

**THE HON'BLE SMT JUSTICE ANIS**

**CRIMINAL PETITION Nos.14074 & 14081 of 2016**

**COMMON ORDER:**

Criminal Petition No.14074 of 2016 is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C') by the petitioners/A.1 to A.13 & A.15 to A.17 to quash the proceedings in Crime No.56 of 2016 of Chowdepalli Police Station, Chittoor District registered for the offences punishable under Sections 403, 406, 409, 420 read with 34 of the Indian Penal Code, 1860 (for short, 'the I.P.C').

2. Criminal Petition No.14081 of 2016 is filed under Section 482 of Cr.P.C by the petitioners/A.1 to A.13 & A.15 to A.22 to quash the proceedings in Crime No.51 of 2016 of Somala Police Station, Chittoor District registered for the offences punishable under Sections 420, 409, 403, 406 read with 34 I.P.C.

3. Heard the learned counsel appearing for the petitioners and the learned Public Prosecutor appearing for the first respondent-State in both the petitions.

4. It is argued by the learned counsel appearing for the petitioners in both the petitions that the complaints in Cr.No.51 of 2016 of Somala police station and Cr.No.56 of 2016 of Chowdepalli police station dated 18.09.2016 are similar to Cr.No.33 of 2016 of Sodam police station dated

29.04.2016 and relied upon the case law reported in **T.T.Antony v. State of Kerala and others with Damodaran P. and others v. State of Kerala and others with State of Kerala and others v. Revada Chandrasekhar and others**<sup>1</sup>, wherein it is held as follows:

15. On these contentions, four points arise for determination:

(i) Whether registration of a fresh case, Crime No.263/97, Kuthuparamba by Police Station on the basis of the letter of the DGP dated July 2, 1997 which is in the nature of the second R.R. under Section 164 of Cr. P.C. is valid and can it form the basis of a fresh investigation?

(ii) Whether the appellants in Appeal Nos.689/2001 & 4066/2001 (arising out of SLP(Cd.) 1502/00 and SLP(c) 8840/00) and respondent in Appeal Nos. 698-91/01 (arising out of SLP (Cr.) Nos. 2724-25/00) have otherwise made out a case for quashing of proceedings Crime No. 268/97 Kuthuparmaba Police Station;

(iii) What is the effect of the report of Sri. K. peamanebann Commission of Inquiry, and

(iv) whether the facts and the circumstances of the case justify a fresh investigation by CBI.

16. As points (i) and (ii) are interconnected, it will be convenient to deal with them together. Inasmuch as the germane question relates to registration of an F.I.R., we may useful refer to Section 154 of the Code of Criminal Procedure, 1973 (Cr.P.C.) which reads as under:

"154. Information in cognizable cases -

(1) Every information relating to the Commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance there of shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in the behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be

<sup>1</sup> (2001) 6 SCC 181

*made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.*

17. Sub-section (1) of Section 154 of Cr.P.C. contains four mandates to an officer-in-charge of a police station. The first enjoins that every information relating to commission of a cognizable offence if given orally shall be reduced to writing and the second directs that it be read over to the informant; the third requires that every such information whether given in writing or reduced to writing shall be signed by the informant and the fourth is that the substance of such information shall be entered in the station house diary. It will be apt to note here a further directive contained in sub-section (1) of Section 157 of Cr. P.C. which provides that immediately on receipt of the information the officer of the Police Station shall send a report of every cognizable offence to a Magistrate empowered to take cognizance of the offence and then proceed to investigate or depute his subordinate officer to investigate the facts and circumstances of the case. Sub-section (2) entitles the informant to receive a copy of the information, as recorded under sub-section (1), free of cost. Sub-section (3) says that in the event of an officer in charge of a police station refusing to record the information as postulated under sub-section(1), a person aggrieved thereby may send the substance of such information in writing and by post to the Superintendent of Police concerned who is given an option either to investigate the case himself or direct the investigation to be made by a police officer subordinate to him, in the manner provided by Cr.P.C., if he is satisfied that the information discloses the commission of a cognizable offence. The police officer to whom investigation is entrusted by the Superintendent of Police has all the powers of an officer in charge of the police station in relation to that offence.

18. An information given under sub-section (1) of Section 154 of Cr.P.C. is commonly known as First Information Report (F.I.R.) though this term is not used in the Code. It is a very important document. And as its nick name 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 into motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 of Cr.P.C., as the case may be and forwarding of a police report under Section 173 of Cr.P.C. It is quite possible and it happens not infrequently that more information's that one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offence. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 of Cr.P.C. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the First Information Report - F.I.R. postulated by Section 154 of Cr. P.C. All other information's 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 offenses as may

come to his notice during the investigation, will be statements falling under Section 162 of Cr. P.C. No such information/statement can properly be treated as an F.I.R. 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 the Cr. P.C. Take a care where an FIR mentions cognizable offence under Section 307 or 320 I.P.C. and the investigating agency learns during the investigation or receives a fresh information that the victim died, no fresh FIR under Section 302 I.P.C. need be registered which will be irregular; in such a case alternation of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown persons that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against II- the read offender-who can be arraigned in the report under Section 173(2) or 173(8) of Cr.P.C., as the case may be. It is of course permissible for the investigating officer to send up a report to the concerned Magistrate even earlier that investigation is being directed against the person suspected to be the accused.

19. The scheme of the Cr.P.C. is that an officer in charge of a Police Station has to commence investigation as provided in Section 156 or 157 of 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 evidence collected he has to form opinion under Section 169 or 170 of Cr.P.c., as the case may be, and forward his report to the concerned Magistrate under Section 173(2) of 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 of 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 F.I.R. 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 F.I.R. 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 Cr.P.C.

21. The learned Solicitor General relied on the judgment of this Court in *Ram Lal Narang & Ors. vs. State (Delhi*

*Administration 1979CriLJ1346 (referred to as Narangs case) to contend that there can be a second F.I.R. in respect of the same subject matter. In that case the contention urged by the appellant was that the police had committed illegality, acted without jurisdiction in investigating into the second case and the Delhi Court acted illegally in taking cognizance of that (the second) case. A reference to the facts of that case would be interesting. Two precious antique pillars of sand stone were deposited in the court of Ilaga Magistrate, Karnal, as stolen property. One N.N. Malik filed an application before the Magistrate seeking custody of the pillars to make in detail study on the pretext that he was a research scholar. It appears that the then Chief Judicial Magistrate of Karnal, (H.L. Mehra), was friend of Malik. At the instance of Mehra the said Ilaga Magistrate ordered that the custody of the pillars be given to Malik on his executing a bond. About three months thereafter Malik deposited two pillars in the court of Ilaga Magistrate, Karnal. After sometime it came to light that the pillars returned by Malik were not the original genuine pillars but were fake pillars. An F.I.R. was lodged against both Malik and Mehra under Section 120B read with Section 406 and 420 of I.P.C. alleging conspiracy to commit criminal breach of trust and cheating. The C.B.I. after necessary investigation filed charge sheet in the court of Special Magistrate, Ambala, against both of them. Ultimately on the application of the public prosecutor the case was permitted to be withdrawn and the accused were discharged. Sometime later the original genuine pillars were found in London which led to registering an F.I.R. in Delhi under Section 120B read with Section 411 of I.P.C, and Section 25(1) of the Antiquities and Art Treasures Act, 1972 against three persons who were brothers (referred to as 'Narangs'). The gravamen of the charge against them was that they, Malik and Mehra, conspired together to obtain custody of the genuine pillars, got duplicate pillars made by experienced sculptors and had them substituted with a view to smuggle out the original genuine pillars to London. After issuing process for appearance of Narangs by the Magistrate at Delhi, an application was filed for dropping the proceedings against them on the ground that the entire second investigation was illegal as the case on the same facts was already pending before Ambala Court, therefore, the Delhi Court acted without jurisdiction in taking cognizance of the case on the basis of illegal investigation and the report forwarded by the police. The Magistrate referred the case to the High Court and Narangs also filed an application under Section 482 of Cr.P.C. to quash the proceedings. The High Court declined to quash the proceedings, dismissed the application of Narangs and thus answered the reference. On appeal to this Court it was contended that the subject-matter of the two F.I.Rs. and two charge-sheets being the same there was an implied bar on the power of the police to investigate into the subsequent F.I.R. and the court at Delhi to take cognizance upon the report of such information. This Court indicated that the real question was whether the two conspiracies were in substance and truth the same and held that the conspiracies in the two cases were not identical. It appears to us that the Court did not repeal the contention of the appellant regarding the illegality of the second FIR and the investigation based thereon being vitiated, but on facts found that the two FIRs in truth and substance were different - the first was a smaller conspiracy*

*and the second was the larger conspiracy as it turned out eventually. It was pointed out that even under the Code of 1898 after filing of final report there could be further investigation and forwarding of further report. The 1973 Cr.P.C. specifically provides for further investigation after forwarding of report under sub-section (2) of Section 173 of Cr.P.C. and forwarding of further report or reports to the concerned Magistrate under Section 173(8) of Cr.P.C. It follows that if the gravamen of the charges in the two FIRs - the first and the second - is in substance and truth the same, registering the second FIR and making fresh investigation and forwarding report under Section 173 Cr.P.C. will be irregular and the Court can not take cognizance of the same.”*

5. Taking into consideration all the facts and circumstances of the case, the Investigating Officer is directed not to arrest the petitioners in both the petitions, but continue the investigation. The Investigating Officer while investigating Cr.No.33 of 2016 shall take consideration Cr.No.56 of 2016 and Cr.No.51 of 2016 and file the final report into the Court.

6. With this observation, the criminal petitions are disposed of. Miscellaneous petitions pending if any in these criminal petitions shall stand closed.

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**JUSTICE ANIS**

September 28, 2016

**Note:**

Issue C.C tomorrow

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