

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 131 2017**

1. Dayanand G. Narvekar,
S/o Ganeshraj Narvekar,
67 years of age, Business,
R/O House No.2/3, Saad,
Karaswada, Mapusa.
Bardez-Goa.

... Petitioner

V e r s u s

1. Police Inspector,
Crime Branch, EOC,
Police Head Quarters,
Panaji-Goa.
2. Public Prosecutor,
High Court of Bombay at Goa,
Panaji-Goa.
3. Mr. Nilesh Prabhudessai,
S/o Mr. Keshav Prabhudessai,
Major of age, businessmen,
R/o H. No.595/4, Grande Pulvaddo,
Benaulim, Goa.
(All registered addresses)

.... Respondents.

Shri N. Sardessai, Senior Advocate with Advocate Kapil Kerkar for the
Petitioner.

Shri S. R. Rivankar, Public Prosecutor for the Respondents.

**CORAM: C. V. BHADANG &
PRITHVIRAJ K. CHAVAN, J J.
RESERVED ON: 5TH OCTOBER, 2017.
PRONOUNCED ON : 9TH OCTOBER, 2017**

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

By this petition, under Article 226 of the Constitution of India r/w section 482 of the Code of Criminal Procedure 1973 (Code, for short) the petitioner is seeking quashing of F.I.R No.142/2016 registered with the respondent no.1 for the offence punishable under sections 408, 409, 464, 468, 471, 420 r/w section 120 B of the Indian Penal Code (I.P.C for short).

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

That the petitioner was the President of the Goa Cricket Association (GCA for short) during the year 2006-2007. The other office bearers of the GCA during the relevant year were Mr. Chetan Desai (Secretary), Mr. Vinod Phadke (Treasurer) and Mr. Akbar Mulla, who was the member of the GCA. An amount of Rs.11,52,91,206/- was allotted by the Board of Control for Cricket in India (BCCI) to GCA in the year 2006-2007 towards T.V. subsidy. The said amount was disbursed in installments. The gravamen of the allegations against the petitioner and the other office bearers, who are the co accused, is that they had hatched a criminal conspiracy, in furtherance of which, a fraudulent bank account was opened and the amount of the T.V. subsidy was deposited in the said account and was siphoned off.

According to the prosecution, the balance sheet of GCA for the financial year 2006-2007 reflected the receipt of only Rs.7,56,91,206/- as the amount received from BCCI, as against disbursement of Rs.11,52,91,206/-.

3. Indisputably, an offence at Crime No.75/2016 came to be registered against the petitioner and others on 2/6/2016 with the respondent on the basis of a complaint of Mr. Vilas Desai resident of Margao, alleging misappropriation of an amount of Rs.2,87,00,000/- out of the total amount received from BCCI, through fraudulent opening of an account in the DCB bank at Panaji. It is a matter of record that the investigation in the said offence is complete and a charge sheet is filed before the learned Judicial Magistrate First Class at Panaji where the trial is pending.

4. On the basis of a subsequent complaint lodged by Mr. Nilesh Prabhudessai resident of Benuaim, the present offence at Crime No.142/2016 came to be registered against the petitioner and others, which is in respect of the alleged misappropriation of Rs.1 crore, from out of the total amount allotted by the BCCI. According to the prosecution, the amount of Rs. 1 crore was disbursed vide cheque No.0851 dated 9/5/2006, of ICICI Bank, Chennai Branch and during investigation it was revealed that the petitioner and others, in furtherance of their criminal conspiracy had opened a

fraudulent account in Shiroda Urban Cooperative Society P. Ltd, Kundaim branch, in the name of GCA vide Account No.46 and the said cheque was deposited in the said account. The said amount was systematically siphoned off by regular withdrawals till July 2007 and subsequently the account came to be closed some where in the year 2009. According to the prosecution, it was also revealed during the course of the investigation that the amount of Rs.1 crore was not reflected in the balance sheet/audit report of GCA for the year 2005-06 to 2008-2009. The managing committee of the GCA had concealed the said fact about the said current account with the Shiroda Urban Cooperative Society P. Ltd from the chartered accountant and as such, the amount was not reflected in the balance sheet nor in the audit report. There are several other allegations made about the said account being opened without there being any resolution/approval of the GCA in this regard and the account being opened by one of the co accused, Mr. Chetan Desai in gross violation of the byelaws. Be that as it may, for the purpose of disposal of the present petition, it is not necessary to set out further details. The petitioner is seeking quashing of the FIR no.142/2016.

5. We have heard Shri Sardessai, the learned Senior Counsel for the petitioner and Shri Rivankar, the learned Public Prosecutor for the respondent. Perused record including the copy of the charge sheet filed in

respect of Crime No.75/2016.

6. Shri Sardesai, the learned Senior Counsel for the petitioner has raised a solitary contention. It is submitted that the impugned F.I.R registered on the basis of the complaint of Mr. Nilesh Prahbudesai is not competent, in view of the registration of the earlier F.I.R being Crime No.75/2016. It is submitted that the subsequent F.I.R having arisen out of the same transaction, it was not competent for the investigating agency to register the same in the face of the registration of the earlier F.I.R. On behalf of the petitioner strong reliance is placed on the decision of Supreme Court in the case of **TT Antony Vs. State of Kerala and others (2001) 6 SCC 181** and **Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and anr, (2013) 6 SCC 348**. It is submitted that the provisions of the Code do not contemplate multiple F.I.Rs in respect of the same transaction or occurrence. It is submitted that according to the prosecution's own case, the amount of Rs. 1 crore which is subject matter of the present F.I.R is part of the total amount of Rs.11,52,91,206/- which has been allotted by the BCCI to GCA and disbursed in installments. The learned Senior Counsel was at pains to point out that in the charge sheet filed in respect of the earlier F.I.R (Crime No.75/2016) as also the present F.I.R the investigating agency has incorporated the offence punishable under Section 120-B of I.P.C, which

would be indicative of the fact that according to the prosecution the act of opening of the account and the withdrawal of the amount is part of a larger conspiracy and on applying the test of sameness of the transaction the second F.I.R would be clearly incompetent. He, therefore, submits that the impugned F.I.R deserves to be quashed. Except this, no other contention is raised. The learned Senior Counsel in all fairness does not dispute that the investigating agency can, however, conduct investigation and file a supplementary charge sheet, if so advised, under section 173 (8) of Cr.P.C..

7. On the contrary it is submitted by Shri Rivankar, the learned Public Prosecutor that the subject matter of the present F.I.R cannot be said to be a part of the same transaction, which was subject matter of the earlier F.I.R in Crime No.75/2016. The learned Public Prosecutor has pointed out that in respect of the first F.I.R the account was opened in DCB bank at Panaji while in the present F.I.R, it is opened in the Shiroda Urban Cooperative Society P. Ltd., Kundaim branch. It is submitted that merely because the amount of Rs.1 crore which is the subject matter of the present F.I.R is part of the total amount, disbursed by the BCCI would not be sufficient to hold that both these F.I.Rs arise out of the same transaction. The learned Public Prosecutor was at pains to point out that the modus operandi followed by the petitioner and others may be same or similar. However, that is not sufficient

to bring the act which is subject matter of the present F.I.R as being part of the same transaction as that of the first F.I.R. On behalf of the respondent reliance is placed on the decision of the Supreme Court in the case of **BabuBhai Vs. State of Gujarat and others (2010) 12 SCC 254.**

8. We have given our anxious consideration to the rival circumstances and the submissions made. The dispute essentially turns upon as to whether the subject matter of the impugned F.I.R can be said to be a part of the same transaction as that of the previous F.I.R. If yes the petition has to succeed. If not, it has to fail.

9. An F.I.R as the name suggests is the information received by police, in respect of a cognizable offence, first in point of time. Thus, there cannot be second such information, which can in no case be treated as a first information report. The Supreme Court in the case of **T. T. Antony (supra)** has held that 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”(see para 20).

10. In the case of **Amitbhai Anilchandra Shah (supra)** it has been

held that a second F.I.R (which is not a cross -case) 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 of India and the said principle of law as laid down in the case of **T.T. Anthony (supra)** has never been diluted in any subsequent judicial pronouncements even while carving out certain exceptions. One of the well known exceptions carved out of the rule, (as laid down in the case of **T.T. Antony**) is that it will not apply to a F.I.R in a cross-case.

11. In order to determine whether different offences ought to be treated as part of the same transaction, the Supreme Court laid down a “consequence test” in the case of **C. Muniappan, (2010) 9 SCC 567**. The said test prescribes that 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.

12. In the case of **Amitbahai Anilchandra Shah** the question was whether there was a single conspiracy to carry out three fake encounters by the police officials or one conspiracy followed by a second conspiracy to

carry out fake encounter killings. On facts it was held that fake encounter killing of T was part of the same transaction or same conspiracy as that which related to fake encounter killing of S and K as was clear from the charge sheet and the supplementary charge sheets filed in respect of the first FIR and the charge sheet filed in respect of the second FIR.

13. In the case of **BabuBhai (supra)** the Supreme Court has held that once the registration of the second FIR is challenged as being forming part of the same transaction, the Court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness has to be applied to find out whether both the FIRs are in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in a case where the contrary is proved, where the version in the second FIR is different and they are in respect of two different incidents/crimes, the second FIR is permissible. (see para 21).

14. It can thus be seen that the question whether the second FIR is in respect of an offence or different offences committed in the course of the same transaction or in respect of the same cognizable offence or the same occurrence and/or incident giving rise to one or more cognizable offences

would be a question depending upon the facts and circumstances of each case. There cannot be any straightjacket formula to determine the same looking to the myriad situations which can arise requiring registration of the second FIR. In order to determine the question whether the second FIR pertains to an incident forming part of the same transaction, the court has to carefully consider the allegations in both the FIRS, having regard to the totality of the facts and circumstances of the case and then to decide one way or the other.

15. Coming to the present case, the contention on behalf of the petitioner is that the allegation about misappropriation of the amount of Rs.2,87,00,000/- (Crime No.75/2016) and the misappropriation of Rs.1 crore (Crime No.142/2016) is forming part of the total amount of Rs.11 croers and odd allotted and disbursed by the BCCI to the GCA. This according to the petitioner is indicative of the fact that the second FIR forms part of the same transaction as covered by the earlier FIR. In our considered view the submission cannot be accepted. It cannot be said that the two offences are part of the same transaction, although the petitioner and the other co accused might have adopted a similar modus operandi. However, they are two distinct incidents which cannot form part of the 'same transaction'. The deposit of the subsequent cheque of Rs.1 crore in a newly opened account with the Shiroda

Urban Cooperative Society and the systematic withdrawal of the amount over a period of time and the subsequent closure of the account in our considered view cannot form part of the same transaction, as that of the first FIR, although as noticed earlier, a similar modus operandi might have been adopted by the concerned. It would be significant to note that as held by the Supreme Court in the case of **T.T. Anthony (supra)** the registration of the second FIR would be impermissible in respect of (i) the same cognizable offence or (ii) the same occurrence or (iii) same incident giving rise to one or more cognizable offences. It would be significant to note that the first FIR pertaining to the amount of Rs.2,87,00,000/- is a separate and distinct offence/occurrence/incident and merely because the amount of Rs.1 crore which is subject amount of the second FIR, is part of the total amount of Rs.11 crores and odd allotted and disbursed by the BCCI would not be sufficient to hold that the second FIR forms subject matter of the 'same transaction', as covered by the first FIR. The consequence test is one of the tests adopted to determine whether the subject matter of the second FIR forms part of the same transaction. Even applying the said test, it cannot be said that the second FIR pertains to an incident which may be a consequence of the incident covered by the first FIR. For all practical purposes, they are distinct incidents/occurrences, and thus we are unable to hold that the second FIR would form part of the same transaction.

16. It is true that in both the FIRs (and the charge sheet filed in pursuance of the first FIR), the Investigating Agency, has invoked the offence of conspiracy under section 120 B of IPC. However, that again would not be sufficient to hold that both the FIRs relate to the same transaction/incident/occurrence. The matter can be viewed from another angle. The conspiracy alleged in the two FIRs can be seen as distinct conspiracies although the modus operandi adopted may be same or similar. Thus the fact that the investigating agency has invoked section 120-B of IPC in both the FIRs is not sufficient to hold that both the FIRs form subject matter of the same transaction inasmuch as they pertain to distinct incidents of opening of two distinct accounts in two distinct banks and deposit of two distinct cheques in the said accounts and then alleged siphoning of the funds.

17. In this regard a useful reference may be made to the decision of the Supreme Court in the case of **Rameshchandra Nandlal Parikh vs. State of Gujarat and anr.** (2006) 1 SCC 732, in which the Supreme Court after reconsidering the earlier decision in the case of T.T. Antony (supra) held that in a case where two FIRs are not in respect of (i) the same cognizable offence or (ii) the same occurrence giving rise to one or more cognizable offences nor are they alleged to have been committed in the course of the

same transaction or the same occurrence as the ones alleged in the first FIR, there is no prohibition in registration of the second FIR.

18. For the reasons aforesaid in our considered view this is not a fit case to exercise the jurisdiction under Article 226 of the Constitution of India or section 482 of the Cr.P.C. The petition is accordingly dismissed. Needless to mention that we have not examined the merits of the allegations against the petitioner or others.

PRITHVIRAJ K. CHAVAN, J

C. V. BHADANG, J.

Ap/