

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 496 OF 2018

Smt. Rajani W/o Sagar Ratan and Ors.,
..VS..

The Commissioner of Police, Nagpur and Ors.,

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S. S. Joshi, Advocate for the petitioners.
Shri N. R. Patil, A.P.P. for the respondents.

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATED : 03.02.2021

Heard learned counsel for the petitioners and
learned A.P.P. for the respondents.

2. A brief summary of the allegations made in this case indicates that there was a layout in which several plots were laid out and they were sold to individual owners by one Milind Co-operative Housing Society and also Crown Co-operative Housing Society by executing separate registered sale-deeds in favour of about 50 to 60 plot owners, as alleged and later on, this property comprising so many individual plots laid out in the whole layout was sold as a whole by another registered sale-deed, thereby giving rise to grievance of each and every affected individual plot owner.

3. The contention is that when the alleged

offence basically relates to the sale of the whole property by a single registered document of sale-deed, if any offence is to be registered it would be only on the basis of the information received at the concerned police station at the first available opportunity or in other words it would be that information which would be first in point of time in terms of its being received at the police station and that all the informations relating to commission of the same offence received subsequently could not be treated as FIRs in such a case. Reliance has been placed upon the law laid down in this regard by the Hon'ble Supreme Court in the case of *T. T. Antony Vs. State of Kerala and Ors.*, (2001) 6 SCC 181.

4. According to learned A.P.P., there can be no dispute about the principles of law laid down in said case of *T.T.Antony* (supra).

5. For the sake of convenience, it would be useful for us to refer to the relevant observations of the Supreme Court made in paragraph Nos.20 and 27. They read as under :

“20. From the above discussion it follows that under the scheme of the provisions of Section 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. 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 Cr.P.C.

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court. There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narangs' case it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court. However, 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, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Section 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. In our view 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 under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C. or under Article 226/227 of the Constitution. ”

6. In view of above, we are inclined to dispose of this petition by issuing necessary directions in the matter.

7. It is directed that if, after registration of the First Information Report, which is first in point of time in respect of the alleged fraudulent sale of the properties by single registered sale-deed, any other information

alleging commission of the same offence is received, before dealing with the subsequent information and taking a decision, if any, to treat it as another FIR, the Police Station Officer of the concerned police station shall bear in mind the law laid down by the Supreme Court in the case of *T.T.Antony* (supra), in particular the observations made in paragraph Nos.20 and 27 reproduced herein-above, and shall accordingly take an appropriate decision.

The Writ Petition is disposed of accordingly.

JUDGE

JUDGE

Kirtak