IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10400 of 2017

Arising Out of PS. Case No.-181 Year-2016 Thana- RUNISAIDPUR District- Sitamarhi

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1. Hasanbibi Khatoon Wife of Late Md. Ahmad. Resident of Village- Suhai, P.S.- Dumra, District- Sitamarhi.
2. Md. Layak Ansari Son of Late Wokil Ansari Resident of Village- Suhai, P.S.- Dumra, District- Sitamarhi.
3. Md. Shaheed Ansari Son of Late Md. Hasan Jan Ansari, Resident of Village- Suhai, P.S.- Dumra, District- Sitamarhi.
4. Md. Gafoor Ansari Son of Late Md. Isha Ansari, Resident of Village- Suhai, P.S.- Dumra, District- Sitamarhi.
5. Md. Abdul Sakoor Ansari Son of Md. Isha Ansari, Resident of Village- Suhai, P.S.- Dumra, District- Sitamarhi.
6. Md. Jabbar Son of Late Md. Jafir, Resident of Village- Suhai, P.S.- Dumra, District- Sitamarhi.
7. Md. Mustafa Son of Late Md. Jafir, Resident of Village- Suhai, P.S.- Dumra, District- Sitamarhi.
8. Md. Mostkim Ansari Son of Md. Sovrari Ansari, Resident of Village- Suhai, P.S.- Dumra, District- Sitamarhi.
9. Md. Jaharuddin Son of Late Md. Waseer, Resident of Village- Suhai, P.S.- Dumra, District- Sitamarhi.
10. Md. Harun Son of Late Md. Wasir, Resident of Village- Suhai, P.S.- Dumra, District- Sitamarhi.
11. Md. Islam Son of Late Md. Ainul, Resident of Village- Suhai, P.S.- Dumra, District- Sitamarhi.
12. Khurshid Ansari Son of Late Md. Patarka @ Mostkim Ansari, All Resident of Village- Suhai, P.S.- Dumra, District- Sitamarhi.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. Azimun Khatun W/o Late Md. Akbar Vill-Suhai Dumara,Dist.-Sitamarhi

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Ajay Kumar Thakur, Sr. Adv. Mr.Ritvik Thakur, Adv. Mrs.Vaishnavi Singh, Adv.
For the Opposite Party/s	:	Mr.Jitendra Kumar Singh, APP
For the informant	:	Mr.Ashhar Mustafa, Adv. Mr.Abu Nasar, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

5 17-03-2023 Heard learned Senior Counsel for the petitioners and Md. Ashhar Mustafa, learned counsel for the informant as also Mr. Jitendra Kumar Singh, learned APP for the State.

2. On 22.2.2023, the matter was taken up and the following order was passed :

> *"Heard Mr. Ajay Kumar Thakur, learned Senior Counsel duly assisted by Mrs. Vaishnavi Singh, learned counsels for the petitioners as also Md. Abu Nasar who represents the informant.*
>
> *2. The present petition has been preferred for quashing of the order dated 2.2.2017 passed by the learned Chief Judicial Magistrate, Sitamarhi in Runnisaidpur P.S. Case No. 181 of 2016 G.R. No. 1369 of 2016, Tr. No. 1814/17 by which after differing with the final form submitted by the police, he issued process against the petitioners for facing trial under sections 302/34, 120-B of the Indian Penal Code.*
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> *3. The complaint which turned into a FIR lodged by the mother of the deceased alleged that her son Md. Ahmad Hussain was taken by named accused on 30.3.2016. As he failed to return in the night, she asked her daughter-in-law (wife of the deceased) to*

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ascertain where her husband is. It has been alleged that the lady scolded her and asked her to sleep and her husband will return in the morning. Subsequently, on the next day, she heard that the dead body of her son has been found near pond. Accordingly, she reached the place and found the dead body and had strong belief that her daughter-in-law alongwith her relatives killed her son.

4. Accordingly, the complaint was filed which ultimately led to lodging of Runnisaidpur P.S. Case No. 181 of 2016.

5. Learned Senior Counsel submits that the matter relates to 30.3.2016 followed by recovery of dead body on 1.4.2016 and immediately thereafter, the petitioner no.1 namely Hasanbibi Khatoon who is wife of the deceased lodged FIR vide Runnisaidpur P.S. Case No. 122 of 2016 on 1.4.2016 itself alleging therein that her in-laws which included her mother-in-law and the younger brother of the deceased, Ajmat have allegedly killed her husband.

6. The police investigated the matter in both the cases and while charge-sheet was submitted in the case lodged by the lady-petitioner no.1 Hasanbibi Khatoon amongst other against the mother-in-law (informant herein) as also the younger brother of the deceased, in the case in hand

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(Runnisaidpur P.S. Case No. 181/2016), the police submitted final form stating the case to be untrue.

7. Learned Senior Counsel Mr. Ajay Kumar Thakur straight away took this Court to the supplementary affidavit alongwith annexure to show the order of learned District and Sessions Judge-IX, Sitamarhi dated 21.1.2022 in which in the Sessions Trial No. 404/2016 (G.R. No. 09/2016) relating to Runnisaidpur P.S. Case No. 122 of 2016 (lodged by the petitioner no.1) the learned Court in para-28 observed as follows:

> *28. Having regard to the aforementioned discussion, I feel no hesitation in holding that the persecution has successfully proved the charges against the accused. Accused Ajmat stands guilty for the offence punishable u/s 302 IPC with section 201 IPC only and not in other sections, the prosecution has succeeded to bring home the guilt against both the accused for the alleged offences. Accordingly, the accused Ajmat is convicted for offence punishable u/s 302 IPC and u/s*

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201IPC, respectively. The accused Ajmat is in custody, and was produced through video conferencing.

Let the accused be heard on the quantum of sentence on 28.01.2022.

8. Accordingly, it convicted Ajmat (younger brother of the deceased) for the offence under section 302/34 and 201/34 of the Indian Penal Code relating to the death of husband of the petitioner petitioner no.1 with the following order:

32.In view of above submissions made by the learned counsel and the facts and discussions as made in the body of judgment. Whereby I have found the convict-Ajmat is guilty for the offence u/s 302/34 and 201/34 IPC respectively and the circumstances and manner in which the offenses were committed and seriousness and gravity of the same, I come to the conclusion that this case does not come within the purview

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of rarest of the rare case. So, the convict Ajmat is sentenced to life imprisonment and fine of 50,000/-Rs u/s 302 IPC and in case of default of payment, further RI of 05(five) months, alongwith 06 months RI and fine of 1000/-Rs. for section 201 of IPC and default of payment 03 days RI, both the sentences shall run concurrently and the period already spent in judicial custody by the convict shall be set off.

9. Learned Senior Counsel submits that here is a case where the husband of the petitioner no.1 was killed and the aggrieved lady lodged FIR vide Runnisaidpur P.S. Case No. 122/2016 but to save her son, Ajmat the mother-in-law of the petitioner no.1 and mother of the deceased lodged a false case.

10. In the FIR lodged by her, the learned Court had already taken the matter to its logical conclusion by convicting Md. Ajmat on 21.1.2022 and in that background, the present case lodged by the mother-in-law in which the petitioners are accused is

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nothing but an abuse of the process of the law.

11. He further submits that considering all these facts, a coordinate bench of this Court had stayed the further proceeding in the aforesaid Runnisaidpur P.S. Case No. 181 of 2016 on 8.4.2017 itself.

12. Learned counsel for the informant on the other hand once again seeks adjournment for filing reply.

13. As a last chance, list this matter after one week. If proper assistance is not rendered on that day and/or any affidavit is not filed, the matter will be taken to its logical conclusion.

14. Till the next date of hearing, the interim order dated 9.2.2023 to continue."

3. A counter affidavit has come on behalf of the informant.

4. Let the same be kept on record.

5. It has been submitted by the learned counsel for the informant-Opposite Party No. 2 that although two different FIRs were there relating to the same occurrence with two different versions, in the present case, when the closure report was submitted by the police on the ground of error of law, the learned Magistrate having prima facie satisfied, rightly differed with the closure report and took cognizance in the matter.

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6. According to him, the investigation report which cited error of law as a ground for submission of closure report was not consistent with the law of the land and as such, the order of the learned Magistrate cannot be faulted upon.

7. He has taken this Court to an order of the Hon'ble Apex Court in **Harjinder Singh versus State of Punjab and Others reported in (1985) 1 SCC 422** where para-7 state as follows :

> *"7. It is contended by learned counsel for the appellant that the High Court was wrong in upholding the order of the learned Additional Sessions Judge that the cases be clubbed and consolidated particularly when the prosecution versions in the police challan case and the complaint case are materially different and the accused persons are also not the same. He places reliance on the decision of this Court in Kewal Krishan v. Suraj Bhan for the submission that the two cases should be tried together but not consolidated. Further, he contends that in view of the conflicting prosecution versions in the two cases it is proper that the learned Additional Sessions Judge should inform the Government about the desirability to appoint a Special Public Prosecutor to conduct the case of the*

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complainant."

8. It is his further submission that when the rival versions of a particular occurrence is/are there, two FIRs can be maintained in law which also mandate that both the cases could be tried together by the same court so that these are disposed of simultaneously.

9. In this connection, he has taken this Court to the case of Hon'ble Apex Court in the **State of M.P. versus Mishrilal (dead) and Others** reported in **(2003) 9 SCC 426** with special reference to paragraph 7 and 8 which read as follows :

> *"7. Undisputedly, accused Mishrilal lodged the report to the police vide Ext. D-S over the same incident which happened on 5-3-1987, in which he had clearly stated that the injuries were sustained by him and his son Madhusudan at the hands of the prosecution party. It is also not disputed that on the strength of the complaint lodged by Mishrilal, investigation was also carried out and challan was filed, namely, Crime Case No. 52 of 1987 under Sections 147, 148, 149 and 324 IPC against the prosecution party which is pending for disposal before the learned Judicial Magistrate, First Class. In the said challan,*

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the prosecution party is stated to be the aggressor. This Court in Nathi Lal v. State of UP pointed out the procedure to be followed by the trial court in the event of cross-cases. It was observed thus: (SCC pp. 145-46. para 2).

"2. We think that the fair procedure to adopt in a matter like the present where there are cross-cases, is to direct that the same learned Judge must try both the cross-cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross-case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross-case cannot be looked into. Nor can the Judge be influenced by whatever is argued in the cross-case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross-case. But both the judgments must be pronounced by the

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same learned Judge one after the other."

8. *In the instant case, it is undisputed, that the investigating officer submitted the challan on the basis of the complaint lodged by the accused Mishrilal in respect of the same incident. It would have been just, fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in Nathi Lal case'. The cross-cases should be tried together by the same court irrespective of the nature of the offence involved. The rational behind this is to avoid the conflicting judgments over the same incident because if cross-cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments. In the instant case, the investigating officer submitted the challan against both the parties. Both the complaints cannot be said to be right. Either one of them must be false. In such a situation, legal obligation is cast upon the investigating officer to make an endeavour to find out the truth and to cull out the truth from falsehood. Unfortunately, the investigating officer has failed to discharge the obligation, resulting in grave miscarriage of justice."*

10. On the basis of said order, learned counsel for the informant submits that the learned Judge was required to take up

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both the cases simultaneously, proceed in a case, reserve the judgment, proceed in another case and then dispose of the matters by two separate judgments.

11. Having not done so, the learned Court erred in taking of the case lodged by the petitioner No. 1 herein which finally resulted into the conviction of the informant's son.

12. He as such submits that now that an order has been passed and this case could not be taken up as an interim protection was there, the appropriate course would be that the petition is dismissed and the petitioners face trial and let the matter re-examined by the learned Trial Court and come to a conclusion and in case, it result into their conviction, automatically the other convicted person namely, Azmat will be entitled to relief.

13. To this, the learned Senior Counsel, Mr. Ajay Kumar Thakur has submitted that both the cases cited by the other side cannot come to the informant's rescue.

14. So far as the applicability of the case of **Harjinder Singh versus State of Punjab and Others** (supra) is concerned, in the present case, the two matters were not clubbed, rather the petitioner No. 1 upon being harassed by the informant despite the fact that she lost her husband and FIR was lodged which

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culminated into the matter being sent to the Trial Court against the informant's son, she knocked the doors of this Court and on 8.4.2017, the further proceeding of the order dated 2.2.2017 passed by the learned C.J.M. Sitamarhi in Runni Saidpur P.S. Case No. 181 of 2016 was stayed.

15. He further submits that even the other case cited by the informant in **State of M.P. versus Mishrilal (dead) and Others** (supra) is of no help inasmuch as, the observation was to take up both the cases one after another and keep order reserved in first case, take up the second case and finally pass order one after another and the same was also to be done/order was to be pronounced by the same learned Judge.

16. Here it is an admitted case that in the Runni Saidpur P.S. Case No. 122 of 2016 lodged by the petitioner No. 1 herein, the learned Additional District and Sessions Judge-9, Sitamarhi vide an order dated 21.1.2022 passed order and judgment convicting the accused-Azmat for the offences punishable under Section 302/34 of the Indian Penal Code read with Section 201/34 of the IPC respectively and was sentenced to undergo life imprisonment and fine of Rs. 50,000/- under Section 302 of the IPC and in case of default of payment, further rigorous imprisonment of five months along with six months rigorous

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imprisonment and fine of Rs. 1,000/- for Section 201 of the IPC and in default of payment, two months rigorous imprisonment and both the sentences is/are to run concurrently and in that backdrop, the fresh trial of the petitioners for the same killing will be nothing but an abuse of the process of law.

17. Having gone through the facts of the case, the two FIRs lodged in the present case as also the submissions put forward by the respective parties and the cases cited by them, this Court is in complete agreement with the submissions put forward by the learned Senior Counsel for the petitioners that once the two FIRs were lodged, in one case (in which the petitioner was the informant), the police investigated the case, charge-sheet submitted, cognizance taken, charges framed, trial initiated which culminated into the conviction of accused-Azmat; in another case, the police submitted final form, the learned C.J.M. Sitamarhi differed, the petitioner knocked the door of this Court and interim protection was granted to her, now that conviction order has already been passed, as stated above, the further proceeding in the present case (Runni Saidpur P.S. Case No. 181 of 2016) lodged by the informant-Azimun Khatun will be an abuse of the process of law.

18. So far as the cases cited by the learned counsel for

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the informant is concerned, it has been rightly pointed out by the learned Senior Counsel that neither the two cases were clubbed together nor it is a case that the two cases were pending before the same learned Judge in which the learned Court failed to take up the matter one after another as also the fact that the trial in which Azmat was accused already stands concluded.

19. In that backdrop, having dealt with the case on earlier occasion also (22.2.2023), this Court is convinced that the further proceeding in Runni Saidpur P.S. Case No. 181 of 2016, G.R. No. 1369/2016, Tr. No. 1814/2017 cannot continue.

20. Accordingly, the present petition under Section 482 of the Cr.P.C. is allowed and the order dated 2.2.2017 passed by the learned Chief Judicial Magistrate, Sitamarhi in Runni Saidpur P.S. Case No. 181 of 2016, G.R. No. 1369/2016, Tr. No. 1814/2017 stands quashed.

21. The case accordingly stands disposed of.

(Rajiv Roy, J)

Ajay Singh/-

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