

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.407 of 2019

Arising Out of PS. Case No.-478 Year-2018 Thana- GHOSI District- Jehanabad

Anil Kumar Son of Late Geeta Prasad Resident of Village - Pariyawan, P.S.-
Ghosi (Okari O.P.) District - Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar, through District Magistrate, Jehanabad.
2. District Magistrate / Collector, Jehanabad
3. Special Land Acquisition Officer, Sone Yojana, Aurangabad
4. Anchal Adhikari / Circle Officer, Madanganj Block, P.S.- Ghosi (Okari O.P.)
Jehanabad
5. Station House Officer (SHO) Ghosi P.S. (Okari O.P.) Jehanabad

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Pramod Kumar Singh, Advocate
For the Respondent/s : Mr. Rakesh Kumar Srivastava, AC to GP-15

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 03-04-2019

Heard Mr. Pramod Kumar Singh, learned counsel
for the petitioner and Mr. Rakesh Kumar Srivastava, learned
counsel for the State.

2. This application under Article 226 of the
Constitution of India has been filed by the petitioner for
quashing the first information report (for short 'FIR') of Ghosi
P.S. Case No. 478 of 2018 registered on 05.12.2018 under
Sections 420, 468, 470 and 471 of the Indian Penal Code (for
short 'IPC').



3. Learned counsel appearing for the petitioner submitted that for the same cause of action, the petitioner is being prosecuted twice as two FIRs have been filed one after other within a gap of six months. The aforesaid action of the respondents is neither sustainable in law nor on facts. Hence, the later FIR is liable to be quashed.

4. Per contra, learned counsel appearing for the State submitted that the FIR of Ghosi P.S. Case No. 478 of 2018 was registered on 05.12.2018 at the instance of one Pramod Kumar Mishra, Special Land Acquisition Officer, Sone Project, Aurangabad whereas the first case i.e. Ghosi P.S. Case No. 174 of 2018 dated 16.06.2018 was registered on the basis of written report submitted by the Circle Officer, Modanganj. In the first case i.e., Ghosi P.S. Case No. 174 of 2018 apart from the petitioner Anil Kumar, two others, namely, Raj Kumar Sharma and the then Circle Inspector were made accused whereas in the second case, it is the petitioner alone who has been made accused. He has further contended that since the allegations are serious and have been registered by different officials at two different point of time, there is no illegality in continuing with the investigation of both the cases. He has submitted that investigation of both the cases is in advanced stage. He has



pleaded that during pendency of investigation, it would not be proper for this Court to interdict the FIR of the later case i.e., Ghosi P.S. Case No. 478 of 2018.

5. I have heard learned counsel for the parties and carefully perused the record.

6. On 16.06.2018 Ghosi P.S. Case No. 174 of 2018 was registered for the offences punishable under Sections 406, 409, 419, 420, 467, 468 and 471/34 of the I.P.C. against the petitioner, the then Revenue Clerk Raj Kumar Sharma and the then Circle Inspector of Modanganj circle at the instance of one Pramod Kumar Mishra, the then Circle Officer of Modanganj, circle. In his written report submitted to the Officer-in-charge of the Ghosi police station, he has stated that the petitioner has received the amount of compensation for acquisition of plots of land acquired for the purpose of construction of "Afflux Bundh Mandai Weir" by producing land possession certificate and rent receipts issued by the then Revenue Clerk Raj Kumar Sharma and the then Circle Inspector. The land possession certificate was issued in favour of the petitioner even without making any physical verification.

7. After lapse of six months of coming into existence of Ghosi P.S. Case No. 174 of 2018 the Special Land



Acquisition Officer, Sone Project, Aurangabad gave a written report to the officer-in-charge of the Ghosi police station stating therein that for construction of "Afflux Bundh Mandai Weir", the Executing Engineer, Water Resources Division, Ghosi, Jehanabad sent requisition for permanent acquisition of 62.51 acre of land in village- Pariyawan, Aurangabad police station. On the basis of said requisition land acquisition proceeding was initiated by the Special Land Acquisition Officer, Sone Project, Aurangabad. Under the said scheme out of 1448 Raiyats, 974 were already paid compensation. In course of payment of compensation in respect of land acquired in village Pariyawan of Thana No. 544, Khata No. 302, Khesra No. 09, Area- 0.9075, Khesra No.24, Area-0.28, Khesra No.17, Area- 0.53, Khesra No. 32, Area- 0.41, Khesra No. 51, Area- 0.215, Khesra No. 52. Area- 0.03, Khesra No.25, Area- 0.57 making total area 2.9425 acre, rupees one crore twenty four lacs seventy six thousand and two hundred was paid as compensation by the Land Acquisition Officer, Aurangabad on 15.05.2017 to the petitioner on the basis of land possession certificate no. 91 dated 08.05.2017 produced by the petitioner which was issued vide revenue receipt no. 0464153 dated 06.05.2017 by the Circle Office, Modanganj.

8. After the payment of compensation was



made to the petitioner in respect of Khata No. 302 another person made a claim on the basis of land possession certificate issued by the Circle Office, Modanganj. He had also furnished Kewala relating to land and the revenue receipt and requested for payment of compensation. He also apprised that the Circle Officer, Modanganj and other officials of the said Circle Office had issued land possession certificate to different persons with respect to same land even without making any inquiry. It has been further alleged in the said written report that for the alleged act of illegal issuance of land possession certificate, the Revenue Clerk Raj Kumar Sharma has been suspended and a departmental proceeding has been initiated against him and a disciplinary proceeding has also been initiated against the Circle Officer, Modanganj Mr. Pramod Kumar Mishra, the informant of the first FIR.

9. On the basis of the aforesaid allegations made in the written report submitted by the Special Land Acquisition Officer, Sone Project, Aurangabad, the FIR of Ghosi P.S. Case No. 478 of 2018 was registered against the petitioner.

10. From perusal of the two FIRs, it would be evident that in both the FIRs the allegations are common. They relate to fraudulent receipt of payment of compensation for



acquisition of land by producing illegally obtained land possession certificate. In the first FIR, the allegations are not in detail. However, in the second FIR the same allegation has been elaborately dealt with. The details of land have not been mentioned in the FIR whereas the details of the land for which the amount of compensation has been received by the petitioner has been mentioned in the second FIR. That apart, there is no other difference in the two FIRs. Thus, it would appear that the first FIR was made on the basis of the information received by the informant Circle Officer whereas the second FIR has been instituted after nearly six months when the investigation into the first FIR had already been commenced and had reached to a certain stage. Naturally, while instituting the second FIR, the informant was in know of the alleged acts of omission and commission in some detail. However, merely because, certain additional informations were obtained at the time of recording of second FIR, the same would not have been treated as an FIR. Those informations could have been the part of investigation of the first FIR, but every subsequent information in respect of same charges cannot be treated to be a fresh FIR. In case of an oral statement after institution of an FIR revealing certain informations, the same would be treated as statement of



witnesses under Section 161(3) of the Code of Criminal Procedure (for short 'Cr.P.C.').

11. An FIR is registered under Section 154 of the Cr.P.C. Section 154 of the Cr.P.C places a duty upon the Officer-In-charge of the police station to register an FIR upon receipt of information about a cognizable offence. However, it is settled principle of law that two FIRs cannot be registered for the same offence. The safeguard provided under the Cr.P.C against institution of second FIR is based on the principle of akin to that of double jeopardy, rule of fair investigation and prevention of abuse of power by the investigating authority of the police. There is always a possibility that more than one piece of information is given to the officer-in-charge of a police station in respect of the same incident. Under such circumstance, only the earliest or the first information with regard to the commission of a cognizable offence would satisfy the requirement of Section 154 of the Cr.P.C. and all other materials and information given to or received in course of investigation would be either in the nature of statement made under Section 161(3) of the Cr.P.C or the materials seized in connection with the FIR.

12. While saying so, I am mindful of the fact that



the counter version in respect of the same offence can always give rise to a second FIR. In case, where incidents are separate or independent also, a second FIR would be permissible. Furthermore, where the subsequent event is of such a magnitude that it does not fall within the ambit and scope of the FIR recorded first, a second FIR would be permissible.

13. However, in the instant case, from the allegations made in the second FIR, it would be manifest that they are neither in the nature of counter version nor the incidents are separate and independent nor the subsequent event is of such a greater magnitude that it does not fall within the ambit and scope of the FIR recorded first.

14. In that view of the matter, this Court cannot accept the contention of the State that the institution of the second FIR, on the basis of the allegations, which are in great detail would be permissible. The information given by the two different officials at two different point of time in respect of same incident should not have resulted in institution of two FIRs.

15. Accordingly, the FIR of the second case i.e. Ghosi P.S. Case No. 478 of 2018 is set aside. The application stands allowed.



16. However, the materials collected in course of investigation of Ghosi P.S. Case No. 478 of 2018 shall be treated to be part of investigation of first case i.e., Ghosi P.S. Case No. 174 of 2018. The investigating officer of Ghosi P.S. Case 478 of 2018 shall provide the materials collected in course of investigation of Ghosi P.S. Case No. 478 of 2018 to the investigating officer of Ghosi P.S. Case No. 174 of 2018, who shall complete the investigation of Ghosi P.S. Case No. 174 of 2018 as early as possible preferably within a period of four months from the date of receipt/production of a copy of this order.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.04.2019
Transmission Date	11.04.2019

