

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.Nos.28802 & 28803 of 2017
and Crl.MP.Nos. 16287 to 16290 of 2017

Crl.O.P.No.28802 of 2017 :-

1. Matchan @ Abubacker Siddik
 2. Sheik Mohaideen
 3. Abdul Malik
 4. Sarthar
 5. Palkara Mydeen @ Ahamed Mydeen
 6. Faizal Ahmed
 7. Nijam
 8. Basheer Ali
 9. Raj Mohamed
 10. Nazeen @ Settu
 11. Saleem
 12. Abuthahir
 13. Sheik
- ... Petitioners

Vs.

1. The State Rep by
The Inspector of Police,
Muthupettai Police Station,
Tiruvarur.
 2. The Village Administrative Officer,
Muthupettai, Tiruvarur.
- ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash the proceedings as against the petitioners in S.C.No.101 of 2016 pending on the file of the learned Principal District Judge, Tiruvarur.

For Petitioners : Mr. I.Abdul Basith

For Respondents : Mr.Mohamed Riyaz
Additional Public Prosecutor.

Crl.O.P.No.28803 of 2017 :-

1. Matchan @ Abubacker Siddik
 2. Sheik Mohaideen
 3. Abdul Malik
 4. Sarthar
 5. Raj Mohamed
 6. Abuthahir
- ... Petitioners

Vs.

1. The State Rep by
The Inspector of Police,
Muthupettai Police Station,
Tiruvarur.

2. Saravanan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash the proceedings as against the petitioners in S.C.No.133 of 2015 pending on the file of the learned Principal District Judge, Tiruvarur.

For Petitioners: Mr. I.Abdul Basith

For Respondents

For R1 : Mr.Mohamed Riyaz
Additional Public Prosecutor.

For R2 : No appearance

C O M M O N O R D E R

These petitions have been filed to quash the proceedings in S.C.Nos.101 of 2016 and 133 of 2015, respectively, on the file of the learned Principal District Judge, Tiruvarur.

2. The petitioners in Crl.O.P.No.28802 of 2017 are arraigned as A1 to A5, A7, A11, A15, A16, A18, A21 and A22 in Crime No.315 of 2013, registered by the first respondent registered for the offences under Sections 147, 294(b), 504 506(1) of IPC and Section 3(1) of TNPPDL Act. After completion of investigation, the first respondent filed a final report and the same has been taken cognizance in S.C.No.101 of 2016 on the file of the learned Principal District Judge, Tiruvarur. The allegations as against the petitioners are that on 09.08.2013, to celebrate Ramzhan festival, the petitioners along with other accused persons were went on rally in their respective bikes. At that time, there was a meeting conducted by the members belonging to the Bharathiya Janatha Party. Therefore, the first respondent diverted them to other route. But the petitioners along with other accused persons distracted the first respondent and other police officials from doing their official duty and also caused damage to the fruit shops, flower shops and other shops and also caused damage to the police vehicles.

3. It is also seen that the first respondent registered an another case as against the petitioners in Crime No.318 of 2018, on receipt of the separate complaint from a shop owner. It is seen that both the complaint registered for the very same set of facts and for the very same allegations. The first respondent also filed separate charge sheet in both the FIR registered as against the petitioners. In fact, the statement recorded from the witnesses under Section 161(3) of Cr.P.C are

also one and the same in all the charge sheets. There cannot be even more than one FIR for the very same occurrence and that on the very same set of allegations.

4. Admittedly, the petitioners along with other accused persons were going rally, in order to celebrate their Ramzan festival on 09.08.2013. There was an obstruction by the other party members. Therefore, they were directed to other route and therefore they attacked some of the fruit shops and flower shops. Hence, there cannot be more than one FIR for the said occurrence. The first respondent mechanically registered five cases in Crime Nos. 314 to 318 of 2013, as against the petitioners for the very same occurrence, on receipt of different complaints from the different shop owners. The first respondent also filed final report in all the crime numbers. It is completely violation of the procedure laid down in the Cr.P.C.

5. In this regard, it is relevant to rely upon the judgment reported in (2013) 6 SCC 348 in the case of Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation and anr., in which the Hon'ble Supreme Court of India held as follows :-

"52. a) This Court accepting the plea of the CBI in Narmada Bai (supra) that killing of Tulsiram Prajapati is part of the same series of cognizable offence forming part of the first FIR directed the CBI to "take over" the investigation and did not grant the relief prayed for i.e., registration of a fresh FIR. Accordingly, filing of a fresh FIR by the CBI is contrary to various decisions of this Court.

b) The various provisions of the Code of Criminal Procedure clearly show that an officer-in-charge of a police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the First Information Report, on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of evidence collected, Investigating Officer has to form an opinion Under Section 169 or 170 of the Code and forward his report to the concerned Magistrate Under Section 173 (2) of the Code.

c) Even after filing of such a report, if he comes into pos, there is no need to 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 which is evident from Sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. 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.

I d) Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering FIR in the Station House Diary, the 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 of the Code. Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report (s) to the Magistrate. 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 underway or final report Under Section 173(2) has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of power Under Section 482

of the Code or under Articles 226/227 of the Constitution.

e) First Information Report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR.

f) In the case on hand, as explained in the earlier paras, in our opinion, the second FIR was nothing but a consequence of the event which had taken place on 25/26.11.2005. We have already concluded that this Court having reposed faith in the CBI accepted their contention that Tulsiram Prajapati encounter is a part of the same chain of events in which Sohrabuddin and Kausarbi were killed and directed the CBI to "take up" the investigation.

g) For vivid understanding, let us consider a situation in which Mr. 'A' having killed 'B' with the aid of 'C', informs the police that unknown persons killed 'B'. During investigation, it revealed that 'A' was the real culprit and 'D' abetted 'A' to commit the murder. As a result, the police officer files the charge sheet Under Section 173 (2) of the Code with the Magistrate. Although, in due course, it was discovered through further investigation that the person who abetted Mr. 'A' was 'C' and not 'D' as mentioned in the charge sheet filed Under Section 173 of the Code. In such a scenario, uncovering of the later fact that 'C' is the real abettor will not demand a second FIR rather a supplementary charge sheet Under Section 173(8) of the Code will serve the purpose.

h) Likewise, in the case on hand, initially the CBI took a stand that the third person accompanying Sohrabuddin and Kausarbi was Kalimuddin. However, with the aid of further investigation, it unveiled that the third person was Tulsiram Prajapati. Therefore, only as a

result of further investigation, the CBI has gathered the information that the third person was Tulsiram Prajapati. Thus a second FIR in the given facts and circumstances is unwarranted; instead filing of a supplementary charge sheet in this regard will suffice the issue.

i) Administering criminal justice is a two-end process, where guarding the ensured rights of the accused under Constitution is as imperative as ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the court of law to protect and shield the rights of both. Thus, a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. Accordingly, 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. As a consequence, in our view this is a fit case for quashing the second F.I.R. to meet the ends of justice.

j) The investigating officers are the kingpins in the criminal justice system. Their reliable investigation is the leading step towards affirming complete justice to the victims of the case. Hence they are bestowed with dual duties i.e. to investigate the matter exhaustively and subsequently collect reliable evidences to establish the same."

In the above case, Hon'ble Supreme Court of India held in respect of registration of FIR and consequential issues, that the FIR is a report which gives information with regard to any offence. There cannot be second FIR in respect of very same set of allegations. Therefore, the impugned proceedings cannot be sustained as against the petitioners and it is nothing but clear abuse of process of law.

6. In an another judgment reported in (2013) 6 SCC 384 in the case of Anju Chaudhary Vs. State of UP and anr., the Hon'ble Supreme Court of India held that there cannot be second FIR in respect of very same offence/event because,

whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR. In the case of hand, for the very same offence there are five FIRs have been registered by the first respondent police and also filed final report. It cannot be permissible, as such the subsequent information is nothing furtherance to the first FIR. Therefore, the entire proceedings are vitiated and it is liable to be quashed.

7. In view of the above discussions, both the Criminal Original Petitions are allowed and the proceedings in S.C.Nos.101 of 2016 and 133 of 2015, respectively, on the file of the learned Principal District Judge, Tiruvarur, are hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rts
To

1. The Principal District Judge,
Tiruvarur.
2. The Inspector of Police,
Muthupettai Police Station,
Tiruvarur.
3. The Public Prosecutor,
High Court of Madras,
Chennai.

+2ccs to Mr. I.Abdul Basith, Advocate SR.No. 32859,32862
CRL.O.P.Nos.28802 & 28803 of 2017
and Crl.MP.Nos.16287 to 16290 of 2017
A.SK(04/06/2019)

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