ORISSA HIGH COURT: CUTTACK

CRLMC No. 2042 of 2021

An application under section 482 of the Code of Criminal Procedure, 1973 seeking to quash the Bhubaneswar Mahila P.S. Case No. 36 of 2021 corresponding to C.T. Case No. 1919 of 2021, which is now pending in the Court of learned S.D.J.M., Bhubaneswar.

Dillip Kumar Rath ..... Petitioner

-Versus-

State of Odisha and Anr. ..... Opp. Parties

Advocate(s) appeared in this case :-

For Petitioner	:	M/s. L.Mohanty, P.K. Pattanaik & T. Sahoo, Advocates
For Opp. Parties	:	Mr. P.K. Maharaj, Addl. Standing Counsel
		M/s. B.P.B. Bahali, P.K. Sahu, H.B. Banah, G. Dhala, M. Sahu & M. Mohanty, Advocates (Opp. Party No.2)

CORAM
JUSTICE SASHIKANTA MISHRA

JUDGMENT
4th January, 2022

SASHIKANTA MISHRA, J.

In the present application filed under Section 482 of Cr.P.C., the petitioner prays for quashment of Mahila Police Station,

Bhubaneswar FIR No. 36 dated 27.03.2021 on the ground that another FIR on the self-same allegation was registered by Malkangiri Police Station vide FIR No. 106 dated 03.04.2021.

2. The brief facts of the case are that the petitioner is the husband of opposite party no.2, who lodged a written report before the S.P. Malkangiri on 18.03.2021 making some allegations against her husband and in-laws. The FIR was registered by IIC, Malkangiri P.S. on the direction of the S.P., Malkangiri as Malkangiri P.S. Case No.106 dated 03.04.2021 for the commission of offences under Sections 498-A/294/323/506/34 of IPC. The informant-opposite party no.2 also submitted another complaint on 27.03.2021 before the IIC of Mahila Police Station, Bhubaneswar against her husband and in-laws, which came to be registered as Mahila P.S. Case No. 36 dated 27.03.2021 for the alleged commission of offences under Sections 498-A/323/294/307/506/34 of IPC read with Section 4 of DP Act. Contending that the FIR lodged before the Mahila Police Station at Bhubaneswar, though registered on 27.03.2021 is actually the second FIR, the petitioner has filed this application seeking quashment of the same.

3. Heard Mr. L. Mohanty, learned counsel for the petitioner, Mr. P.K. Maharaj, learned Addl. Standing Counsel for the

State and Mr. B.P.B. Bahali, learned counsel appearing for opposite party no.2.

4. Before adverting to the facts of case, it would be apposite to refer to the position of law in the present context. Section 154 of Cr.P.C. provides for giving information to Police in cognizable cases, which could be oral or in writing. Such information is termed as "First Information Report" and as the name suggests, is supposed to be the earliest information regarding the occurrence given to the police which sets the criminal law into motion. There is no provision in law permitting multiple information being given to police of the same occurrence.

In the case of ***T.T. Antony vs. State of Kerala*** reported in (2001) 6 SCC 181, the apex court held that second FIR for the self-same occurrence giving rise to one or more cognizable offences is not permissible. Again, referring to the ratio laid down in ***T.T. Antony*** (supra), the apex court in the case of ***Upkar Singh vs. Ved Prakash*** reported in (2004) 13 SCC 292 explained the legal position further as under:

> *"17. It is clear from the words emphasised hereinabove in the above quotation, this Court in the case of T.T. Antony v. State of Kerala has not excluded the registration of a complaint in the nature of a counter-case from the purview of the Code. In our opinion, this Court in that case only held that any further complaint by the same complainant or others*

> *against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited under Section 162 of the Code. This prohibition noticed by this Court, in our opinion, does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident.*

5. When in a given fact situation, more than one FIR apparently relating to the same occurrence has been registered, what recourse is to be taken has been explained by the apex court in the case of ***Anju Choudhury vs. State of U.P. & Anr.***, reported in (2013) 6 SCC 384 In the said case, the apex court held as under:

> *"23. The First Information Report is a very important document, besides that it sets the machinery of criminal law in motion. It is a very material document on which the entire case of the prosecution is built. Upon registration of FIR, beginning of investigation in a case, collection of evidence during investigation and formation of the final opinion is the sequence which results in filing of a report under Section 173 of the Code. The possibility that more than one piece of information is given to the police officer in charge of a police station, in respect of the same incident involving one or more than one cognizable offences, cannot be ruled out. Other materials and information given to or received otherwise by the investigating officer would be statements covered under Section 162 of the Code. The Court in order to examine the impact of one or more FIRs has to rationalise the facts and circumstances of each case and then apply the test of 'sameness' to find out whether both FIRs relate to the same incident and to the same occurrence, are in regard to incidents which are two or more parts of the same transaction or relate completely to two distinct occurrences. If the answer falls in the first category, the second FIR may be liable to be quashed. However, in case the contrary is proved, whether the version of the second FIR is different and they are in respect of two different incidents/crimes, the second FIR is permissible, This is the view expressed by this*

Court in the case of Babu Babubhai v. State of Gujarat and Ors. [(2010) 12 SCC 254]. This judgment clearly spells out the distinction between two FIRs relating to the same incident and two FIRs relating to different incident or occurrences of the same incident etc."

Thus, being faced with a situation where two FIRs have been registered and it is contended that both relate to the same occurrence, the test of 'sameness' is to be applied to find out if both the FIRs in fact relate to the same incident and the same occurrence. If they relate to the same occurrence, the second FIR is liable to be quashed.

6. The facts of the case may now be examined in the light of the legal propositions discussed in the preceding paragraphs.

As to the question which FIR was lodged first, it is contended by Mr. L. Mohanty, learned counsel for the petitioner, that on the face of it, the FIR before Mahila Police Station, Bhubaneswar was lodged on 27.03.2021, but the date of registration of the FIRs can be misleading inasmuch as the informant lodged FIR before S.P., Malkangiri on 18.03.2021, which is evident from the copy of the same enclosed as Annexure-1 to the petition.

7. Per contra, Mr. B.P.B. Bahali, learned counsel for the informant has argued that the FIR before Malkangiri Police Station was lodged subsequent to the FIR lodged before Mahila Police Station,

Bhubaneswar and that the date of registration is the determining factor. Mr. B.P.B. Bahali further argued that the very fact that the informant had to leave her matrimonial home and take shelter in her parental home is by itself adequate to prove that the cruelty inflicted on her also continuous in her parental home despite absence of any overt act of physical cruelty at such place. Therefore, it is well settled that the courts at the place where the wife takes shelter after leaving or being driven away from the matrimonial home on account of act of cruelty committed by husband or his relatives would also have jurisdiction to entertain a complaint alleging commission of offences under Section 498-A of IPC. In support of his contention, Mr. Bahali has referred to the decisions of the apex court in the case of ***Rupli Devi vs. State of Uttar Pradesh and Ors***., reported in AIR 2019 SC 1790 : (2019) 5 SCC 384; ***Ruhi vs. Anees Ahmad and Ors.*** (SLP (Criminal) No. 106 of 2017 decided on 06.01.2020); ***Swaati Nirkhi and Ors. Vs. State (NCT of Delhi) and Ors.*** reported in AIR 2021 SC 1303; and the case of ***Rashmi Chopra and Ors. vs. State of Uttar Pradesh and Ors.*** reported in AIR 2019 SC 2297.

Basing on the above case laws, Mr. Bahali contends that as the informant is staying at her parental house at Bhubaneswar since long, where a part of cause of action arose and some part of cause of

action arose at Malkangiri, Nabarangpur and Bhubaneswar on different places and different instances, there is no bar to lodge the complaint in both the places as per Sections 178 and 179 of Cr.P.C.

8. A perusal of the FIR lodged before the S.P., Malkangiri reveals that the said complaint was received by the office of S.P., Malkangiri on 23.03.2021. The S.P., Malkangiri passed an order on 24.03.2021 directing the IIC, Malkangiri P.S. to take necessary legal action and to submit Action Taken Report by 25.03.2021. The said order was forwarded to the IIC vide memo No. 4360/HRPC dated 24.03.2021. Surprisingly, the IIC endorsed receipt of the petition (complaint) on 03.04.2021 and accordingly registered the same as Malkangiri P.S. Case No. 106 on the same date.

As regards the other FIR, it is observed from the copy thereof enclosed as Annexure-2 that the same was lodged on 27.03.2021 and also registered on the same date.

In the above fact situation, which would be the first FIR is to be determined. The FIR dated 18.03.2021 was directly addressed to the S.P., Malkangiri, who forwarded it to the IIC of the Police Station having jurisdiction for registration and investigation. The said FIR was received by the S.P. on 23.03.2021 and order was passed to register the

same on 24.03.2021 but, the same was actually registered on 03.04.2021. Law mandates that the FIR should have been registered on 23.03.2021 itself but as stated earlier, the same was registered only on 03.04.2021. Apparently because of the inaction of the police to register the FIR received on 23.03.2021, the informant lodged another FIR in the interregnum i.e., on 27.03.2021 before Mahila Police Station.

9. To decide as to if the so-called second FIR is to be quashed or not, it is necessary to first to see whether the two FIRs actually relate to the same occurrence. Applying the test of 'sameness' as laid down in ***Anju Choudjury*** (Supra) it is seen that in the FIR registered on 03.04.2021, the allegations relate mainly to physical and mental cruelty meted out to the informant by her husband and in-laws right from the beginning of her married life. Several instances have been cited in this regard. In the FIR registered on 27.03.2021, the very same story has been narrated almost as a copy of the other FIR save and except for the allegation that while the informant was at Odogaon, her husband attempted to kill her by throttling her neck but she managed to escape. All other allegations are more or less the same in both the FIRs and in fact, even identical at many places. Therefore, on a conjoint reading of the two FIRs there remains no doubt that both relate to the same occurrence.

10. Having held so, it is now to be decided as to which is the first FIR.

As stated in ***Upkar Singh*** (supra), the reason why a second FIR is prohibited is that with the lodging of an FIR, investigation would have already started and further complaint against the same accused would amount to an improvement on the facts mentioned in the original complaint. In other words, the criminal law is set into motion with the lodging of the first complaint/FIR. So once the criminal law is set into motion, any further information/complaint relating to the same occurrence can only supplement the same but not be treated as an independent complaint. Viewed in light of the above proposition, it is seen that the FIR lodged by the informant before Mahila Police Station, Bhubaneswar was registered on 27.03.2021 and hence, the criminal law was set into motion on and from that date in relation to the alleged occurrence. So, by the time the other FIR was registered in Malkangiri Police Station, that is, on 03.04.2021, the criminal law relating to the occurrence had already been set into motion by virtue of the FIR registered on 27.03.2021 in the Mahila Police Station. It is true that the complaint addressed to SP, Malkangiri was written on 18.03.2021 and received in the office of the SP, Malkangiri on 23.032021 but, for reason unknown, it came to be registered only on 03.04.2021 when the

other FIR had already been registered. Therefore, even though the complaint was received prior to 27.03.2021, the fact that it was registered on 03.04.2021 would make it the second FIR and not the original FIR.

11. It is also contended by learned counsel for the petitioner that the informant has already filed a case before the Family Court at Jeypore for a decree of divorce being CP No. 23 of 2020 which shows that she is living separately and has no relationship with her husband. Without expressing any opinion on the merits of the above contention, it would suffice to note that the pendency of the said case or the stand taken therein by the informant can hardly have any bearing on the present case, which is confined to the criminal proceedings initiated at the instance of the informant.

12. For the forgoing reasons therefore, this court holds that the FIR registered by Mahila Police Station on 27.03.2021 is the first FIR and hence, the second FIR registered on 03.04.2021 by Malkangiri Police Station cannot be maintained as an independent FIR in the eye of law. The contentions advanced on behalf of the petitioner are, therefore, not tenable. The other contentions advanced by learned counsel for the

informant-opposite party no.2 are not required to be gone into in view of the findings as above.

13. In the result, the CRLMC is disposed of by directing the IIC of Malkangiri Police Station to transmit the FIR No. 106 dated 03.04.2021 along with the other materials/evidence/ statements, if any collected during investigation to the IIC of Mahila Police Station, Bhubaneswar forthwith.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 4th January, 2022/ A.K. Rana

HIGH COURT
सत्यमेव जयते
ORISSA