

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-2010-2021

Date of decision : 20.04.2021

Sunil Kumar Diwan and another ...Petitioners

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Narender Pal Bhardwaj, Advocate
for the petitioners.

Mr. Rajiv Sidhu, DAG, Haryana
for the State-respondent No.1.

Mr. Davinder Lubana, Advocate
for the respondents No.2 to 4.

...

SUVIR SEHGAL, J.

Through the instant petition filed under Section 482 of the Code of Criminal Procedure, 1973, the petitioner seeks quashing of FIR No.0008 dated 04.01.2021 (Annexure P-1), registered for offences under Sections 406, 409, 420, 467, 468, 471 and 120-B IPC, at Police Station Naraingarh, District Ambala and all subsequent proceedings arising therefrom qua the petitioners in view of the law laid down by the Hon'ble Apex Court in "*Amitbhai Anilchandra Shah Versus The Central Bureau of Investigation and another*" 2013 (2) RCR (Criminal) 819 being violative of Section 220 of the Code of Criminal Procedure and basic principles of criminal jurisprudence.

Counsel for the petitioners has urged that the petitioners are facing a trial in FIR No.0043 dated 11.02.2020 (Annexure P-2) lodged for offences under Sections 406, 420, 120-B of the Indian Penal Code, 1860 and offences under Section 467, 468 and 471 of the Indian Penal Code, 1860 were added later on, at Police Station, Naraingarh, District Ambala, in which case, after investigation, a final report (Annexure P-4) has been prepared and presented against the petitioners before the trial Court. Counsel submits that the facts of the impugned FIR (Annexure P-1) are part of the same series of facts and transaction and consequently the lodging of the two FIRs in respect of the one and the same incident is not permissible in law. He has placed reliance upon the judgments of the Hon'ble Supreme Court in *TT Antony Versus State of Kerala (2001) 6 SCC 181*, *Krishna Lal Chawla and others Versus State of U.P. and another (2021) AIR SC 1381* and *Arnab Ranjan Goswami Vs. Union of India and others (2020) AIR SC 2386*, besides the judgment in Amitbhai Anilchandra Shah's case (*supra*).

The petition has been opposed by the State Counsel. He is assisted by the counsel for the complainants, who have been served with an advance copy of the petition. They supported the registration of FIR (Annexure P-1) contending that the offences are distinct and separate and are based on independent cause of action and there is no infirmity in the registration of the FIR (Annexure P-1). They have sought dismissal of the petition.

I have considered the rival submission of the parties.

The Hon'ble Supreme Court in Krishna Lal Chawla's case has hold as under:-

*“6. The grave implications of allowing such misuse may be understood better in light of the following exposition by this Court in **Amitbhai Anilchandra Shah v. CBI & anr, (2013) 6 SCC 348:***

“37. This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T.Antony [(2001) 6 SCC 181 : 2001 SCC (Crl) 1048], this Court has categorically held that registration of second FIR (which is not a cross-case) is violative of Article 21 of the Constitution.” (emphasis supplied)

Article 21 of the Constitution guarantees that the right to life and liberty shall not be taken away except by due process of law. Permitting multiple complaints by the same party in respect of the same incident, whether it involves a cognizable or private complaint offence, will lead to the accused being entangled in numerous criminal proceedings. As such, he would be forced to keep surrendering his liberty and precious time before the police and the Courts, as and when required in

each case. As this Court has held in Amitbhai Anilchandra Shah (supra), such an absurd and mischievous interpretation of the provisions of the Cr.P.C. will not stand the test of constitutional scrutiny, and therefore cannot be adopted by us.

7. The implications of such successive FIRs on an individual's rights under Article 21 of the Constitution has been elaborated further in T.T.Antony (supra):

*“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., 1973 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 **Narang case [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (CrI) 479]** 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., 1973.” (emphasis supplied)”

Hon'ble Supreme Court has held that whenever further information relating to the same cognizable offence or occurrence giving rise to one or more cognizable offences is received, the registration of the second FIR would be barred. It is thus apparent that the emphasis of the Apex Court is on the commonality and sameness of the sum and substance of the accusations pertaining to the same incident.

In the above backdrop, the allegations leveled in both the FIRs have to be examined. FIR (Annexure P-2) has been registered by Sadhu Singh against six accused including both the petitioners on the allegation that they induced him to deposit Rs.24,34,830/- in 18 Fixed Deposits with the Nationalized Bank Employees and Other Public Co-operative T&C Society Limited, Naraingarh, Ambala to earn higher rate of interest. He alleged that the accused have collected more than 50 crore rupees from different persons in a similar fashion and have transferred money in the name of their relatives and also purchased immovable properties.

FIR (Annexure P-1) has been lodged by Shyam Lal Verma and Smt. Suman against 18 accused, most of whom are the office bearers or employees of the society including both the petitioners, on the allegation that they falsely represented that the National Bank Employees and Other Public Co-operative T&C Society Limited which is registered with the Government and is audited every year. Initially the complainant deposited

money in the year 2003 in a Fixed Deposit, which was renewed from time to time. The second complainant alleged that the money received by her on the death of her husband, who was a Government employee, has been misappropriated by the accused who have acted in collusion with each other. Both the petitioners and accused Vinod Kumar retired from SBI, Naraingarh and easily managed to win the confidence of the complainant. It has been alleged that the accused committed fraud by forging the signatures of the investors on some FDs to show that the maturity proceeds had been paid back and even the balance sheet of the society has been manipulated in connivance with the auditors. Allegations have also been leveled against accused Randhir and Kuldeep of depositing the investors' money in their personal account instead of the account of the society.

From the examination of both the FIRs, it is apparent that they are based on different set of allegations and pertain to distinct transactions between the accused and the informants, who are also different. On receipt of the information, separate FIRs have been registered by the jurisdictional Police Station. Thus, it cannot be inferred that there is any commonality in respect of the distinct transactions, which have given rise to a separate cause of action. As such, filing of different FIRs or registration of the second FIR would not be impermissible and the FIR (Annexure P-1) cannot be quashed.

Still further, the reliance placed by counsel for the petitioners in the case of **Arnab Ranjan Goswami's case (supra)** will also not advance his case as the Hon'ble Supreme Court was dealing with a case, where

FIRs/complaints had been lodged against a journalist in different jurisdictions but they pertained to the same incident broadcast by the petitioner on his news channel. This is not the situation in the instant case.

Consequently, the instant petition must fail and is ordered to be dismissed.

It is clarified that nothing said herein above shall be construed to be an expression on the merits of the case.

(SUVIR SEHGAL)
JUDGE

20.04.2021
Pardeep

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No