

**IN THE HIGH COURT FOR THE STATE OF TELANGANA,
HYDERABAD**

* * *

**Criminal Petition Nos.2305 of 2013, 3306 of 2013, 4661 of
2013, 7084 of 2014 and 1315 of 2015**

Between:

Akbaruddin Owaisi

Petitioner

Versus

The State of Andhra Pradesh,
rep. through its Public Prosecutor,
High Court, Hyderabad and another.

Respondents

JUDGMENT PRONOUNCED ON : 21.03.2022

THE HONOURABLE SRI JUSTICE UJJAL BHUYAN

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| 1. | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | : Yes |
| 2. | Whether the copies of judgment may be
Marked to Law Reporters/Journals? | : Yes |
| 3. | Whether His Lordship wishes to
see the fair copy of the Judgment? | : Yes |

UJJAL BHUYAN, J

*** THE HONOURABLE SRI JUSTICE UJJAL BHUYAN**

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Respondents

! Counsel for the Petitioner : Mr. S. Niranjana Reddy,
learned Senior Counsel appearing on
behalf Mr. N. Naveen Kumar.

^ Counsel for the respondents : Mr. C. Pratap Reddy, learned Public
Prosecutor; &
Mr. S. Sudershan, learned Additional
Public Prosecutor.

<GIST:

> HEAD NOTE:

? Cases referred

1. 2013 (6) ALT 101
2. 2001 (6) SCC 181
3. 2013 (6) SCC 348
4. 2021 (1) SCC (1)
5. (2013) Cri.L.J. 776 (SC)
6. 2001 (2) ALT (CrI.) 26 (SC)=(2001) 4 SCC 350
7. (2010) 12 SCC 254
8. AIR 1979 SC 1791
9. 2020 14 SCC 12
10. (2004) 13 SCC 292

THE HONOURABLE SRI JUSTICE UJJAL BHUYAN

Criminal Petition No.2305 of 2013
Criminal Petition No.3306 of 2013
Criminal Petition No.4661 of 2013
Criminal Petition No.7084 of 2014
and
Criminal Petition No.1315 of 2015

COMMON ORDER:

This order will dispose of Criminal Petition Nos.2305 of 2013, 3306 of 2013, 4661 of 2013, 7084 of 2014 and 1315 of 2015.

2. Heard Mr. S. Niranjana Reddy, learned Senior Counsel appearing on behalf of Mr. N. Naveen Kumar, learned counsel for the petitioners. Also heard Mr.C.Pratap Reddy, learned Public Prosecutor and Mr.S.Sudershan, learned Additional Public Prosecutor, for the respondent-State.

3. All the petitions have been filed under section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for quashing of the complaints on the ground that the complaints filed relate to the same incident registered with Nirmal Police Station in the District of Adilabad in Crime No.1 of 2013.

4. In all the criminal petitions, petitioner is Akbaruddin Owaisi, who has been named as “accused” in all the criminal complaints.

5. Since Criminal Petition No.2305 of 2013 was filed first in point of time, for the sake of convenience, the facts pleaded in the said petition are adverted to hereunder.

6. On 16.01.2013, one Kaatagoni Mohan Goud as the complainant, lodged a complaint before the Judicial First Class Magistrate at Wanaparthi naming

petitioner as “accused” therein. The complainant mentioned that he was a permanent resident of Wanaparthi town in the District of Mahabubnagar and a legal practitioner belonging to orthodox Hindu family. The complainant stated that on 29.12.2012, at about 7.00 p.m., while he was browsing through the internet, he came across a video in *YouTube* site, wherein the accused was addressing a public meeting held at Nirmal town, Adilabad District in a high pitched voice, and he had used highly inflammatory and derogatory words against the Hindu religion, Hindu Gods and Goddesses. Such utterances caused a deep sense of hurt to the complainant. His religious sentiments were particularly hurt, because the accused was a sitting MLA. Accordingly, he requested the learned Magistrate to take cognizance of the offence committed by the accused under section 298 of

the Indian Penal Code, 1861 (IPC) and, thereafter to issue summons to him to stand trial.

7. On receipt of such complaint, learned Magistrate recorded the statement of the complainant. Thereafter, he passed order dated 23.01.2013 holding that there was a *prima facie* case to take cognizance of offences under Sections 153, 153-B and 298 of I.P.C. The said complaint was registered as C.C.No.19 of 2013. Following the same, the learned Magistrate issued summons to the accused, i.e., the petitioner, for appearance on 15.03.2013.

8. According to the petitioner, in respect of the same alleged speech made by him at Nirmal in Adilabad District, police of Nirmal Police Station had already registered a crime against the petitioner on 02.01.2013 being Crime No.1 of 2013 under Sections 153-A and 121 of the Indian Penal Code, 1860 (IPC).

9. Contending that filing of subsequent complaint is nothing but an attempt to harass the petitioner, besides being an abuse of the process of law, the present criminal petition came to be filed.

10. This Court, by order dated 26.03.2013, had issued notice and stayed further proceedings in C.C. No.19 of 2013 on the file of Judicial First Class Magistrate at Wanaparthy.

11. Thereafter, Criminal Petition No.3306 of 2013 came to be filed by the petitioner for quashing of the proceedings in C.C.No.21 of 2013 on the file of II Metropolitan Magistrate, Cyberabad at L.B.Nagar. Here also it is contended that the complaint made in C.C.No.21 of 2013 relates to the same incident covered by Crime No.1 of 2013 registered before the Nirmal Police Station. This Court, by order dated 18.04.2013, had stayed further proceedings in C.C.No.21 of 2013.

12. Thereafter, Criminal Petition No.4661 of 2013 came to be filed by the petitioner assailing C.C.No. 314 of 2013 on the file of VII Additional Chief Metropolitan Magistrate at Hyderabad on the same ground pertaining to the alleged speech of the petitioner at Nirmal, which is subject matter of Crime No.1 of 2013 registered before Nirmal Police Station. This Court, by order dated 08.05.2013, had admitted the said petition and granted stay of further proceedings in C.C.No.314 of 2013.

13. Criminal Petition No.7084 of 2014 pertains to C.C.No.41 of 2013 registered before the Chief Judicial Magistrate at Bokaro in the State of Jharkhand. It is stated that C.C.No.41 of 2013 relates to the alleged speech of the petitioner made at Nirmal town, which is the subject matter of Crime No.1 of 2013 registered before the Nirmal Police Station. This Court by order

dated 04.07.2014 had admitted the Criminal Petition and granted stay of further proceedings in C.C.No.41 of 2013.

14. Likewise Criminal Petition No.1315 of 2015 came to be filed by the petitioner assailing the legality and validity of C.C.No.17/SW/2013 pending on the file of Metropolitan Magistrate 51st Court at Kurla, Mumbai relating to the alleged speech of the petitioner delivered at Nirmal town, which is subject matter of Crime No. 1 of 2013 registered at Nirmal Police Station. By order dated 08.06.2015, this Court had admitted the aforesaid Criminal Petition and had granted stay.

15. During the hearing, a memo dated 09.02.2022 was filed on behalf of the petitioner in Criminal Petition No.2305 of 2013. It is stated therein that the police had completed investigation in Crime No.1 of 2013 on the file of Nirmal Police Station. Upon

completion of investigation, police submitted charge-sheet before the Court of Additional Judicial Magistrate of First Class at Nirmal. Thereafter, the Court of Additional Judicial Magistrate of First Class took cognizance of the charge-sheet vide order dated 30.01.2018 for offences punishable under Sections 120-B, 121-A, 124-A, 298, 153-A, 295-A, 298, 505 and 188 of IPC. It is further stated that subsequently the above case was transferred and committed to the Court of I Special Sessions Court for Trial of MPs and MLAs, Hyderabad vide order dated 10.12.2019 and thereafter renumbered as S.C.No.3 of 2013. Petitioner had received summons dated 26.08.2021 in S.C. No. 3 of 2013.

16. Learned counsel for the petitioner has referred to the provisions of Sections 186 and 201 of Cr.P.C. and submits that trial arising out of Crime No.1 of

2013, which is registered before the Nirmal Police Station, should be allowed to continue and all further proceedings should be discontinued. He submits that filing of second FIR on the same incident is impermissible in law. Lodging of multiple FIRs at different places relating to an alleged offence committed at one place is nothing but an attempt to harass the petitioner, and would be clearly an abuse of the process of the Court. In support of such submissions, reliance has been placed on the following decisions, viz., **Akbaruddin Owaisi vs. Government of A.P.**¹, **T.T. Antony vs. State of Kerala**², **Amitbhai Anilchandra Shah vs. Central Bureau of Investigation**³, and **Amish Devgan vs. Union of India**⁴.

¹ 2013 (6) ALT 101

² 2001 (6) SCC 181

³ 2013 (6) SCC 348

⁴ 2021 (1) SCC (1)

17. While learned Public Prosecutor does not dispute the legal contentions urged by learned counsel for the petitioner, none-the-less he submits that complaints lodged by different complainants may be treated as statements made under Section 162 of the Cr.P.C. and they can also be made witnesses in the proceedings in S.C.No.3 of 2013.

18. Submissions made by learned counsel for the parties have received the due consideration of the Court.

19. Perused the contents of the FIR lodged before Nirmal Police Station on 02.01.2013. The first information was lodged by a police official of Nirmal Police Station by the name of Laxmi Narsimha Swamy. According to him, there was a public meeting at Nirmal on 22.12.2012. The meeting was organized by AIMIM, a political party, and permission for use of loud

speaker in the meeting was obtained on the assurance that there would not be any nuisance or annoyance to the public. The meeting was addressed by several politicians including the petitioner, who was an MLA. The speech delivered by the petitioner was highly provocative, insulting religions other than the Muslim religion. He also stated that if police was withdrawn for fifteen minutes, he would show what they were capable of. Such extreme utterances, provocative and highly inflammatory language had hurt the sentiments of the people, besides promoting enmity between different groups of people on the ground of religion.

20. On a comparison of the complaints with the said FIR, it is seen that the substance of the complaints in all the cases is more or less identical. At this stage, it may be mentioned that in Criminal Petition No.3306 of 2013 cognizance was taken on 10.01.2013; cognizance

order was passed on 29.04.2014 in Criminal Petition No. 7084 of 2014, and likewise in Criminal Petition No. 1315 of 2015 cognizance was taken on 22.05.2015.

21. After hearing learned counsel for the parties and on due consideration, the question which falls for consideration is *whether* the subsequent complaints lodged after Crime No.1 of 2013 at Nirmal Police Station (now S.C.No.3 of 2013 on the file of Court of First Special Sessions Court for Trial of MPs and MLAs at Hyderabad) would be permissible in law? If not, what would be the consequence or fate of such criminal complaints?

22. The heading of 'Section 186' of Cr.P.C. is : **High Court to decide, in case of doubt, district where inquiry or trial shall take place.** Section 186 of Cr.P.C. states that where two or more courts have taken cognizance of the same offence and a question

arises as to which of them ought to inquire into or try that offence, then the question shall be decided by that High Court, if the Courts are subordinate to the same High Court; and if the Courts are not subordinate to the same High Court, by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings first commenced. Thereafter, all other proceedings in respect of that offence shall be discontinued.

23. Coming to Section 210 of Cr.P.C., it lays down the procedure to be followed when there is a complaint case and police investigation in respect of the same offence. As per Sub-Section (1) when in a case instituted otherwise than on a police report i.e., a complaint case, it is made to appear to the Magistrate, that an investigation by the police is in progress in relation to the offence which is the subject-matter of

the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

24. In **T.T. Antony's case** (2 supra) Supreme Court held that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence, giving rise to one or more cognizable offences. It was held that only the information about the commission of cognizable offence(s), which is first entered in the Station House Diary by the Officer In-Charge of the Police Station, can be regarded as First Information Report under Section 154 of the Cr.P.C.; on subsequent information, the same offence will be covered by Section 162 of the Cr. P.C. It was held as follows:

“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 (supra) 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 Sections 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 underway 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.”

25. From the above, it is clearly discernable that according to the Supreme Court, the sweeping power of investigation does not warrant subjecting a citizen each time to a 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. The Court observed that case of fresh investigation based on the consequent or successive FIRs not being 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 Articles 226/227 of the Constitution. In the circumstances of that case, it was held that registration of the second FIR was not valid and consequently investigation made pursuant thereto was of no legal consequences. Those were accordingly quashed.

26. This legal position was reiterated by the Supreme Court in **Amitbhai Anilchandra Shah's case** (3 supra). Referring to the decision of **T.T. Antony's case** (2 supra), Supreme Court held that a second FIR in respect of an offence or a different offence committed in the course of same transaction is not only impermissible but it violates Article 21 of the Constitution as well. In the facts of that case, Supreme Court held that filing of second FIR and fresh

charge sheet was violation of fundamental rights under Articles 14, 20 and 21 of the Constitution since the same relief is sought against an alleged offence in respect of which an FIR had already been filed and the Court has taken cognizance.

27. At this stage, it may also be mentioned that against registration of multiple FIRs and multiple complaints, on account of same public speech given by the petitioner which is subject matter of Crime No.1 of 2013 registered before Nirmal Police Station, petitioner had filed a Writ Petition before this Court being Writ Petition No.824 of 2013 which was disposed of on 19.07.2013 [since reported in [2013 (6) ALT 101] (3 supra)]. On the question of the test to be applied to determine whether or not the two FIRs under consideration relate to the same or different incidents, this Court held as follows:

*“40. Let us now briefly refer to the tests which should, ordinarily, be applied to determine whether or not the two FIRs under consideration relate to the same incident/transaction. The law recognizes a common trial or a common FIR being registered for one series of acts so connected together as to form the same transaction as contemplated under Section 220 Cr.P.C. The expression 'same transaction', from its very nature, is incapable of exact definition. (**Anju Chaudhary v. State of Uttar Pradesh**⁵; **Mohan Baitha v. State of Bihar**⁶). The distinction between two FIRs relating to the same incident, and two FIRs relating to different incidents or occurrences of the same incident, should be carefully examined. (**Babubhai v. State of Gujarat**⁷). The merits of each case must be considered to determine whether a subsequently registered FIR is a second FIR relating to the same incident or offence or is based upon distinct and different facts and whether its scope of inquiry is entirely different or not. It will not be appropriate for the Court to lay down one straight jacket formula uniformly applicable to all cases. This will always be a mixed question of law and fact depending on the merits of a given case. (**Anju Chaudhary** [5 supra]). The test, to determine whether two FIRs can be permitted to exist, is whether the two*

⁵ (2013) Cri.L.J. 776 (SC)

⁶ 2001 (2) ALT (Cr1.) 26 (SC)=(2001) 4 SCC 350

⁷ (2010) 12 SCC 254

incidents are identical or not. (Ram Lal Narang v. State (Delhi Admn)⁸).”

28. This Court thereafter dealt with the aspect relating to registration of two FIRs in two different police stations by two different complainants against the same accused for the same incident. This Court analyzed various decisions of the Supreme Court as well as of different High Courts and came to the conclusion that complaint lodged in police station was quashed on the ground that another complaint was already lodged in a different police station for the same offence, or the Court in the other place had already taken cognizance of the offence. Finally, this Court concluded as follows:

“70. Multiple investigations by multiple police stations could well result in an accused, who can eventually be tried and punished for the said incident only once, being subjected to repeated arrests by different

⁸ AIR 1979 SC 1791

investigating officers, and being called upon to appear before different police officers attached to different police stations, in connection with the investigation of the same offence. While the power to arrest an accused is conferred on the investigating officer under Section 41 Cr.P.C, construing the provisions of the Cr.P.C. as enabling different investigating officers attached to different police stations to, one after the other, arrest the same person for the same incident/occurrence would not be a fair or a just procedure. The petitioner's fundamental rights, under Article 21 of the Constitution of India, would be violated as he would not only face the threat of imminent and numerous arrests by different investigating agencies for the same incident/occurrence, but his liberty would also be restricted on his being required to appear before different investigating agencies conducting parallel investigation into the same incident.”

29. In Arnab Ranjan Goswami vs. Union of India⁹, petitioner had complained that following broadcast on Republic Bharat TV on 21.04.2020, multiple FIRs and criminal complaints were lodged against him, not only in the State of Maharashtra but in different States and

⁹(2020) 14 SCC 12

Union Territories. The first FIR was lodged at Sadar Police Station, Nagpur City, Maharashtra whereafter as many as 14 other FIRs and complaints were lodged in different places. Delineating the aspect of lodging of subsequent FIRs, Supreme Court on an analysis of various judgments including in **T.T. Antony's case** (2 supra) and in **Upkar Singh vs. Ved Prakash**¹⁰, held that there can be no second FIR when the information concerns the same cognizable offence alleged in the first FIR or the same occurrence or the incident which gives rise to one or more cognizable offences. Barring situations in which a counter-case is filed, a fresh investigation or a second FIR on the basis of the same or connected cognizable offence would constitute an abuse of the statutory power of investigation and may be a fit case for exercise of power either under Section 482 Cr.P.C. or under Articles 226/227 of the

¹⁰(2004) 13 SCC 292

Constitution. However, it has been clarified that when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried out under both of them by the same investigating agency. In the facts of that case, it was found that all the FIRs or complaints lodged in diverse jurisdiction arose out of one and the same incident, i.e., broadcast by the petitioner in Republic Bharat on 21.04.2020. Therefore, all the other FIRs/complaints were quashed leaving open the investigation carried out by Sadar Police Station, Nagpur City which was however transferred to NM Joshi Marg Police Station in Mumbai.

30. The above principle finds reiteration in the case of **Amish Devgan** (4 supra). Referring to and reiterating the principle of law laid down in **Arnab Ranjan**

Goswami (5 supra), Supreme Court held that ordinarily first FIR, i.e. FIR registered first in point of time, should be treated as the main FIR and others as statements under Section 162 of the Cr.P.C. However, in exceptional cases and for good reasons, it will be open to the High Court or to the Supreme Court, as the case may be, to treat the subsequently registered FIR as the principle FIR. However, this clarification also does not dilute the main proposition that there cannot be multiple FIRs and consequently multiple investigations arising out of one cognizable offence. Notwithstanding the clarification given in the facts of that case, Supreme Court ultimately accepted the prayer of the petitioner and directed transfer of FIRs to Dargah Police Station, Ajmer, Rajasthan, where the first FIR was registered.

31. Thus, in view of the above discussion, this Court has no hesitation that FIR lodged in Crime No.1 of 2013 before the Nirmal Police Station in which charge-sheet has now been filed by the police and committed to the Court of First Special Sessions Court for Trial of MPs and MLAs at Hyderabad, wherein it has been renumbered as S.C.No.3 of 2013 is the first FIR, the trial of which should be continued and taken to its logical conclusion. Insofar the other complaints are concerned, those would stand discontinued. However, statements of the complainants recorded in those cases may be forwarded to the Court of First Special Sessions Court for Trial of MPs and MLAs and form part of the record on the basis of which learned trial Court may consider treating the said complainants as witnesses in the proceedings of S.C. No.3 of 2013.

32. With the above observations and directions, all the criminal petitions are accordingly disposed of.

33. Interim orders passed earlier would stand modified accordingly.

34. As a sequel, miscellaneous petitions pending if any in these criminal petitions, shall stand closed.

UJJAL BHUYAN , J

Date: 21.03.2022

LR Copy to be marked : YES

B/o.

As / Ndr