

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 09 of 2022

1. Hari Shankar Agarwal, aged about 62 years, son of late Matadin Agarwal
2. Usha Agarwal, aged about 56 years, wife of Hari Shankar Agarwal
3. Rohit Agarwal, aged about 32 years, son of Hari Shankar Agarwal
4. Rahul Agarwal, aged about 34 years, son of Sri Hari Shankar Agarwal

All residents of 7, Ramdhan Ghosh Lane, Bally (M) Velur Math,
P.O. & P.S.-Velur Math, Dist.- Howrah (West Bengal)

.... Petitioners

Versus

1. The State of Jharkhand
2. Neetu Agarwal, d/o Sri. Braj Kishore Prasad, resident of New Colony, Jabra Road, P.O. & P.S.- Korrah, Dist.-Hazaribagh

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

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For the Petitioners	: Mr. Nilesh Kumar, Advocate
	: Ms. Sonal Sodhani, Advocate
For the State	: Mrs. Priya Shrestha, Spl. P.P.
For O.P. No.2	: Mr. Shashi Bhushan Sah, Advocate
	: Mr. Abhishek Kumar, Advocate

By the Court:-

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with a prayer to quash the cognizance order dated 26.07.2021 passed by the learned A.C.J.M., Hazaribagh and the FIR along with the entire criminal proceeding including the FIR in connection with Korrah P.S. Case No.224 of 2020, corresponding to G.R. No. 1362 of 2021.

3. The brief facts of the case is that the opposite party no.2 lodged a written report basing upon which Belur P.S. Case No.151 of 2020 was registered on 22.08.2020 in the District of Howrah in the State of West Bengal for the offence punishable under Sections 498A, 506, 509, 354 and 34 of Indian Penal Code as well as Section 3/4 of Dowry Prohibition Act. The allegation therein is that the petitioners in furtherance of their common intention with the co-accused persons treated the informant with cruelty, outraged her modesty, criminally intimated her and demanded dowry. Subsequently, the opposite party no.2 filed Complaint Case No.1730 of 2020 in the court of Chief Judicial Magistrate, Hazaribagh in the State of Jharkhand on 14.09.2020 besides giving a detailed description of allegation made in the FIR of Belur P.S. Case No.151 of 2020, the opposite party no.2 also alleged that on 13.09.2020 at 05:00 pm, the petitioners committed criminal trespass to the house of the complainant and criminally intimated her and abused her. In the said Complaint Case No. 1730 of 2020, the informant also disclosed about lodging the written report with the police of Belur police station on 22.08.2020.
4. The learned Chief Judicial Magistrate, Hazaribagh referred the complaint of the complainant to police under Section 156 (3) Cr.P.C.; basing upon which Korrah P.S. Case No.224 of 2020 has been registered.
5. Police took up investigation of the case and after finding the allegations to be true, submitted charge sheet against the

petitioners for having committed the offences punishable under Sections 341, 323, 498A, 506 and 34 of Indian Penal Code.

6. On the basis of charge sheet submitted, the learned Chief Judicial Magistrate, Hazaribagh took cognizance of the offence punishable under Sections 341, 323, 498A, 506 and 34 of Indian Penal Code.

7. Relying upon the judgment of Hon'ble Gauhati High Court in the case of **Major Anant Fogat vs. State of Nagaland & Anr.** reported in **2015 SCC OnLine Gau 594** in which in the facts of that case; when for the same set of allegations two FIRs were registered, the first one at Delhi and the second FIR at Tlmarpur police station and while submitting her FIR, the informant of that case requested the in-charge of Tlmarpur police station not to take up the case; as and when the FIR which she lodged at Delhi is registered, the Gauhati High Court quashed the second FIR by holding that the FIRs reveals that the incident narrated in the two FIRs occurred around the same time hence, the same comes within the mischief of second FIR and the offences were committed in course of same transaction. It is submitted by the learned counsel for the petitioners that in this case also the FIR of Korrah P.S. Case No.224 of 2020 is the second FIR in respect of same occurrence in which Belur P.S. Case No.151 of 2020 was registered; hence the FIR is liable to be quashed.

8. In support of her contention, learned counsel for the petitioners also relied upon the judgment of Patna High Court in the case of **Kushami Devi & Ors. vs. The State of Bihar & Anr.** reported in

2015 SCC OnLine Pat 6168 wherein, in the facts of that case, the complaint case was referred to police and on the basis of the same Mahila P.S. Case No. 66 of 2013 was registered and subsequently, the informant of that case filed an application before the Superintendent of Police Madhubani and upon the direction of the Superintendent of Police, Bhairo Asthan P.S. Case No. 92 of 2013 was registered, the Patna High Court observed that both the Complaint Case No.948 of 2013 and the written report of Bhairo Asthan P.S. Case No. 92 of 2013 have the same place and date of occurrence containing the same allegations save and except the demand of providing motorcycle as well; which was mentioned in the application submitted by the informant to the Superintendent of Police on 15.07.2013 before instituting the Complaint Case No. 948 of 2013 on 20.07.2013, the Patna High Court quashed Bhairo Asthan P.S. Case No.92 of 2013 and submits that the same principle can be applied in this case also and the entire FIR of Korrah P.S. Case no.224 of 2020 be quashed.

9. It is next submitted by the learned counsel for the petitioners that the allegations made against them are false, absurd and unbelievable. It is then submitted that the petitioner no.1 is suffering from both knee joint spaces problem. Hence, it is submitted that the prayer as made in the criminal miscellaneous petition be allowed.
10. Learned Spl. P.P. and the learned counsel for the opposite party no.2 on the other hand vehemently opposes the prayer to quash the cognizance order dated 26.07.2021 passed by the

A.C.J.M., Hazaribagh and the FIR along with the entire criminal proceeding including the FIR in connection with Korrah P.S. Case No.224 of 2020, corresponding to G.R. No. 1362 of 2021. It is submitted by learned Spl. P.P. that the occurrence of 13.09.2020, which took place subsequent to the lodging of the FIR of Belur P.S. Case No.151 of 2020 on 22.08.2020, is a separate and distinct offence which could not have been taken care of by the FIR of Belur P.S. Case No.151 of 2020 as not only the time of occurrence even the place of occurrence is also different and the nature of occurrence is also different. Hence, the facts of this case being entirely different from the facts of the case in which Gauhati High Court and Patna High Court have quashed the second FIR as relied upon by the petitioners, the ratio of those cases are not applicable to the facts of this case. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

11. Learned counsel for the opposite party no.2 relied upon the judgment of a coordinate Bench of this Court in Cr.M.P. No. 825 of 2022 dated 25.01.2023 wherein, the coordinate Bench relied upon the judgment of Hon'ble Supreme Court of India in the case of **R.K. Khanna vs. State** reported in **(2003) 11 SCC 758** to the effect that merely because the Magistrate has not exercised the power of staying the complaint case under Section 210 of Cr.P.C., the FIR cannot be quashed. Learned counsel for the opposite party no.2 also adopts the submission of learned Spl. P.P. and submits that in view of separate and distinct subsequent occurrence which was

committed on 13.09.2020 as mentioned in paragraph no.15 of the complaint; which has been treated as the written report of the FIR being Korrah P.S. Case No.224 of 2020 and were found to be true in the investigation of the case and rightly the learned Magistrate has taken cognizance, the same cannot be quashed. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

12. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that the Hon'ble Supreme Court of India in the case of **Anju Chaudhary v. State of U.P. and Another** reported in (2013) 6 SCC 384, paragraph no.15 of which reads as under:-

"15. It has to be examined on the merits of each case whether a subsequently registered FIR is a second FIR about the same incident or offence or is based upon distinct and different facts and whether its scope of inquiry is entirely different or not. It will not be appropriate for the court to lay down one straitjacket formula uniformly applicable to all cases. This will always be a mixed question of law and facts depending upon the merits of a given case."

The Hon'ble Supreme Court of India has held that whether or not the second FIR is about the same incident or offence or based on distinct or different facts or whether the scope of enquiry is entirely different or not is to be examined on the merits of each case.

13. The Hon'ble Supreme Court of India in the case of **C. Muniappan vs. State of Tamil Nadu** reported in (2010) 9 SCC 567, has 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 the second FIR will be impermissible in law.

14. Now coming to the facts of this case, the FIR of Korrah P.S. Case No.224 of 2020 contains allegations of an occurrence of an offence which took place on 13.09.2020 that is after lodging of the first FIR which took place on a different date not only on a different date but altogether on a different place of occurrence in a different State and keeping in view the nature of allegation, it cannot be said that the occurrence of 13.09.2020 took place as a consequence of an occurrence for which Belur P.S. Case No.151 of 2020 has been registered.

15. Under such circumstances, as this case fails the consequence test so this Court is not inclined to accept the contention of the learned counsel for the petitioners that the FIR of Korrah P.S. Case No. 224 of 2020 is the second FIR in respect of the same occurrence or the same is a consequence of the same occurrence. Hence, this Court is not inclined to allow the prayer to quash the cognizance order dated 26.07.2021 passed by the learned A.C.J.M., Hazaribagh and the FIR along with the entire criminal proceeding including the FIR in connection with Korrah P.S. Case No.224 of 2020, corresponding to G.R. No. 1362 of 2021.

16. Accordingly, this criminal miscellaneous petition being without any merit is dismissed.

(Anil Kumar Choudhary, J.)