



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.02.2018

Delivered on : 06.03.2018

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THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P.(MD) No.293 of 2018

and

W.M.P.(MD) Nos.318 and 319 of 2018

D.Saravana Kumar,
S/o. Deviannan,
Proprietor, Sri Annai Garments
and Kumar Shirts,
Door No.76, Jawahar Bazzarr,
Karur Town, Karur.

... Petitioner

-Vs-

1.The Superintendent of Police,
Karur.

2.Mr.Kummaraja,
Deputy Superintendent of Police,
Karur.

3.Thiru.Prithiviraj,
Inspector of Police,
Karur Town Police Station,

4.Ravi ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus directing the first respondent to register a case based on the complaint given by the petitioner dated 24.12.2017 and investigate the same by the first respondent in accordance with law.

For Petitioner : M/s. V.Ramamurthy
For Respondents : Mr.N.Shanmuga Selvam
Additional Government Pleader
for R.1 to R.3

:M/s. G.Karuppasamy Pandian
for R.4

O R D E R

This Writ Petition has been filed to direct the first respondent to register a case based on the complaint given by the petitioner dated 24.12.2017 and investigate the same in accordance with law.



2.The learned counsel for the petitioner has submitted that the petitioner is running a Garments shop in the name and style of Sri Annai Garments and Kumar Shirts in Door No.76, Jawahar Bazzar, Karur Town, Karur. The fourth respondent is the petitioner's sister's husband and he was employed in the said shop. On 19.03.2009 the petitioner's sister namely, Thangamani died and thereafter, the fourth respondent had swindled a sum of Rs.40,00,000/- from the petitioner's shop and the same was came to the knowledge of the petitioner only about six months back. Hence, the petitioner has dismissed the fourth respondent from his service, in the month of September 2017. Thereafter, the fourth respondent has started a Garments Shop at Namakkal using the money swindled from the petitioner.

3.The learned counsel for the petitioner further submitted that the fourth respondent demanded a share in the Garments shop or to pay a huge amount and for that the petitioner has not agreed and hence the fourth respondent made an attempt to remove the stocks available in the petitioner's shop. Hence, the petitioner has filed a suit in O.S.No.965 of 2017 on the file of the Subordinate Judge, Karur and also filed the petition in I.A.No.1138 of 2017 on 18.02.2017 seeking interim injunction and the learned Subordinate Judge has also granted interim injunction till 02.01.2018. The fact remains so, on 23.12.2017 at about 02.30.p.m., the fourth respondent along with the group of persons trespassed into the petitioner's shop and caused damages to the stocks and materials and also attacked the petitioner's brother and snatched away gold chain and mobile phone and taken away the camera with CCTV footage. With regard to the aforesaid occurrence, immediately the petitioner has lodged a complaint before the Karur Police Station, but instead of taking action on the said complaint, the respondent Nos.2 and 3 colluded with the fourth respondent and obtained signatures from the petitioner's brother Karthikeyan in blank papers and locked the petitioner's shop and took away the key violating the civil Court's order.

3. He further submitted that the respondent Nos.2 to 4 have caused loss to the petitioner to the tune of Rs.15,00,000/- and the petitioner apprehends that they may continue the un-lawful act to coerce the petitioner to go for settlement and hence he requests this Court to direct the first respondent to register a case based on the complaint given by the petitioner dated 24.12.2017 and investigate the same.

5.The learned Government Advocate has submitted that with regard to the occurrence stated in the petition already an FIR has been registered in crime No.1053 of 2017 under Sections 294(b), 324 and 506(i) IPC, based on the complaint given by the petitioner's brother namely Karthikeyan. The said FIR has been registered against the fourth respondent and two others and the investigation is in progress and that being so, the second FIR cannot be registered, based on the complaint given by the petitioner dated



24.12.2017.

6. The learned counsel for the fourth respondent has submitted that the petitioner and the fourth respondent are close relatives and they are partners in the aforesaid shop, but the petitioner with a view to defraud the fourth respondent gave a false complaint through his brother and all the aforesaid proceedings are motivated with *mala fide* intention and therefore, he requests to dismiss the present Writ Petition.

7. The learned counsel for the petitioner by way of reply has submitted that the FIR in crime No.1053 of 2017 was registered based on the complaint given by the petitioner's brother namely, Karthikeyan, with regard to the trespass committed by the fourth respondent and his men and for causing damages to the properties and for assaulting the petitioner's brother, but, subsequently, the respondent Nos. 2 and 3 colluded with the fourth respondent came to the petitioner's shop and locked the shop and have taken away the key and with regard to the said occurrence, a complaint was sent to the first respondent on 24.12.2017, but no action has been taken.

8. He further submitted that since both the occurrences took place on different times, there is no bar for registering a second FIR with regard to the second occurrence. In support of his contention, he relied upon the decision in *Anju Chaudhry Vs. State of Uttar Pradesh* and another (2003) 6 SCC 384. Wherein the Honourable Supreme Court in paragraphs 14, 15, 44 and 45 has observed as follows:

"... 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 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 not 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.4 and Vinay Tyagi v. Irshad Ali5 of the same date.)

15. It has to be examined on the merits of each case whether a subsequently registered FIR is a second FIR about the same incident or offence or is based upon distinct and different facts and whether its scope of inquiry is entirely different or not. It will not be appropriate for the court to lay down one straitjacket formula uniformly applicable to all cases. This will always be a mixed question of law and facts depending upon the merits of a given case.

44. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is not commonality and the purpose thereof different and they



emerge from different circumstances, it will not be possible for the court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.

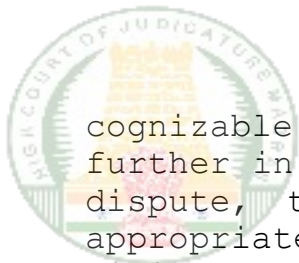
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45. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction".

9. From the aforesaid decision, it is clear 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. Further, where two incidents are of different times with involvement of different persons, there is not commonality and the purpose thereof different and they emerge from different circumstances, subsequent FIR could be registered.

10. In the case on hand, the first occurrence said to have taken place on 23.12.2017 at 03.15 p.m. in the petitioner's shop and with regard to the said occurrence, the petitioner's brother namely, Karthikeyan gave a complaint and based on that complaint an FIR in crime No.1053 of 2017 under Sections 294, 324, 506(i) IPC has been registered against the fourth respondent herein and two others. In the said FIR it is stated that the fourth respondent and two others have trespassed into the petitioner's shop and caused damages and also assaulted the petitioner's brother.

11. The petitioner's contention is that on the same day i.e., 23.12.2017, subsequent to the aforesaid occurrence, the third respondent came to the petitioner's shop along with Police Constables and directed the petitioner to go out of the shop and locked the shop and took the key and went to the police station. It is his further case that on the same day at about 08.00 p.m. the second respondent has enquired the matter in Karur Town Police Station and at that time, the third respondent was also there and both of them asked the petitioner to hand over the shop key to the fourth respondent and refused to give the shop key to the petitioner. According to the petitioner the said occurrence is totally different from the first occurrence and hence a separate FIR has to be registered. Therefore, the first respondent is directed to enquire the second complaint which has been given by the petitioner dated 24.12.2017 and if the enquiry discloses any



cognizable offence, then he has to register a case and proceed further in accordance with law. If the enquiry reveals only a civil dispute, then it is open to him to direct the parties to get appropriate remedy in the suit which is already pending before the civil Court.

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12. With the aforesaid observations this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The Superintendent of Police,
Karur, Karur District.

+1cc to Mr. V. RAMAMURTHY, Advocate, SR.No. 53845

+1cc to M/s. Special Government Pleader, SR.No. 53649

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