

Ram Baran Ram Vs The State of Bihar and Others

Court: Patna High Court

Date of Decision: Dec. 7, 2011

Final Decision: Dismissed

Judgement

A.K. Trivedi, J.

Petitioner Ram Baran Ram has filed instant petition of writ asking for a relief for quashing of FIR of Gaunaha P.S. Case

No.23 of 2009 arising out of Special P.S. Case No.25 of 2009 as well as Gaunaha P.S. Case No.01 of 2010.

2. The shorn of unnecessary details, the facts of the case which are interrelated begins with filing of written report by Block Development Officer-

cum-C.O. Gaunaha P.S. Case No.23 of 2009 before Officer-in-charge, Gaunaha disclosing therein that on the same day i.e. 25.06.2009 at about

03.:10 P.M. after getting confidential information with regard to realization of money from the Aaganbari Sebika illegally at the hands of Incharge

Child Development Project Officer Smt Kusum Kumari, Head Clerk Ram Baran Ram, Peon Shashi Bhushan Tiwary and having been kept in a

Almirah, she along with police personnel reached at the concerned office, got open the Almirah and found Rs.43750/- as well as a list comprising

of three pages written in pen of Ram Baran Ram detailing the amount realized from the Aaganbari Sebika as well as mode of distribution. The

seizure was video graphed and during said course Child Development Project Officer, Smt. Kusum Kumari had accepted regarding illegal

realization of money from Aaganbari Sebika. The aforesaid written report let institution of Gaunaha P.S. Case No.23 of 2009 u/s 7/13(2) read

with 13(1)(d) of P.C. Act and accordingly it has been renumbered as Special Case No.25 of 2009. Then thereafter, after removal of Smt. Kusum

Kumari, Sefali Narayan came as successor-in-office. The staffs concerned on account of being an accused were absconding and then with the

permission of the District Magistrate lock of Safe were broken and then inventory was made and during said course, loss of Rs.41440.20 paisa

was detected for which on the written report of Sefali Narayan, Gaunaha P.S. Case No.01 of 2010 has been registered.

3. It has been submitted on behalf of the petitioner that both the FIRs have been filed with malafide intention only to harass the petitioner along with

others. Then submitted that the amount so seized in connection with Gaunaha P.S. Case No.23 of 2009 (Special 25/2009) happens to be the

amount belonging to the Government which was kept in Almirah and on account of seizure of that very amount, the same has been shown as

embezzled amount. As such, if the recovered amount is connected with Gaunaha P.S. Case No.01 of 2010, there happens to be no case of

embezzlement of under Prevention of Corruption Act.

4. It has further been submitted that neither the Block Development Officer was superior officer nor it has got authority to conduct raid. At the

other hand, the Department happens to be under direct control of District Magistrate. Because of the fact that no instruction has been given by the

District Magistrate to the B.D.O. therefore neither the BDO was competent enough to conduct raid and seized the amount on false pretext which

happens to be the Government Money nor the FIR, could have been launched on his behest.

5. Further submitted that none of the Aaganbari Sebika has come forwarded to say that money has been squeezed from them illegally. Not only

this, it has further been pleaded that during course of Departmental proceeding conducted against Kusum Kumari it has been held that so alleged

list, as disclosed in the FIR, to be prepared in pen of petitioner, has not been found to be in his pen. As such, once there happens to be positive

finding during conduction of departmental proceeding, he cannot be held liable for criminal prosecution. Also relied upon decisions reported in

Binay Kumar Singh and Others Vs. The State of Bihar and Others , P. Sirajuddin, etc. Vs. State of Madras, etc., , State of West Bengal and

Others Vs. Swapan Kumar Guha and Others, , P. Sirajuddin, etc. Vs. State of Madras, etc., , 2011 PLJR (3) SC 137, 1991 PLJR (1) 201.

6. Lastly it has been submitted that when the prosecution is malicious, biased, malafide, there happens to be catena of judicial pronouncement as

referred above that allowing the proceeding further more will be nothing but an abuse of process of court and so the same is liable to be quashed.

It has further been submitted that the informant Indu Kumari herself possessed chequered history and the act done at her behest, in the aforesaid

background, is suggestive of the fact that she had intentionally filed the case for illegal gain, and to enable the same seized the government money.

So the cumulative effect happens to be prosecution of petitioner in both the cases appears to be sheer abuse of process of court and is accordingly

liable to be quashed.

7. It has also been submitted that the government has forbidden its machinery to register a case against government official in routine manner rather

the same should be registered only after taking prior permission from the head and for that relied upon Annexure-8.

8. At the other hand, the learned AC to SC-14, while refuting the submission advanced on behalf of the petitioner submitted that because of the

fact that finding of departmental inquiry that too not initiated against petitioner is not going to affect the prospect of criminal prosecution as both are

independently dealt with and proceed on different spectrum. Then submitted that the recovery of amount is an admitted one. The amount does not

tally with the amount whatever been alleged to have embezzled in connection with Gaunaha P.S. Case No.1 of 2010. Then submitted that the act

of informant of Gaunaha P.S. Case No.23 of 2009 appears to be fully endorsed with by the District Magistrate, West Champaran and the same is

evident from plain reading of written report of Gaunaha P.S. Case No.1 of 2010 itself. As such, locus standi of informant cannot be challenged.

Moreover it happens to be cognizable offence. Then it has been submitted that in Gaunaha P.S. Case No.1 of 2010 charge sheet has been

submitted u/s 409 of the I.P.C. while investigation of Gaunaha P.S. Case No.23 of 2009 is going on and the same is pending only for handwriting

expert report with regard to the list so seized alleged to have in the pen of Ram Baran Ram, the petitioner. It has been submitted that as both the

cases happens to be economic offence one under P.C. Act and other under criminal breach of trust and so the circular issued by the government is

not at all applicable in the present circumstance. So submitted that the prayer of the petitioner is fit to be rejected.

9. It is needless to say that proceeding of criminal case as well as Departmental inquiry are not at all inter related. Any finding recorded during

course of departmental inquiry exonerating the liability will not be a ground for quashing the criminal prosecution. Moreover, the departmental

inquiry was against Smt. Kusum Kumari and the petitioner did not aver that his specimen and writing was ever examined by handwriting expert

during said course, apart from the fact that seized paper was not available during course of conduction of Departmental enquiry. Be that as it may,

the peculiar nature of fact as emerges out is not going to help the petitioner.

10. Now coming to the other points, so far Gaunaha P.S. Case No.1 of 2010 is concerned, the investigation is already concluded followed with

submission of charge sheet while the Gaunaha P.S. Case No.23 of 2009 still happens to be under investigation. So the prayer with regard to

Gaunaha P.S. Case No.1/2010 is found to be desolated.

11. It is settled law that the writ court cannot substitute itself as an Investigating Authority while the matter is under investigation and for that I

would rely upon 2006 (1) SCC 324 at para-2 it has been held:

By the impugned order, the High Court has quashed FIR No.55 dated 27.04.2001. The FIR was registered against four respondents for having

committed theft of cheel logs from the forest of Kukanet. In sum and substance, the allegation is of illegal felling of trees and theft of the same from

the forest. Curiously, the High Court by entering into the factual arena has passed the impugned order quashing the FIR. Such a course is wholly

impermissible. The High Court acted mere as an investigating agency at a stage when the FIR was under investigation. At this stage, we wish to say

no more lest it may prejudice the parties.

12. In another decision reported in 2007 (14) SCC 497 at para-3 it has been held:

Having heard the parties and perused the record, we are of the view that the High Court was not justified at this stage to examine the matter and

quash the police investigation, which was pending against the respondent Laxmi Dhaul.

13. Whether the amount so seized on the basis of which Gaunaha P.S. Case No.23 of 2009 was registered is the subject matter of Gaunaha P.S.

Case No.1 of 2010 that happens to be the factual aspect which cannot be decided under writ jurisdiction as has been held by the Hon"ble Apex

Court reported in Mukesh Kumar Agrawal Vs. State of U.P. and Others, at para-15.

The appellant in invoking the writ jurisdiction of the High Court order raised contentions involving disputed questions of fact. Ordinarily, the

disputed questions of fact are not determined in a writ petition. We would, however, hasten to add that the same would not mean that the High

Court cannot exercise its discretionary writ jurisdiction for determination of disputed questions of fact or only because itself the same would deter

the High Court from exercising its jurisdiction.

14. Even taking into account the allegation it appears so hazy that it is found to be inappropriate in attracting writ jurisdiction.

15. Thus, I do not see the prayer of the petitioner tenable at this stage. Consequent thereupon, petition is rejected.