Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.305 OF 2013
(Arising out of S.L.P. (Crl.) No. 9276 of 2012)

Surender Kaushik and others ... Appellants

Versus

State of Uttar Pradesh and others ..Respondents

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. The present appeal, by special leave, is directed against the order dated 12.10.2012 passed by the Division Bench of the High Court of Judicature at Allahabad in Criminal Miscellaneous Writ Petition No. 15077 of 2012 wherein the High Court has declined to quash the FIR No. 442 of 2012 registered at P.S. Civil Lines, Meerut, that has given rise to Crime No.

491 of 2012 for offences punishable under Sections 406, 420, 467, 468, 471, 504 and 506 of the Indian Penal Code (for short "the IPC").

3. At the very outset, it is requisite to be stated that the appellants had invoked the jurisdiction under Article 226 of the Constitution for quashment of the FIR on two counts, namely, first, that no prima facie case existed for putting the criminal law into motion and, second, when on the similar and identical cause of action and allegations, FIR No. 425 of 2012 corresponding to Crime No. 475 of 2012 had already been registered, a second FIR could not have been lodged and entertained. The High Court, by the impugned order, has opined that it cannot be held that no prima facie case is disclosed and, thereafter, proceeded to issue certain directions in relation to surrender before the concerned court and grant of interim bail in view of the decision rendered by the Full Bench of the Allahabad High Court in ***Amrawati and another* v. *State of UP***[1] and ***Lal Kamlendra***

[1] 2005 Cri. L.J. 755

Pratap Singh* v. *State of Uttar Pradesh and others[2].

4. We are not adverting to the second part of the order as the controversy in this regard has not emerged before this Court in the present case. The assail to the validity of registration of second FIR has not been dealt with by the High Court. Mr. Nagendra Rai, learned senior counsel appearing for the appellants, did not advance any contention and, rightly so, with regard to the existence of a prima facie case for registration of the FIR, but emphatically put forth the proponements pertaining to the validity of entertaining the second FIR despite the lodgment of an earlier FIR in respect of the same cause of action and the same incident. Therefore, we shall restrict our delineation to the said sentinel issue exclusively.

5. From the factual background which has been exposited in this appeal and the documents annexed thereto, it is limpid that FIR No. 274 of 2012 was lodged by the appellant No. 1, Surender Kaushik, as the Secretary of Sanjeev Memorial Education Society

[2] (2009) 4 SCC 437

on 29.5.2012 against Dr. Subhash Gupta, Dr. Harshu Gupta and Yunus Pahalwan, members of the society, alleging that in collusion with one Surya Prakash Jalan, they had prepared fake and fraudulent documents. It was further alleged that their signatures had been forged indicating their participation in various general/executive meetings of the society, though they had not attended the said meetings. On the basis of the said FIR, a crime under Sections 420, 467, 468 and 471 of the IPC was registered.

6. One Dr. Subhash Gupta filed an application before the Additional Chief Judicial Magistrate, Meerut, under Section 156(3) of the Code of Criminal Procedure (for brevity "the Code") alleging, inter alia, that he was never a member of the Sanjeev Memorial Education Society, Ghaziabad and further he was neither present in the meetings of the society which were held on 1.10.2008 and 16.4.2009 nor was he a signatory to the resolutions passed in the said meetings. It was further asseverated in the

application that the accused persons, namely, P.C. Gupta, Seema Gupta, Surender Kaushik, Kamlesh Sharma and Vimal Singh, had fabricated an affidavit on 15.12.2008 with forged signatures and filed before the Deputy Registrar, Society Chit and Fund, Mohanpuri, Meerut. The said petition was entertained and on the basis of the direction of the learned Magistrate, FIR No. 425 of 2012 was lodged on 21.8.2012 for the offences punishable under Sections 406, 420, 467, 468, 471, 504 and 506 of the IPC.

7. As the facts would further unfurl, FIR No. 442 of 2012 which gave rise to Crime No. 491 of 2012 was registered on 4.9.2012 and it is apt to note that the said FIR came to be registered on the basis of an order passed by the learned Magistrate under Section 156(3) of the Code. In the said case, the complainant was Smt. Nidhi Jalan, one of the members of the Governing Body of the society, and it was alleged that she is a member of the society which runs an educational institution, namely, Mayo

International School, and the accused persons, namely, P.C. Gupta, Seema Gupta, Vikash Jain, Bhawna Jain, Sushil Jain, Shubhi Jain, Surender Kaushik, Kamlesh Sharma, Rajender Sharma, Virender Bhardwaj, Vimal Singh and Renu Sharma, having entered into a conspiracy had prepared forged documents regarding meetings held on different dates, fabricated signatures of the members and filed before the competent authority with the common intention to grab the property/funds of the society. Be it noted, the members had filed affidavits before the competent authority that they had never taken part in the meetings of the school management and had not signed any papers. As already stated, the said FIR pertained to offences punishable under Sections 406, 420, 467, 468, 471, 504 and 506 of the IPC.

8. It is submitted by Mr. Nagendra Rai, learned senior counsel, that the FIR No. 442 of 2012 could not have been lodged and entertained as law prohibits lodgment of the second FIR in respect of the same

cognizable offence and it is propounded by him that when there is a legal impediment for setting the criminal law in motion, the decision in ***State of Haryana and others*** **v.** ***Bhajan Lal and others***[3] gets attracted. To bolster the contention that the second FIR could not have been entertained, the learned senior counsel has commended us to the decisions in ***T.T. Antony*** **v.** ***State of Kerala and others***[4]**,** ***Pandurang Chandrakant Mhatre and others*** **v.** ***State of Maharashtra***[5] and ***Babubhai*** **v.** ***State of Gujarat and others***[6].

9. Mr. R.K. Dash, learned senior counsel for the State, per contra, submitted that there is no absolute prohibition in law for lodgment of a second FIR and, more so, when allegations are made from different spectrum or, for that matter, when different versions are put forth by different persons and there are different accused persons. It is urged by him that the decisions relied upon by the appellants are

[3] 1992 Supp (1) SCC 335
[4] (2001) 6 SCC 181
[5] (2009) 10 SCC 773
[6] (2010) 12 SCC 254

distinguishable on facts and the proposition of law laid down therein is not applicable to the case at hand. The learned senior counsel would further contend that the principles stated in ***Ram Lal Narang* v. *State (Delhi Administration)***[7] and ***Upkar Singh* v. *Ved Prakash and others***[8] are attracted to the case at hand.

10. Mr. Altaf Ahmed, learned senior counsel appearing for the complainant, the fourth respondent herein, has submitted that on certain occasions, same set of facts may constitute different offences and when there are two distinct offences having different ingredients, there would be no embargo for registration of two FIRs. It is further canvassed by him that on certain occasions, two FIRs may have some overlapping features but it is the substance of the allegations which has to be looked into, and if a restricted view is taken, then no counter FIR can ever be lodged. The learned senior counsel would further submit that the investigation by the police cannot be

[7] (1979) 2 SCC 322
[8] (2004) 13 SCC 292

scuttled and the accused persons cannot be allowed to pave the escape route in this manner. It has been highlighted by him that lodging of second FIR for the same cause of action or offence is based on the principle that a person should not be vexed twice, but if there are offences having distinctive ingredients and overlapping features, it would not invite the frown of Article 20 of the Constitution of India. The pronouncement in ***State (NCT of Delhi)*** **v.** ***Navjot Sandhu alias Afsan Guru***[9] has been commended to us.

11. Chapter XII of the Code deals with information to the police and their powers to investigate. As provided under Section 154 of the Code, every information relating to commission of a cognizable offence either given orally or in writing is required to be entered in a book to be kept by the officer-in-charge of the concerned police station. The said FIR, as mandated by law, has to pertain to a cognizable case. Section

[9] (2005) 11 SCC 600

2(c) of the Code defines "cognizable offence" which also deals with cognizable cases. It reads as follows:-

> "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;"

12. If the primary requirement is satisfied, an FIR is registered and the criminal law is set in motion and the officer-in-charge of the police station takes up the investigation. The question that has emerged for consideration in this case is whether after registration of the FIR and commencement of the investigation, a second FIR relating to the same incident on the basis of a direction issued by the learned Magistrate under Section 156(3) of the Code can be registered.

13. For apposite appreciation of the issue raised, it is necessitous to refer to certain authorities which would throw significant light under what circumstances entertainment of second FIR is prohibited. In ***Ram Lal Narang*** (supra), this Court was dealing with the facts and circumstances of a

case where two FIRs were lodged and two charge-sheets were filed. The Bench took note of the fact that the conspiracy which was the subject-matter of the second case could not be said to be identical with the conspiracy which was the subject-matter of the first one and further the conspirators were different, although the conspiracy which was the subject-matter of the first case may, perhaps, be said to have turned out to be a part of the conspiracy which was the subject-matter of the second case. After adverting to the various facets, it has been opined that occasions may arise when a second investigation started independently of the first may disclose wide range of offences including those covered by the first investigation. Being of this view, the Court did not find any flaw in the investigation on the basis of the subsequent FIR.

14. In ***T.T. Antony*** (supra), it was canvassed on behalf of the accused that the registration of fresh information in respect of the very same incident as an FIR under Section 154 of the Code was not valid

and, therefore, all steps taken pursuant thereto including investigation were illegal and liable to be quashed. The Bench, analyzing the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, came to hold that only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code and, therefore, there can be no second FIR and consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. It was further observed that on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or

the same occurrence and file one or more reports as provided in Section 173 of the Code.

15. It is worth noting that in the said case, the two-Judge Bench explained and distinguished the dictum in ***Ram Lal Narang*** (supra) by opining that the Court had indicated that the real question was whether the two conspiracies were in truth and substance the same and held that the conspiracies in the two cases were not identical. It further proceeded to state that the Court did not repel the contention of the appellant regarding the illegality of the second FIR and the investigation based thereon being vitiated, but on facts found that the two FIRs in truth and substance were different since the first was a smaller conspiracy and the second was a larger conspiracy as it turned out eventually. Thereafter, the Bench explained thus: -

> "The 1973 CrPC specifically provides for further investigation after forwarding of report under sub-section (2) of Section 173 CrPC and forwarding of further report or reports to the Magistrate concerned under Section 173(8) CrPC. It follows that if the gravamen of the charges in the two FIRs — the first and the second — is in truth and

> substance the same, registering the second FIR and making fresh investigation and forwarding report under Section 173 CrPC will be irregular and the court cannot take cognizance of the same."

16. In ***Upkar Singh*** (supra), a three-Judge Bench was addressing the issue pertaining to the correctness of law laid down in the case of ***T.T. Antony*** (supra). The larger Bench took note of the fact that a complaint was lodged by the first respondent therein with Sikhera Police Station in Village Fahimpur Kalan at 10.00 a.m. on 20th May, 1995 making certain allegations against the appellant therein and some other persons. On the basis of the said complaint, the police had registered a crime under Sections 452 and 307 of the IPC. The appellant had lodged a complaint in regard to the very same incident against the respondents therein for having committed offences punishable under Sections 506 and 307 of the IPC as against him and his family members. As the said complaint was not entertained by the concerned police, he, under compelling circumstances, filed a petition under Section 156(3) of the Code before the Judicial Magistrate, who

having found a prima facie case, directed the concerned police station to register a crime against the accused persons in the said complaint and to investigate the same and submit a report. On the basis of the said direction, Crime No. 48-A of 1995 was registered for offences punishable under Sections 147, 148, 149 and 307 of the IPC. Challenging the direction of the Magistrate, a revision was preferred before the learned Sessions Judge who set aside the said direction. Being aggrieved by the order passed by the learned Sessions Judge, a Criminal Miscellaneous petition was filed before the High Court of Judicature at Allahabad and the High Court, following its earlier decision in ***Ram Mohan Garg* v. *State of U.P.***[10], dismissed the revision. While dealing with the issue, this Court referred to paragraph 18 of ***T.T. Antony*** (supra) and noted how the same had been understood: -

> **"11.** This observation of the Supreme Court in the said case of *T.T. Antony* is understood by the learned counsel for the respondents as the Code prohibiting the filing of a second complaint arising from

[10] (1990) 27 ACC 438

> the same incident. It is on that basis and relying on the said judgment in *T.T. Antony case* an argument is addressed before us that once an FIR is registered on the complaint of one party a second FIR in the nature of a counter-case is not registrable and no investigation based on the said second complaint could be carried out."

17. After so observing, the Court held that the judgment in ***T.T. Antony*** (supra) really does not lay down such a proposition of law as has been understood by the learned counsel for the respondent therein. The Bench referred to the factual score of ***T.T. Antony*** (supra) and explained thus:-

> "Having carefully gone through the above judgment, we do not think that this Court in the said cases of *T.T. Antony* v. *State of Kerala* has precluded an aggrieved person from filing a counter-case as in the present case."

To arrive at such a conclusion, the Bench referred to paragraph 27 of the decision in ***T.T. Antony*** (supra) wherein it has been stated that a case of fresh investigation based on the second or successive FIRs, *not being a counter-case*, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in

respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution. Thereafter, the three-Judge Bench ruled thus:

> "In our opinion, this Court in that case only held that any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited under Section 162 of the Code. This prohibition noticed by this Court, in our opinion, does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident."

18. Be it noted, in the said verdict, reference was made to ***Kari Choudhary* v. *Sita Devi***[11], wherein it has been opined that there cannot be two FIRs against the same accused in respect of the same case, but when there are rival versions in respect of the same episode, they would normally take the shape of two

[11] (2002) 1 SCC 714

different FIRs and investigation can be carried out under both of them by the same investigating agency. Reference was made to the pronouncement in ***State of Bihar* v. *J.A.C. Saldanha***[12] wherein it has been highlighted that the power of the Magistrate under Section 156(3) of the Code to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out under Section 3 of the Police Act.

19. It is worth noting that the Court also dealt with the view expressed in ***Ram Lal Narang*** (supra) and stated thus: -

> **"22.** A perusal of the judgment of this Court in *Ram Lal Narang* v. *State (Delhi Admn.)* also shows that even in cases where a prior complaint is already registered, a counter-complaint is permissible but it goes further and holds that even in cases where a first complaint is registered and investigation initiated, it is possible to file a further complaint by the same complainant based on the material gathered during the course of investigation. Of course, this larger proposition of law laid down in *Ram Lal Narang case* is not necessary to be relied

[12] (1980) 1 SCC 554

> on by us in the present case. Suffice it to say that the discussion in *Ram Lal Narang case* is in the same line as found in the judgments in *Kari Choudhary* and *State of Bihar* v. *J.A.C. Saldanha*. However, it must be noticed that in *T.T. Antony case*, *Ram Lal Narang case* was noticed but the Court did not express any opinion either way."

20. Explaining further, the Court observed that if the law laid down by this Court in ***T.T. Antony*** (supra) is to be accepted to have held that a second complaint in regard to the same incident filed as a counter complaint is prohibited under the Code, such conclusion would lead to serious consequences inasmuch as the real accused can take the first opportunity to lodge a false complaint and get it registered by the jurisdictional police and then that would preclude the victim to lodge a complaint.

21. In ***Pandurang Chandrakant Mhatre*** (supra), the Court referred to ***T.T. Antony*** (supra), ***Ramesh Baburao Devaskar*** **v.** ***State of Maharashtra***[13] and ***Vikram*** **v.** ***State of Maharashtra***[14] and opined that the earliest information in regard to the commission of a cognizable offence is to be treated

[13] (2007) 13 SCC 501
[14] (2007) 12 SCC 332

as the first information report and it sets the criminal law in motion and the investigation commences on that basis. Although the first information report is not expected to be an encyclopaedia of events, yet an information to the police in order to be first information report under Section 154(1) of the Code, must contain some essential and relevant details of the incident. A cryptic information about the commission of a cognizable offence irrespective of the nature and details of such information may not be treated as first information report. After so stating, the Bench posed the question whether the information regarding the incident therein entered into general diary given by PW-5 is the first information report within the meaning of Section 154 of the Code and, if so, it would be hit by Section 162 of the Code. It is worth noting that analyzing the facts, the Court opined that information given to the police to rush to the place of the incident to control the situation need not necessarily amount to an FIR.

22. In ***Babubhai*** (supra), this Court, after surveying the earlier decisions, expressed the view that 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 FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case the contrary is proved, where the version in the second FIR is different and they are in respect of two different incidents/crimes, the second FIR is permissible. In case the accused in the first FIR comes forward with a different version or counterclaim in respect of the same incident, investigation on both the FIRs has to be conducted.

23. It is worth noting that in the said case, the Court expressed the view that the High Court had correctly reached the conclusion that the second FIR was liable to be quashed as in both the FIRs, the allegations related to the same incident that had occurred at the

same place in close proximity of time and, therefore, they were two parts of the same transaction.

24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in ***Upkar Singh*** (supra), the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident

do take different shapes and in that event, lodgment of two FIRs is permissible.

25. In the case at hand, the appellants lodged the FIR No. 274 of 2012 against four accused persons alleging that they had prepared fake and fraudulent documents. The second FIR came to be registered on the basis of the direction issued by the learned Additional Chief Judicial Magistrate in exercise of power under Section 156(3) of the Code at the instance of another person alleging, inter alia, that he was neither present in the meetings nor had he signed any of the resolutions of the meetings and the accused persons, five in number, including the appellant No. 1 herein, had fabricated documents and filed the same before the competent authority. FIR No. 442 of 2012 (which gave rise to Crime No. 491 of 2012) was registered because of an order passed by the learned Magistrate. Be it noted, the complaint was filed by another member of the Governing Body of the Society and the allegation was that the accused persons, twelve in number, had

entered into a conspiracy and prepared forged documents relating to the meetings held on different dates. There was allegation of fabrication of the signatures of the members and filing of forged documents before the Registrar of Societies with the common intention to grab the property/funds of the Society. If the involvement of the number of accused persons and the nature of the allegations are scrutinized, it becomes crystal clear that every FIR has a different spectrum. The allegations made are distinct and separate. It may be regarded as a counter complaint and cannot be stated that an effort has been made to improve the allegations that find place in the first FIR. It is well-nigh impossible to say that the principle of sameness gets attracted. We are inclined to think so, for if the said principle is made applicable to the case at hand and the investigation is scuttled by quashing the FIRs, the complainants in the other two FIRs would be deprived of justice. The appellants have lodged the FIR making the allegations against certain persons, but

that does not debar the other aggrieved persons to move the court for direction of registration of an FIR as there have been other accused persons including the complainant in the first FIR involved in the forgery and fabrication of documents and getting benefits from the statutory authority. In the ultimate eventuate, how the trial would commence and be concluded is up to the concerned court. The appellants or any of the other complainants or the accused persons may move the appropriate court for a trial in one court. That is another aspect altogether. But to say that it is a second FIR relating to the same cause of action and the same incident and there is sameness of occurrence and an attempt has been made to improvise the case is not correct. Hence, we conclude and hold that the submission that the FIR lodged by the fourth respondent is a second FIR and is, therefore, liable to be quashed, does not merit acceptance.

26. In view of the aforesaid premised reasons, the appeal, being sans substance, stands dismissed.

.....J.
[K. S. Radhakrishnan]

.....J.
[Dipak Misra]

New Delhi;
February 14, 2013