arvind Kumar Singh, Inspector of Police at Kishanganj police station. It was found by the investigating officer during the course of investigation in the first FIR that real name of the appellant no.1 was Awadesh Kumar Jha s/o Late Kaladhar Jha r/o Gram Akbarpur, District Purnea and was found to be working as Development Officer at New India Assurance Company Ltd. Branch Purnia, contrary to the same the personal information was furnished by him at the time of investigation of the case on the first FIR. Similarly, with regard to the appellant no.2 his father's name was found to be Late Ramendra Prasad and not Late Ramanand. His actual address was found to be Ranipatti P.S. Kumarkhand, District Madhepura and he was found to be working as surveyor and investigator of all branches of General Assurance Company. It is also alleged in the second FIR that both the appellants had not disclosed their correct names, father's name, their address and occupation in the bail applications filed by them in respect of the case arising out of first FIR before the Additional Sessions Judge.

From a bare perusal of second FIR, it is abundantly clear that both the appellants have furnished wrong information to the police as to their names, father's name and address during the course of investigation made on the first FIR. This Court is of the view that the offences alleged to have committed by them are mentioned in second FIR, which offences are distinct offences committed by both the appellants and the same have no connection with the offences for which the first FIR was registered against them. Therefore, for the reason stated supra, the contention urged by the learned counsel on behalf of both the appellants that instead of institution of second FIR for the said offences, a further investigation as provided under sub-Section (8) to Section 173 of Cr.P.C. should have been done by the investigation officer on the ground of they being the part of same transaction with offences registered under first FIR is wholly untenable in law and liable to be rejected.

Further, the decision of this Court in the case of Amitbhai Anilchandra Shah (supra) upon which strong reliance is placed by the learned counsel on behalf of both the appellants does not render any assistance to them in the case at hand. This Court in the said case after examining the relevant provisions of Cr.P.C. has categorically held thus:-

> "58.2. The various provisions of the Code of Criminal Procedure clearly show that an officer-in-charge of a police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the first information report, on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of the evidence collected, the investigating officer has

to form an opinion under Section 169 or 170 of the Code and forward his report to the Magistrate concerned under Section 173(2) of the Code.

58.3. Even after filing of such a report, if he comes into possession of further information or material, there is no need to 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 which is evident from sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. 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.

xx xx xx 58.5. The first information report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR." (emphasis supplied by this Court) It is well settled principle of law that there can be no second FIR in the event of any further information being received by the investigating agency in respect of offence or the same occurrence or incident giving rise to one or more offences for which chargesheet has already been filed by the investigating agency. The recourse available with the investigating agency in the said situation is to conduct further investigation normally with the leave of the court as provided under sub-Section (8) to Section 173 of Cr.P.C. The reliance is placed on the decision of this court rendered in T.T.Antony v. State of Kerala[2], relevant paras of which read thus:

"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.

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> 21. ...The 1973 CrPC specifically provides for further investigation after forwarding of report under sub-section (2) of Section 173 CrPC and forwarding of further report or reports to the Magistrate concerned under Section 173(8) CrPC. It follows that if the gravamen of the charges in the two FIRs — the first and the second — is in truth and substance the same, registering the second FIR and making fresh investigation and forwarding report under Section 173 CrPC will be irregular and the court cannot take cognizance of the same." (emphasis supplied) However, this principle of law is not applicable to the fact situation in the instant case as the substance of the allegations in the said two FIRs is different. The first FIR deals with offences punishable under Sections 3,4,5,6 and 7 of the Act, whereas, the second FIR deals with the offences punishable under Sections 419 and 420 of IPC which are alleged to have committed during the course of investigation of the case in the first FIR.

This Court is of the view that the alleged offences under the second FIR in substance are distinct from the offences under the first FIR and they cannot, in any case, said to be in the form of the part of same transaction with the alleged offences under the first FIR. Therefore, no question of further investigation could be made by the investigating agency on the alleged offences arisen as the term "further investigation" occurred under sub-Section (8) to Section 173 of Cr.P.C. connotes the investigation of the case in continuation of the earlier investigation with respect to which the chargesheet has already been filed. The reliance is placed on the judgment of this Court in the case of Rama Chaudhary v. State of Bihar[3], the relevant para 17 reads thus:

> "17. From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of the police report under sub-section (2) on completion of the investigation, the police has a right to "further" investigation under sub-section (8) of Section 173 but not "fresh investigation" or "reinvestigation". The meaning of "further" is additional, more, or supplemental. "Further" investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether." (emphasis supplied) Therefore, for the above said reasons the submissions made on behalf of both the appellants are not tenable in law and the same cannot be accepted by this Court. Further, the case of Amitbhai Anilchandra Shah (supra) upon which strong reliance is placed by the learned counsel for both the appellants is also totally inapplicable to the fact situation and it does not support the case of both the appellants.
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> For the reasons stated supra, this Court does not find any reason either to interfere with the impugned order passed by the High Court or with the order of dismissal dated 04.12.2013 passed by the Judicial Magistrate first class, Kishanganj, on the application made under Section 239 of Cr.P.C. filed by the appellants. Accordingly, this appeal being devoid of merit is dismissed. The order dated 09.02.2015 granting stay shall be vacated.
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> .....CJI.

[T.S. THAKUR] .....J. [V. GOPALA GOWDA] New Delhi, January 7, 2016 ITEM NO.1A-For Judgment COURT NO.10 SECTION IIA S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS Criminal Appeal No(s). 15/2016 arising from SLP(Crl.) No.975/2015 AWADESH KUMAR JHA @ AKHILESH KUMAR JHA & ANR. Appellant(s) VERSUS THE STATE OF BIHAR Respondent(s) Date : 07/01/2016 This appeal was called on for pronouncement of JUDGMENT today.

For Appellant(s) Mr. Akhilesh Kumar Pandey,Adv.

For Respondent(s) Mr. Samir Ali Khan,Adv.

Hon'ble Mr. Justice V.Gopala Gowda pronounced the judgment of the Bench comprising Hon'ble the Chief Justice and His Lordship.

Leave granted.

The appeal is dismissed in terms of the signed Non-Reportable Judgment.

(VINOD KUMAR) (MALA KUMARI SHARMA)
COURT MASTER COURT MASTER

(Signed Non-Reportable judgment is placed on the file)

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[1] (2013) 6 SCC 348
[2] (2001) 6 SCC 181
[3] (2009) 6 SCC 346