



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.09.2017

DELIVERED ON : 22.12.2017

WEB COPY

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P. (MD) No.13407 of 2017

- 1.C.Manas
- 2.T.Raju
- 3.S.Krishnasamy
- 4.C.Kumaradhas
- 5.T.Pauls
- 6.R.Jeya
- 7.S.Lilly Bai
- 8.S.Ganesan
- 9.D.Nalinakumari
- 10.J.Sam Christin Dhas
- 11.G.Chellappan
- 12.T.Vasanthakumar
- 13.J.Rajamani
- 14.Rajarethinam
- 15.P.Stephenson
- 16.S.Marison

.. Petitioners

Vs.

1. The State
Rep. by the Inspector of Police,
CCIW, Nagercoil,
Kanyakumari District.
(Crime No.3 of 2016)

2. Suresh

.. Respondents

Petition filed under section 482 Cr.P.C., to direct the first respondent to take action on the final report dated 9.3.2015 filed by the first respondent in Crime No.6 of 2015 and drop further action on the basis of its against the FIR in Crime No.3 of 2016 dated 8.8.2016 on the file of the first respondent Police in so far as the petitioners are concerned.

<https://hcservices.ecourts.gov.in/hcservices/>
For Petitioners : M/s.M.Anbarasi
For Respondents : Mr.K.Anbarasan
Government Advocate (Crl.side)

**ORDER**

This Criminal Original Petition has been filed by the petitioners seeking direction on the first respondent to take action on the Final Report dated 9.3.2015 filed in Crime No.6 of 2015 and drop further action against the FIR in Crime No.3 of 2016 dated 8.8.2016 on the file of the first respondent.

2. Brief facts which led to the filing of this petition is that, on 4.5.2014, due to heavy rain, the compound wall of YMCA building had fallen on the godown of Marthandam Bee Keepers Co-operative Society, which was controlled by the second respondent, where honey collected from the members and other farmers was stored. Owing to falling of the compound wall, 22 drums of 630 Kgs. of honey stored in the godown were damaged. Alleging that the petitioners have taken away honey in the damaged godown and caused loss to the tune of Rs.22.00 lakhs to the Society, the second respondent lodged a complaint against the petitioners in Crime No.3 of 2016 on the file of the first respondent.

3. The case of the petitioners is that action against the petitioners under Section 81 of Tamil Nadu Co-operative Society Act, 1983 (hereinafter referred to as "the said Act") was also initiated. Aggrieved by the same, the petitioners have filed writ petition before the High Court and the same was dismissed. According to the petitioners, thereafter, the Society was dissolved on 9.3.2016. Only based on the report of the Enquiry Officer under Section 81 of the said Act and also based on the recommendations, the complainant had lodged the complaint supra before the first respondent under Sections 408, 471, 477(A) and 34 of the Indian Penal Code.

4. The petitioners have filed Crl.O.P.(MD) No.15033 of 2016 to quash the FIR in Crime No.3 of 2016, wherein this Court has granted interim order dated 22.8.2016 to the effect that filing of the final report alone was deferred and the said interim order was periodically extended from time to time and finally vacated on 5.10.2016, without filing any counter by the respondents.

5. It is the case of the petitioners that when the first respondent was trying to file a final report before the jurisdictional Court, the petitioners have filed Crl.M.P.(MD) No.4127 of 2017 to stay all further proceedings of the impugned FIR and this Court has granted interim stay on 25.5.2017. The second respondent, thereafter, moved a petition in Crl.M.P.(MD) No.5154 of 2017 to vacate the interim order and the same was allowed on 21.9.2017. Taking advantage of the vacation of the order, the first respondent is preparing to file the final report in Crime No.3 of 2016. Hence, the petitioners have filed the present O.P.



6. The respondents have not filed any counter-affidavit in this O.P.

7. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent. Perused the materials available on record.

8. The FIR in Crime No.3 of 2016 was lodged by the second respondent alleging that the petitioners had taken away honey stored in the damaged godown of Marthandam Bee Keepers Co-operative Society and caused huge loss of more than Rs.22.00 lakhs to the Society.

9. It is to be noted that one Christopher has lodged a complaint in Crime No.6 of 2015 on the file of the Inspector of Police, District Crime Branch, Kanyakumari arraying the petitioners and others as accused alleging that taking advantage of the damage caused to the godown, they had stolen 14380 Kgs honey worth more than Rs.25.00 lakhs.

10. After completing the investigation in Crime No.6 of 2015, the Inspector of Police, District Crime Branch, Kanyakumari has filed a closure report dated 9.3.2015 stating that no offence has been made out to lay a charge sheet.

11. The learned counsel for the petitioners submitted that the closure report dated 9.3.2015 filed in Crime No.6 of 2015 be taken on record in Crime No.3 of 2016 on the file of the first respondent and drop further action in Crime No.3 of 2016. In support of his contention, the learned counsel relied upon the decisions in Anju Chaudhary v. State of Uttar Pradesh and another, reported in (2013) 6 SCC 384 and T.T.Antony v. State of Kerala and others, reported in (2001) 6 SCC 181.

12. It is pertinent to note that to quash the FIR in Crime No.3 of 2016 on the file of the first respondent, the petitioners have filed CrI.O.P.(MD) No.15033 of 2016. Along with the Original Petition, the petitioners have also filed CrI.M.P (MD) No.7060 of 2016 seeking to stay all further proceedings of the FIR in Crime No.3 of 2016. By an order dated 22.8.2016, this Court, while adjourning the matter for two weeks, granted interim order to the effect that filing of the final report alone is deferred till then. Thereafter, by the order dated 5.10.2016, the said interim order was vacated and the matter was directed to be listed after four weeks. As stated supra, resisting the main petition, the respondents therein have not filed any counter-affidavit.

13. Subsequently, the petitioners have filed CrI.M.P.(MD) No.4127 of 2017 seeking to stay all further proceedings in Crime No.3 of 2016 insofar as the petitioners are concerned pending



disposal of the main O.P. By the order dated 25.5.2017, this Court granted interim stay for a period of eight weeks and directed the matter to be posted after eight weeks.

14. According to the petitioners, the second respondent has filed CrI.M.P(MD) No.5154 of 2016 to vacate the interim order dated 25.5.2017 and the same was allowed by this Court vide order dated 21.9.2017. Taking advantage of the vacation of the interim order, now the first respondent is trying to file the final report in Crime No.3 of 2016. Therefore, the petitioners sought a restraint order against the first respondent from filing the final report in Crime No.3 of 2016.

15. It is not disputed by the respondents, particularly the first respondent that CrI.O.P.(MD) No.15033 of 2016 is pending before this Court. The respondents have not questioned the final report filed in Crime No.6 of 2015.

16. In Anju Chaudhary, supra, the Hon'ble Supreme Court held thus:

"14. On the plain construction of the language and scheme of Sections 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognizable offence shall be reduced into writing by the officer-in-charge of a police station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of Section 154 of the Code. These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police. Therefore, second FIR for the same incident cannot be registered. Of course, the investigating agency has no determinative right. It is



only a right to investigate in accordance with the provisions of the Code. The filing of report upon completion of investigation, either for cancellation or alleging commission of an offence, is a matter which once filed before the court of competent jurisdiction attains a kind of finality as far as police is concerned, may be in a given case, subject to the right of further investigation but wherever the investigation has been completed and a person is found to be prima facie guilty of committing an offence or otherwise, re-examination by the investigating agency on its own should not be permitted merely by registering another FIR with regard to the same offence. If such protection is not given to a suspect, then possibility of abuse of investigating powers by the police cannot be ruled out. It is with this intention in mind that such interpretation should be given to Section 154 of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, reinvestigation or de novo investigation is beyond the competence of not only the investigating agency but even that of the learned Magistrate. The courts have taken this view primarily for the reason that it would be opposed to the scheme of the Code and more particularly Section 167(2) of the Code. (Ref. Reeta Nag v. State of W.B. [(2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] and Vinay Tyagi v. Irshad Ali [(2013) 5 SCC 762] of the same date.)"

17. In T.T.Antony, supra, the Hon'ble Supreme Court held thus:

"18. 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.

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."

18. Thus, it is settled that there cannot be two First Information Reports for the same offence.

19. In *Vikram v. State of Maharashtra*, reported in (2007) 12 SCC 332, the Hon'ble Supreme Court held that it was not impermissible in law to treat the subsequent information report as the First Information Report and act thereupon.

20. In *Tapinder Singh v. State of Punjab*, reported in (1970) 2 SCC 113, the Hon'ble Supreme Court examined the question as to whether cryptic, anonymous and oral messages, which do not clearly specify the cognizable offence, can be treated as FIR, and answered the question in the negative.

21. As stated supra, for the alleged occurrence dated 04/05.05.2014, one Christopher has lodged FIR on 09.1.2015 and after thorough investigation, the Inspector of Police, District Crime Branch, has filed his final report dated 9.3.2015 suggesting to drop the action. For the same offence, the second respondent has lodged FIR in Crime No.3 of 2016 on 08.8.2016 that too after knowing the final report filed in Crime No.6 of 2015.

<https://hcservices.ecourts.gov.in/hcservices/>

22. The Apex Court time and again observed that if both FIRs relate to the same incident and to the same occurrence, the second



FIR will be liable to be quashed. However, if they relate to incidents which are in two or more parts of the same transaction or relate completely to a distinct occurrence, the second FIR is permissible. The present case will fall in the first category. Thus, the law is well settled that there can be no fresh investigation on receipt of subsequent information in respect of the same cognizable offence or the same occurrence and/or incident giving rise to one or more cognizable offences.

23. In the result,

a) this Criminal Original Petition is allowed;

b) the FIR in Crime No.3 of 2016, dated 08.8.2016 pending on the file of the 1st respondent police is quashed, in so far as the petitioners are concerned, in view of the closure report dated 09.3.2015 filed in Crime No.6 of 2015.

Sd/-

Assistant Registrar (AE)

/True copy/

Sub Assistant Registrar

To:

The Inspector of Police,
CCIW, Nagercoil, Kanyakumari District

+1. CC to Mr.D.Selvanayagam, Advocate SR.No.94632

Cr1.O.P. (MD) No.13407 of 2017
22.12.2017

vs/ar

MKV-CM-VR-SAR 1/5.4.2018/8P-3C