

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 115 OF 2016

1. M/s Dream Logistics India Pvt. Ltd.,
Dream Chambers, Near Bus Stand,
Yellapur, Karnataka 581 359.
2. Shri Vivek Hebbar, son of Shivaram
Hebbar, 34 years old, married, Indian
National, Resident of Dream
Chambers, Near Bus Stand, Yellapur,
Karnataka 581 359.
3. Smt. Divya Vivek Hebbar, wife of Shri
Vivek Hebbar, 33 years old, Indian
National, Resident of Dream
Chambers, Near Bus Stand, Yellapur,
Karnataka 581 359.
4. Shri Shivaram Hebbar, s/o
Mhaballeshwar Hebbar, 58 years old,
married, Indian National, Resident of
Dream Chambers, Near Bus Stand,
Yellapur, Karnataka 581 359.
5. Shri Prakash Hegde, son of late Shri
Gopal Krishna Hegde, 39 years old,
married, Indian National, Resident of
Dream Chambers, Near Bus Stand,
Yellapur, Karnataka 581 359. Petitioners

Versus

1. State of Goa, Through the Police Sub-
Inspector Satish V. Padvalkar, Special
Investigation Team, Dona Paula, Goa,
403 001.
2. Intertek India Pvt. Ltd., Division: Oil,
Chemical, Agri & Minerals, Shaikh
Munaf Issac House, Near Kadamba
Bus Stand, Mundvel Vaddem, Vasco Da
Gama, Goa - 403 802. Respondents

Shri S.G. Desai, Senior Advocate with Shri Murthy Dayanand Naik and Ms. Pooja Desai, Advocates for the Petitioners.

Shri Pravin N. Faldessai, Additional Public Prosecutor for the Respondent No. 1.

Shri Valmiki Menezes with Shri Akshay Shirodkar, Advocates for the Respondent No. 2.

CORAM:- C.V. BHADANG &

PRITHVIRAJ K. CHAVAN, JJ.

RESERVED ON: 21st JULY, 2017

PRONOUNCED ON: 27th JULY, 2017

JUDGMENT: (PER C.V. BHADANG, J.)

By this petition under Articles 226 and 227 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, 1973 (Code, for short), the petitioners are seeking quashing of the final report/charge sheet No. 21/2015, before the learned Judicial Magistrate First Class at Margao.

2. The brief facts necessary for the disposal of the petition may be stated thus:

The petitioner no. 1 is a Company incorporated under the Companies Act, 1956, having its registered office at Yellapur, Karnataka. The petitioner no. 2 is the Managing Director of the petitioner no. 1. The respondent no. 3, who is the wife of respondent no. 2, was a Director of the petitioner no. 1. She has

since resigned on 11.10.2010. Petitioner no. 4 has also resigned from the Directorship of the Company on 01.04.2011. Petitioner no. 5 is an existing Director of the petitioner no. 1.

3. On 02.06.2011, the petitioner no.1 had entered into a contract to sell 56,450 wet metric ton (WMT) of iron ore fines to M/s Shivnath Minerals and Chemicals (M/s SMC), a registered partnership firm at Raipur, Chattisgarh. As per the terms of the contract, the petitioner no. 1 was required to ship the consignment from Mormugao Port, Goa to Rizhao Port, China. As per the terms of the contract, the petitioner no. 1 was required to get the iron ore fines analysed by the respondent no. 2-M/s Intertek India Pvt. Ltd. (M/s IIPL), in order to ensure that the iron ore is of grade 51 (51% Fe content) and above.

4. According to the petitioners, the iron ore fines were got analysed from M/s IIPL, which issued a certificate, certifying that the Fe content of the ore was 53.60%. Accordingly, the iron ore was shipped by 'M.V. Sagarjeet' on 01.06.2011 to Rizhao Port, China. The shipment was allegedly re-analysed by the foreign buyer at the said port and the buyer found that the Fe content was 42% and not 53.60%. Consequently, the consignment was rejected. According to M/s SMC, they suffered

a loss of Rs.16 crores on account of the rejection of the iron ore by the buyer at Rizhao Port, China.

5. Undisputedly, the petitioner no. 1 had purchased the iron ore from M/s Prasanna V. Gotge (M/s PVG), a proprietorship concern, owned by Prasanna V. Gotge, trading in minerals, based in Belgaum. According to the petitioner, it was M/s PVG, which got the ore to be certified from M/s IIPL having 53.60% Fe content.

6. It appears that M/s SMC lodged a complaint on 18.07.2011 against the petitioners and others, including M/s IIPL with the Civil Lines Police Station at Raipur, Chattisgarh. On the basis of the said complaint, a FIR No. 283/2011 was registered on 29.08.2011 (hereinafter referred to as the first FIR). On completion of the investigation, a charge sheet came to be filed on 28.11.2011, against the petitioner no. 2 and one Mr. G. Ravikumar and others, for the offence punishable under Sections 420, 467, 468, 471 read with Section 120-B of the Indian Penal Code, before the competent Court at Raipur. The petitioner nos. 3 and 4, were not arraigned as accused in the said case presumably on account of the fact that they had resigned from the Directorship of the petitioner no. 1, much prior to the date of

the contract.

7. It appears that a supplementary charge sheet came to be filed against the petitioner no. 5 on 18.07.2012 in which, apart from the petitioner nos. 1, 2 and 5, Prasanna V. Ghotge was also made a co-accused. On the basis of these charge sheets, a Criminal Case No. 3747/2011 was registered on the file of the Chief Judicial Magistrate (CJM) at Raipur. After the learned CJM framed charge against the petitioner nos. 1 and 2, the petitioner no. 1 entered into compromise with the complainant-M/s SMC and an application for permission to compound the offence was filed before the learned CJM, in as much as the offence under Section 420 of IPC was compoundable. By an order dated 21.12.2011, the learned CJM permitted the compounding of the offence against the petitioner nos. 1 and 2, who accordingly came to be acquitted.

8. The petitioner no. 5 approached the Chattisgarh High Court in Criminal Miscellaneous Petition No.641/2013, for quashing of supplementary charge sheet. That, Criminal Miscellaneous Petition was disposed of by observing that M/s SMC should file appropriate compounding application, as was done in respect of the petitioner nos. 1 and 2. It appears that

M/s SMC accordingly filed an application for compounding before the learned CJM, which was rejected. The petitioner no. 5 has challenged the same before the Chattisgarh High Court in Criminal Miscellaneous Petition No.884/2014 in which, further proceedings in Criminal Case No. 3747/2011, have been stayed.

9. Be that as it may, it so happened that M/s IIPL filed a complaint dated 18.09.2011, against the petitioners and others before the Panaji Town Police Station, on basis of which, a second FIR came to be registered, in respect of the same transaction on 27.09.2011. Undisputedly, the investigation on the basis of the said FIR is complete and a charge sheet is filed against the petitioners alongwith one G. Ravikumar and Prasanna V. Ghotge, for the offence punishable under Sections 408 and 420 read with Section 120-B of IPC. The petitioners are seeking quashing of the said charge sheet, which is filed before the learned Chief Judicial Magistrate at Margao (hereinafter referred to as the impugned charge sheet).

10. We have heard Shri Desai, the learned Senior Counsel for the petitioners and Shri Faldessai, the learned Public Prosecutor for the respondent no. 1. We have also heard Shri Menezes, the learned Counsel appearing for the respondent no.

2. With the assistance of the learned Counsel for the parties, we have perused the record and the impugned charge sheet.

11. Shri Desai, the learned Senior Counsel for the petitioners has raised three contentions. Firstly, it is submitted that since the petitioner nos. 3 and 4 have resigned from the Directorship of the petitioner no. 1-Company, much before the date of the contract, they could not have been arraigned as accused. The learned Counsel has produced Form-32 by which, the factum of resignation of these petitioners has been communicated to the Registrar of the Companies. It is submitted that the petitioner nos. 3 and 4 were not arraigned as accused in the criminal case before the learned CJM, Raipur on account of the fact that they had resigned from the Directorship, much prior to the date of the contract.

Secondly, it is submitted that the registration of the second FIR, the consequent investigation conducted on the basis of the same and the filing of the charge sheet, was impermissible, in as much as the second FIR emanates from the same transaction in respect of which, already, the first FIR was lodged. On behalf of the petitioners, reliance is placed on the Division Bench judgment of this Court, in the case of **Pawan Ranjithmal Lodha Vs. The State of Maharashtra & Another**,

2017 SCC online Bom 4180, in order to submit that the second FIR in respect of the same transaction is not permissible and is violative of Article 21 of the Constitution of India.

Lastly, it is submitted that the petitioner nos. 1 and 2 have since been acquitted by the learned CJM, Raipur on account of leave to compound the offence granted by the learned CJM. Thus, the petitioner nos. 1 and 2 could not be asked to face prosecution again, as the same would amount to double jeopardy, which is frowned upon by Article 22 of the Constitution of India. The learned Counsel has strenuously urged that the registration of the second FIR and the consequent filing of the charge sheet, is grossly illegal in view of the settled legal position as set out above.

12. On the contrary, it is submitted by Shri Faldessai, the learned Additional Public Prosecutor that M/s IIPL found that one of its employees was personally involved in issuing a fake certificate, showing the iron ore content to be higher than what it actually was. The learned Additional Public Prosecutor points out that the complaint by M/s IIPL is in respect of the separate subject matter and was thus competent.

13. Shri Menezes, the learned Counsel for the respondent no. 2 has taken us through the complaint dated 18.09.2011, in order to demonstrate that manipulation was done by G. Ravikumar, the employee of the respondent no. 2 with the active connivance of the other co-accused including the petitioners. The learned Counsel has pointed out that there were earlier reports showing the Fe content of the iron ore only to be 46% and thus, the respondent no. 2 was competent to file a complaint on the basis of which, second FIR is registered. Insofar as petitioner nos. 3 and 4 are concerned, it is submitted that the investigation has revealed that substantial amounts have been credited to their Accounts, arising out of the sale of the iron ore and thus, at this stage, they cannot seek quashing of the charge sheet, on the ground that they had ceased to be the Directors of the petitioner no. 1-Company, much before the parties entered into the subject contract of sale of iron ore. He therefore submits that the petition be dismissed.

14. We have carefully considered the rival circumstances and the submissions made. Undisputedly, on the basis of a complaint lodged by M/s SMC, the petitioner no. 2 and one G. Ravikumar, who was the Branch Manager at Goa Branch of M/s IIPL, were charge sheeted before the learned CJM at Raipur.

Subsequently, a supplementary charge sheet came to be filed before the said Court, against the petitioner no. 5 herein. It is further a matter of record that insofar as petitioner nos. 1 and 2 are concerned, they have compounded the offence with the complainant-M/s SMC. It is further undisputed that the petitioner no. 5 had approached the Chattisgarh High Court for quashing of the supplementary charge sheet and that petition was disposed of by observing that a compounding application may be filed before the learned CJM. The compounding application had been filed, however, has been rejected and that order is challenged before the Chattisgarh High Court in Criminal Miscellaneous Petition No. 884/2014, which is said to be pending. The proceedings in Criminal Case No. 3747/2011, pending before the learned CJM, Raipur, have been stayed.

15. Coming back to the impugned charge sheet, the same is filed on the basis of the complaint dated 18.09.2011, filed by one Sowmen Chatterjee, Assistant Manager of M/s IIPL. As per the said complaint, M/s IIPL is a Company engaged in inspection, testing and certification of minerals, chemicals and agri products, all over India. M/s IIPL has a branch office at Vasco, Goa, where Mr. G. Ravikumar was working as a Branch Manager, since 23.07.2010. Undisputedly, Mr. G. Ravikumar has resigned

from his services from 13.06.2011 and has since been relieved and is no longer in services of M/s IIPL. According to M/s IIPL, as a Branch Manager, Mr. G. Ravikumar was responsible for receiving sample analysis report of grading of iron ore from the laboratory and preparing final data based on the analysis done by the chemists and thereafter, for issuing certificate of grade of the iron ore. On 07.09.2011 and 10.09.2011, an inquiry was made with M/s IIPL by the CID, Crime Branch asking for details about sampling of cargo exported through vessel 'M.V. Sagarjeet'. The said inquiry was made by the CID, Crime Branch on the complaint lodged by Mr. Pankaj Agarwal of M/s SMC, the complainant before the Raipur Court. It appears that it was Mr. G. Ravikumar, who had issued the certificate dated 08.06.2011, in respect of the consignment of 56,450 tonnes of iron ore, exported through vessel 'M.V. Sagarjeet' by the petitioner no.1-Company. It was Mr. G. Ravikumar, who had certified the iron ore to be of grade 53.6 (Fe content of 53.60%). According to the complainant-M/s IIPL, Mr. G. Ravikumar resigned from his services "suddenly and unexpectedly". The complaint dated 18.09.2011 then goes upon to describe about the clean image enjoyed by M/s IIPL. It says that in the course of internal investigation, the sample "inward memo" in respect of the said cargo was checked and after reconciling the data issued by Mr.

G. Ravikumar, it was found that the iron ore was of grade 46 (Fe content of 46%) and not of grade 53.6 (Fe content of 53.60%), as certified by Mr. G. Ravikumar. Thus, in short, according to the complainant-M/S IIPL, there was an conspiracy between Mr. G. Ravikumar and the petitioners in manipulating the records as to the actual grade of the iron ore. The complaint alleges that it was Mr. G. Ravikumar, who misused the power of certification vested in him and with criminal intention has issued a false certificate. The complaint was therefore lodged for taking action against the petitioners alongwith Mr. G. Ravikumar and Prakash Hegde. The question is whether the said complaint, the second FIR, the consequent investigation and the charge sheet, are liable to be quashed ?

16. The question about the competency of the second FIR, arising out of the same transaction, is no longer *res integra*. The Hon'ble Supreme Court in the case of **Amitbhai A. Shah Vs. Central Bureau of Investigation & Another, (2013) 6 SCC 348** has held thus, in paras 37 and 38 of the judgment:

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 Vs. State of

Kerala, (2001) 6 SCC 181, 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:

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

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 Cr.P.C. 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 the case of **Ram Lal Narang Vs. State, (1979) 2 SCC 322**, 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) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C., 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 Cr.P.C. 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.

38. Mr. Rawal, learned ASG, by referring **T.T. Antony (supra)** submitted that the said principles are not applicable and relevant to the facts and circumstances of this case as the said judgment laid down the ratio that there cannot be two FIRs relating to the same offence or occurrence. The learned ASG further pointed out that in the present case, there are two distinct incidents/occurrences, inasmuch as one being the conspiracy relating to the murder of Sohrabuddin with the help of Tulsiram Prajapati and the other being the conspiracy to murder Tulsiram Prajapati - a potential witness to the earlier conspiracy to murder Sohrabuddin. We are unable to accept the claim of the learned ASG. As a matter of fact, the aforesaid proposition of law making registration of fresh FIR impermissible and violative of Article 21 of the Constitution is reiterated, reaffirmed in the following subsequent decisions of this Court:

1. **Upkar Singh Vs. Ved Prakash** (2004) 13 SCC 292
2. **Babubhai Vs. State of Gujarat & Ors.** (2010) 12 SCC 254
3. **Chirra Shivraj Vs. State of A.P.** AIR 2011 SC 604
4. **C. Muniappan Vs. State of Tamil Nadu** (2010) 9 SCC 567.

*In **C. Muniappan** (supra), this Court explained “consequence test”, i.e., if an offence forming part of the second FIR arises as a consequence of the offence alleged in the first FIR then offences covered by both the FIRs are the same and, accordingly, the second FIR will be impermissible in law. In other words, the offences covered in both the FIRs shall have to be treated as a part of the first FIR.”*

17. It can thus be seen that there cannot be a second FIR in respect of the same occurrence or incident, giving rise to one or more cognizable offences.

18. In the case of **C. Muniappan** (supra), the Hon'ble Apex Court explained “consequence test”, i.e. if, an offence forming part of the second FIR, arises as a consequence of the offence alleged in the first FIR, then offences covered by both the FIRs are the same and accordingly, the second FIR would be impermissible in law. It has been held that in such a case the

offences covered in both the FIRs, shall have to be treated as a part of the first FIR.

19. It can thus be seen that impermissibility of the second FIR as being violative of Article 21 of the Constitution of India, would arise either where the second FIR is in respect of incident forming part of the same transaction out of which, the first FIR arises or where the second FIR arises out of the incident/transaction, which may be a consequence of an earlier incident/transaction. The question whether, the second FIR arises out of the same transaction or out of a transaction which is said to be a consequence would depend upon facts and circumstances of each case.

20. Reverting back to the present case, the complaint lodged by M/s SMC alleges that there was a conspiracy between the petitioner no. 2 and Mr. G. Ravikumar, in the matter of grading of the iron ore, as a result of which, M/s SMC had suffered loss. Coming to the second FIR lodged by M/s IIPL, it is in respect of the same transaction and the only deviation insofar as the second FIR is concerned is that, according to M/s IIPL, it was Mr. G. Ravikumar, who in his personal capacity had conspired with the petitioners and Mr. Prasanna Ghotge in

hatching the conspiracy to show that the iron ore was of grade 53.6 (Fe content of 53.60%), when it was actually of grade 46 (Fe content of 46%).

21. It was contended by Shri Desai, the learned Senior Counsel for the petitioners, that by virtue of the second complaint, M/s IIPL is only trying to protect its corporate image, by attributing the fraud and deceit to one of its employees, who has since resigned. The learned Senior Counsel points out that this is only to save the image of M/s IIPL and to save one Mr. Datta. We do not find it necessary to go into this aspect because in our considered view, the FIR and the charge sheet, need to be quashed, only on account of the fact that the second FIR and the charge sheet are based on the first FIR, which is not permissible because the second FIR arises out of the same transaction.

22. A brief reference to the Division Bench judgment of this Court in the case of **Pawan Lodha** (supra) may be made at this stage. In that case, accused no. 3 in the first FIR, which was lodged at Andheri Police Station was a complainant in the second FIR lodged at Dhule. This Court after taking note of the judgment in the case of **Amitbhai Shah** (supra), found that the

test of the same transaction as laid down in **Babubhai's** case (supra), was satisfied in the facts and circumstances of that case and consequently, the FIR/proceedings were quashed.

23. In the result, the petition is allowed in terms of prayer clause (a).

PRITHVIRAJ K. CHAVAN, J.

C.V. BHADANG, J.

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