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**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (MAIN) NO.5 OF 2022**

Maracelino Dias,
Aged 35 years,
R/o. H.No.142/G, Gaonkarwada,
Curca Bambolim, Goa.
Presently in judicial custody
at Central Jail, Colvale,
Bardez, Goa. ...Petitioner

Versus

1. Police Inspector,
Old Goa Police Station,
Old Goa.

2. State,
Through PP,
High Court of Bombay at Porvorim,
Goa. ...Respondents

Mr. Arun Bras De Sa, Advocate for the Petitioner.

Mr. S.G. Bhobe, Public Prosecutor for the Respondents.

**CORAM: DIPANKAR DATTA, CJ. &
M. S. SONAK, J.**

DATED: 1st AUGUST 2022

JUDGMENT : (Per M.S. Sonak, J.)

1. Heard Mr. Arun Bras De Sa for the Petitioner and Mr. S.G. Bhobe, Public Prosecutor for the State.

2. Rule. The rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.

3. On 20.06.2020, FIR No.76/2020 was registered at the Old Goa Police Station against the Petitioner and 13 others alleging offenses under Sections 307,143,147,148,149,450 read with Section 120-B of IPC and some provisions of the Arms Act. One Sonu Yadav, who died in the incident, was also alleged to be one of the conspirators, along with the Petitioner and others.

4. Mr. Subhash Yadav, the father of Sonu Yadav, lodged a complaint that some unknown persons, during the course of committing the offense, registered as FIR No.76/2020, murdered his son Sonu Yadav by firing a bullet at his chest and thereby committing offenses punishable under Sections 302,120-B IPC and Section 3 read with Sections 35 and Section 5 read with Section 27 of the Arms Act. This complaint was registered as FIR No.77/2020 on 20.06.2020 at the Old Goa Police Station.

5. Thus, regarding the same incident, two FIRs, FIR No.76/2020 and FIR No.77/2020, came to be registered at the Old Goa Police Station. From the perusal of the two complaints,

it is apparent that both the FIRs relate to the same incident or, in any case, two or more parts of the same incident.

6. Concerning FIR No.76/2020, a final report was filed before the Judicial Magistrate First Class at Panaji. As a result, the matter was committed to the Principal Sessions Court considering the offenses alleged, and the same is registered as Sessions Case No.30/2020.

7. Similarly, a final report was submitted concerning FIR No.77/2020, and the matter was committed to the Principal Sessions Court and registered as Sessions Case (302) No.17/2020.

8. The Principal Sessions Judge, Panaji, by order dated 10.05.2021, in Sessions Case (302) No. 17/2020, has ordered charges to be framed against the petitioners under Sections 302, 120 IPC, and Section 3 read with Section 25 and Section 5 read with 27 of the Arms Act.

9. At this stage, the Petitioner, by instituting this petition, questions the registration of the second FIR, that is, FIR No.77/2020, and the proceedings based thereon, that is, Sessions Case (302) No.17/2020, by contending that such second FIR concerning the same incident or parts of the same incident, is

quite incompetent and even amounts to a violation of the rights guaranteed by Article 21 of the Constitution. Mr. De Sa learned Counsel for the petitioners relies on *Amitbhai Anilchandra Shah V/s. Central Bureau of Investigation and Anr.*¹ in support of this contention.

10. Mr. De Sa also referred to an order dated 15.11.2021 made by the learned Single Judge of this Court (Manish Pitale, J.) in Criminal Misc. Application (Bail) No.468/2021(F), by which some of the accused persons in Sessions Case No.30/2020 were enlarged on bail. He referred to the contentions of Mr. Bhobe, the learned Public Prosecutor, recorded in paragraph 6, which reads as follows:

"6. Mr. Bhobe, the learned Public Prosecutor, has appeared on behalf of the State and he submits that appropriate steps are being taken in the matter considering the fact that the two incidents appear to be part of the same transaction and that ideally only one crime ought to have been registered in the context of the entire incident. It is informed that filing an appropriate application is contemplated in the facts and circumstances, for either clubbing of the two cases or treating the chargesheet in one of the cases as supplementary chargesheet for the main case. Although the learned Public Prosecutor submitted that there is sufficient material on record in the present case to support the allegations of unlawful

¹ (2013) 6 SCC 348

assembly and conspiracy, he conceded to the fact that Sections 120-B and 149 of the IPC have not been invoked."

11. Based on the above, Mr. De Sa submits that the second FIR, FIR No.77/2020, and the proceedings in Sessions Case (302) No.17/2020 are liable to be quashed. Mr. De Sa, however, conceded that the charge sheet in Sessions Case (302) No.17/2020 can always be treated as a supplementary charge sheet in Sessions Case No.30/2020. Mr. De Sa also conceded that FIR No.77/2020 can also be considered a statement recorded in the course of investigations pursuant to FIR No.76/2020 under Section 161 of Cr.P.C.

12. Mr. Bhobe learned Public Prosecutor fairly accepted that no second FIR could have been registered in the facts and circumstances of the present case. Accordingly, he submitted that this second FIR and the proceedings in pursuance of the same, including the order made by the Sessions Judge on 10.05.2021, could be quashed.

13. He, however, submitted that this Court should clarify that the second FIR must be treated as a statement recorded in the course of investigations, and the charge sheet or final report in Sessions Case (302) No.17/2020 must be treated as a

supplementary charge sheet in Sessions Case No.30/2020. Accordingly, he submitted that even the order dated 10.05.2021 in Sessions Case (302) No.17/2020 could be set aside. Still, a direction may be issued to the learned Sessions Judge to frame the charge afresh after considering the charge sheet in Sessions Case No.30/2020 and the supplementary charge sheet.

14. We have considered the submissions by Mr. De Sa and Mr. Bhobe, the learned Public Prosecutor. According to us, the issue raised in this matter is substantially governed by the decision of the Hon'ble Supreme Court of India in *Amitbhai Shah* (supra). This decision holds that the second FIR in respect of the same offense or even different offenses committed in the course of the same transaction is not just impermissible but violates Article 21 of the Constitution. The Court held that this principle was laid down in *T.T. Antony V/s. State of Kerala*² and has never been diluted in subsequent judicial pronouncements even while carving out exceptions.

15. Therefore, the second FIR No.77/2020 and the proceedings in pursuance of the same will have to be quashed. The further course suggested by Mr. De Sa and Mr. Bhobe will

2 (2001) 6 SCC 181

have to be adopted because that was precisely the course followed in *Amitbhai Shah* (supra).

16. *Amitbhai Shah* (supra), in similar circumstances, has held that in the absence of any prejudice, the charge sheet based on the second FIR need not be quashed. Instead, the second charge sheet can be treated as supplementary to the first charge sheet. This is clear from paragraphs 58 and 60 of *Amitbhai Shah* (supra).

17. Accordingly, we quash FIR No.77/2020, the final report form (charge sheet) in terms of Section 173 of Cr.P.C. registered as Sessions Case (302) No.17/2020, and the order dated 10.05.2021 made therein by the learned Sessions Judge, Panaji.

18. However, we clarify that the complaint/FIR No.77/2020 will now have to be treated as a statement recorded in the course of investigations pursuant to FIR No.76/2020 under Section 161 of Cr.P.C. Further, we clarify that the final report form (charge sheet) in Sessions Case (302) No.17/2022 will have to be treated as a supplementary charge sheet in Sessions Case No.30/2020 on the file of the learned Sessions Judge at Panaji.

19. Further, we direct the Sessions Judge at Panaji to consider the framing of charges afresh after considering the final report

form (charge sheet) in pursuance of investigations into FIR No.76/2020 and the supplementary charge sheet as explained above.

20. The rule is made absolute in the above terms. There shall be no order for costs.

M. S. SONAK, J.

CHIEF JUSTICE

NITI K
HALDANKAR

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