

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 1 OF 2015**

1. Mr. Mahesh Parsram Matta
Aged 41 years,
Residing at 350/6, Vishal Mandir,
2nd Floor, Opp. Sadguru Linking Road,
Khar (W), Mumbai-400052 .. Petitioner

Versus

1. State of Goa
Through Public Prosecutor
at the High Court, Goa
2. Inspector of Police,
Margao Town Police Station,
Goa.
3. Mr. Vijay Dalwani
Age 46, Occup : Service
Residing at A-506, Crow,
Hiranandani Estate,
Godbunder Road, Thane (West),
Maharashtra. .. Respondents

Mr. D. K. Singh, Advocate for the petitioner.

Mr. S. R. Rivankar, Public Prosecutor for the respondents no. 1 and 2.

Mr. Ryan Menezes, Advocate for the respondent no. 3.

CORAM :- F. M. REIS, &
K. L. WADANE, JJ.

Reserved on : 9th March, 2015.

Pronounced on : 13th March, 2015

JUDGMENT : (Per K. L. WADANE, J.)

Heard Mr. D. K. Singh, learned Advocate for the petitioner, Mr. S. R. Rivankar, learned Public Prosecutor for the respondent nos. 1 and 2 and Mr. Ryan Menezes, learned Advocate for the respondent no. 3.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel for the respondents waive service.

3. The petitioner has filed this petition for quashing of the First Information Report of Crime No. 522/2014 registered against the petitioner for the offences punishable under Sections 403, 409, 420 and 465 read with Section 34 of the Indian Penal Code (I.P.C.) in Margao Town Police Station, Goa. The investigation of the above crime is going on. The respondent no. 2 lodged this First Information Report on behalf of M/s. Sanda Well Being Private Ltd. (M/s. Sanda Company, for short). The said Company is presently known as M/s. Yours Lifestyle Pvt. Ltd.

4. The above mentioned First Information Report is challenged by the petitioner on the ground that already the complainant has filed a criminal complaint against the petitioner in

the Court of Metropolitan Magistrate at Mumbai. After filing of the complaint, the Metropolitan Magistrate has forwarded it to Nirmalnagar Police Station under the provisions of Section 156(3) of Cr.P.C. After receipt of the complaint, the Investigating Officer has registered the Crime bearing M.E.C.R. No. 7/2014 against the petitioner for the offences under Sections 403, 409, 420 and 465 of I.P.C. and the Investigation of that crime was already started and going on.

5. The petitioner was in the employment of M/s. Sanda Company and was serving as a Sales Director during the period from 02/08/2008 to 25/03/2013. The services of the petitioner were terminated by the said Company. Thereafter, the said Company filed a suit for damages bearing Suit No 898/2013 before the High Court of Bombay. The petitioner has appeared in that suit and filed his Written Statement/ reply. Considering the written statement / reply of the petitioner, no interim relief has been granted in favour of M/s. Sanda Company.

6. After registration of the initial cognizable offence against the petitioner at Nirmalnagar Police Station at Mumbai, he approached to the Sessions Court at Mumbai for anticipatory bail. He was granted interim anticipatory bail and the Bail Petition

bearing No. 1284/2014 is pending.

7. During the course of hearing of the Anticipatory Bail Petition at Mumbai, the Investigating Officer submitted his reply, from which, it is seen that the entire transaction during the service period of the petitioner for M/s. Sanda Company is under investigation. Therefore, according to the petitioner, there was no necessity to file another F.I.R. in respect of the same transaction/offence. The allegations regarding misappropriation of the money and forgery of certain documents are already under investigation by the Investigating Officer of Nirmalnagar Police Station at Mumbai. Therefore, filing of the subsequent First Information Report regarding the same allegations would nothing but abuse of the process.

8. We have perused the documents on records. During the course of arguments, Mr. D. K. Singh, learned Counsel for the petitioner has pointed out the similarity of the contents in the complaint before the Metropolitan Magistrate Court at Mumbai and the First Information Report lodged at Margao Town Police Station. Mr. Singh further pointed out to the report/ say submitted by the Investigating Officer before the Sessions Court while hearing the Anticipatory Bail Petition of the petitioner and by referring to the

contents of the said report, Mr. Singh has pointed out that the cognizance of misappropriation and forgery was already taken, including the alleged misappropriation and forgery during the entire service period of the petitioner with M/s. Sanda Company.

9. Mr. S. R. Rivankar, learned Public Prosecutor appearing for the respondents no. 1 and 2 has submitted that the allegations in both those complaints before the Metropolitan Magistrate at Mumbai and the First Information Report submitted before the Margao Town Police Station are more or less similar, coupled with overlapping of the time of the alleged offence.

10. Mr. Ryan Menezes, learned Counsel appearing for the respondent no. 3 has argued that the offences of misappropriation / forgery committed by the petitioner at Mumbai and at Goa are altogether different and distinct offences. The allocations of funds to the office of Goa and Mumbai are also different. Therefore, the offences committed by the petitioner are distinct. Therefore, the Investigating Officer of Margao Police Station at Goa has rightly registered the Crime No. 522/2014 against the petitioner.

11. We have gone through the entire record relating to the complaint filed by the complainant in the Court of Metropolitan

Magistrate at Mumbai as well as copy of the First Information Report, on the basis of which Crime No. 522/2014 is registered. It is seen from the record that the private complaint filed by the complainant was referred for the investigation to the concerned police upon which Crime No. 7/2014 was also registered. On perusal of the contents of the paragraph 31 of the complaint, it appears that there are serious allegations about submitting false bills and of fraud and forgery during the period from 2009 to 2013 which covers the entire service period of the petitioner with M/s. Sanda Company. Further from the contents of the say given on behalf of the police, opposing the anticipatory bail of the petitioner, it was contended that after investigating bank account of the accused during the period from 2009 to 2013, the information, which has been received about the funds received from M/s. Sanda Company and credited to the bank account of the petitioner is as follows :

Year	Salary and incentive allowance	Advance amount given by Company for people related expense
2009-10	38,00,000/-	2,05,20,000/-
2010-11	3,25,43,000/-	3,26,00,000/-
2011-12	2,47,51,000/-	2,98,00,000/-
2012-13	2,21,00,000/-	5,48,00,000/-

During the course of the investigation, if the Investigating Officer finds some more material in connection with the same crime, he can investigate further in the matter.

12. Mr. Menezes, learned Counsel for the respondent no. 3 relied upon the judgment in the case of ***Rameshchandra Nandlal Parikh Vs. State of Gujarat and another***, reported in 2006 AIR (SC) 915 and has argued that the offences committed by the petitioner / accused are distinct offences, giving rise to one or more cognizable offences. Therefore, this Writ Petition is liable to be rejected. We have gone through the observations of the above cited authority. Paragraph 13 of the judgment of the case (supra) reads as under :

“13. In the facts of the present case, we are satisfied that the complaints, which were filed in respect of malfeasance and misfeasance within the jurisdiction of the Ahmedabad Police, were not in respect of the same cognizable offence or the same occurrence giving rise to one or more cognizable offences, nor were they alleged to have been committed in the course of the same transaction or the same occurrence as the one

alleged in First C.R. No. 67/2001."

13. The above observations made in **Rameshchandra Nandlal Parikh** (supra) are not applicable to the facts of the present case because admittedly, the accused was serving in M/s. Sanda Company, but the alleged offence of misappropriation or forgery is in respect of the amounts from two branches of M/s. Sanda Company. Therefore, it can not be said that the petitioner has committed a distinct offence. Shri Rivankar, learned Public Prosecutor also accepts that the transactions referred in the impugned F.I.R. are covered in the F.I.R. registered in Mumbai.

14. Mr. Singh, the learned Advocate has relied upon the judgment in the case of **Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and another**, reported in (2013) 6 SCC 348. Paragraph 37 of the said judgment reads as under :

"37. This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T. Anthony V. State of Kerala, (2001)6 SCC 181, this Court has categorically held that registration of

second FIR (which is not a cross case) is violative of Article 21 of the Constitution. The following conclusions in paragraphs 19, 20 and 27 of that judgment are relevant which read as under:

“19. The scheme of Cr.P.C. is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 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 the evidence collected, he has to form an opinion under Section 169 or 170 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 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 Cr.P.C.

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 Ram Lal Narang Vs. State (Delhi Admn), (1979)2 SCC 322, 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., 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 Cr.P.C. or under Articles 226/227 of the Constitution.”

The above referred declaration of law by this Court has never been diluted in any subsequent judicial pronouncements even while carving out exceptions.”

15. The above observations made in **Amitbhai Anilchandra Shah** (supra) are perfectly applicable to the facts of the present case because the alleged offences committed by the petitioner seem to be in the course of same transaction. Therefore, it is not permissible to register another offence for the same allegations. It is to be noted that the Police Officer of the Nirmalnagar Police Station, who is investigating the complaint, if comes across any further information regarding the same incident, he can make further investigation. The Investigating Officer can investigate the alleged misappropriation covering the period from 02/08/2008 to 25/03/2013. There is no bar on the Investigating Officer to investigate the case in its entirety.

16. In view of the above discussion and conclusion, F.I.R. in Crime No. 522/2014 of Margao Town Police Station needs to be

quashed. Consequently, the Writ Petition is allowed. F.I.R. in Crime No. 522/2014 of Margao Town Police Station is quashed.

17. Rule made absolute in the above terms.

18. Writ Petition stands disposed of accordingly, with no order as to costs.

SMA K. L. WADANE,J.

F. M. REIS, J.