

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 435 of 2017

Kamlesh Naidu, S/o. Krishna Swami Naidu, Aged About 23 Years, R/o. Purani Basti, Thana & Tahsil Kharsia, District Raigarh, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through the Superintendent Of Police, District Raigarh, Thana & District Raigarh, Chhattisgarh.
2. The Station House Officer, Police Station Kharsia, Tahsil Kharsia, District Raigarh, Chhattisgarh.
3. Rajesh Agrawal, S/o. Ghanshyam Agrawal, Aged About 44 Years, R/o. And Postal Address- Subhash Chowk Kharsia Chhattisgarh.
 ,,.....(Complainant Crime No. 374/2017).
4. Gaurav Kumar Banarji, S/o. Ashok Kumar Banerji, Aged About 18 Years, Subhash Chowk Lodge Area, Thana Kharsia District Kharsia Chhattisgarh.
(Complainant Crime No. 375/2017).
5. Mahesh Kumar Agrawal, S/o. Jagdish Prasad Agrawal, Aged About 42 Years, R/o. Subhash Chowk, Thana Kharasia, Distt. Kharsia Chhattisgarh.
(Complainant Crime No. 376/2017).
6. Chintamani Mankar, S/o. Late Shankar Lal Manakar, Aged About 54 Years, R/o. Subhash Chowk, Kharsia Thana Kharsia, District Raigarh, Chhattisgarh
(Complainant Crime No.373/2017)
 (Sub Inspector, Thana In Charge Kharsia).

---- Respondents

For Petitioner : Mr. N.K.Malviya, Advocate

For State/
Respondent No.1 & 2 : Mr. Neeraj Sharma, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

25.10.2017

Heard

1. The present petition is to quash the four FIR, which are registered at Police Station Kharsiya, District Raigarh on 04.09.2017 under different crime numbers.

2. The first FIR is filed as Annexure P-1, which is registered under Section 147, 148, 457, 294, 506, 350, 323 & 392 of I.P.C. which is under the Crime No.374/2017 and the complainant in this FIR is one Rajesh Agrawal. The second FIR is filed as Annexure P-2, which is under Section 394 of I.P.C. under the Crime No.375/2017 lodged by one Gaurav Kumar Banerjee. The third FIR is filed as Annexure P-3 for the offence under Section 147, 148, 294, 506, 323, 354 & 392 of I.P.C. lodged by one Mahesh Kumar Agrawal under Crime No.376/2017. The another FIR, Annexure P-4, is lodged under Section 186, 353, 332 of I.P.C. under Crime No.373/2017 lodged by one Police Officer Vinagati Vanakar. The incident happened on 03.09.2017 during the idol immersion and subsequent thereby wherein the petitioner who has been named as one of the co-accused alongwith others have assaulted and committed loot from different persons.
3. Learned counsel for the petitioner would submit that there cannot be four FIRs in respect of the same incident, as the incident falls within the definition of same transaction, therefore, the other incident has to be merged into one FIR, which is the first FIR. He placed his reliance in case of ***Surender Kaushik & Others v. State of Uttar Pradesh & Others***¹ and would submit that the second FIR in respect of the same incident is not permissible.
4. Perused the different FIRs. The first FIR, Annexure P-1 is for the offence under Section 147, 148, 457, 294, 506, 350, 323, 392 of I.P.C. and the complainant is Rajesh Agrawal wherein it is alleged that the petitioner alongwith other co-accused entered into the house, tried to outrage the modesty of the ladies, assaulted them and subsequently looted the Gold chain by entering into the

¹ (2013) 5 SCC 148

house. The second FIR, Annexure P-2, is for the offence under Section 394 of I.P.C. and the lodger is Gaurav Kumar Banerjee who alleged that the accused and the others were quarreling with one Rajesh Agrawal and when he tried to intervene he was assaulted and thereafter an amount of Rs.3800/- was looted from him. The third FIR, Annexure P-3, for the offence under Section 147, 148, 294, 506, 323, 354, 392 of I.P.C. is lodged by Mahesh Kumar Agrawal and it was complained that during the idol immersion, the petitioner alongwith others came with Clubs, abused and asked for one Rajesh Dhansu, thereafter, the complainant was assaulted and an amount of Rs.1200/- was looted and outraged the modesty of the lady. The another FIR, Annexure P-4, lodged by one Vinagati Manakar, a police officer, is for the offence under Section 186, 353, 332 of I.P.C. The FIR contains that after hearing the news that some dispute has taken place when the police went there then in the crowd the present petitioner instigated to attack the police, thereafter, the other persons attacked him and he was assaulted.

5. Perusal of the FIR would show that though the incident was of 03.09.2017, the petitioner alongwith others have committed different assault to different complainants. It is not a case that the complainant is one and same and the accused are same. The FIR was lodged on 04.09.2017 within short span of time by the different complainants and it is not a case that after lodging of one FIR another FIR is lodged for improvement of the facts mentioned in the original complaint.
6. In view of such facts, the case law cited by the petitioner i.e. *Surender Kaushik* (supra) rather sway in favour of the prosecution

of lodging different FIRs as the complainants and the incidents are different. Their Lordship in this case supra at para 24 has held as under :

“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 [(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.”

7. Therefore, in view of the facts narrated above, it would reveal that four different victim had made different reports and every injury is different. There has been certain time gap also appears in between the reports, therefore, one victim cannot be asked to join hands when he is individually been assaulted or had suffered loss of goods. In view of this, it would be clear that four FIRs are not a version of the same incident, as such, the doctrine of sameness cannot be pressed into.
8. In the result, the petition has no merit and accordingly it is dismissed at the motion stage.

Sd/-
(Goutam Bhaduri)
Judge