

2024(3) eILR(PAT) HC 277
IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.649 of 2017

Arising Out of PS. Case No.-4 Year-2017 Thana- JURAWANPUR District- Vaishali

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Ranjit Kumar @ Guddu son of Late Hare Ram Singh, resident of Mohalla-
Khudaul, Gandhi Maidan, P.S.- Supaul, District- Supaul.

... ... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Bihar, Patna
2. The Director General of Police, Bihar, Patna.
3. The D.I.G., Tirhut, Muzaffarpur.
4. The Superintendent of Police, Vaishali at Hazipur.
5. The Office In-charge, Jurabanpur, P.S., Dist- Vaishali.

... ... Respondent/s

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Acts/Section/Rules:

- Bihar Prohibition And Excise Act, 2016 - Sections 30(A), 38 And 41
- Indian Penal Code - Section 120B

Criminal Writ - filed for quashing of second FIR registered at Jurabanpur PS - First FIR was registered at Khusrupur police station on basis of secret information that led to recovery of illegal liquor from a vehicle. Arrested persons made the statement that they had, on the way, unloaded some illegal liquor in a house in Virpur within the jurisdiction of Jurabanpur Police Station. - 2nd FIR was registered in Jurabanpur Police Station on basis of secret information that led to recovery of illegal liquor from the same house in Virpur house where illegal liquor was stored. It was the case of the petitioners that incidents in both the FIRs are part of the same transaction and thus, the second FIR deserved to be quashed.

Held - second FIR is admissible only when the allegation of offence is absolutely distinct and separate from the first FIR in respect of the same incident. - In this case, entire incident and transaction took place in one transaction and by way of transportation and illegal delivery of illegal liquor in the State of Bihar, the accused persons committed same offence - Second FIR quashed

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... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjeev Ranjan, Advocate
Ms.Aastha Ananya, Advocate
For the Respondent/s : Mr.Arvind Kumar, Advocate
For the EOU : Mr.V.N.P. Sinha, Sr. Advocate
Mr.Vijay Anand, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 01-03-2024

Khusrupur P. S. Case No. 21 of 2017, dated 5th of
February, 2017, was registered on the basis of a *suo motu*
complaint made by one Mritunjay Kumar, SHO, Khusrupur
Police Station, alleging, *inter alia*, that on 4th of February, 2017



at about 10.00 P.M. in Hardas Bigha Petrol Pump on NH 30 old road under the said police station, he was performing night patrolling duty along with S.H.O., Vinay Kumar Mishra, Constables of Armed Forces, namely, Anil Kumar Singh, Mithilesh Kumar, Rakesh Kumar Singh Das and Rana. When they reached near Hardas Bigha Petrol Pump, one Md. Mustaqe attached to Special Task Force (herein after referred to as the STF) of Patna informed him on telephone that they received a secret information to the effect that some people from the State of Haryana formed an organized syndicate to sell liquor in no liquor State of Bihar. It was also informed that for the last two or three months, a group of persons forming a syndicate, had been selling liquor by transporting it in closed containers inside pickup vans in order to earn huge sum of money. Even on 4th of February, 2017, a big pick up container with Registration No. HR62-8670 with a sticker “Bank Duty, Government of India”, pasted thereon with ZX Plus Security, persons were moving at different places of the State and supplied Indian Made Foreign Liquor (herein after referred to as the “IMFL” for short) to Diara area via Gyaspur Pipa Pul and Khusrupur and the said pick-up van was followed by a Tata Indigo Car, bearing Registration No. BR1CF-2846, which also carried liquor inside it. The leader of



the syndicate member would come soon to receive the money in exchange of supplying liquor.

2. On receiving the said information from STF, the informant gave necessary instructions to the force, and the police personnel, accompanying the informant, started waiting for arrival of the said container. At about 11.00 P.M., a security van having Registration No. HR-62-8670 came from the Gyaspur side. The police party surrounded the said vehicle and stopped it. Meanwhile, a Tata Indigo ECSXL Car, bearing Registration No. BR01CF-2486 also came from behind and was apprehended. Meanwhile, Commando Team of STF also reached the location. In order to witness police action, local people assembled at the spot. The police called two independent witnesses, namely, Nandu Paswan and Umesh Kumar and conducted search of the security van and closed container attached therewith. The police recovered a cartoon of Haryana made 375 ml. Royal Stag Classic Whisky (24 bottles) in which two bottles are empty. In the said cartoon and bottles, it was specifically stamped “for sale in Harayana only”. On being asked, the driver of the security van told his name as Sumit Bajaj, resident of Hisar in Harayana. A young man was sitting on the left side of the driver, he told his name as Mayank Bajaj.



He was also a resident of Hisar. Then, the police party seized the said Tata Indigo Car. One Ranjeet Kumar @ Guddu was driving the said car. Another person, who was sitting on the seat by the side of the driver, disclosed his name as Ajayant. The persons, who were sitting on the back seat of the said car were Anil Kumar Jaiswal and Santosh Chaudhary. On search, police recovered one cartoon of 375 ml. Royal Stag Classic Whiskey from the boot space of the car. The IMFL recovered from pickup van and the Tata Indigo car were seized by the police and proper seizure list was prepared. The apprehended persons could not produce any document in support of their possession and sale of IMFL in Bihar. Accordingly, they were arrested. It was learnt on interrogation that the accused persons used to run a syndicate to sell IMFL illegally in Bihar. The seized liquor was ordered by Ajayant and those were supposed to be unloaded in the house and shop of one Lagan Ram at Virpur, Diara within the police station Jurabanpur. It was also learnt during interrogation that two cartoons of liquor were supplied to one Arjun Rai at Patna. The accused persons made statement that on the request of Ajayant, they supplied IMFL to Vaishali and Patna and many other places by the same pick up van. They also disclosed that 116 numbers of cartoon of IMFL were stored in his house and



shop of Arjun Rai. In return, Ajayant received Rs. 5,00,000/- and total outstanding amount was Rs. 8,12,500/-. On completion of search and seizure, Mritunjay Kumar lodged the compliant.

3. Again, one Navin Kumar Singh, Sub-Inspector of police attached to Jurabanpur Police Station lodged a *suo motu* complaint to the effect that on 5th of February, 2017 at about 10.30 P.M., he left the police station with police force for night patrolling and conducting raid. In course of night patrolling, they reached near Shivanagar Lakarbaba Chowk. At around 02.15 A.M., the Officers attached to Khusrupur Police Station and the members of STF informed the said Navin Kumar Singh that they received an information that a group of miscreants procured liquor from the State of Haryana to supply them illegally in various places at Patna, Virpur Diara and other areas for the purpose of storing and selling liquor in violation of its ban. They also informed that during raid, they arrested six persons. It was also informed to them that the accused persons supplied 70 cartoons of liquor behind Arjun Rai's warehouse. In order to verify the said information, the police party along with Special Armed Police, Sudama Mandal, Gandhari Prasad and Jalil Mohammad reached Arjun Rai's hideouts and conducted search and raid. At the same time, officials of Khusrupur Police



Station and S.T.F. of Patna reached there with the Armed Forces and searched as per statement of the accused persons. During search, IMFL was found from a room of Bindeshwar Rai's house. The said IMFL was seized in presence of two independent witnesses. Total quantity of IMFL was 70 cartoons of different brands. Seizure list was prepared in presence of the independent witnesses and accused Sumit Bajaj, Ajayant, Mayank Bajaj, Anil Kumar Jaiswal, Ranjeet Kumar, Santosh Chaudhury, Arjun Rai and Bindhshwar Rai were examined.

4. The present Criminal Writ Application has been filed for quashing of Jurabanpur P. S. Case No. 04 of 2017, dated 5th of February, 2017, registered for the offence punishable under Section 120B of the Indian Penal Code read with Sections 30(a), 38 and 41 of the Bihar Prohibition and Excise Act, 2016.

5. It is contended on behalf of the petitioner that he was arrested in connection with Khusrupur P. S. Case No. 21 of 2017, dated 5th of February, 2017, registered for the offences punishable under Sections 420 and 120B of the Indian Penal Code read with Sections 30(a), 38 and 41 of the Bihar Prohibition and Excise Act, 2016.

6. According to the petitioner, Jurabanpur P. S. Case No. 4 of 2017 was instituted on the basis of alleged recovery of



IMFL from the house of Bindeshwar Rai of Virpur.

7. The case of the prosecution is that the accused persons were arrested in connection with Khusrupur P. S. Case No. 21 of 2017. They made the statement regarding storing of IMFL in the house of Bindeshwar Rai of Virpur. The said place is within the jurisdiction of Jurabanpur Police Station. Therefore, the police officer of Jurabanpur Police Station was made an alert and a joint raid was conducted in the house of the said Bindeshwar Rai and foreign liquor was recovered.

8. It is submitted by the learned Advocate for the petitioner that the raid conducted by the police attached to Khusrupur Police Station and also by the police attached to Jurabanpur Police Station were in course of the same transaction. Therefore, there is no reason to register two separate cases one by Khusrupur Police Station and another by Jurabanpur Police Station.

9. Referring to a decision of the Hon'ble Supreme Court in the case of *T. T. Antony Vs. State of Kerala & Ors.*, reported in *(2001) 6 SCC 181*, it is submitted by the learned Advocate appearing on behalf of the petitioner that there can be no second F.I.R. and consequently no fresh investigation on receipt of every subsequent information in respect of same



cognizable offence or same occurrence, giving rise to one or more cognizable offences. Only information about commission of a cognizable offence, which is first entered in the police station and recorded in the diary by Officer Incharge of the police station, can be regarded as F.I.R. under Section 154 of the Code of Criminal Procedure. All subsequent statements / informations will be covered by Section 162 of the Cr.P.C. The Officer Incharge of the police station has to investigate not merely the cognizable offence reported in the F.I.R. but also other connected offences found to have been committed in the course of same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Cr.P.C.

10. It is pointed out by the learned Advocate appearing on behalf of the petitioner that as many as six accused persons were apprehended by the police attached to Khusrupur P. S. Case No. 21 of 2017, dated 5th of February, 2017. During interrogation, the informant of Khusrupur Police Station came to know from one Arjun Rai that the accused persons supplied 70 cartoons of liquor behind Arjun Rai's warehouse. The said information was communicated to Sub-Inspector, Navin Kumar Singh of Jurabanpur police station and a police team along with STF officers as well as officers and members of police force



attached to Khusrupur P. S. conducted raid in the house of one Bindeshwar Rai and recovered huge quantity of IMFL from his house. Thus, apprehension of the accused persons, recovery of IMFL from the pick up van and boot space of a Tata Indigo Car as well as receiving information about supply and concealment of foreign liquor in the house of Bindeshwar Rai, happened in course of one and the same transaction. Therefore, Jurabanpur P. S. Case No. 04 of 2017, dated 5th of February, 2017 is liable to be quashed.

11. In support of his contention, he further refers to another decision in the case of ***Babubhai Vs. State of Gujarat & Ors.***, reported in ***(2010) 12 Supreme Court Cases 254***. In the said report, it is held by the Hon'ble Supreme Court that an F.I.R. under Section 154 Cr.P.C. is the first information of a cognizable offence recorded by the Officer Incharge of the police station. It sets the machinery of criminal law in motion and marks commencement of the investigation which ends with the formation of an opinion under Section 169 or 170 of the Cr.P.C., as the case may be. Thus, it is quite possible that more than one piece of information be given to the police officer Incharge of police station in respect of the same incident involving one or more than one cognizable offences. In such a



case, he need not enter each piece of information in the diary. All other information given orally or in writing after the commencement of investigation into the facts mentioned in the First Information Report will be statements falling under Section 162 of the Cr.P.C.

12. In case of a subsequent F.I.R., the Court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the F.I.R.s relate to same incidents in respect of same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is affirmative, the second F.I.R. is liable to be quashed. However, in case, the contrary is proved, where the version in the second F.I.R. is different and they are in respect of two different incidents / crimes, the second F.I.R. is permissible.

13. Coming to the instant case, it is submitted by the learned Advocate for the petitioner that second F.I.R. being Jurabanpur P. S. Case No. 04 of 2017, dated 5th of February, 2017, cannot be registered because of the fact that the incident that took place in the night of 4/5 of February, 2017, was that some accused persons allegedly forming a syndicate were transporting IMFL to Bihar from Haryana. They were unloading



IMFL in different places in the State of Bihar. While going towards Diara area via Gyaspur Pipa Pul, the police apprehended one pick van, arrested the driver and helper of the said pick up van and four persons travelling by a Tata Indigo Car, following the pick up van. After apprehension, they were interrogated and one of them stated that huge quantity of IMFL was unloaded in Jurabanpur. Thus, if some part of the same transaction takes place within the jurisdiction of one police station and some part within the jurisdiction of another police station, disclosing same and identical offence committed in same transaction, criminal case may be instituted in either of the two police stations. Since Khusrupur P. S. Case No. 21 of 2017, dated 5th of February, 2017 was registered at an earlier point of time, Jurabanpur P. S. Case No. 04 of 2017, dated 5th of February, 2017 ought to be quashed.

14. On the same principle, the learned Advocate appearing on behalf of the petitioner refers to the following decisions of the Hon'ble Supreme Court:

(i) ***Chirra Shivraj Vs. State of Andhra Pradesh:***
(2010) 14 SCC 444

(ii) ***Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation & Anr.: (2013) 6 SCC 348***



(iii) *Awadesh Kumar Jha @ Akhilesh Kumar Jha & Anr. Vs. State of Bihar: (2016) 3 SCC 8*

(iv) *Dipu Singh @ Braj Kishor Vs. State of Bihar, delivered by a Co-ordinate Bench in Criminal Writ Jurisdiction Case No. 1169 of 2021, dated 21st March, 2020.*

15. The learned Advocate for the petitioner also refers to another decision of Hon'ble Supreme Court in *Criminal Appeal No. 2343 of 2023 (Haji Iqbal @ Bala through S.P.O.A. Vs. State of U.P. & Ors.)*. It is held in paragraph 14 of the said judgement that whenever an accused approaches the Constitutional Court under Article 226 of the Constitution to get the F.I.R. or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the Court owes a duty to look into the F.I.R. with care and a little more closely, because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the F.I.R. / complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the F.I.R. / complaint are such that they disclose the necessary ingredients to constitute



the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the F.I.R./complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attendant circumstances emerging from the records of the case over and above the averments and, if need be, with due care and circumspection try to read in between lines. The Court while exercising its jurisdiction under Section 482 of the Cr.P.C. or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to initiation / registration of the case as well as the materials collected in course of investigation.

16. Now, if over all circumstances, leading to the initiation of FIR is closely assessed then it would be found that accused Bindeshwar Rai was arrested and huge quantity of IMFL was recovered in course of the same transaction of the incident which started on the road within Khusrupur Police Station. The issue may be explained by the following example. A drug paddler while delivery of Narcotic Drugs is arrested from a particular place. A case is registered against him under



the penal provisions of Narcotic Drugs and Psychotropic Substances Act, 1985. During investigation, the accused was interrogated. In course of his interrogation, police came to know that he distributed drugs at different places within the jurisdiction of different police stations. In order to workout the said information, police passed the said information to different police stations and they, on search, recovered drugs from the persons to whom the drug paddler supplied the drugs. The series of action taken by police in recovery of drugs as per the statement of the accused constitute commission of offence in same transaction and only one FIR will be initiated against the accused. Recovery in course of investigation as per the statement of the accused can be regarded as statements under Section 162 of the Cr.P.C. If recovery is made in pursuance to such statement, it may be admissible as an evidence as discovery of a fact under Section 27 of the Cr.P.C., but all such discoveries of drugs from different police stations will not make the accused liable to face different trials. Same is the case in the incident in hand.

17. Learned Advocate on behalf of the State, on the other hand, submits that if first and second FIR fundamentally differ from each other as the informants of both the FIRs are



different officers belonging to the different districts, accused persons are also different and the scope of investigation is also substantially different, first FIR cannot be equated with second FIR, which are distinct and different from each other, having separate cause of action at different places, having different accused persons

18. In support of his contention, the learned Advocate for the State refers to the case of *M/s Majhulia Sugar Industries Pvt. Ltd & Anr. Vs. The State of Bihar & Ors.* reported in **2024(1) PLJR 574**. The learned Advocate for the State/respondent also places reliance on the decision of the Apex Court in *Anju Chaudhary Vs. State of Uttar Pradesh & Anr.* reported in **(2013) 6 SCC 384**. In the aforesaid report, the Hon'ble Supreme Court was pleased to lay down the guideline under what circumstances second FIR can be treated to be admissible. It is stated by the Hon'ble Supreme Court that the test of sameness is to be applied. If the incident refers to one series of acts so connected together as to form same transaction, there should be one FIR. The second FIR in such a case is not permissible. However, second FIR can be instituted for an unrelated incident and for offence of such magnitude which does not fall within the ambit of the first FIR.



19. On the same issue, the learned Advocate for the State/respondent refers to another decision in the case ***Rameshchandra Nandlal Parikh Vs. State of Gujarat & Anr.***, reported in ***(2006) 1 SCC 732***.

20. Having gone through the judicial precedence closely, it appears to this Court that second FIR is admissible only when the allegation of offence is absolutely distinct and separate from the first FIR in respect of the same incident. As for example, a shopkeeper lodges an FIR alleging that his shop was burnt and damaged. In the second FIR, another person alleges incident of communal hatred, arson and breach of peace, resulting in destruction of property by fire including the shop of the first informant. The above-mentioned two incidents discloses absolutely to distinct offences. In such a case, second FIR is admissible.

21. In the instant case, some persons were apprehended within the jurisdiction of Khusrupur Police Station. A pick up van and a Tata Indigo Car were stopped. The persons who were apprehended were travelling by the said two vehicles. On search, police recovered two cartoons of IMFL, one from the pickup van and another from the boot space of Tata Indigo Car. One of the accused made statement to the police officer of



Khusurpur that they unloaded huge amount of IMFL on the way in Virpur within police station Jurabanpur. It was informed by the informant of Khushrupur P.S. Case No 21 of 2017 to the Officer In-charge of Jurabanpur Police Station. Search was conducted by the officers of Jurabanpur, STF personnel and the officers and members of Khusrupur Police Station and IMFL was recovered from the house of one Bindeshwar Rai. The entire incident and transaction took place in one transaction and by way of transportation and illegal delivery of IMFL in the State of Bihar, the accused persons committed same offence under the provisions of the Bihar Excise and Prohibition Act, 2016.

22. Therefore, in the facts and circumstances of the case, there could not have been a second FIR i.e., Jurabanpur P.S. Case 04 of 2017. The FIR in connection with Jurabanpur P.S. Case 04 of 2017, dated 5th of February, 2017, under Sections 120B of the Indian Penal Code read with Sections 30(a), 38 and 41 of the Bihar Prohibition and Excise Act, 2016 is hereby quashed. However, the incident of arrest and recovery of IMFL from the house of Bindeswar Rai be tagged with Khusrupur P.S. Case No. 21 of 2017 and investigation of the case will be held in relation to all the accused persons in



Khusrupur P.S. Case No. 21 of 2017.

23. With the aforesaid observation / direction, this
Criminal Writ Petition stands disposed of.

(Bibek Chaudhuri, J)

uttam/-

AFR/NAFR	AFR
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