

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Before:

The Hon'ble Justice Ananda Kumar Mukherjee

C.R.R. 1222 of 2019

Anirban Banerjee

-Vs-

State of West Bengal

For the Petitioner : Mr. Mayukh Mukherjee, Advocate

For the State : Mr. Swapan Banerjee, Advocate
Mr. Suman De, Advocate

Heard on : 09.12.2021

Judgment on: 23.12.2021.

Ananda Kumar Mukherjee, J. :-

1. This revisional application under section 401 read with section 482 of the Code of Criminal Procedure 1973, hereafter referred to as the Cr. P.C, has been preferred by the petitioner seeking quashing of the proceedings in A.C.G.R Case no. 32 of 2019, arising out of Regent Park Police Station Case no. 02 of 2019 dated 02.01.2019, under section 509/506/114 of the Indian Penal Code, pending before the court of Learned Additional Chief Judicial Magistrate, at Alipore, South 24 Parganas.

2. In gist, the contention of the petitioner is that he is distantly related to Opposite Party no. 2 who lodged an FIR against the petitioner and her own father, Kalipada Ghatak, before the Regent Park Police Station giving

rise to Regent Park police station Case no. 02 of 2019 dated 02.01.2019. It is the further case of the petitioner that a Civil Suit being T.S no 559 of 2018 has been filed by opposite party no. 2 against said Kalipada Ghatak, her father which is pending adjudication at Alipore Court.

3. The allegations in the FIR lodged by Opposite Party no. 2 would demonstrate that the petitioner on 22.11.2018 called her names over mobile telephone and abused her in filthy language and also incited her to commit suicide. She further disclosed that the petitioner threatened her not to complain before the police station and alleged that her father, a co-accused, was threatening her to vacate the dwelling house.

4. The petitioner termed the complaint of opposite party no. 2 as frivolous with an object only to wreck personal vengeance against him as he had stood by her father and supported him.

5. The petitioner/ revisionist has contended that the allegations in the FIR against the petitioner is concocted and that it has been lodged for a coercive purpose to settle score over property related dispute. Further case of the revisionist is that information disclosed in the FIR was earlier disclosed to police and it was recorded as GDE No 1924 dated 22.11.2018. Therefore, an FIR cannot be registered subsequently on the basis of the same information given at an earlier point of time, as it is not permissible under the law to treat the later information as FIR. The petitioner therefore prayed for quashing of the FIR as well as the related case arising therefrom.

6. Notice was issued to Opposite Party no. 1 and 2. The State/Opposite Party No. 1 has appeared and is represented by Mr. Banerjee, senior Advocate. The Opposite Party no. 2 after being served with notice did not appear to contest this revision application.

7. Learned Advocate for the petitioner referring to the FIR of Opposite Party no. 2 registered on 02.01.2019 argued that the alleged occurrence relating to threatening the Opposite Party no. 2 by petitioner over mobile telephone took place on 22.11.2018 but the FIR was lodged on 02.01.2019, after a lapse of forty days from the date of registering the GDE No. 1924 dated 22.11.2018 on the self same occurrence. Learned Advocate for the petitioner urged that once a cognizable offence is disclosed, the police is duty bound to registrar the same in the station diary and investigate into the same. It is argued that an information of a cognizable offence made before the police station first in point of time shall be treated as FIR or the First Information Report. Subsequent information on the self same occurrence cannot be registered as FIR. Learned Advocate for the petitioner fortified his argument by relying upon a decision of this court in the case of **Ramesh Sha and Another Verses State**, reported in **2007 SCC online CAL 593: (2007) 4 CHN 809**. In the said decision, learned Division Bench of this Court while considering an application for anticipatory bail under section 438 of the Cr. P.C. dealt with a specific contention of the petitioners therein where two cases of Bhadreswar station, bearing NGR No. 1397 of 2007 and Bhadreswar Police Station Case No. 196 of 2007 dated 30.08.2007 were registered

over the same incident. Police arrested and forwarded the accused persons before the court in connection with the Bhadreswar Police Station General Diary No. 1586 and 1587 dated 26.08.2007, corresponding to NGR 1397 of 2007 and they were subsequently released on bail. Apprehending arrest in Bhadreswar P.S Case No. 196 of 2007 the petitioner sought for anticipatory bail before this court under section 438 of Cr. P.C. It was contended by the petitioners therein that both the cases, bearing NGR No. 1397 of 2007 and Bhadreswar Police Station Case No. 196 of 2007 dated 30.08.2007 were registered over self same occurrence. Adverting to the legal provisions under section 154 (1) of the Cr. P.C. Learned Division Bench of this court referred to the decision of the Supreme Court of India in **Kari Choudhary vs. Most. Sita Debi (AIR 2002 SC 441)**, where on consideration a similar position, the Hon'ble Apex Court held; " The legal position is that there cannot be two FIR against the same accused in respect of the same case."

In Ramesh Sha and another vs. State (2007 SCC online CAL 593) this High Court held that in view of the legal position as highlighted above, all subsequent information made orally or in writing after commencement of investigation in respect of the same incident will be a statements falling under section 162 of the Cr. P.C and no such information can subsequently be treated as a FIR, as it would amount to be a second FIR, which is not in conformity with the scheme of the Code of Criminal Procedure.

8. The second limb of argument advanced by Mr. Mukherjee, learned Advocate for the petitioner is that, the opposite party no 2 has filed another civil suit against her father, a co-accused in this case, being Title Suit no. 2194 of 2016 before learned Civil Judge (Junior Division) Alipore, wherein she filed a petition praying for dismissal of the suit for non prosecution, based upon an agreement for compromise dated 08.09.2021. In the compromise agreement Opposite Party No. 2 has stated that she made amicable settlement with Kalipada Ghatak, her father and agreed to vacate the portion occupied by her on the ground floor of the suit building on condition that her younger sister Smt. Arpita Ghatak paid Rs. 12,00,000/- to her. The opposite party/ FIR maker who is the plaintiff therein, stated that steps shall be taken to drop the criminal proceeding initiated by her against the present petitioner which cropped up due to misunderstanding with her father and the opposite party no 1. Learned Advocate urged that apart from a frivolous second FIR which is not tenable under the law, as parties have settled their differences and the dispute being private in nature, it would be an abuse of the process of court if the FIR is not quashed and the criminal proceeding continues.

9. Mr. Banerjee, Learned Advocate for the State strongly opposed the prayer for quashing of the FIR and the pending proceeding thereof. It is submitted that after completion of investigation police submitted charge-sheet against the petitioner and one Kalipada Ghatak under section 506/509/114 of the IPC. Referring to the Case Diary it is urged that the Opposite Party no. 2 in her statement under section 164 of Cr. P.C dated

02.01.2019 has supported her earlier statement in the FIR that she had been abused over telephone and threatened by the petitioner. Learned Advocate for the State contented that there is no merit in the present application seeking quashing and the same is liable to be dismissed.

10. I have considered the arguments advanced by learned Advocate for the petitioner as well as learned Advocate for State/ Opposite Party no. 1. On traversing the FIR, lodged by Opposite Party no. 2 it is explicit therein that some dispute over property subsists between the FIR maker and her father Kalipada Ghatak. She stated in the FIR that her father threatened her in filthy language, asking her to vacate the house and the present petitioner, Anirban Banerjee who is related to the de-facto complainant has also abused her over telephone on the instigation of her father. She stated that the matter was disclose to the police for the first time on 22.11.2018, on the basis of which G.D.E. no. 1924 of 22.11.2018 was registered. Subsequently on 23.12.2018 when the same information was given to police, it was registered in the station diary as Regent Park Police Station Case no. 02 of 2019 dated 02.01.2019.

11. In order to adjudicate procedural sanctity in registration of the impugned FIR, it is important to advert to the statutory scheme in the Criminal Procedure Code for receiving of information at the police station and the power of the police to investigate into offences, which are as follows:

“154.Information in cognizable cases.- (1) Every information relating to the commission of a cognizable offence, if given orally to an

officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under Sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an Officer-in-Charge of a police station to record the information referred to in Sub-section (1) may send the substance of such information, in writing any by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an Officer-in-Charge of a police station in relation that offence.

155. Information as to non-cognizable cases and investigation of such cases.-*(1) when information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.*

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

156. Police officer's power to investigate cognizable case.-*(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.*

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

Section 2(C) of the Code of Criminal Procedure defines ‘cognizable offence’ as an offence for which and ‘cognizable case’ means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

12. First Information Report has not been defined in the Code of Criminal Procedure. However, it is now well-settled that the First Information Report is that information which is given to police first in point of time, on the basis of which the investigation commences in respect of cognizable offence disclosed.

13. Having regard to the statutory scheme of the Criminal Procedure Code and on a conjoint reading of the above provisions, it emerges that any information relating to commission of a cognizable offence has to be reduced to writing under section 154(1) of Criminal Procedure Code and Section 156 of Cr. P.C empowers the police to investigate into such case without any order from the Magistrate.

Section 155 (2) of the Code of Criminal Procedure provides that in non-cognizable case no police officer shall investigate without the order from the Magistrate having power to try such case or commit the case for trial. Sub-Section (4) of section 155 on the other hand provides that where the case relates to two or more

offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

14. It ensues from the aforementioned provisions that if a G.D.E is registered at the police station disclosing commission of one cognizable offence out of several other offences, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable. In such a case the General Diary Entry should be treated as FIR. Therefore, when police receives specific information disclosing commission of cognizable offence, the police officer is duty bound to record the same in terms of section 154 of the code of Criminal Procedure.

15. The written information of Opposite Party no. 2 submitted before Regent Park Police Station on 23.12.2018 gave rise to Regent Park Police station case no. 2 of 2019 dated 02.01.2019. In the written information it is disclose that on an earlier occasion an information of the same occurrence was reported to police on 22.11.2018. Undisputedly, the General Diary Entry No. 1924 dated 22.11.2018 is the information given first in point of time of the same occurrence. Subsequent FIR, bearing Regent Park Police Station case no. 2 of 2019 dated 02.01.2019, is nothing but a second FIR on the basis of which investigation has been initiated. However, this is not permissible under the law. This legal position has been reiterated by the Hon'ble Supreme Court of India in the case of **Kari Choudhary vs. Most. Sita Debi (AIR 2002 SC 441)**. In the light of the above discussion I find and hold that the ratio of the decision

in **Ramesh Sha and Another vs. State (2007) SCC online CAL 593**, relied upon on behalf of the petitioner squarely applies to the question raised in this case. Accordingly, I find substance in the argument advanced by Learned Advocate for the petitioner that Regent Park Police Station case no. 2 of 2019 dated 02.01.2019, giving rise to charge-sheet has no force under the law.

16. It is also gathered from the certified copy of order no. 23 dated 08.09.2021 passed by the Learned Civil Judge (Junior Division) 1st Court Alipore in Title Suit no. 2194 of 2016, that prior to lodging of the FIR the opposite party no 2 was very much involved in litigations over property disputes with her father. She has finally settled the disputes by entering into an agreement and the suit filed by her was dismissed for non prosecution on the basis of settlement reached.

17. Therefore, it emerge from the available facts that the dispute between the petitioner and Opposition Party no 2 is private in nature. Since there has been an amicable settlement in which the FIR maker has agreed to withdraw the criminal case initiated by her against the petitioner and her father, it would be an abuse of the process of the court by continuing further with such FIR and the case arising out of it, being A.C.G.R. Case No. 32 of 2019, pending before learned A.C.J.M. Alipore.

18. The Hon'ble Supreme Court of India, in the case of **Parbatbhai Aahir vs State of Gujarat** reported in **(2017) 9 SCC 641** has held that "Section 482 Cr. P.C is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make

such orders as are necessary (i) to prevent an abuse of the process of court; or (ii) otherwise to secure the ends of justice.” In the above decision Hon’ble Supreme Court of India has laid down broad principles for invoking the jurisdiction under section 482 of Cr. P.C to quash a First Information Report or a Criminal Proceeding which inter alia are as follows :

- (i) While dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences like murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are not private in nature but have serious impact upon society.
- (ii) There may be Criminal Cases which have an overwhelming or predominant element of civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.
- (iii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situation fall for quashing where parties have settled their dispute.

19. In view of such guiding principles laid down to form an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power. On conspectus of facts and circumstances it appears that Opposite Party no 2 was aggrieved over some property dispute with her father and she was apprehensive of the fact that the petitioner had been misbehaving with her over telephone on the instigation of Kalipada Ghatak, her father. Neither in the FIR nor in her statement under section 164 of the Cr. P.C, she disclosed the exact words uttered by the petitioner allegedly intending to insult her modesty or given rise to a sense of threat in her mind. The civil dispute between Opposite Party no. 2 and Kalipada Ghatak has been resolved amicably. Therefore, in my opinion the present FIR arising out of predominantly a civil dispute which has been settled, gives rise to a circumstance for invoking the inherent power of this court under section 482 of the Code of Criminal Procedure for quashing of the FIR in Regent Park Police Station Case no. 02 of 2019 dated January 2, 2019 and all other proceeding arising out of the same.

20. In the light of the above discussion the revisional application under section 401 and 482 of Cr. P.C. is allowed on contest against Opposite Party no. 1 and ex-party against Opposite Party no.2. The FIR lodged by Opposite Party no. 2 in Regent Park Police Station Case no. 02 of 2019 dated 02.01.2019 under section 506/509/114 of Cr. P.C and A.C.G.R. Case No. 32 of 2019 arising thereof, now pending before the court of

Learned A.C.J.M, Alipore be quashed. Interim order, if any, stands vacated.

21. Criminal Section is directed to forward a copy of the judgment and order to the learned A.C.J.M, Alipore, District South 24 Parganas for information and necessary action.

22. Urgent certified copy of this order may be supplied to the parties expeditiously if applied for, maintaining all formalities.

(Ananda Kumar Mukherjee, J.)