

Shankar Kushwaha @ Shankar Kumar Biswas Vs State Of Bihar

Court: Patna High Court

Date of Decision: Dec. 23, 2022

Acts Referred: Indian Penal Code, 1860 " Section 109, 147, 148, 149, 302, 307, 323, 325, 332, 341, 342, 353, 427, 435

Code Of Criminal Procedure, 1973 " Section 82, 83

Hon'ble Judges: Rajeev Ranjan Prasad, J

Bench: Single Bench

Advocate: P.K. Shahi, Ranjeet Kumar, Md. Nasrul Huda Khan, Sunil Kumar Pathak, Sanjay Kumar, Saroj Kumar Sharma

Final Decision: Disposed Of

Judgement

1. Heard Mr. P.K. Shahi, learned senior counsel assisted by Mr. Ranjeet Kumar, learned Advocate for the petitioners in Cr.W.J.C. No. 1850 of 2019

and Mr. Nasrul Huda Khan, learned SC-1 for the State. Mr. Sunil Kumar Pathak, learned Advocate has argued on behalf of the informant.

2. Also heard Mr. Sanjay Kumar, learned counsel for the petitioner in Cr.W.J.C. No. 14 of 2021 for the petitioner and Mr. Saroj Kumar Sharma,

learned AC to AAG-3 for the State.

3. Since both the writ applications have been heard together with consent of learned counsel for the parties, this Court is disposing of the same by this

common order.

Cr.W.J.C. No.1850 of 2019 (Shankar Kushwaha @ Shankar Kumar Biswas and others Vs. State of Bihar and Anr.)

4. In this writ application the petitioners are praying for quashing of the First Information Report being K. Hat (Sahayak) P.S. Case No. 294 of 2019

dated 02.05.2019 registered for the offences under Sections 147, 148, 149, 341, 323, 325 & 307 of the Indian Penal Code, Section 302 I.P.C. has been

added subsequently.

5. It is the case of the petitioners that at the instance of the injured (since deceased) one First Information Report giving rise to K. Hat (Sahayak) P.S.

Case No. 292 of 2019 dated 01.05.2019 was registered.

6. Later on a second F.I.R. being K. Hat (Sahayak) P.S. Case No. 294 of 2019 dated 02.05.2019 under Sections 147, 148, 149, 341, 323, 325 & 307

of the Indian Penal Code, Section 302 I.P.C. has been added subsequently, has been registered at the instance of the respondent no. 8 & 9.

7. Learned senior counsel for the petitioners argued that in fact for the same occurrence altogether six F.I.Rs. were registered. From the

deceased's side three F.I.Rs. have been lodged. K. Hat (Sahayak) P.S. Case No. 292 of 2019 dated 01.05.2019 was registered under Sections

147, 148, 149, 341, 323 & 307 of the Indian Penal Code wherein Section 302 of the I.P.C. was subsequently added, at the instance of respondent no.

8. In this case (i) Shankar Kushwaha (petitioner no. 1) (ii) Nilu Singh (iii) Ritesh Kumar @ Guddu (petitioner no. 2) and other 10-15 unknown persons

were made accused. The prosecution story is that on 01.05.2019 at about 12:30 noon while the informant was going for panchayati along with his

friend Nurul Khan on Scorpio vehicle, the named accused persons stopped his vehicle and thereafter petitioner no. 1 dragged the driver namely

Aakash Kushwaha @ Mittu and assaulted him with Bamboo on his head in which he fell down and seeing the apprehension he started fleeing but was

caught and assaulted.

8. K. Hat (Sahayak) P.S. Case No. 293 of 2019 dated 01.05.2019 under Section 147, 148, 149, 341, 323, 332, 353, 427 and 435 of the Indian Penal

Code was lodged by one Amit Kumar who was officer-in-charge of the police station. In this case altogether 13 named and 100-150 unknown persons

were made accused. The petitioners are not named in this F.I.R.

9. FIR of K.Hat (Sahayak) P.S. Case No. 294 of 2019 was registered on 02.05.2019 in respect of the alleged occurrence which took place on

01.05.2019 at 12:30 P.M. at Badi Hat beside Laxmi Mandir. The F.I.R. was instituted under Sections 147, 148, 149, 341, 323, 325 & 307 of the Indian

Penal Code. It is stated that vide order dated 08.05.2019 Section 302 I.P.C. was added. Informant of this case is one Suman Singh (respondent no. 9).

The same informant is petitioner in Cr.W.J.C. No. 14/2021. In this case, there are three named accused including the two petitioners of this case and

10-15 unknown persons. As per prosecution story, on 01.05.2019 at 12:30 P.M. brother of the informant along with other were going for panchayati. It

is alleged that named accused along with others stopped their car and Shankar Kushwaha (petitioner no. 1) and others assaulted the brother of the

informant upon his head with Bamboo upon which he fell down. The others somehow managed to flee.

10. Since the present writ application is confined to the prayer of the petitioners to quash and cancel the F.I.R. of K. Hat (Sahayak) P.S. Case No.

294 of 2019, this Court is not going into the details of other F.I.Rs.

11. Learned senior counsel for the petitioners has argued that in both the F.I.Rs., the place of occurrence, time of occurrence and the manner of

occurrence are the same and one. It is his submission that in such circumstance the second F.I.R. is liable to be quashed.

12. Reliance in this regard has been placed on the catena of the judgments of the Hon'ble Supreme Court in the case of T.T. Antony Vs. State of

Kerala reported in (2001) 6 SCC 181; Upkar Singh Vs. Ved Prakash and others reported in (2004) 13 SCC 292; Babubhai vs. State of Gujarat and

others reported in (2010) 12 SCC; Surender Kaushik and others vs. State of Uttar Pradesh and others reported in (2013) 5 SCC 145; Awaqdes

Kumar Jha alias Akhilesh Kumar Jha Vs. State of Bihar reported in (2016) 3 SCC 8; Sreekumar Vs. State of Kerala and others reported in (2018) 4

SCC 579; Anil Singh @ Anil Kumar Singh vs. The State of Bihar reported in 2018 SCC Online Pat 1526; Neeharika Infrastructure Pvt. Ltd. vs. The

State of Maharastra and others reported in 2021 SCC Online SC 315 and Amish Devgan Vs. Union of India and others reported in (2021) 1 SCC 1.

13. Mr. Sunil Kumar Pathak, learned Advocate as well as Mr. Sanjay Kumar, learned counsel for the informants in the above-mentioned two F.I.Rs.

have vehemently opposed this application.

14. Learned counsel submit that it is a matter of record that investigation of these cases were under control of the Criminal Investigation Department

(in short CID). For one reason or another the CID continued with the investigation in K. Hat (Sahayak) P.S. Case No. 294 of 2019. In the

said case only step was taken to add Section 302 I.P.C. After death of the injured brother of the informant. In K. Hat (Sahayak) P.S. Case No.

292/2019 no step was taken to add Section 302 I.P.C. Learned counsel submitted that all the materials were collected in course of investigation in K.

Hat (Sahayak) P.S. Case No. 294 of 2019 and a charge-sheet has been filed in the said case against the accused persons including the petitioners.

Learned counsel submits that in such circumstance quashing of K. Hat (Sahayak) P.S. Case No. 294/2019 would prove fatal to the prosecution and

the culprits may get benefit of the technicalities of law in absence of the materials in K. Hat (Sahayak) P.S. Case No. 292 of 2019.

15. Learned counsel has, however after due deliberations does not dispute that if the investigation of K. Hat (Sahayak) P.S. Case No. 294 of 2019 is

amalgamated with K. Hat (Sahayak) P.S. Case No. 292 of 2019, it will serve the interest of justice.

Stand of Respondent No. 6

16. The Superintendent of Police, Purnea initially filed a counter affidavit through Dy.S.P. (Headquarter), Purnea. The counter affidavit however does

not specifically answers the issues raised in the writ application save and except to say that K. Hat (Sahayak) P.S. Case No. 294 of 2019 has been

found true against 26 named (including the writ petitioners) and 100-150 unknown accused for the offences punishable under Sections 147, 148, 149,

341, 342, 323, 302 and 109 of the I.P.C.

17. In course of hearing of the writ application, a supplementary counter affidavit came to be filed on behalf of respondent no. 6. This affidavit was

filed in compliance of the order dated 25.08.2022 passed by this Court wherein this Court called upon the State to file an affidavit clearly stating as to

whether section 302 I.P.C. has been added in K. Hat (Sahayak) P.S. Case No. 292 of 2019. This Court further observed that in case it has not been

added then the reason thereof and the stand of the investigating agency be placed before this Court.

18. In the light of the order of this Court, the Superintendent of Police has submitted that K. Hat (Sahayak) P.S. Case No.294 of 2019 and K. Hat

(Sahayak) P.S. Case No. 292 of 2019 both were investigated by two different Sub-Inspectors of Police. The investigation of K. Hat (Sahayak) P.S.

Case No. 292/2019 was going on, but, in the meantime, all the six F.I.Rs. were taken into the control of the Criminal Investigation Department (CID)

vide Memo No. 195/RD dated 17.01.2020 of the CID. The CID vide office memo no. 1010/C dated 04.08.2022, in the work scheme directed to

investigate the K. Hat (Sahayak) P.S. Case No.294 of 2019 on 10 points and further directed to investigate K. Hat (Sahayak) P.S. Case No. 292 of

2019 on 8 points. As per direction the investigation of both the cases were going on by a competent police officer and on the direction of the CID a

requisition has been sent to the court of learned C.J.M., Purnea for adding section 302 I.P.C. in K. Hat (Sahayak) P.S. Case No. 292 of 2019.

19. As the hearing of the case progressed, this Court called upon learned counsel for the State to seek instruction from ADG, CID as well as the

Superintendent of Police, Purnea and submit a detail counter affidavit addressing the issues raised by learned counsel for the parties.

20. At this stage, a counter affidavit came to be filed on behalf of the respondent no. 2 & 7 sworn by the Superintendent of Police (C) CID. In

paragraph 8 and 9 of the counter affidavit the CID has recorded as under:

8. Therefore, in light of the above fact and circumstances which have surfaced during the course of investigation and as per the established

proposition of law, it is necessary to amalgamate the investigation of case no. 294/2019 with Purnea K.Hat (Sahayak), P.S. case no. 292/2019. Thus

the Investigating Officer has been directed to submit a request in the concerned Learned Court praying for the amalgamation of entire record of

Purnea K. Hat (Sahayak) P.S. Case No. 294 of 2019, including all the evidences collected, chargesheets submitted, into Purnea K.Hat (Sahayak) P.S.

Case No. 292 of 2019.

9. That, the Superintendent of Police, Purnea has been instructed to constitute a Special Team to assist the Investigating Officer in order to ensure

speedier investigation. The Superintendent of Police, Purnea & the Sub-Divisional Police Officer, Sadar, Purnea have been also been instructed to

regularly review the progress of the investigation of these cases.

21. In the last supplementary counter affidavit filed by Dy.S.P. (Headquarter), Purnea, this Court has been informed that in K. Hat (Sahayak) P.S.

Case No. 294 of 2019 non F.I.R. accused Gautam Sah was arrested and charge-sheet being No. 02/2020 has been submitted against him. It is further

stated that in the light of the order of the Hon'ble Patna High Court passed in Cr.W.J.C. No. 14 of 2021, in view of the materials collected against

Pappu Sah, Amrendra Sah, Sanjay Sah, Anmol Yadav, they have been remanded in this case. Accused Shushant Kushwaha has been granted bail by

learned Court. Sajan Bishwas, Chhotu Roy alias Vikky Kumar, Raja Yadav alias Raja Kumar, Appu Yadav @ Aakash Kumar have surrendered on

03.08.2020 in the learned court of C.J.M., Purnea. Nirmal Kumar @ Nirmal Kumar Sah has surrendered on 05.08.2022. A supplementary charge-

sheet bearing No. 397 of 2022 has been submitted on 26.10.2022. The warrant of arrest has been obtained against Shankar Kushwaha (petitioner no.

1) and Nilu Singh Patel but they are still absconding.

22. In paragraph 6 of the supplementary affidavit, it is stated that so far as K. Hat (Sahayak) P.S. Case No. 294 of 2019 is concerned,

charge-sheet has been submitted against them and process under Section 82 Cr.P.C. has already been executed against non-FIR accused which

includes these two petitioners. The supplementary affidavit further discloses that process under Section 83 Cr.P.C. is going to be obtained from the

learned court.

In Cr.W.J.C. No. 14 of 2021 (SUMAN KUMAR @ SUMAN SINGH Vs. The State of Bihar and others)

23. The informant moved this court for a direction to the respondent authorities to apprehend the accused persons of K. Hat (Sahayak) P.S. Case No.

294 of 2019 who are said to be enjoying the patronage of a Member of the Parliament because the accused is full brother of a member of Parliament.

In the said writ application, it is stated that the investigation officer has though completed the investigation and found the case true against the accused

persons but due to intervention of respondent no. 4 who is under undue pressure of local M.P. directed the I.O. to submit a police report only against

apprehended accused namely, Gautam Sah and to keep the investigation pending against other persons.

24. In Cr.W.J.C. No. 14 of 2021, this Court vide its order dated 23.06.2022 called upon respondent no. 4 to file a counter affidavit. On

26.07.2022, this Court heard learned counsel for the petitioner on I.A. No. 01 of 2022 which was filed for making Mr. Santosh Kushwaha party

respondent no. 8. The allegation against him is that he being an influential person has influenced the investigation and at his instance the

Superintendent of Police, Purnea has tried to subvert the investigation conducted by the I.O. to favour the accused. This Court directed the

Superintendent of Police, Purnea to execute the warrants within a period of one week, failing which he will be personally present with the records of

the case on the next date fixed in the matter. The next date was fixed on 22nd of August, 2022. Before the said date, an intervention application was

filed vide I.A. No. 03 of 2022 on behalf of Shankar Kushwaha @ Shankar Kumar Biswas. He prayed for recall of the order dated 26.07.2022 passed

by this Court. On 22.08.2022, when Cr.W.J.C. No. 14 of 2021 was taken up for consideration, this Court passed an order for listing the matter on the

next date and directed learned A.A.G.-3 for the State to ensure service of copy of the counter affidavit on the other sides.

25. Thereafter, both the writ applications were heard with an understanding to dispose of both the writ applications together.

Consideration

26. In the aforementioned facts and circumstances of the case, this Court finds that admittedly the investigation has progressed in K. Hat (Sahayak)

P.S. Case No. 294 of 2019 in which a charge-sheet has already been filed. The respondent no. 2 to 7 has made a statement in paragraph 8 of

their counter affidavit that they have directed the I.O. to submit a request in the concerned court praying for amalgamation of entire records of K.Hat

(Sahayak) P.S. Case No. 294 of 2019 including all the evidences collected and charge-sheet submitted into K. Hat (Sahayak) P.S. Case No. 292 of

2019. The said respondents have brought on record Annexure 8 with their counter affidavit to show that the progress in respect of all the six

cases have been reviewed and appropriate instructions have been issued to the Investigation Officer. This Court is, therefore of the considered opinion

that in view of the stand of respondent nos. 2 to 7 in paragraph 8 of their counter affidavit, this Court need not exercise its extraordinary

writ jurisdiction to quash the First Information Report being K. Hat (Sahayak) P.S. Case No. 294/2019. The amalgamation of K. Hat (Sahayak) P.S.

Case No. 292/2019 and K. Hat (Sahayak) P.S. Case No. 294 of 2019 would serve the interest of justice. This Court, therefore, refuses to interfere

with the First Information Report of K. Hat (Sahayak) P.S. Case No. 294 of 2019.

27. As regards the execution of warrants and process under Section 82 and 83 Cr.P.C., this Court, at this stage, would put a word of caution for the

CID. It appears from the records that the case was brought under the control of the CID in the month of January 2020 but on record the Court finds

that the CID reviewed the matter and issued instructions to investigate on certain points in both the cases only in the year 2022 when they realized that

the writ applications have come up for consideration in this Court and the Court is passing orders in the writ application. The inaction on the part of the

CID by sitting over the matter for more than two years is apparent on perusal of the records. This Court is further fortified in its view on this

issue upon looking into the case diary which has been brought on record by learned counsel for the State. The Case diary has been written only up to

10.01.2020 (paragraph 150). It shows that this is yet another case in which the CID has not acted for over two years. This is one of the

circumstances which indicate that the allegations of the petitioner in Cr.W.J.C. No. 14 of 2021 that the investigation of the case has not progressed

under some influence needs to be looked into at appropriate stage if occasion so arises. For the present, it is an opportunity for the CID to show

its credibility by taking immediate steps to execute the warrants and process under Section 82 and 83 Cr.P.C. in its true terms and spirit and

ensure that the cases which are subject matter of discussions hereinabove proceed in accordance with law.

28. Both the writ applications are disposed of with aforesaid directions and observations.