

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2360 OF 2017

1. Vanitabai wd/o Dnyanoba Paikrao,
Age 67 years, Occu. Household,
Residing at village Muddesh Wadgaon,
Taluka Gangapur, District Aurangabad
2. Dilip s/o Dnyanoba Paikrao,
Age 38 years, Occu. Agri.,
Residing at village Muddesh Wadgaon,
Taluka Gangapur, District Aurangabad
3. Sunita w/o Dilip Paikrao,
Age 35 years, Occu. Agri.,
Residing at village Muddesh Wadgaon,
Taluka Gangapur, District Aurangabad
4. Anand s/o Dnyanoba Paikrao,
Age 29 years, Occu. Lawyer,
Residing at Parvati Niwas,
Pahadsingpura, Taluka and
District Aurangabad
5. Kalpana Dnyanoba Paikrao,
Age 26 years, Occu. Household
Residing at Parvati Niwas,
Pahadsingpura, Taluka and
District Aurangabad
6. Panchasheela w/o Samadhan Pathare,
Age 33 years, Occu. Household,
Residing at village Karanjgaon,
Taluka Vaijapur, District Aurangabad
7. Samadhan s/o Suryabhan Pathare,
Age 38 years, Occu. S.T. Driver,
Residing at village Karanjgaon,
Taluka Vaijapur, District Aurangabad

.. Applicants

Versus

1. The State of Maharashtra,
2. Saroj w/o Prakash Paikrao,
Age 34 years, Occu. Household,
Residing at Sanjeevini Residency,
Begumpura, Taluka and District
Aurangabad

..Respondents

Mr Arun S. Shejwal, Advocate for applicant

Mr V.M. Kagne, A.P.P. for respondent no.1
Mr N.D. Sonawane, Advocate for respondent no.2

**CORAM : S.S. SHINDE AND
A.M. DHAVALA, JJ**

**DATE OF RESERVING
THE JUDGMENT : 6th September 2017**

**DATE OF PRONOUNCING
THE JUDGMENT : 18th September 2017**

JUDGMENT (Per A.M. Dhavale, J.)

1. Rule. Rule returnable forthwith. With the consent of parties, the matter is heard finally at admission stage.
2. This is an application by accused nos.2 to 8 for quashing of F.I.R. against them, registered at C.R. No.38 of 2017 at Begumpura Police Station, Aurangabad for offences punishable under Sections 498-A, 323, 504, 506 read with Sec.34 of Indian Penal Code. The F.I.R. is lodged by respondent no.2 - Saroj.
3. Respondent no.2 Saroj married to accused no.1 Prakash on 25.4.2008 as per Baudha rites at Muddesh Wadgaon, post Manjri, Taluka Gangapur. Applicants no.1 to 7 are accused nos.2 to 8. Accused no.2 Vanita is mother, accused nos.3 Deelip and accused no.5 Anand are brothers of accused no.1 Prakash. Accused no.6 Kalpana is his sister. Accused no.4 Sunita is wife of accused no.3 Deelip. Accused no.7 is married sister Panchasheela. Accused no.8 is her husband. As per F.I.R., accused nos. 2 to 6 (applicants no.1 to 5) are residing at Muddesh Wadgaon, Taluka Gangapur, while accused nos. 7 and 8 (applicants no. 6 and 7) are residing at Vaijapur. As per

the F.I.R., parents of respondent no.2 - Saroj spent money in performance of marriage by presentation of household articles etc. to Saroj. At the time of marriage, husband of respondent no.2 Saroj (Prakash) was serving in a private school. About two months after marriage, it is alleged that Saroj was asked to bring Rs.5 lakhs from her parents for securing a job for her husband Prakash. Besides, mother-in-law, sister-in-law and brother-in-law's wife were taunting her on the ground that she was unable to cook the food and she was avoiding to work. She gave birth to a male child on 20.4.2009. In September 2010, her husband got employed in C.I.S.F. at Chennai and he alone went to his service place. Respondent no.2 - Saroj along with her child continued to reside at Muddesh Wadgaon along with accused nos. 2 to 6. Thereafter, her mother-in-law, sister-in-law, wife of brother-in-law and husband of sister-in-law were demanding money and were abusing her and insulting her on domestic ground and were not providing her food. In 2013, her husband got employed in Artur road Jail at Mumbai. Initially, he was residing alone in Mumbai. Till June 2016, Saroj was at Muddesh Wadgaon and her in-laws had harassed her. In June 2016, her brother-in-law reached her to her husband's house. Thereafter, her husband started subjecting her to cruelty. He was indulging in consuming liquor and was having illicit relations with several ladies. He was telling her that he was not liking her and as he wanted to contract second marriage, she should leave his house. He used to assault and abuse her and used to keep her hungry. He used to talk in obscene language with other ladies in her presence. She had narrated these instances to her parents in personal visits as well as on phone and her maternal relatives tried to

persuade her husband and in-laws, but it was of no avail. On 12.10.2016, her husband consumed liquor, raised quarrel with her and assaulted her and threatened to kill her and drove her out. She and her son slept outside the house throughout the night without food. She was constrained to sell her Mangalsutra and came back to her maternal house Nagamthan, Taluka Vaijapur. Her relatives again attempt to persuade her husband and in-laws, but it was of no avail. On 9.1.2017, she gave application to the Woman Redressal Forum in the office of Commissioner, Aurangabad. Her in-laws did not appear there. Hence, she filed F.I.R. to that effect. The crime was registered at C.R.No.38/2017 and was investigated into.

4. Mr Shejwal, learned Counsel for the applicants argued that the F.I.R. is false and concocted. There was no complaint of whatsoever nature from 2008 till 2016. The allegations against the applicants are vague. Applicants no.6 and 7 are residing in different town. Respondent no.2 Saroj was residing with her husband at Mumbai, whereas the applicants were residing at Muddesh Wadgaon, Taluka Gangapur. There are no specific allegations against any of the applicants. Accused no.1 was already in service. Respondent no.2 used to reside at her maternal house for maximum period. Applicant no.1 Vanita is aged lady suffering from Spondylosis and she is taking treatment at Vaijapur. Accused no.4 is a practicing lawyer at Aurangabad and accused no.5 sister-in-law Kalpana was also residing at Aurangabad. The only allegation against accused nos.2 - Anand is that he reached respondent no.2 to the house of her husband at Mumbai. The story narrated by the respondent no.2 is inherently

improbable. It is also argued that earlier, the respondent no.2 had filed complaint on 17.10.2016 in the Court of Judicial Magistrate, First Class, Vaijapur at R.C.C.No.366/2016 in respect of the same incident of the same period and against the same accused, except accused no.8 Samadhan, who is added in this F.I.R. There are material variances in respect of allegations of various incidents in the two proceedings. This F.I.R. is not maintainable, as the learned trial Judge has taken cognizance against accused nos.1 to 5. There cannot be separate F.I.R. in respect of same incident in respect of the same offences.

5. Learned A.P.P. Mr V.M. Kagne for State and learned Advocate Mr N.D. Sonawane for respondent no.2 have supported the registration of F.I.R. They argued that the F.I.R. need not contain all the material facts. The contents of the F.I.R. are required to be believed to be true at the face value, though F.I.R. does not disclose all the contents indicating the existence of ingredients of the offences charged. Hence, no interference is called for.

6. We have heard learned Counsel for the parties and learned A.P.P. and have perused the documents produced by the Investigating Officer. The points for our consideration with our findings are as follows :

- (I) Whether the impugned F.I.R. is maintainable ?
- (II) Whether the impugned F.I.R. deserves to be quashed against all or any of the applicants ?

7. In this case, copy of complaint in R.C.C. No.366/2016 from the Court of Judicial Magistrate, First Class, Vaijapur shows allegations of offences punishable under Sections 498-A, 323, 504, 506 against the very same accused persons, except accused no.8 Samadhan. All other remaining accused are same. The period of offence is the same, however, there are some material differences as follows :

(a) As per complaint, there was demand of dowry of Rs.3 lakhs whereas as per the F.I.R., demand of dowry was Rs.5 lakh. In both the matters there is no reference to the person who had made such demand.

(b) In both the complaints there are vague allegations about beating, abusing and ill-treatment on account of domestic disputes. These allegations of beating and abusing and taunting are extremely vague and do not disclose the date, time and place and the specific persons for taking part in such activities.

8. In the impugned F.I.R., it is alleged that amount of Rs.5 lakhs was demanded for securing job for applicant no.1 - husband. The same ground is shown in the complaint but the admitted facts disclosed that at the time of marriage, the applicant no.1 was serving in a school. Thereafter, within short time he got job in C.I.S.F. at Chennai and thereafter in Central Jail, Arthur road, Mumbai. The applicant no.1 was already in service and when he was easily getting jobs, it is difficult to believe that there would be demand of money as dowry for securing a job for him. Pertinently, the complaint lodged on 17.10.2016 shows demand of only Rs.3 lakhs, whereas present F.I.R. shows demand of Rs. 5 lakhs.

9. The informant has produced some documentary evidence to show payment of some amounts by her father to accused no.1. As far as accused no.1 is concerned, there are serious allegations against him, particularly while respondent no.2 Saroj was co-habiting with him At Arthur road Mumbai. Since he is not a party, these allegations are not material.

10. In the complaint R.C.C.No.366/2016, it is alleged that the informant had gone to the police station at Veergaon to lodge F.I.R. but the police declined to record the F.I.R. Hence, she had filed complaint in the Court.

11. The learned J.M.F.C. Court No.3 Vaijapur, by order dated 3.12.2016, took cognizance and issued process against accused nos.1 to 6. Accused no.7 Panchsheela was residing in Vaijapur and not in the village of the applicants and, therefore, no process was issued against her. With the order of issuance of process, the complainant was not satisfied. Hence, she went to the Police Station and lodged the present F.I.R.

12. In following cases, it has been held that second F.I.R. in respect of the same incident is not maintainable.

(I) **T.T. Antony Vs. State of Kerala, AIR 2001 (SC) 2637.** In paragraph 21 of the judgment, it is observed that :

“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 of Criminal Procedure Code 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 concerned 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 Criminal Code.”

(II) Kashinath Kutwal and others Vs. The State of Maharashtra and anr., 2017 ALL MR Cri.2423

(III) Amit Bhai Anilchandra Shaha Vs. Central Bureau of Investigation and anr., 2013 (6) SCC 348. In paragraph 37 of the judgment, it is observed that :

“37. This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T. Antony, this Court has categorically held that registration of second FIR (which is not a cross-case) is violative of Article 21 of the Constitution. The following conclusion in paras 19, 20 and

27 of that judgment are relevant which read as under :
(SCC pp.196-97 & 200).

19. 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.

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](#) 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.

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

(IV) **Surender Kaushik and Ors. Vs. State of Uttar Pradesh and Ors., 2013 (5) scc 148.** In this case, His Lordship, Justice Misra as then was sitting in Division Bench, in paragraph 24 of the judgment observed 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 (supra), 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.”

(V) In **Lalasaheb s/o Rajesaheb Shaikh & Anr. Vs. The State of Maharashtra & Ors., 2017 ALL MR (Cri) 1769**, it is held that “earlier F.I.R. was closed by “C” summary and second F.I.R. was lodged on discovery of new facts leading to filing of second F.I.R. The same was held maintainable.”

(VI) **In Ramakant Singh and etc. vs State Of Bihar and anr., 2006 Cri.L.J. 4752**, in paragraph 14 it is held that :

“14. [Section 156, Cr.P.C.](#) envisages the police officer to investigate cognizable offence. During investigation the Investigating Officer can examine the person acquainted with the facts of the case and reduce their statements in writing. [Section 173, Cr.P.C.](#) requires submission of a final report by the police officer to the Magistrate as soon as the investigation is complete. The final report submitted by the Investigating Officer is not final, where the Investigating Officer has not conducted the case properly, acted negligently, carelessly and there is material on the record that there is further scope for investigation. Such provision is there under [Section 173\(8\)](#) of the Cr.P.C. Final report is submitted under [Section 173\(2\), Cr.P.C.](#) However nothing contained in [Section 173\(2\)](#) of the Code precludes further investigation with respect to the offence after a report has been submitted to the Magistrate. The law does not preclude an I.O. to further investigate the case and collect further evidence. To meet such circumstances there is provision under [Section 173\(8\), Cr.P.C.](#) The I.O. can make further investigation even after the Magistrate takes cognizance of offence on submission of charge-sheet. If there is necessity, and sufficient as well as valid ground for further investigation. So far the filing of the second F.I.R. for the same incident just to collect further evidence has been held illegal by the Apex Court in the Case of T.T. Antony v. The State of Kerala . In this case it has been observed "there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offence. Only information about commission of a cognizable offence which is first entered in station house

diary by officer in charge of the police station can be regarded as FIR under [Section 154](#). All such subsequent informations will be covered by [Section 162](#), [Cr.P.C.](#) Officer In charge of the 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](#). Even if after conclusion of the investigation pursuant to filing of the FIR and submission of report under [Section 173\(2\)](#), the Officer in charge of the police station comes across any further information pertaining to the same incident, he can make further investigation, normally with the leave of the Court and forward the further evidence, if any collected, with further report or reports under [Section 173\(8\)](#)."

13. In the present case, the difference is that the earlier case is not a F.I.R. but a complaint case. Relying upon this fact, it was argued that the provisions of Section 210 Cr.P.C. would come into play. After carefully considering the arguments, we find no substance in this submission. Section 210 Cr.P.C. lays down that when the complaint case is pending before any Court and it is revealed that F.I.R. lodged in respect of the same incident is under investigation, then the proceeding of complaint case is to be stayed and the papers of investigation are to be called and then both the matters should be clubbed. However, this does not permit any person to lodge F.I.R. in respect of the same incident, for same period, against the same accused persons with some modification, after having filed complaint before the Magistrate and the Magistrate has passed an order of taking cognizance against same person, only because such person is

not fully satisfied with the order of the Magistrate. It is against the established principles about the criminal prosecutions. Section 210 Cr.P.C. contemplates cases wherein the complaint might be filed by one person and F.I.R. is filed by some other person or the complaint may disclose some offences while the F.I.R. shows different offences. For example, the complaint may be in respect of Section 302 of Indian Penal Code and F.I.R. may be in respect of Section 306 of Indian Penal Code. In the present case, not only the complaint is prior in time but the Court, after hearing to the complainant has issued process against six out of seven accused persons. In such situation, it is not permissible to allow the complainant to file F.I.R. in respect of one additional accused making new allegations in respect of the same period and same crime. All the principles prohibiting the lodging of second F.I.R. would be applicable with equal force or even more vigour when the first one is a complaint and the Magistrate has taken cognizance of the same.

14. Learned Advocate for the respondent no.2 argued that since the applicant no.1 is a Police Officer, the Police did not record the F.I.R. of respondent no.2 properly. There was documentary material on record about payment of dowry which was not incorporated in the F.I.R. He relied on one communication dated 14.2.2017 made by respondent no.2 to the Commissioner of Police, Aurangabad in which specific allegations are made against each of the accused. This is again after thought. The earliest communication is by way of complaint dated 17.10.2016, after respondent no.2 returned to her matrimonial house on 16.10.2016. This complaint was lodged after

giving instructions to the Advocate and there is no satisfactory explanation why certain material facts are not disclosed in this complaint. Besides, applicant no.1 is not a Police Officer. He is serving in jail. He has no control over the Police.

15. The argument that applicant no.1 Vanitabai (accused no.2) was suffering from Spondylosis and was residing at Vaijapur cannot be considered as relevant for deciding this application.

16. We find that when the learned Magistrate has taken cognizance of the allegations of respondent no.2 in complaint R.C.C. No.366/2016 against accused nos.1 to 6 and has discharged accused no.7, they cannot be again compelled to face ordeal of trial on the same facts. It amounts to abuse of the process of the Court. Hence, we hold that the F.I.R. is not maintainable and pass the following order :

ORDER

(I) Criminal Application is allowed. The F.I.R. registered against the applicants at C.R.No. 38 of 2017 at Begumpura Police Station, Aurangabad now transferred to Vaijapur for offence punishable under Sections 498-A, 323, 504, 506 read with Sec.34 of Indian Penal Code, is hereby quashed.

(II) We clarify that the observations made herein are made only for deciding the present application filed by the present applicants and these observations shall not be used elsewhere in any other trial against the present applicants or anybody else.

(III) Rule is made absolute in above terms. There shall be no orders as to costs.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)

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