

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.14378 of 2014 (O&M)
Date of Decision:08.01.2024

Sheo Ram Aggarwal

... Petitioner

Versus

Dharam Pal Aggarwal

... Respondent

2. CRM-M No.3216 of 2015

Sheo Ram

... Petitioner

Versus

Dharam Pal and another

... Respondents

3. CRM-M No.4554 of 2015 (O&M)

Subhash and another

... Petitioners

Versus

Dharam Pal and another

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anurag Jain, Advocate
for the petitioner(s) in CRM-M No.14378 of 2014 and
CRM-M No.3216 of 2015.

None for the petitioners in CRM-M No.4554 of 2015.

Ms. Geeta Sharma, DAG, Haryana.

Mr. Gautam Dutt, Advocate
for the complainant.

HARPREET SINGH BRAR, J. (ORAL)

1. This order of mine shall dispose of three petitions bearing CRM-M Nos.14378 of 2014, 3216 and 4554 of 2015 as the issue involved in all petitions is similar. For the sake of brevity, facts are being culled out from CRM-M No.14378 of 2014.

2. In the petition bearing CRM-M No.14378 of 2014 filed under Section 482 Cr.P.C., the petitioner has sought quashing of the impugned order dated 27.01.2014 (Annexure P-10) passed by the learned Additional Chief Judicial Magistrate, Hisar whereby the cancellation report filed by the investigating agency has been converted into a complaint case filed by the respondent while ignoring the fact that a complaint filed by the respondent on the same set of allegations is already pending before the learned trial Court wherein the petitioner has already been summoned to face trial along with other co-accused.

3. Prayer in CRM-M No.4554 of 2015 is for quashing of the impugned order dated 25.07.2014 (Annexure P-9) passed by the learned Additional Chief Judicial Magistrate, Hisar vide which the petitioners have been summoned to face trial under Sections 420, 467, 468, 471 IPC in Criminal Case No.24 dated 14.06.2005 filed under Sections 420, 467, 468, 471, 120-B, 34 IPC at Police Station Civil Lines, Hisar ignoring the fact that on the same set of allegations proceedings are already pending before the trial Court against the petitioners as well as the impugned order dated 09.01.2015 (Annexure P-10) by which revision petition filed by the petitioner has been dismissed by the Additional Sessions Judge, Hisar.

4. In CRM-M No.3216 of 2015, the petitioner has sought quashing of the impugned summoning order dated 21.02.2012 (Annexure P-7) passed by the learned Chief Judicial Magistrate, Hisar vide which the petitioner has been summoned to face trial under Sections 420, 467, 468, 471 IPC in Criminal Case No.566-1 dated 14.06.2005 filed under Sections 420, 467, 468, 471, 120-B IPC at Police Station Civil Lines, Hisar ignoring the fact that on the same set of allegations proceedings are already pending before the trial Court against the trial

Court as well as the impugned order dated 09.01.2015 (Annexure P-8) by which revision petition filed by the petitioner has been dismissed by the Additional Sessions Judge, Hisar.

5. In brief, facts are that petitioner and the respondent-Dharam Pal Aggarwal were in very good terms and they were jointly engaged in the business of property dealing. However, due to illegal acts and conduct of respondent No.1, their relationship became strained and respondent implicated the petitioner in one or another case by levelling false and frivolous allegations against him. The respondent filed a complaint under Sections 420, 467, 468, 471, 452, 506, 120-B IPC alleging therein that petitioner in connivance with other co-accused had prepared agreements to sell dated 10.11.1998 and 01.09.1994 by forging his signatures. The said complaint had been sent under Section 156 (3) Cr.P.C. for registration of a criminal case against the petitioner by the learned trial Court along with other co-accused whereupon FIR No.421 dated 03.08.2001 was registered under Sections 420, 467, 471, 452, 120-B, 506 IPC at Police Station Civil Lines, Hisar. During the course of investigation in the said FIR, it transpired that the petitioner did not commit any illegal act or offence and when the investigating agency was about to file a cancellation report in the said FIR case, respondent filed another private complaint on the same set of allegations before the learned trial Court under Sections 420, 467, 468, 471, 120-B and 34 IPC in which the petitioner as well as other co-accused namely Subhash and Zile Singh had been arrayed as accused. In the said private criminal complaint vide order 16.09.2006 (Annexure P-3), the learned trial Court has summoned the petitioner along with other co-accused to face trial for commission of offences punishable under Sections 420, 467, 468, 471, 120-B/34 IPC. Aggrieved against the said summoning order dated 16.09.2006, one of the co-accused namely

Subhash filed a revision petition before the learned Sessions Judge, Hisar, who vide order dated 16.07.2008, while accepting the said petition had categorically held that the impugned order passed by the learned trial Court was passed without making proper inquiry into the matter afresh and thus, remanded the matter back before the learned trial Court to enquire into the matter afresh after appreciation of facts and law.

6. Thereafter, in compliance of order dated 16.07.2008 passed by the learned Sessions Judge, Hisar, the learned trial Court made enquiry into the matter and after appreciating the material available on record, dismissed the said private complaint qua the co-accused vide order dated 21.02.2012, however, summoned the petitioner to face trial for commission of offence under Sections 420, 467, 468, 471 IPC.

7. During the course of investigation of the second complaint, the investigating agency filed a cancellation report before the learned trial Court in FIR No.421 dated 03.08.2001 registered under Sections 420, 467, 468, 471, 452, 506, 120-B IPC, which was accepted vide order dated 31.01.2006 passed by the learned trial Court and accused persons were discharged. Aggrieved by the said order dated 31.01.2006, respondent preferred a revision petition before the learned Additional Sessions Judge, Hisar which was accepted vide order dated 13.02.2009 and the matter was remanded back for passing a fresh order. The order dated 13.02.2009 passed by the learned Additional Sessions Judge was challenged by the petitioner in CRR No.607 of 2009 before this Court, which was dismissed vide order dated 21.03.2013. The petitioner and the respondent appeared before the learned trial Court on 20.01.2014 and the respondent made a statement that he did not want any action against anybody with regard to agreement dated 01.09.1994. Thereafter, without appreciating the fact that the

respondent had availed remedy of complaint on the same set of allegations, the learned trial Court vide impugned order dated 27.01.2014 converted the cancellation report submitted by the investigating agency into a complaint case and directed the respondent to lead preliminary evidence.

8. Learned counsel for the petitioner *inter alia* contends that while passing the impugned order dated 27.01.2014, the learned trial Court has totally ignored the fact that once the cognizance has already been taken by the learned trial Court on the private complaint filed by the respondent vide order dated 21.02.2012, the second complaint on the same set of allegations is nothing but an abuse of the process of law. In support of his contention, he relies upon the judgment passed by the Hon'ble Supreme Court in ***S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. and others 2008 (2) RCR (Crl.) 38*** as well as judgment passed by this Court in ***Ved Parkash Vs. Bhana @ Jai Bhagwan 2004 (2) RCR (Crl.) 336***. Further reliance has been placed upon the judgment passed in ***The State of Haryana and others Vs. Chaudhary Bhajan Lal and others 1992 SCC (Criminal) 426*** to contend that in order to prevent the abuse of process of the Court or otherwise to secure the ends of justice, inherent power under Section 482 Cr.P.C. can be exercised.

9. It is also contended that in the first complaint petitioners in CRM-M No.4554 of 2015 namely Subhash and Zile Singh have already been discharged and therefore, order dated 25.07.2014 passed by the learned trial Court summoning them to face trial for commission of offences punishable under Sections 420, 467, 468 and 471 IPC in the second complaint filed on the same set of allegations is not sustainable. Further, the petitioner-Sheo Ram in CRM-M No.3216 of 2015 has been summoned to face trial in the first complaint and therefore, order dated 21.02.2014 passed by the learned trial Court whereby he

has been summoned to face trial for commission of offences punishable under Sections 420, 467, 468 and 471 IPC is also liable to be set aside, keeping in view the fact that another complaint on the same set of allegation is already pending consideration of the learned trial Court.

10. Per contra, learned counsel appearing for the respondent submits that the learned trial Court has rightly passed the impugned order dated 27.01.2014, as the allegations levelled in both the complaints are different. In pursuance to complaint dated 01.08.2001 filed under Section 156 (3) Cr.P.C. before the trial Court, FIR No.421 dated 03.08.2001 was registered under Sections 420, 467, 471, 452, 120B, 506 IPC at Police Station Civil Lines, Hisar against 9 accused whereas in the complaint dated 14.06.2005 filed subsequently, there are only three accused i.e. petitioners herein. Petitioners along with other accused persons forged the agreement to sell to give undue benefit to Sheo Ram Aggarwal. The cancellation report in the first complaint was filed on the basis that the parties are related to each other and civil litigation was pending between them. It is further contended that in fact, the second complaint was filed prior to passing of order on cancellation report submitted by the police on 14.06.2005 in which petitioners have been ordered to be summoned to face trial for commission of offence punishable under Sections 467, 468, 471, 120-B, 34 IPC. Since the trial Court vide impugned order dated 31.01.2006 did not consider the cancellation report, which was filed on the basis of pendency of civil litigation between the parties, the Revisional Court had rightly set aside the said order and remanded the matter back for fresh consideration. Thereafter, on appreciation of material available on record, the learned Court has passed the order dated 27.01.2014 converting the cancellation report into a complaint case so that the

complainant could be able to lead evidence to prove the allegations levelled therein.

11. I have heard learned counsel for the parties and perused the paper book with their able assistance as well as the case laws cited.

12. The first complaint was filed by the respondent on 01.08.2001 under Section 156 (3) Cr.P.C. before the trial Court on the basis of which FIR No.421 dated 03.08.2001 was registered under Sections 420, 467, 471, 452, 120B, 506 IPC at Police Station Civil Lines, Hisar. Investigation in the said FIR was conducted by the investigating agency and a cancellation report was prepared. However, before submitting the said cancellation report before the learned trial Court by the investigating agency, another complaint alleging same set of allegations was filed by the respondent on 14.06.2005 i.e. after a period of about 4 years. In the said complaint, petitioners have been summoned for facing trial for commission of offences punishable under Sections 420, 467, 468, 471 IPC vide impugned orders dated 21.02.2012 and 25.07.2014, which are subject of challenge in CRM-M No.3216 of 2015 and 4554 of 2015 respectively. It is apt to mention herein that in the first complaint, petitioners in CRM-M No.4554 of 2015 were discharged, however, they are ordered to be summoned in the second complaint to face trial for commission of offences punishable under aforesaid Sections.

13. A perusal of the record clearly indicates that it is not the case of the respondent that he acquired acknowledge with regard to forgery of the second agreement to sell dated 10.11.1998 when he preferred to file second private complaint rather he has categorically pleaded in the first complaint with regard to forgery of both the agreements to sell dated 01.09.1994 and 10.11.1998. As such, the respondent cannot be allowed to blow hot and cold in the same breath

and set up his case by twisting and re-agitating same facts and allegations, which he has already pleaded in the first complaint dated 01.08.2001. The petitioners cannot be subjected to agony of trial for the second time on the same set of allegations for which they have already been subjected to investigation by the police and enquiry by the Magistrate.

14. It is settled proposition of law that second complaint against same accused in respect of same incident/transaction is not only impermissible but would be violative of Article 21 of the Constitution of India unless it is a counter-complaint by the other party. A two Judges Bench of the Hon'ble Supreme Court in ***T.T. Antony Vs. State of Kerala and others (2001) 6 SCC 181***, speaking through Justice S.S.M. Quadri has held as under:-

“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 CrPC 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 [(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) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, 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 CrPC or under Articles 226/227 of the Constitution.

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35. For the aforementioned reasons, the registration of the second FIR under Section 154 CrPC on the basis of the letter of the Director General of Police as Crime No. 268 of 1997 of Kuthuparamba Police Station is not valid and consequently the investigation made pursuant thereto is of no legal consequence, they are accordingly quashed. We hasten to add that this does not preclude the investigating agency from seeking leave of the Court in Crimes Nos. 353 and 354 of 1994 for making further investigations and filing a further report or reports under Section 173(8) CrPC before the competent Magistrate in the said cases. In this view of the matter, we are not inclined to interfere with the judgment of the High Court under challenge insofar as it relates to quashing of Crime No. 268 of 1997 of Kuthuparamba Police Station against the ASP (R.A. Chandrasekhar); in all other aspects the impugned judgment of the High Court shall stand set aside.”

15. A two Judges Bench of the Hon’ble Supreme Court in ***Krishna Lal Chawla and others Vs. State of Uttar Pradesh and another (2021) 5 SCC 435*** speaking through Justice M.M. Shantanagoudar has observed as under:

“4. The learned counsel for Respondent 2 sought to justify the impugned orders by relying on the following excerpt from this Court's decision in Upkar Singh v. Ved Prakash [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , which clarified the import of its previous holding in T.T. Antony v. State of Kerala [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] : (Upkar Singh case [Upkar

Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , SCC p. 299, para 23)

“23. Be that as it may, if the law laid down by this Court in T.T. Antony case [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.”

Therefore, Upkar Singh clarified that this Court's previous decision in T.T. Antony will not bar the filing of a second complaint with respect to the same incident, if such second complaint is filed as a counter-complaint by the other party.

5. We are in agreement with the aforementioned construction of T.T. Antony. However, we fail to see how this position of law comes to Respondent 2's rescue. The question posed in the present case for consideration before us is wholly different, and concerns the validity of the private complaint filed by Respondent 2, after an earlier information filed as NCR No. 158 of 2012 — both of which were filed by the same party, against the same accused, and in relation to the same incident that too after the charge-sheet was filed in case arising out of NCR No. 160 of 12 in Crime No. 283 of 2017 after taking due permission of the Magistrate. The aforementioned portion of Upkar Singh relied on by Respondent 2, thus, does not benefit his case.

6. Indeed, a closer look at the decision in Upkar Singh takes us to the contrary conclusion. In regard to the question of material improvements made in a subsequent private complaint by the same complainant against the same accused with regard to the same incident, it may be useful to refer to the following excerpt

from Upkar Singh, which further clarifies the holding in T.T. Antony (Upkar Singh SCC pp. 297-98, para 17)

“17. ... 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.”

(emphasis supplied)

It is the aforementioned part of the holding in Upkar Singh that bears directly and strongly upon the present case.

7. This Court in Upkar Singh has clearly stated that any further complaint by the same complainant against the same accused, after the case has already been registered, will be deemed to be an improvement from the original complaint. Though Upkar Singh was rendered in the context of a case involving cognizable offences, the same principle would also apply where a person gives information of a non-cognizable offence and subsequently lodges a private complaint with respect to the same offence against the same accused person. Even in a non-cognizable case, the police officer after the order of the Magistrate, is empowered to investigate the offence in the same manner as a cognizable case, except the power to arrest without a warrant. Therefore, the complainant cannot subject the accused to a double whammy of investigation by the police and inquiry before the Magistrate.

8. We are cognizant of the fact that in the present case, no investigation had begun pursuant to NCR No. 158 of 2012 filed by Respondent 2 for a certain period. However, the overall concern expressed by this Court in Upkar Singh about the misuse of successive complaints by the same party, where the second complaint is clearly propped up to materially improve on the earlier one, resonates with us. We regret to say that the same thing which this Court had categorically prohibited in Upkar Singh has happened in the present case.

9. *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 (SCC p. 373, para 37)*

“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 [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 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)

10. *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, such an absurd and mischievous interpretation of the provisions of the CrPC will not stand the test of constitutional scrutiny, and therefore cannot be adopted by us.”*

16. Keeping in view the aforesaid facts and circumstances and ratio laid down by the Hon’ble Supreme Court in *T.T. Antony (supra)* and *Krishna Lal Chawla (supra)*, this Court finds force in the arguments raised by the counsel appearing for the petitioner(s). Resultantly, the summoning order dated 25.07.2014 (Annexure P-9) passed by the learned Additional Chief Judicial Magistrate, Hisar qua petitioners Subhash Chand and Zile Singh in CRM-M No.4554 of 2015 and summoning order dated 21.02.2012 (Annexure P-7) passed by the learned Chief Judicial Magistrate, Hisar qua petitioner Sheo Ram in CRM-M No.3216 of 2015 respectively are set aside. Consequently, CRM-M Nos.4554 and 3216 of 2015 are allowed.

17. As regards the relief sought in CRM-M No.14378 of 2014, this Court is informed that the first complaint dated 01.08.2001 in which the cancellation report submitted by the investigating agency was converted into complaint case under Sections 420, 467, 468, 471, 201 and 506 read with Section 120-B IPC has been dismissed vide order dated 20.10.2023 passed by the learned Judicial Magistrate 1st Class, Hisar and against the said order, the respondent/complainant has preferred a revision petition before the Sessions Court, Hisar. In view of the said fact, nothing survives for consideration in CRM-M No.14378 of 2014 and the same is dismissed as having been rendered infructuous. However, either of the parties will be at liberty to challenge the order passed by the Revisional Court against it, in accordance with law.

(HARPREET SINGH BRAR)
JUDGE

January 08, 2024
Pankaj*

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