

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 01 OF 2014

Mr. Nilesh Mahendra Tanna,
Age 47 years, Occu. Business,
R/o. Flat No.1505, Tower 4,
Challenger Tower, Thakur Village,
Poysar Village, Kandiwali (E),
Mumbai

.. Applicant
(Orig. accused)

v/s.

1. The State of Maharashtra
Through Sr. P.I.
Hinjewadi Police Station, Pune

2. Rajkumar Panjabi
Age 39 years, R/at 109,
Shindhi Society, Aundh, Pune

..Respondents

Mr. Shubhash Jha i/b Subhash Hulyalkar for the applicant
Mr. Harshad V. Nimbalkar a/w Rishi Ghorpade, S.H. Nimbalkar for
intervener

Mr. K.V. Saste, APP for respondent State

**CORAM : R.V. MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
RESERVED ON : 9th DECEMBER, 2015**

PRONOUNCED ON : 19th MARCH, 2015

JUDGMENT (PER ANUJA PRABHUDESSAI, J).

1. Heard learned Counsel for the respective parties. Rule. Rule is made returnable forthwith. By consent, both the applications are taken up for final hearing.

2. By this application, filed under Section 482 of the Cr.P.C., the applicant seeks quashing of FIR No.603 of 2013, registered at Hinjawadi Police Station, Pune under Sections 467, 468, 469, 470, 420 r/w 34 of the IPC.

3. The facts relevant for disposal of these applications, briefly stated are as under.

The respondent no.2 - original complainant is a partner of M/s. Rama Synergy Sweses engaged in construction business. The applicant Nilesh Tanna is one of the Directors of NHK Developers, JBRS Pvt. Ltd. and the Managing Director of M/s. N. Square Realities. The respondent no.2 had lodged a report dated 12.04.2013 before Hinjewadi Police Station alleging that the

applicant Nilesh Tanna and other partners / Directors of the said companies had represented to the respondent no.2 that they had entered into transaction / MOU with different land owners for purchase of land admeasuring 200 acres situated at village Marunji, Pune. In November, 2011, the applicant and other partners / directors proposed to sell to the respondent no.2, a portion of the said land admeasuring 50 acres for total consideration of Rs.130 crores. They also showed to the respondent no.2 MOU executed between them and the original land owners for sale of 200 acres of land. The respondent no.2 was informed that initially the land would be purchased in the name of NHK Developers, N. Square Pvt. Ltd. Companies and J.B.R.S. Pvt. & Investment Ltd. Co. and after obtaining proper permission / license, a portion of the said land admeasuring 50 acres, would be transferred in the name of M/s. Rama Synergy Sweses, of which the respondent no.2 is a partner.

4. Pursuant to the negotiations held on 8th May, 2012, an agreement was executed between M/s. Rama Synergy Sweses and

NHK Developers, S. Square Realities Pvt. Ltd. Company and JBRS and Investment Pvt. Ltd. in respect of sale of land admeasuring 50 acres for a total consideration of Rs.130 crores. It was agreed that if the transaction was not completed within the stipulated time, the vendors would return the money with interest at the rate of 18% per annum. In terms of the said agreement, respondent no.2 paid a sum of Rs.12 crores to M/s. NHK Developers by RTGS.

5. The applicant and the other directors avoided giving copies of the development agreements and the power of attorney. Upon persistent insistence, the respondent no.2 was given a copy of a document, stated to be “term sheet”, wherein it was mentioned that NHK Developers and one Aniruddha Deshpande were going to make transaction of sale and purchase of land at village Marunji, Tal. Mulshi, Dist. Pune. The respondent no.2 had alleged that on 23rd April, 2012 he had contacted Aniruddha Deshpande, one of the land owners who had allegedly agreed to sale the land to the applicant and others Directors. Said Aniruddha Deshpande informed the respondent no.2 that he did

not know the applicant herein and that he had not entered into any transaction for sale of the property.

6. The respondent no.2 alleged that the applicant and the others had induced him to pay Rs.12 crores on the basis of forged documents. He, therefore, lodged a complaint dated 12.04.2013 with the Hinjawadi Police Station, pursuant to which, C.R. No.603 of 2013 came to be registered under Sections 467, 468, 469, 470, 420 r/w 34 of the IPC.

7. Shri. Jha, learned Counsel for the applicant has submitted that the dispute is essentially of civil nature. Learned Counsel for the applicant has further submitted that pursuant to the complaint lodged by Aniruddha Deshpande on 12.04.2014, Deccan Police Station has registered FIR No.226 of 2013 for the offence punishable under Sections 420, 467, 468, 471 r/w 34 of the IPC. He has stated that the statement of Rajkumar Punjabi – respondent no.2 has been recorded in the said crime. He has further submitted that a charge-sheet has already been filed in

respect of the said crime and that Rajkumar Punjabi – respondent no.2 has been cited as a witness in the said criminal case arising out of FIR No.226 of 2013.

8. Learned Counsel Shri. Jha has contended that the FIR lodged by Rajkumar Punjabi before Hinjewadi Police Station is in respect of the same transaction and it was lodged later in point of time. Relying upon the decision of the Apex Court in the case of *T.T. Anthony Vs. State of Kerala (2001) 6 SCC 181* as well as the decision in the case of *Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation & Anr. 2013 (6) SCC 348*, he has submitted that law does not permit registration of two FIRs in respect of the same crime. He, therefore, claims that FIR No.603 of 2013 being the second FIR is not maintainable and is liable to be quashed.

9. Learned Counsel for respondent no.2 Mr. Nimbalkar has disputed that the FIR No. 603 of 2013 is a subsequent FIR. He has submitted that the said FIR was lodged on 12.12.2013, much prior

to the registration of Crime No.226 of 2013. Learned Counsel for respondent no.2, therefore, claims that the decisions in the case of *T.T. Anthony & Anr.* and *Amitabh Shah (Supra)* are not applicable to the facts and circumstances of the present case.

10. We have perused the records and considered the arguments advanced by the respective parties. The records reveal that FIR No.603 of 2013 was registered pursuant to the report lodged by the respondent no.2 at Hinjewadi Police Station, Pune. A bare perusal of the said FIR *prima facie* discloses all the ingredients of the offences stated in the FIR. We are, therefore, unable to concede to the submissions that the dispute is of civil nature.

11. Thus, the only other point falling for our consideration is whether the FIR No.603 of 2013 is a second FIR and is liable to be quashed. Before advertng to the facts of the case, it would be appropriate to refer to the decision of the Apex Court in *Amitbhai Anilchandra Shah (Supra)* has reiterated and re-emphasized the principles laid down in its earlier pronouncements in *T.T. Anthony*

v/s State of Kerala (2001) 6 SCC 181 as under:-

“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.PC. 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.

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 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. In Narang case 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) 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 countercase, 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.

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

12. The Apex court has also reiterated the principles laid down in its previous pronouncements in paragraph nos.33, 42, 44, 45, 48 and 49, which read as under:-

“33. ...In C. Muniappan (Supra), this Court explained “consequence test” i.e., if an offence forming part of the second FIR arises as a consequence of the offence alleged in the first FIR then offences covered by both the FIRs are the same and, accordingly, the second FIR will be impermissible in law. In other words, the offences covered in both the FIRs shall have to be treated as a part of the first FIR.” ...

“42. In the case of Babubhai (supra), the very same Bench considered the permissibility of more than one FIR and the test of sameness. After explaining FIR under Section 154 of the Code, commencement of the investigation, formation of opinion under Sections 169 or 170 of the Code, Police report under Section 173 of the Code and statements under Section 162 of the Code, this Court, has held that the Court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to 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 having two or more parts of the same transaction. This Court further held that if the answer is in affirmative, the second FIR is liable to be quashed. It was further held that in case the contrary is proved, where the version in the second FIR is different and is in respect of the two different incidents / crimes, the second FIR is permissible. This Court further explained that in respect of the same incident the accused in the first FIR comes forward with a different version or counterclaim, investigation on both the FIRs has to be conducted.”...

“44. In the case of Nirmal Singh Kahlon (Supra), this Court has carved out an exception for filing a second FIR. As per the exception carved out in the said case, the second FIR lies in a case where the first FIR does not contain any allegations of criminal conspiracy...

“45. Ram Lal Narang (supra) was cited to be an authority carving out an exception to the general rule that there cannot be a second FIR in respect of the same offence. This Court, in the said decision, held that a second FIR would lie in an event when pursuant to the investigation in the first FIR, a larger conspiracy is

disclosed, which was not part of the first FIR.”

“48. Upkar Singh (Supra), also carves out a second exception to the rule prohibiting lodging of second FIR for the same offence or different offences committed in the course of the transaction disclosed in the first FIR. The only exception to the law declared in T.T. Anthony (Supra), which is carved out in Upkar Singh (Supra) is to the effect that when the second FIR consists of alleged offences which are in the nature of the cross case/cross complaint or a counter complaint, such cross complaint would not be permitted as second FIR.”

“49. The ratio laid down in Kari Choudhary's (Supra) case, is heavily relied on In that decision, it was held that when there was two 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. ...”

13. There can thus be no dispute that the earliest information given under Section 154(1) of the Cr.P.C., marks the commencement of the investigation. Every subsequent information in respect of the same crime cannot be treated as FIR and there can be no fresh investigation on the basis of subsequent FIR unless it falls within the exception carved out by the Apex Court in the decisions supra.

14. In the light of the principles laid down by the Apex Court in the aforesaid decisions, it is necessary to apply the test of sameness with respect to the F.I.R. registered at Hinjewadi Police Station, Pune and the FIR registered at Deccan Police Station, Pune.

15. It is not in dispute that Aniruddha Deshpande had lodged a report dated 17.12.2013 at Deccan Police Station, Pune wherein he had stated that on 23rd April, 2013 the respondent no.2 had shown him a photocopy of term sheet and had inquired with about the sale transaction, referred to in the said term sheet. Said Aniruddha Deshpande had stated that he did not know Nilesh Tanna, the applicant herein and that he had not entered into any transaction either written or oral with Nilesh Tanna. He had further stated that he had not signed the said term sheet and that his signature was forged. He had claimed that Nilesh Tanna and the other Directors of NHK Developers had forged the said

document and a receipt wherein it was stated that a sum of Rs.21 crores was paid to him and that on the basis of the said document, Nilesh Tanna and others had taken Rs.12 crores from the respondent no.2 Raju Punjabi.

16. Pursuant to the said report lodged by Anirudha Deshpande, FIR No.226 of 2013, dated 17.12.2013 came to be registered at Deccan Police Station, Pune against the applicant and others for committing offences punishable under Sections 420, 467, 468, 471 r/w 34 of the IPC.

17. It is not in dispute that the FIR No.603 of 2013 has been registered at Hinjewadi Police Station on 24.12.2013 on the basis of the report dated 12.12.2013 lodged by the respondent no.2. A perusal of the report lodged by Aniruddha Deshapnde visa-a-vis the report lodged by respondent no.2 herein and applying the test of sameness, we are of the considered view that both complaints relate to the same facts and transactions and involve the same accused.

18. The question, which therefore arises, is whether the FIR No.603 of 2013 is registered on the basis of subsequent information in the nature of Second FIR. The term first Information Report is not defined or mentioned in the Code. As it has been held in the case of T.T. Antony (supra) “ *An information given under sub-section (1) of Section 154 Cr.PC is commonly known as first information report (FIR) 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 in motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 Cr.PC, as the case may be, and forwarding of a police report under Section 173 CrPC.* ”

19. The First Information Report, therefore, is nothing but an earliest information relating to commission of cognizable offence

given under Sub-Section (1) of Section 154 of the Cr.P.C., which sets the investigation in motion. Section 154(1) mandates that every such oral information should be reduced in writing and shall be read over to the informant. This section mandates that every such information either oral or written shall be signed by the informant and further that the substance of such information shall be entered into station house diary. In short, Section 154 of the Cr.P.C. regulates the manner of recording the First Information relating to the commission of a cognizable offence.

20. In the instant case, the respondent no.2 had lodged a written report at Hinjewadi Police Station. The endorsement on the said report 12.12.2013 reveals that Hinjewadi Police Station had received the said report on 14.12.2013. Pursuant to the said report, C.R. No.603 of 2013 was registered at Hinjewadi Police Station on 24.12.2013. Whereas Aniruddha Deshpande had lodged a report at Deccan Police Station on 17.12.2013 on the basis of, which C.R. No. 226 of 2013 was registered at Deccan

Police Station on the same day.

21. It is, therefore, evident that two different complainants have filed two different complaints against the same accused in respect of the same crime before two different police stations. The information given by the respondent no.2 was first in point of time visa-a-vis the information given by Aniruddha Deshpande. The mere fact that the Crime No.603 of 2013 was registered on 24.12.2013 would not make it a second FIR, as what is relevant is the date on which the information is given and not the date on which the offence is registered. We are, therefore, unable to accept the contention of Shri. Jha, learned Counsel for the applicant that the FIR No.603 of 2013 lodged by the respondent no.2 is a Second FIR.

22. The apprehension of the applicant that he will have to face multiple trials is premature. The FIR No.603 of 2013 is at the stage of investigation. The possibility of the applicant having to face multiple trials would arise only if the investigation in FIR No.

603 of 2013 culminates in filing of the report under section 173. In such an eventuality the applicant can always avail of appropriate remedy under the law. Consequently, the applicant has not made out any grounds for quashing of FIR No.603 of 2013.

23. Under the circumstances, in our view, the present case does not warrant exercise powers conferred by section 482 of the code. Hence, the application stands dismissed.

(ANUJA PRABHUDESSAI, J.)

(R.V. MORE, J.)