IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2684 OF 2014
WITH
CRI.APPLICATION NO.529 OF 2014 IN WP/2684/2014

Jayawantrao Dhondiram Patil and Ors Petitioners.

Vs

State of Maharashtra & Anr. .. Respondents

Mr. Subhash Jha a/w Ms.Rushita Jain, i/b Law Global, Advocates for Petitioners.
Mr. S.K.Shinde, Public Prosecutor, with Ms.M.M.Deshmukh, APP, for Respondent No.1-State.
Mr. S.G.Deshmukh with Mr. Sachin K.Hande i/b Raju M. Yamgar, Advocate for Applicants-Intervenors in Appln. No.529 of 2014.

CORAM : RANJIT MORE & R.G.KETKAR,JJ.
RESERVED ON: 07/09/2015
PRONOUNCED ON: 29th SEPTEMBER, 2015.

ORDER:

1. Heard Mr. Subhash Jha, learned counsel for the petitioner, Mr S.K.Shinde, learned Public Prosecutor for respondent no.1 and Mr S.G.Deshmukh, learned counsel for intervenor at length

2. By this Petition under Article 226 of the Constitution of India, the petitioners have prayed for quashing and setting aside F.I.R., being F.I.R. No.37/14, dated 12.3.2014 registered with Sangli City Police Station under sections 420, 408, 409, 465, 468, 471 read with Section 34 Indian Penal Code, 1860, (for short, 'I.P.C.').

3. Mr. Jha submitted that earlier Shri Vinod Bhaurao Patil, Auditor Class-I Co-operative Societies, lodged a complaint with Sangli City Police Station on 17.4.2009, inter alia, alleging that the audit report in respect of Bhagya Laxmi Nagari Sahakari Pat Sanstha Ltd, Sangli (for short, 'Pat Sanstha') for the financial year

1.4.2005 to 31.3.2006 revealed that Directors of Pat Sanstha contrary to bye-laws of Pat Sanstha, had given loans to directors or their 39 relatives to the tune of Rs.72,94,000/- without obtaining any security. They have also given loans in 34 cases to the tune of Rs.31,58,000/- without obtaining any security among others. In all, loan to the tune of Rs. 1,41,92,500/- was disbursed.

4. The case was investigated and chargesheet is filed in the Court of learned Magistrate at Sangli on 8.7.2011 for offences punishable under sections 406, 408, 409 and 420 read with 34 I.P.C and sections 146(a) and 147 of the Maharashtra Co-operative Societies Act, 1960. The petitioners applied for enlarging them on anticipatory bail. The petitioners were enlarged on anticipatory bail by the learned Sessions Judge, Sangli on 17.8.2009. One Vikas Rajaram Kolekar claiming to be depositor with Pat Sanstha instituted Criminal Application No.5359 of 2009 in this court. By order dated 3.10.2011 the application was rejected.

5. Mr. Jha submitted that nearly after five years of registration of the first FIR., Shri Ranjit Rangrao Patil, Sub Auditor, Co-operative societies, Jat lodged another FIR. being FIR No. 37/2014 with Sangli City Police Station, Sangli which was registered for the offences punishable under sections 420, 408, 409, 465, 468, 471 read with 34 I.P.C on 12.3.2014. He submitted that bare

perusal of the two FIRs shows that the allegations in both the FIRs are one and the same. The first FIR is based on the audit report for the period from 1.4.2005 to 31.3.2006 wherein it is alleged that offences therein were committed between 16.8.2007 and 22.10.2007. In the second F.I.R it is based on purported audit report for the period from 1.4.2006 to 31.10.2009. He submitted that the period in both the FIRs, to some extent, is overlapping. Both these FIRs are so intrinsically connected with each other that it is impossible to read the two kind of transactions in isolation. He submitted that in the first FIR , 13 persons are made accused. In the second FIR some of the accused in the first FIR are dropped and some are added. He submitted that these are cosmetic changes. The second FIR. is fall-out of the first FIR. There are no independent transactions in the two FIRs. It is also not the case of larger conspiracy. If the test of "sameness" is applied, registration of second FIR is not permissible.

6. Mr. Jha submitted that the learned Sessions Judge granted anticipatory bail in the first FIR. Criminal Application challenging the grand of anticipatory bail was rejected by this Court on 3.10.2011. This Court directed the prosecution not to file chargesheet. As the complainant in the first FIR did not succeed in ensuring arrest of the petitioners, the second FIR is filed so that the petitioners will be arrested based on the second FIR. He submitted that if at all additional information is received by the

prosecution after registration of the first FIR the prosecution can seek permission of the concerned Magistrate for investigating the case further under section 173(8) of Cr.P.C. The registration of the second FIR is in gross violation of fundamental rights of the petitioners enshrined in Articles 21 and 22 of the Constitution of India. He, therefore, submitted that registration of second FIR on 12.3.2014 is wholly impermissible in law. In support of his submissions, he relied upon the following decisions of the Apex Court:

(i) T.T.Antony Vs. State of Kerala, (2001) 6 SCC 181 and in particular paragraphs 18 to 20;

(ii) Babubhai Vs. State of Gujarat, (2010) 12 SCC 254 and in particular paragraphs 20 and 21;

(iii) Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation, (2013) 6 SCC 348;

(iv) Surender Kaushik Vs. State of Uttar Pradesh, (2013) 5 SCC 148 and in particular paragraphs 23 and 24 thereof, and the decision of this Court in the case of Mahesh Parsram Matta Vs State of Goa, 2015 ALL MR (Cri) 3116.

7. On the other hand, Mr. Shinde submitted that the First Information Report was registered for offences punishable under sections 406, 408, 409, 420 read with section 34 I.P.C and Section 146(a) and 147 of the Maharashtra Cooperative Societies Act,1960. The said FIR is lodged on the basis of audit report for

the period from 1.4.2005 to 31.3.2006. He invited our attention to the first FIR and the statement of the complainant recorded therein.

8. Mr.Shinde submitted that as against this, the second FIR is registered for the offences punishable under sections 420, 408,409, 465, 468,471,474 read with 34 I.P.C. The said FIR is based upon the audit report for the period from 1.4.2006 to 31.10.2009. In other words, the second FIR is based on the audit report subsequent to the audit report on which first FIR is based. He has taken us through the statement of the complainant recorded in that FIR. He submitted that comparison of the two FIRs will clearly indicate that the second FIR is not fall out of the first FIR. The allegations in the first FIR are not overlapping in the second FIR. Transaction in the first FIR and second FIR are independent. Even the accused are different. The two FIRs are based upon two different incidents. He relied upon the decision of this Court in the case of Ashok Sopan Patil Vs. The State of Maharashtra, 2015 ALL MR (Cri.) 7. Mr. Deshmukh adopted submissions of Mr. Shinde.

9. We have considered the rival submissions made by the learned counsel appearing for the parties. We have carefully perused the material on record. The short question is whether registration of the second FIR is permissible.

10. In the case of T.T.Antony (supra), the Apex Court in

paragraph 20 observed thus :

> "20. ... 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 of the Code."**
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> (emphasis supplied)

In paragraph 21 of T.T.Antony case, it was observed thus :

> "21. ... .. The 1973 CrPC specifically provides for further investigation after forwarding of report under sub-section (2) of Section 173 CrPC and forwarding of further report or reports to the Magistrate concerned under Section 173(8) CrPC. **It follows that if the gravamen of the charges in the two FIRs — the first and the second — is in truth and substance the same, registering the second FIR and making fresh investigation and forwarding report under Section 173 CrPC will be irregular and the court cannot take cognizance of the same.**"
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> (emphasis supplied)

11. In Kari Choudhary V Sita Devi, (2002) 1 SCC 714, the Apex Court in paragraph 11 observed thus:

> "11. ... **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 out under both of them by the same investigating agency." (Kari Choudhary case, SCC P.717, para 11)".
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> (emphasis supplied)

12. In the case of Surender Kaushik (supra), the Apex Court after considering the earlier decisions, observed in paragraph 24

thus:

> "24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in Upkar Singh V.Ved Prakash , (2004) 13 SCC 292, the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible."

13. Mr. Jha relied upon the decision of Babubhai (supra). In that case, the incident started in the morning as per both the FIRs C.R.No.I-154 of 2008, was lodged by Sub Inspector of Police Mr M.N.Pandya and he narrated the incident. In that FIR, place of occurrence was near the pond in village Dhedhal.In the second FIR in CR No.I-155/2008 incident also occurred near the pond in vilage Dhedhal. In paragraph 25, the Apex Court observed that while comparing both the FIRs, there was no doubt that both the incidents had occurred at the same place in close proximity of time and, therefore, they were two parts of the same transaction. It was, therefore, held that the second FIR was liable to be quashed.

14. In the case of Nirmal Singh Kahlon Vs. State of Punjab

(2009) 1 SCC 441, it was held in paragraph 67 thus:

> "67. **The second FIR, in our opinion, would be maintainable not only because there were different versions but when new discovery is made on factual foundations. Discoveries may be made by the police authorities at a subsequent stage.** Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature. If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, in our opinion, as and when the same surfaced, it was open to the State and/or the High Court to direct investigation in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged."
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> (Emphasis supplied)

15. In the case of Amitbhai Anilchandra Shah (supra), the Apex Court considered its earlier decision in the case of Rubabbauddin Shaikh Vs,.State of Gujarat, (2010) 2 SCC 200 and in particular paragraph 19 quoted the relevant excerpts from the said decision. In paragraph 20, the Apex Court reproduced paragraphs 65, 66 and 82 of that decision. The Apex Court, thereafter observed in paragraph 21 thus :

> "21. The observations, findings and directions in Rubabbuddin Sheikh clearly show that the alleged killing of Tulsiram Prajapati was thus perceived even by this Court to be an act forming part of the very same transaction and same conspiracy in which the offence of killing of Sohrabuddin and Kausarbi took place. CBI also, upon investigation held that "strong suspicion expressed by this court in the above judgment was true and filed charge-sheet(s)".

Applying the tests laid down by the Apex Court in the above referred decisions, we have examined the facts and circumstances giving rise to both the FIRs. The test of sameness is to be applied for finding out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction.

16. In the present case, one Vinod Bahurao Patil, Sub-Auditor of Co-operative Societies, Sangli lodged a report at Sangli City Police Station on 17.4.2009 alleging that Directors of Pat Sanstha during the financial year 2005-06, viz. for the period from 1.4.2005 to 31.3.2006, committed breach of rules and regulations of Pat Sanstha and fraudulently gave loans to the tune of Rs.1,41,92,500/- and the said amount is misappropriated by the accused.

17. In pursuance of that report, Sangli City Police Station registered C.R.No.80/09 under sections 406,408, 409, 420 read with section 34 I.P.C. After completion of investigation, chargesheet was filed before the Chief Judicial Magistrate, Sangli on 21.1.2011 against accused persons, namely (1) Jaywantrao Dhondiram Patil, (2) Rangrao Abaji Patil, (3) Rajendra Rangrao Bhosale, (4) Purushottam Ganpatrao Barge, (5) Panditrao Laxman Patil, (6) Shivajirao Dattajirao Patil, (7) Sadashiv Dudhappa Palekar, (8) Rajendra Jayvant Arjune, (9) Tanaji Bandu Chavan, (10) Charushila Madhavrao jadhav, (11) Vikramsinh Jayvantrao Patil, (12) Suhas Rangrao Patil, (13) Amar Janardan Kamble.

18. On 12.3.2014, one Ranjit Rangrao Patil, Sub Auditor lodged a report at Sangli City Police Station alleging that he received an audit report for the period from 1.4.2006 to 31.10.2009 which, inter alia, discloses commission of an offence of breach of trust and misappropriation of amount of Rs. 34,65,087.75. On the basis of that report, Sangli City Police Station registered C.R. No.37/14 under sections 406, 408, 409, 420, read with section 34 I.P.C. against accused persons, namely (1) Jaywantrao Dhondiram Patil, (2) Rangrao Abaji Patil, (3) Panditrao Laxman Patil, (4) Rajendra Rangrao Bhosale, (5) Purushottam Narayan Barge, (6) Shivajirao Dattajirao Patil, (7) Vikramsinh Jayvantrao Patil, (8) Rajendra Jayvant Arjune, (9) Sadashiv Dudhappa Palekar, (10) Tanaji Bandu Chavan, (11) Amar Janardan Kamble, (12) Vishwas Shamrao Zambre, (13) Sambhaji Shripati Vandkar.

19. Mr. Shinde submitted that in view of Sections 212 (2), 219(1) and (2) and 220(2) of Cr.P.C when the accused is charged with criminal breach of trust or dishonest misappropriation of money, the time included between the first and last of such dates shall not exceed one year. In other words, offences committed in several years should be charged separately i.e. for one year's crime one charge should be framed. Perusal of both the FIRs shows that the Auditor of Crime No.80/2009 and the Auditor of Crime No.37/2014 are different. Both the Auditors carried out audits for different years and they found different

amounts of misappropriation. The Audit Reports are for different periods and transactions are also different from different years.

20. After considering the two FIRs, we are of the view that the version in the second FIR is different. Both the FIRs are in respect of the two different incidents/crimes. Even the accused are different. The period of audit is also different. The allegations in the two FIRs are also different. In view thereof, we do not find any merit in the submission of Mr. Jha that registration of the second FIR is impermissible. In the result, no case is made out for invocation of powers under section 482 of Cr.P.C. Hence, Petition fails and the same is dismissed. In view of dismissal of the Petition, Civil Application No.529 of 2014 for intervention does not survive and the same is dismissed.

(R.G.KETKAR, J.) **(RANJIT MORE,J.)**

C E R T I F I C A T E

Certified to be true and correct copy of the original signed order.