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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 2457/2014**

AJAY CHOWDHARY

..... Petitioner

Through: Mr. Ratan K. Singh, Mr. Manish Chaudhary, Mr. Arjun Chaudhary & Mr. Raghav Alok, Advocates.

versus

STATE & ORS.

..... Respondents

Through: Mr. Rajesh Mahajan, ASC for the State.
Mr. Vineet Jhanji, Advocate for respondent No.2.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
08.07.2016

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1. This writ petition has been filed to seek quashing of FIR No.612/2007 dated 31.12.2007 under Section 447/420/511/120B IPC registered with Police Station M.S. Park, Delhi. During the pendency of the petition the charge-sheet stands filed. Consequently, learned counsel for the petitioner, on instructions, has not pressed the petition on merits and he seeks leave to press all his submissions except one, before the Trial Court to seek discharge. This Court has not expressed any opinion on the merits of the case of either party in respect of the submissions not advanced by them.

2. The only aspect on which the petition has been pressed by learned counsel for the petitioner is that the FIR in question is the second FIR relating to the same alleged offences. He submits that the aforesaid FIR could not have been registered, investigated and a separate final report filed, since the police was already investigating FIR No.229/2006 i.e. the first FIR. In the first FIR, the complainant had alleged that the petitioner was undertaking sale transactions- allegedly unauthorisedly, to dispose of the properties of Capital Land Builders Private Limited. In that FIR, the allegation of the complainant was that the petitioner accused was undertaking other similar sales of plots unauthorisedly. The submission is that instead of filing the FIR in question, i.e. FIR No.612/2007, the alleged further offences (in respect of which the present FIR No.612/2007 has been filed), should have been investigated as a part of the earlier FIR, and the police could have filed an additional charge-sheet in the first case itself, after obtaining leave of the Court. In this regard, learned counsel for the petitioner has placed reliance on two decisions of the Supreme Court, namely, *Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and Another*, (2013) 6 SCC 348, and *T.T. Antony Vs. State of Kerala*, (2001) 6 SCC 181.

3. Learned counsel for the petitioner submits that the offences involved in both the FIRs arise from the same transaction. The crux of the case of the prosecution is that the accused have unauthorisedly, and without any competence, dealt with the assets of the aforesaid company by disposing of the plots at different points of time. Merely because there are different instances of sale of plots alleged to have been undertaken unauthorisedly, the same did not provide justification for registration of different FIRs.

4. On the other hand, the submission of learned APP and the learned counsel for respondent No.2 is that the transactions involved are separate and distinct, and they arise from different events. It is further pointed out that some of the accused in the second FIR are not accused in the first FIR, and only two of the accused in the first FIR figure in the second FIR. Learned counsel for the respondents have also urged that the facts of the present case are distinct from those dealt with by the Supreme Court in the aforesaid cases. Attention is drawn to para 29 of ***T.T. Antony*** (supra).

5. In ***T.T. Antony*** (supra), the Supreme Court, inter alia, observed as follows:

“19. An information given under sub-section (1) of Section 154 CrPC 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 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. It is quite possible and it happens not infrequently that more informations than 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 offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 CrPC. 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 — FIR postulated by Section 154 CrPC. All other informations 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. Take a case where an FIR mentions cognizable offence under Section 307 or 326 IPC and the investigating agency learns during the investigation or receives fresh information that the victim died, no fresh FIR under Section 302 IPC need be registered which will be irregular; in such a case alteration 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 person or knowing 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 H — the real offender — who can be arraigned in the report under Section 173(2) or 173(8) CrPC, as the case may be. It is of course permissible for the investigating officer to send up a report to the Magistrate concerned even earlier that investigation is being directed against the person suspected to be the accused.

20. The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC 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 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. 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 CrPC.

21. From the above discussion it follows that 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.

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28. 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* [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] 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 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 CrPC or under Articles 226/227 of the Constitution”.

(emphasis supplied)

6. The Supreme Court, as would appear from the para 19 extracted above, was considering the situation where the police officer while investigating the FIR gathers some information than the one given in the FIR “*in respect of the same incident involving one or more than one cognizable offences*”. The Supreme Court made the observations that only one FIR should be registered involving different offence which may be unearthed from time to time, where the event/ transaction was one. The Supreme Court expressly observed that “*there can be no second FIR and consequently there can be no fresh investigation on receipt of other subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognisable offences*”. Even the facts, in the background of which the Supreme Court made the aforesaid observations, show that it was one occurrence/ incident that the Supreme Court was dealing with. Firing took place by the police at two places leading to registration of two different FIRs. While the investigation in the said FIRs was pending, an inquiry commission was set

up which gave its report. The report was accepted by the Government with the direction that legal action cannot be taken against all those responsible for the findings of the commission. Thereafter, another case was registered on the basis of the directions issued by the Inspector General of Police. It is in this background that the Court made the aforesaid observations. The Supreme Court while analysing the facts of the case before it, inter alia, observed in paragraph 29:

*“29. On the date when the Additional Chief Secretary wrote to the Director General of Police, the investigations initiated in the said two crimes relating to the same incident were in progress. The investigating agency should have taken advantage of the report of the Commission for a proper further investigation into the case. On the facts which might come to light during investigation, if necessary, the investigating agency should have altered the offences under appropriate section of the relevant Acts and concluded the investigations. In view of the orders of the Director General of Police to register a case and on the further direction of the Inspector General of Police, the officer in charge of the police station registered Crime No. 268 of 1997 of Kuthuparamba Police Station. **A comparison and critical examination of the FIRs in Crimes Nos. 353 and 354 of 1994 on one hand and FIR in Crime No. 268 of 1997 on the other, discloses that the date and place of occurrence are the same; there is alluding reference to the deaths caused due to police firing in the FIRs in Crimes Nos. 353 and 354 of 1994. In any event, that fact was evident on the scene of occurrence. The narration of events, which we need not repeat here, is almost the same. The additional averments in Crime No. 268 of 1997 are based on the findings in the report of the Commission. Having regard to the test laid down by this Court in Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] with which we are in respectful agreement, we find that in truth and substance the essence of the offence in Crimes Nos. 353 and 354 of 1994 is the same as in Crime No. 268 of 1997 of Kuthuparamba Police Station. In our view, in sending***

*information in regard to the same incident, duly enclosing a copy of the report of the Commission of Inquiry to the Inspector General of Police for appropriate action, the Additional Chief Secretary adopted the right course of action. Perhaps the endorsement of the Inspector General of Police for registration of a case misled the subordinate police officers and the said letter with regard to the incident of 25-11-1994 at Kuthuparamba was registered again under Section 154 CrPC which would be the second FIR and, in our opinion, on the facts of this case, was irregular and a fresh investigation by the investigating agency was unwarranted and illegal. On that date the investigations in the earlier cases (Crimes Nos. 353 and 354 of 1994) were pending. The correct course of action should have been to take note of the findings and the contents of the report, streamline the investigation to ascertain the true and correct facts, collect the evidence in support thereof, form an opinion under Sections 169 and 170 CrPC, as the case may be, and forward the report/reports under Section 173(2) or Section 173(8) CrPC to the Magistrate concerned. The course adopted in this case, **namely, the registration of the information as the second FIR in regard to the same incident and making a fresh investigation is not permissible under the scheme of the provisions of CrPC as pointed out above, therefore, the investigation undertaken and the report thereof cannot but be invalid.** We have, therefore, no option except to quash the same leaving it open to the investigating agency to seek permission in Crime No. 353 or 354 of 1994 of the Magistrate to make further investigation, forward further report or reports and thus proceed in accordance with law”.*

(emphasis supplied)

7. The two examples cited by the Supreme Court in para 19 extracted above also show that the observations of the Supreme Court were made in the context of registration of multiple FIRs in relation to the same incident/occurrence/transaction.

8. In **Amitbhai Anilchandra Shah** (supra), the Supreme Court in the summary of its conclusions, inter alia, observed:

*“58.3. Even after filing of such a report, if he comes into possession of further information or material, there is no need to 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 which is evident from sub-section (8) of Section 173 of the Code. **Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. 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.***

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58.5. The first information report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR.

*59. In the light of the specific stand taken by CBI before this Court in the earlier proceedings by way of assertion in the form of counter-affidavit, status reports, etc. we are of the view that filing of the second FIR and fresh charge-sheet is violative of fundamental rights under Articles 14, 20 and 21 of the Constitution **since the same relate to alleged offence in respect of which an FIR had already been filed and the court has taken cognizance.** This Court categorically accepted CBI's plea that killing of Tulsiram Prajapati is a part of the same series of cognizable offence forming part of the first FIR and **in spite of the fact that this Court directed CBI to “take over” the investigation and did not grant the relief as prayed, namely,***

registration of fresh FIR, the present action of CBI filing fresh FIR is contrary to various judicial pronouncements which is demonstrated in the earlier part of our judgment.

60. In view of the above discussion and conclusion, the second FIR dated 29-4-2011 being RC No. 3(S)/2011/Mumbai filed by CBI is contrary to the directions issued in judgment and order dated 8-4-2011 by this Court in Narmada Bai v. State of Gujarat [(2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526] and accordingly the same is quashed. As a consequence, the charge-sheet filed on 4-9-2012, in pursuance of the second FIR, be treated as a supplementary charge-sheet in the first FIR. It is made clear that we have not gone into the merits of the claim of both the parties and it is for the trial court to decide the same in accordance with law. Consequently, Writ Petition (Crl.) No. 149 of 2012 is allowed. Since the said relief is applicable to all the persons arrayed as accused in the second FIR, no further direction is required in Writ Petition (Crl.) No. 5 of 2013”.

9. Once again, it would be seen that the rule against registration of a fresh FIR enforced by the Supreme Court was in relation to the same cognizable offence. The additional feature of this case was that the Supreme Court had rejected the endeavour of the C.B.I. to register a second FIR in earlier proceedings and, thus, the registration of the second FIR was contrary to the earlier direction of the Supreme Court.

10. The fact situation in the present case is materially different inasmuch, as, each transaction of sale of property of the aforesaid company allegedly undertaken by the accused allegedly without authority, and on the basis of forged and fabricated documents, constituted separate events and transactions which took place at different points of time. Merely because the modus operandi allegedly adopted by the accused may have been the same in respect of different sale transactions allegedly undertaken by the

accused, it cannot be said that the even or the transaction is one. The accused in the first FIR No.229/2006 were six in number, namely:

- (i) Ajay Chaudhary
- (ii) Arun Chaudhary
- (iii) Ajay Yadav
- (iv) Farhan-ul-Haq
- (v) Surender Pal
- (vi) Rajpal Sharma

11. The charge-sheet in case arising out of FIR No.229/2006 reveals that the same alleges forgery and fabrication by the accused of several documents for the purpose of allegedly unauthorised transfer of several plots belonging to the aforesaid company. The charge-sheet arising out of the second FIR, namely Fir No.612/2007 is against two named accused Ajay Chaudhary and Darshan Singh. Though, Ajay Chaudhary is named as accused in both the charge-sheets, Darshan Singh is not an accused in the charge-sheet arising out of the first FIR No.229/2006. A perusal of the charge-sheet arising out of the second FIR shows that the same pertains to different events and transactions in relation to the property of the aforesaid company. Consequently, the submission of learned counsel for the petitioner that the registration of the second FIR and the resultant filing of the second charge-sheet is illegal, cannot be accepted since the two FIRs pertain to different events and transactions. Merely because the modus operandi adopted by the accused in relation to such different events/ transactions may be the same, the transactions/ events cannot be called the same or one. There is another aspect that dissuades me from exercising the

discretionary jurisdiction in favour of the petitioner. The second FIR was registered in 2007. The petitioner waited for almost six years to file the present petition, during which period the police carried out investigation and eventually filed the charge-sheet after the filing of this petition. Out of the main objections to registration of a second or multiple FIRs is that the accused should not be harassed by being subjected to investigation repeatedly. Now that stage is over since the final report stands filed. Thus, that grievance of the petitioner does not survive. The petitioner, therefore, could and ought to have challenged the registration of the second FIR soon after its registration. Accordingly, the aforesaid submission of learned counsel for the petitioner is meritless and is rejected.

12. The writ petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

JULY 08, 2016

B.S. Rohella