

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 100 of 2018

1. Baijnath Thakur S/o Jivlal Thakur
2. Sunil Saw S/o Sitaram Saw
3. Teklal Saw S/o Budhan Saw
4. Govind Kumar Gupata S/o Lochan Saw
5. Baleshwar Thakur S/o Kewal Thakur
6. Meghan Thakur S/o Thakuri Thakur
7. Arvind Kumar Prasad S/o Lochan Prasad r/o Village aurwatanr,
P.O.- Mandramo, P.S. Saria, District Giridih.
8. Lochan Saw S/o Cherak Nayak
9. Thaneswar Thakur S/o Nunu Chand Thakur
10. Bijli Devi W/o Bhuneshwar Saw
11. Panwa Devi W/o Dayal Saw
12. Deglal Prasad Gupta @ Deglal Saw S/o Puran Saw
13. Lalji Hazam @ Laljit Sharma S/o Hira Lal Thakur
14. Mina Devi W/o Dinesh Prasad Gupta
15. Dinesh Prasad Gupta S/o Lilo Saw
16. Nemchand Nayak S/o Tilak Saw
17. Prameshwar Prasad Gupta S/o Janaki Saw
18. Ratni Devi W/o Janaki Saw
19. Koshaliya Devi W/o Jagdish Prasad Nirala
20. Jagdish Prasad Nirala S/o Jethu Saw
21. Khirodhar Prasad Gupta S/o Kitu Saw
22. Purni Devi W/o Kitu Saw
23. Sitaram Saw S/o Darsu Saw
24. Dilo Saw S/o Jethu Saw
25. Tilak Saw S/o Cherak Nayak
26. Kamali Devi W/o Tilak Saw

Petitioner no. 1 to 6, 8 to 26 Resident of Village-Gothwa tanr, P.O.
+P.S.- Nimiyaghat, District Giridih. ... Petitioners

Versus

1. The State of Jharkhand
2. Sundari Devi W/o Gurudayal Saw R/o Village- Gothwa tanr,
P.O. + P.S.- Nimiyaghat, District- Giridih. ... Opposite Parties

For the Petitioners : Mr. Arvind Kumar, Advocate
For the State : Mrs. Priya Shrestha, Spl.P.P.
for the O.P. No. 2 : Mr. Arvind Kr. Choudhary, Advocate

P R E S E N T
HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court: Heard the parties.

2. This Cr.M.P. has been filed with a prayer to quash the order of cognizance dated 08.02.2017 passed in connection with Nimiaghat P.S. Case No. 106 of 2015 corresponding to G.R. No. 2441 of 2015 arising out of Complaint Case No. 1114 of 2015 in T.R. No. 881 of 2017 by which the court of learned Judicial Magistrate, 1st class, Giridih has taken cognizance under sections 147, 148, 149, 341, 323, 324, 337, 307, 427, 448, 379 of the Indian Penal Code as well as the entire criminal proceeding on the ground that this is the self-same occurrence in respect of which earlier Nimiaghat P.S. Case No. 75 of 2015 was instituted, on the written report being lodged by the brother-in-law (devar) of the complainant of this case. The allegation against the petitioners in this case is that the petitioners being the members of unlawful assembly armed with deadly weapons trespassed to the house of the petitioners, committed mischief and committed theft of the gold and silver jewelry.

3. The complainant/opposite party no. 2 first filed Complaint Case No. 1114 of 2015. The same was referred to police under Section 156(3) of Cr.P.C. basing upon which Nimiaghat P.S. Case No. 106 of 2015 was registered. Police after investigation, found that the allegations are not true. Thereafter, the complainant filed protest petition. The same was numbered as C.P. Case No. 1102 of 2016. Vide order dated 08.02.2017, the learned learned Judicial Magistrate, Giridih found *prima facie* case for the said offence and ordered for issue of summons.

4. It is submitted by the learned counsel for the petitioners drawing the attention of the Court to the certified copy of First Information Report of

Nimiaghat P.S. Case No. 75 of 2015 instituted by the brother-in-law (devar) of the informant, that for the selfsame occurrence prior to this First Information Report Nimiaghat P.S. Case No. 75 of 2015 has been instituted for an occurrence which took place on 22.06.2015 at 7.00 am. It is then submitted that, for the selfsame occurrence, this First Information Report was filed and consequent upon which cognizance has been taken; which will amount to double jeopardy. It is lastly submitted that the prayer as prayed for by the petitioners be allowed.

5. Learned counsel for the opposite party no. 2 submits that some more accused has been named in this complaint on the basis of which the First Information Report of Nimiaghat P.S. Case No. 106 of 2015 has been registered; hence there is no Bar to continue with this alleged second First Information Report. Hence it is submitted that the Cr.M.P. being without any merit be dismissed.

6. Having heard, the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that in the case of ***T.T. Antony v. State of Kerala & Others*** reported in **2001(6) SCC 181** para 27 which reads as under :

“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 subsection (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 [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] 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.” (Emphasis supplied)

The Supreme Court of India has held that 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.

7. The Hon’ble Supreme Court of India in the case of ***Prem Chand Singh vs. State of Uttar Pradesh & Another*** reported in (2020) 3 SCC 54 paragraph-11 of which reads as under:-

“11. It is, therefore, apparent that the subject-matter of both the FIRs is the same general power of attorney dated 2-5-1985 and the sales made by the appellant in pursuance of the same. If the substratum of the two FIRs are common, the mere addition of Sections 467, 468 and 471 in the subsequent FIR cannot be considered as different ingredients to justify the latter FIR as being based on different materials, allegations and grounds.” (Emphasis supplied)

has held that if the substratum of the two FIRs are common, the mere addition of certain additional offences in the subsequent FIR cannot be considered as different ingredients to justify the latter FIR as being based on different materials, allegations and grounds.”

8. Now coming to the facts of the case the undisputed facts remains that the informant and complainant belongs to the same family. The genesis of occurrence in both these cases is regarding the use of road situated in front of the house of both the complainant and informant of both Nimiaghat P.S. Case No. 106 of 2015 and Nimiaghat P.S. Case No. 75 of 2015. The date of occurrence of both the cases is 22.06.2015 and time of occurrence and place of occurrence is also same.

9. Under such circumstances, merely because in the complaint some more accused have been arrayed alleging that they were also members of the unlawful assembly, this Court is of the considered view that the same is not justified to maintain the second First Information Report. Therefore, continuation of proceeding in connection with Nimiaghat P.S. Case No. 106 of 2015 will amount to abuse of process of law.

10. Hence, this is a fit case where the entire criminal proceeding including the order of cognizance dated 08.02.2017 passed in connection with Nimiaghat P.S. Case No. 106 of 2015 corresponding to G.R. No. 2441 of 2015 arising out of Complaint Case No. 1114 of 2015 in T.R. No. 881 of 2017 which is now pending before the learned Judicial Magistrate, 1st Class, Giridih, as prayed for by the petitioners, be quashed and set aside.

11. Accordingly, the order of cognizance dated 08.02.2017 passed in connection with Nimiaghat P.S. Case No. 106 of 2015 corresponding to G.R. No. 2441 of 2015 arising out of Complaint Case No. 1114 of 2015 in T.R. No. 881 of 2017 which is now pending before the learned Judicial Magistrate, 1st Class, Giridih is quashed and set aside against the petitioners.

12. In the result, this Cr.M.P. stands allowed.

13. In view of disposal of this Cr.M.P., the interim relief granted vide order 15.03.2018, is vacated.

14. Registry is directed to intimate the court concerned forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 20th September, 2024
AFR/ MM