

GAHC040013602023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Crl.Petn./185/2023

Genom Pertin
S/o Lt. Nati Pertin, R/o E Sector, Naharlagun, P.O and P.S Naharlagun, District
Papum Pare, Arunachal Pradesh.

VERSUS

The State of AP and Anr.
through the learned Public Prosecutor. 2:Tapi Tasang
Age: 0
Occupation

Advocate for the Petitioner : Rajesh Sonar

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 21.03.2024

Heard Mr. R. Sonar, learned counsel for the petitioner. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State respondent and Mr. T. Omo, learned counsel for the respondent No. 2.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 seeking quashment of the F.I.R. dated 18.04.2023, being Ziro P.S. Case No. 12/2023, under Section 279, IPC, corresponding to G.R. Case No. 15/2023, and the consequential Charge-Sheet No. 18/2023, dated 31.07.2023, under Section 279 IPC, as well as the criminal proceedings pending before the Court of learned Chief Judicial Magistrate, Ziro.

3. The facts leading to filing of the present petition is that on 22.03.2023, at around 2.30 a.m. to 3.00 a.m., while the petitioner was on his way to his home in his Scorpio vehicle after attending a dinner party hosted by his friend, he accidentally hit the parked Alto 800 Car, which belongs to respondent No. 2, and pushed ahead the said Alto Car and thereby hit the motorcycle (Bajaj Pulsar) of one Shri Millo Nibo which was parked in front of his Car. Thereafter, the petitioner on being stopped his vehicle, at that point of time, a group of 5 to 7 people started physically assaulting him and caused him serious bodily injuries for which was evacuated to the District Hospital, Ziro. Later on, when he was informed that Shri Millo Nibo, the owner of the motorcycle, was involved in assaulting him, he lodged an F.I.R. on 22.03.2023 before the Ziro Police Station

against the said Shri Millo Nibo and other unknown persons, which has been registered as Ziro P.S. Case No. 09/2023, under Sections 308/341/323/34 IPC.

4. It is contended that on the same day, i.e. on 22.03.2023, Shri Millo Nibo, owner of the motorcycle, also lodged an F.I.R. against the petitioner alleging that a Scorpio car, being driven by the petitioner, hit the Alto car of Shri Tapi Tassang and his parked motorcycle causing severe damage to their vehicles. On the basis of the said F.I.R., Ziro P.S. Case No. 11/2023, under Section 279 IPC has been registered, and police has laid the Charge-Sheet and is pending trial.

5. Thereafter, subsequent thereto, Shri Tapi Tasang, respondent No. 2, has filed the second F.I.R. on 18.04.2023 against the petitioner in respect of the same cause of action and transaction, which is registered as Ziro P.S. Case No. 12/2023, under Section 279 IPC. The Investigating Officer, after completion of investigation into the said Ziro P.S. Case No. 12/2023, has filed Charge-Sheet No. 18/2023, dated 31.07.2023, which is pending trial before the Court of learned Chief Judicial Magistrate, Ziro.

6. Mr. R. Sonar, learned counsel for the petitioner, submits that the police has filed the Charge-Sheet No. 18/2023 in respect of the same cause of action and same transaction for which the 1st F.I.R. dated 22.03.2023 has been lodged and was registered as Ziro P.S. Case No. 11/2023, corresponding to G.R. Case No. 14/2023, against the petitioner. Mr. Sonar, while referring to the provision of Cr.P.C. submits that there cannot be any 2nd F.I.R. and consequently, there cannot be any 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. He further submits that both the F.I.R. clearly reveals that the same are identical and arisen out of the single incident and therefore the subsequent registration of the 2nd F.I.R. against the petitioner in respect of same incident and making a fresh investigation is not legally permissible and consequently, the Charge-Sheet filed in connection with the 2nd F.I.R. is illegal, void and without any authority.

7. In support of his submission, Mr. Sonar, learned counsel, has placed reliance on the judgments of Hon'ble Supreme Court in the case of **T. T. Antony Vs. State of Kerala & Ors.**, reported in **(2001) 6 SCC 181**, and has emphasized on paragraph Nos. 25 & 27 of the judgment, which is reproduced herein below:

"25. Where the police transgresses its statutory power of investigation the High Court under Section 482 CrPC or Articles 226/227 of the Constitution and this 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.

27. 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 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narangs' case (supra) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court. 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.

may, 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. Mr. Sonar, learned counsel, has also relied on another judgment of Hon'ble Supreme Court in the case of **Arnab Ranjan Goswami Vs. Union of India**, reported in **2020 SCC OnLine SC 462**, and has emphasized on paragraph No. 28 of the judgment, which is reproduced herein below:

"28. The fundamental basis on which the jurisdiction of this Court has been invoked under Article 32 is the filing of multiple FIRs and complaints in various States arising from the same cause of action. The cause of action was founded on a programme which was telecast on R Bharat on 21 April 2020. FIRs and criminal complaints were lodged against the petitioner in the States of Maharashtra, Rajasthan, Madhya Pradesh, Telangana and Jharkhand besides the Union Territories of Jammu and Kashmir. The law concerning multiple criminal proceedings on the same cause of action has been analyzed in a judgment of this Court in TT Antony v State of Kerala¹⁹ ("TT Antony"). Speaking for a two judge Bench, Justice Syed Shah Mohammed Quadri interpreted the provisions of Section 154 and cognate provisions of the CrPC including Section 173 and observed:

"20...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 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." The Court held that "there can be no second

FIR" where the information concerns the same cognisable offence alleged in the first FIR or the same occurrence or incident which gives rise to one or more cognisable offences. This is due to the fact that the investigation covers within its ambit not just the alleged cognisable offence, but also any other connected offences that may be found to have been committed.

This Court held that once an FIR postulated by the provisions of Section 154 has been recorded, any information received after the commencement of investigation cannot form the basis of a second FIR as doing so would fail to comport with the scheme of the CrPC. The court observed:

"18...All other information 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 offences as may come to his notice during the investigation, will be statements falling under Section 162 CrPC. No such information/statement can properly be treated as an FIR 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 CrPC." This Court adverted to the need to strike a just balance between the fundamental rights of citizens under Articles 19 and 21 and the expansive power of the police to investigate a cognisable offence. Adverting to precedent, this Court held:

"27...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 or under Articles 226/227 of the Constitution." (Emphasis supplied) The Court held that barring situations in which a counter-case is filed, a fresh investigation or a second FIR on the basis of the same or connected cognisable offence would constitute an "abuse of the statutory power of investigation" and may be a fit case for the exercise of power either under Section 482 of the CrPC or Articles 226/227 of the Constitution.

29. The decision in TT Antony came up for consideration before a three judge Bench in Upkar Singh v Ved Prakash²⁰ ("Upkar Singh"). Justice N Santosh Hegde, speaking for this Court adverted to the earlier decisions of this Court in Ram Lal Narang v State (Delhi Administration)²¹ ("Ram Lal Narang"), Kari Choudhary v Mst. Sita Devi²² ("Kari Choudhary") and State of Bihar v JAC Saldanha²³ ("Saldanha"). The Court noted that in Kari Choudhary, this Court held that:

"11...Of course the legal position is 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 different FIRs and investigation can be carried on under both of them by the same investigating agency."

9. Mr. Sonar also placed reliance on an Order of this Court dated 04.03.2021, passed in Crl. Petn. No. 29(AP)/2020.

10. Ms. T. Jini, learned Additional Public Prosecutor, as well as Mr. T. Omo, learned counsel for the respondent No. 2, fairly agreed that no 2nd F.I.R. can be filed arising out of same incident.

11. Due consideration has been extended to the submissions of the learned counsel for the parties and have considered the materials available on record.

12. It is seen that admittedly the petitioner met with an accident with his Scorpio Car near Hari Welcome Gate, Ziro and hit the parked Alto Car of one Shri Tapi Tassang and another parked motorcycle of one Shri Millo Nibo. It is the contention of the petitioner that the accident occurred because of low visibility due to heavy fog and incessant rain at the time of the fateful incident which was beyond his control and there was no any culpable negligence on the part of the

petitioner. Thereafter, when he stopped his vehicle, a group of around 5 to 7 people started assaulting him mercilessly resulting him severe head and bodily injuries and for which he was evacuated to the District Hospital, Ziro. Accordingly, he lodged the F.I.R. dated 22.03.2023 against Shri Millo Nibo and other unknown persons which was registered as Ziro P.S. Case No. 09/2023, under Sections 308/341/323/34 IPC. However, on the same day, i.e. on 22.03.2023, the said Shri Millo Nibo also lodged an F.I.R. against the present petitioner, which is registered as Ziro P.S. Case No. 11/2023, under Section 279 IPC. Subsequently, Shri Tapi Tasang, respondent No. 2 herein, filed the 2nd F.I.R. on the 18.04.2023 against the petitioner which is registered as Ziro P.S. Case No. 12/2023, under Section 279 IPC, and after completion of investigation, the I.O. filed Charge-Sheet No. 18/2023, dated 31.07.2023, against the petitioner which is pending trial before the Court of learned Chief Judicial Magistrate, Ziro.

13. It is a settled position of law that there cannot be a 2nd F.I.R. on the same set of allegations and no fresh investigation is permissible. Since the 1st F.I.R. being Ziro P.S. Case No. 11/2023 is already under investigation, there cannot be any fresh investigation in respect of the same offence or the same incident. Both the F.I.Rs. are arisen out of the same incident and the allegations are also identical.

14. In view of above and also in view of the law laid down by the Hon'ble Supreme Court in the cases of **T. T. Anthony (supra)** and **Arnab Ranjan Goswami (supra)**, this Court is of the considered view that the 2nd F.I.R., being based on same set of allegations, is invalid and not sustainable in the

eyes of law and as such, to prevent the abuse of the process of the Court and also to secure the ends of justice, I find it a fit case to exercise the inherent power under Section 482 Cr.P.C. to quash the 2nd F.I.R. and the subsequent criminal proceedings.

15. Consequently, the F.I.R. dated 18.04.2023, being Ziro P.S. Case No. 12/2023, corresponding to G.R. Case No. 15/2023, and the Charge-Sheet No. 18/2023, dated 31.07.2023, under Section 279 IPC, as well as the consequential criminal proceedings pending before the Court of learned Chief Judicial Magistrate, Ziro, are hereby quashed.

16. Accordingly, this criminal petition stands allowed and disposed of.

JUDGE

Comparing Assistant