

Kari Choudhary vs Most. Sita Devi And Ors. on 11 December, 2001

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Bench: K.T. Thomas, S.N. Phukan

JUDGMENT

Thomas, J.

1. Leave granted.

2. A mother-in-law figured as the complainant in a case of culpable homicide of her daughter-in-law, but eventually she was transposed as one of the delinquent offenders of the said murder. The High Court has now stalled the case against her on the ground of her first complaint. This was unrecognizable to the brother of the deceased and hence he has come to this Court challenging the said order of the High Court.

3. Sugnia Devi is the unfortunate victim who was killed on the night of 27.6.1988. About 10 years

prior to her death she was married to Ram Jatan Choudhary, one of the four sons of the first respondent Sita Devi. She remained childless. On the day which followed her death the first respondent Sita Devi lodged an FIR with Baby Barhi Police Station alleging that a few persons from outside had sneaked into the bedroom of Sugnia Devi and murdered her by strangulation. FIR No. 135 was registered on the basis of the said complaint and investigation was commenced thereafter.

4. During the progress of investigation the police formed an opinion that the murder of Sugnia Devi had taken place in a manner totally different from the version furnished by the first respondent in the FIR. Police found that the murder was committed pursuant to a conspiracy hatched by her mother-in-law Sita Devi and her other daughters-in-law besides others. So the police sent a report to the court on 30.11.1998 stating that the allegations in FIR No. 135 were false. Police continued with the investigation after informing the court that they have registered another FIR as FIR No. 208/98.

5. First respondent Sita Devi filed a protest complaint before the Chief Judicial Magistrate alleging that the police report dated 30.11.1998 is wholly unsustainable and reiterating that the persons arrayed in FIR No. 135 are the real culprits. The Chief Judicial Magistrate rejected the protest complaint as per his order dated 28.8.1999. First respondent challenged the said order in a revision filed before the High Court. The said revision happened to be allowed on 7.2.2000 and the Chief Judicial Magistrate was directed to conduct an inquiry under Section 202 of the Code of Criminal Procedure.

6. The police force proceeded with the investigation on the new discovery that Sugnia Devi was murdered by some other persons and finally concluded the investigation and filed a charge sheet on 31.3.2000. In the said charge sheet first respondent Sita Devi, her two other daughters-in-law, her son Ram Ashish Choudhary and a few others were arraigned for the offence under Section 302 read with Section 34 of the IPC. The Chief Judicial Magistrate before whom the charge-sheet was laid committed the said case to the court of sessions. Thereafter, we are told, the sessions judge framed a charge against the accused so arraigned for the aforesaid offence.

7. In the meanwhile the first respondent moved the High Court once again for quashing the criminal proceedings lodged against her and others. A single Judge of the High Court at Patna upheld her contention and quashed the criminal proceedings as per the impugned judgment. Thus appellant and other accused are now totally absolved from the murder charge even without conducting any trial into the said case. That order of the High Court is under challenge in this Court now.

8. The learned single judge adopted the said course on the premise that there is otherwise double jeopardy as against first respondent. The reasoning of the learned judge is this. When the police filed the earlier report holding that the allegations in FIR No. 135 were false the magistrate took cognizance of offence under Section 188 and 211 of the IPC against her and that order of the magistrate was once quashed. The following observation of the single Judge would reveal how he advanced the said reasoning:

"When once recommendation of lodging of false case and cognizance thereof have been set aside by a court then there is no scope to proceed with the same allegation

that too by the police officer making himself a party which is nothing but a double jeopardy."

9. Both sides said that the order by which cognizance of the offences under Sections 188 and 211 of the IPC was taken had, in fact, related to a different case and not in the case which covered FIR No. 135. Nonetheless learned counsel for the first respondent Sita Devi made an effort to sustain the order of the High Court on the premises that the order of the magistrate (accepting the final report in FIR No. 135) was quashed even otherwise and hence a second final report cannot be filed by the police albeit against other accused. In this context we find it necessary to extract the order passed by the High Court in respect of the proceedings of the magistrate which ended by the order dated 28.8.1999 accepting the report of the police in the case which covered FIR No. 135. The order reads thus:

"The magistrate is required to examine the complainant on solemn affirmation and then proceed in accordance with law. The learned magistrate without following the procedure has passed the impugned order. Accordingly, the order dated 28.8.1999 is hereby quashed and the learned judicial magistrate is directed to dispose of the protest petition filed by the petitioner in accordance with law and in the light of the observations made hereinabove.

10. The result of the said factual development is this. The complainant Sita Devi in FIR No. 135 is allowed to persist with her complaint despite the conclusion reached by the police that the said complaint was false. But that course adopted by the court cannot disable the police to continue to investigate into the offence of murder of Sugnia Devi and to reach the final conclusion regarding the real culprit of her murder. The police completed their investigation only when the charge-sheet was finally laid on 31.3.2000 against the first respondent Sita Devi and others. The said case has to be legally adjudicated for which a trial by the sessions court is indispensable.

11. Learned counsel adopted an alternative contention that once the proceeding initiated under FIR No. 135 ended in a final report the police had no authority to register a second FIR and number it as FIR 208. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency. Even that apart, the report submitted by the court styling it as FIR No. 208 of 1998 need be considered as an information submitted to the court reading the new discovery made by the police during investigation the persons not named in FIR No. 135 are the real culprits. The quash the said proceeding merely on the ground that final report had been laid in FIR No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it.

12. Even otherwise the investigating agency is not precluded from further investigation in respect of an offence in spite of forwarding a report under Sub-section (2) of Section 173 on a previous occasion. This is clear from Section 173(8) of the Code.

13. Thus, from any standpoint the impugned order cannot be sustained. We, therefore, allow this appeal and set aside the impugned order.