

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: February 10, 2011

+ **W.P.(CRL) No.1486/2010 & CRL.M.A.15640/2010**

ANIL KUMAR JAIN

....PETITIONER

Through: Mr.Aditya Agarwal with Mr.Vikram
Aggarwal, Advocates.

Versus

STATE (N.C.T. OF DELHI)

....RESPONDENT

Through: Mr.Akshay Bipin, Additional
Standing Counsel for the State/R.1.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.(ORAL)

1. This is a petition under Articles 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure with the following prayer:-

“.....to allow the present petition and set-aside the impugned order dated 21.02.2008 passed by the Ld. Trial Court and also the impugned order dated 14.09.2010 passed by the Ld. Session Court and also quash the FIR No.75/08 dated 03.04.2008 registered at P.S. Gandhi Nagar.”

2. Only issue raised by learned counsel for the petitioner is that the second FIR No.75/2008 registered on the directions of the learned

Metropolitan Magistrate at P.S. Gandhi Nagar is untenable because the offence complained of in this FIR is an extension of the offence complained of in FIR No.136/2007 P.S. Gandhi Nagar filed on the complaint of Sanjay Gupta against one Ashok Gupta.

3. Relying upon the judgments in the matter of **Babubhai Vs. State of Gujarat & Ors.**, 2010 IX AD (S.C.) 145, **T.T. Antony Vs. State of Kerala and Others**, 2001 SCC (Crl) 1048 and **Mohd. Salim Vs. State**, III (2010) DLT (Crl.) 388, learned counsel for the petitioner submits that it is a settled position in law that once FIR in relation to an offence is registered, second FIR cannot be registered in relation to the same offence. He submitted that in this case, the subsequent FIR is only an extension of FIR No.136/2007 P.S. Gandhi Nagar, therefore it is liable to be quashed.

4. Learned Shri Akshay Bipin, Additional Standing Counsel appearing for the State submits that the offence, which is subject-matter of the complaint in the earlier FIR No.136/2007 P.S. Gandhi Nagar is entirely different as it was registered on the complaint of one Sanjay Gupta against Ashok Kumar Gupta relating to transfer of the funds from his account as well as the account of his father maintained in Vaish Coop. Adarsh Bank Ltd. to the account of Ashok Kumar Gupta's daughter, whereas the second FIR No.75/2008 P.S. Gandhi Nagar registered on the directions of the learned Metropolitan Magistrate relates to misappropriation of funds in furtherance of conspiracy amongst 17 accused persons, including Ashok Kumar Gupta to the tune of

₹21,54,629/- by diverting funds from various accounts maintained in the bank. He further submitted that since the FIR relates to different transactions, there is no bar under law for registration of the second FIR.

5. I have considered the rival contentions. **Babubhai Vs. State of Gujarat & Ors.**(supra) was a case relating to clash between two groups resulting in injuries to various persons. In the said matter, Hon'ble Supreme Court has, inter alia, observed thus:-

“....13. In T.T. Antony v. State of Kerala and Ors., (2001) 6 SCC 181, this Court dealt with a case wherein in respect of the same cognizable offence and same occurrence two FIRs had been lodged and the Court held that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. The investigating agency has to proceed only on the information about commission of a cognizable offence which is first entered in the Police Station diary by the Officer In-charge under Section 158 of the Code of Criminal Procedure, 1973 (hereinafter called the Cr.P.C.) and all other subsequent information would be covered by Section 162 Cr.P.C. for the reason that it is the duty of the Investigating Officer not merely to investigate the cognizable offence report 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 the Investigating Officer has to file one or more reports under Section 173 Cr.P.C. Even after submission of the report under Section 173(2) Cr.P.C., if the Investigating Officer comes across any further information pertaining to the same incident, he can make further investigation, but it is desirable that he must take the leave of the court and forward the further evidence, if any, with further report or reports under Section 173(8) Cr.P.C. In case the officer receives more than one piece of information in respect of the same incident involving one or more than one cognizable offences such information cannot properly be treated as an FIR as it would, in effect, be a second FIR and the same is not in conformity with the scheme of the Cr.P.C. The Court further observed as under:

A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that Sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and

documentary) and forward a further report or reports to the Magistrate.... However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view 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 CrPC or under Articles 226/227 of the Constitution.

.....

17. Thus, in view of the above, the law on the subject emerges to the effect that an FIR under Section 154 Cr.P.C. is a very important document. It is the first information of a cognizable offence recorded by the Officer In-Charge of the Police Station. It sets the machinery of criminal law in motion and marks the commencement of the investigation which ends with the formation of an opinion under Section 169 or 170 Cr.P.C., as the case may be, and forwarding of a police report under Section 173 Cr.P.C. Thus, it is quite possible that more than one piece of information be given to the Police Officer In-charge of the 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 the investigation into the facts mentioned in the First Information Report will be statements falling under Section 162 Cr.P.C.”

6. The matter of **T.T. Antony Vs. State of Kerala and Others**(supra) is also a case under IPC relating to unlawful assembly indulging in assault and causing injuries to various persons. Besides other provisions of law, in the said case, Hon’ble Supreme Court, inter alia, observed thus:-

“19. The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section

156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC.

20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the  197 same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. 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 CrPC."

7. In the matter of **Mohd. Salim Vs. State, III (2010) DLT (Crl.) 388** which also relates to the offence of murder, Single Judge of this Court, inter alia, observed thus:-

"25. The direction of the Division Bench was challenged before the Supreme Court. The Apex Court, while setting aside the decision of the Division Bench, inter alia, observed as under:

18. An information given under Sub-section (1) of Section 154 of Cr.P.C. is commonly known as First Information Report (F.I.R.) though this term is not used in the Code. It is a very important document. And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded

by an officer in charge of a police station. It sets the criminal law into motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 of Cr.P.C., as the case may be and forwarding of a police report under Section 173 of Cr.P.C. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 Cr.P.C. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the First Information Report - F.I.R. postulated by Section 154 of Cr. P.C. All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the First Information Report and entered in the station house diary by the police officer or such other cognizable offenses as may come to his notice during the investigation, will be statements falling under Section 162 of Cr. P.C. No such information/statement can properly be treated as an F.I.R. and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of the Cr. P.C.

19. The scheme of the Cr.P.C. is that an officer in charge of a Police Station has to commence investigation as provided in Section 156 or 157 of Cr.P.C. on the basis of entry of the First Information Report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of evidence collected he has to form an opinion under Section 169 or 170 of Cr.P.C., as the case may be, and forward his report to the Magistrate concerned under Section 173(2) Cr.P.C. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of Sub-section (8) of Section 173 Cr.P.C.

20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus there can be no second F.I.R. 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. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. 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 Cr.P.C.

.....

27. The Apex Court further observed as under:

However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. In our view 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 underway 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 Cr.P.C. or under Article 226/227 of the Constitution.”

8. There can be no dispute with the law enunciated in the above judgments that two FIRs in relation to one occurrence constituting an offence are not permissible under law. However, above referred judgments are not applicable to the case in hand for the reason that subject-matter of the earlier FIR No.136/2007 P.S. Gandhi Nagar is entirely different from the subject-matter of FIR No.75/2008 P.S. Gandhi Nagar and these two FIRs relate to different transactions constituting the offence.

9. FIR No.136/2007 P.S. Gandhi Nagar is in respect of the allegations of misappropriation of ₹9,63,000/- by the accused Ashok Kumar Gupta by manipulating the entries in the bank accounts of the complainant Sanjay Gupta as well as his father and diverting the funds to his sister's account, whereas the subsequent FIR No.75/2008 P.S. Gandhi Nagar relates to the offence of criminal conspiracy hatched amongst 17 accused persons, including Ashok Kumar Gupta in furtherance of which conspiracy, those persons misappropriated a sum of ₹21,54,629/- by manipulating the entries in the account books and diverting the funds relating to bank accounts of various depositors to facilitate the misappropriation. On comparative reading of the above noted FIRs, it is apparent that the FIRs relate to different offences. If an employee of the bank indulges in misappropriation of funds by falsifying the entries in the ledger account of different customers at different dates, it cannot be said that all those offences have been committed during the course of a single transaction. Every such manipulation of account resulting in misappropriation constitutes a distinct offence and for every misappropriation, an FIR can be registered.

10. In the instant case also, earlier FIR No.136/2007 P.S. Gandhi Nagar relates only to the diversion of funds from the account of the complainant Sanjay Gupta and his father by making false entries. However, the second FIR No.75/2008 P.S. Gandhi Nagar, which is sought to be quashed relates to the diversion of funds in furtherance of a conspiracy amongst as many as 17 accused persons to misappropriate the money by making false entries in relation to the bank accounts maintained by different customers, which obviously is an offence distinct from the offence complained of in FIR No.136/2007 P.S. Gandhi Nagar.

11. In view of the above, it is apparent that the earlier FIR No.136/2007 P.S. Gandhi Nagar and the subsequent FIR No.75/2008 P.S. Gandhi Nagar are not inter-related and these two FIRs are in respect of different transactions constituting the offence. Thus, I find no infirmity in the impugned order dated 21.2.2008 passed by learned Metropolitan Magistrate as well as the order of the revision court dated 14.9.2010 declining to quash FIR No.75/2008 dated 3.4.2008 P.S. Gandhi Nagar.

12. Petition is dismissed, subject to cost of ₹5000/- to be deposited with Delhi High Court Legal Services Committee within a week, failing which the Registry shall initiate proceedings for recovery of the same.

(AJIT BHARIHOKE)
JUDGE

FEBRUARY 10, 2011

ks