

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

Reserved on: 14th January, 2013
Pronounced on: 12th February, 2013

+ **CRL.M.C.1919/2012**

AMAR NATH MISHRA Petitioner
Through: Mr. K.G. Bhagat with Ms. Divya Shukla,
Advocates
versus

STATE (C.B.I.) Respondent
Through: Ms.Sonia Mathur, Advocate

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Petitioner seeks quashing of FIR No.RC 14(S) and consequent charge sheet on the basis thereof filed by CBI in the Court of Special Judge, Delhi on the ground that this being the second FIR cannot be given effect to. Reliance is placed on reports of the Supreme Court in *T.T. Antony v. State of Kerala*, (2001) 6 SCC 181 and *Babubhai v. State of Gujarat*, (2010) 12 SCC 254.
2. According to the Petitioner, a complaint dated 10.03.2005 was made by Mr. Kalraj Mishra, M.P., Rajya Sabha to DIG U.P. Police, Lucknow for registration of a case against some unknown person for sending letters to Union Minister and Hon'ble Prime Minister for grant of financial assistance to his institution. The Petitioner says that FIR No.128/2005 was registered in Police Station Hasanganj on 10.05.2005. A final report

dated 10.05.2006 was submitted whereby the complainant(Mr. Kalraj Mishra) gave his no objection. Consequently, the final report was accepted and the case was closed. The Petitioner's case is that registration of the second FIR on the same cause of action by the CBI is unwarranted and the FIR is liable to be quashed.

3. On the other hand, Ms. Sonia Mathur, Advocate for the CBI says that the first FIR was closed without any investigation simply on the statement made by the complainant that he has not lodged report with SHO, P.S. Hasanganj, which was factually correct as the complainant in fact in his no objection affidavit had simply stated that he was not aware of the name of the person responsible for forging the letterhead. She urges that the final report was submitted in the first FIR by the IO of P.S. Hasanganj only on the ground that he had not made any complaint to P.S. Hasanganj. She submits that in such cases, the second FIR is not barred. She places reliance on *Bank of Rajasthan v. Keshav Bangur & Anr.*, (2007) 13 SCC 145 where it was held that if an FIR was not closed on merits, the second FIR was not barred.
4. I have given my thoughtful consideration to the contention raised on behalf of the parties. The copy of the final report is placed on page 14 of the paper book, which is extracted hereunder:

"Sir,

After the above mentioned F.I.R. after being registered was investigated by Sh. Anup Kumar Swami and after that investigation was done by me.

When I went to the House No.11, Vikramaditya Marg of informant Sh. Kalraj Mishra, Member, Raj Sabha to enquire

about the case, he told that he has not got written any such case with the P.S. Hasanganj. Therefore, the investigation of the case is closed with this F.R.

Sir, this F.R. may kindly be allowed to be accepted.”

5. On the basis of the final report, a notice was issued to complainant Mr. Kalraj Mishra who simply stated that he made a complaint to DIG U.P. Police regarding printing of his fake letterhead and forging his signatures thereon. The complainant stated that he was not aware of the name of any accused in the case and he has no objection if the final report submitted by the police was accepted. Thus, it is apparent that the IO of P.S. Hasanganj sought permission to close the case only on the ground that when he went to meet the complainant to make an inquiry about the case, the complainant informed him(the IO) that he had not made any complaint to the SHO, P.S. Hasanganj. Thus, closure of FIR No.143/2005 by the police of P.S. Hasanganj was only on the technical ground that the complainant informed the IO that he(the complainant) did not make any report with the P.S. Hasanganj.
6. There is no dispute about the proposition of law as laid down in *T.T. Antony* that there cannot be successive FIRs in respect of the same incident because in that event the investigations against an accused would never come to an end. In *T.T. Antony*, the Supreme Court observed as under:

“The right of the police to investigate into a cognizable offence is a statutory right over which the court does not possess any supervisory jurisdiction under Cr.P.C. This plenary power of the police to investigate a cognizable offence is, however, not unlimited. It is subject to certain well-recognized limitations.

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. 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. 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 Cr.P.C. or under Articles 226/227 of the Constitution. Where the police transgresses its statutory power of investigation the High Court under Section 482 Cr.P.C. or Articles 226/227 of the Constitution and the Supreme Court in an appropriate case can interdict the investigation to prevent abuse of the process of the court or otherwise to secure the ends of justice.”

7. Similar view was taken by the Supreme Court in *Babubhai*. In *Keshav Bangur*, the Supreme Court, however, clarified that where the first closure of the first FIR is not on merits, the second FIR can proceed. Para 19 of the report in *Keshav Bangur* is extracted hereunder:

“19. Secondly, on 12-7-2002 a closure report in final form was drawn up in connection with FIR No.138/01 inasmuch as CBI had taken up the investigation. The hearing on the final report of closure was concluded before the Sub-Divisional Judicial Magistrate, Alipore. It was allowed by the Sub-Divisional Judicial Magistrate. However, it may be clarified

that the said closure was not on merits of the case. The said closure was only on account of the fact that the investigation stood transferred to CBI. Consequently, now Alipore Police Station has no role to play.”

8. As stated above, the first FIR was closed only on the technical ground that the complainant had told the IO that he did not lodge any report with P.S. Hasanganj. He(complainant) further informed the IO that he was not aware as to who were the culprits, that is, persons responsible for forging his letter head and signatures. The present Petitioner was not an accused in the first FIR, whereas on the basis of the second FIR, the investigation has been completed and a charge sheet has been filed against the Petitioner for forging the letter head and signatures of Mr. Kalraj Mishra, M.P., Rajya Sabha. The powers under Section 482 of the Code of Criminal Procedure has to be exercised to prevent the abuse of the process of the of the Court or otherwise in the interest of justice. In the instant case it cannot be said that the second FIR and the charge sheet on the basis of the same is an abuse of the process of Court.
9. In the circumstances, it will not be appropriate to quash the FIR and the charge sheet already filed in the Court.
10. The Petition is accordingly dismissed.
11. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 12, 2013
pst