



263 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-33311-2017
Decided on:-14.05.2024

Kulbir SinghPetitioner..

VS.

State of PunjabRespondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sandeep Singh Rana, Advocate
for the petitioner.

Mr. Siddharth Sandhu, AAG, Punjab.

HARKESH MANUJA J. (Oral)

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of FIR No.73 dated 27.04.2017, registered under Sections 379 and 411 IPC at Police Station Lalru, District SAS Nagar, which was got registered on the basis of secret information, wherein the petitioner has been implicated for the theft of two buffaloes from village Ramgarh Majra, Police Station Mahesh Nagar, District Ambala.
2. Learned counsel for the petitioner submits that regarding the same incident of alleged theft of two buffaloes on 27.04.2017 from the *bara* of Kaka Singh, village Ramgarh Majra, FIR No.123 dated 27.04.2017 under Section 379 IPC was registered at Police Station Mahesh Nagar, District Ambala around 8:45 p.m. on a complaint made by Kaka Singh.

He further submits that the FIR in question was also registered for

this very incident with the same allegations and the same offence on

27.04.2017, besides Section 411 IPC, on the basis of secret information at Police Station Lalru, District SAS Nagar, which amounted to misuse of process of law, thereby causing serious prejudice to the rights of the petitioner and thus, the FIR in question needs to be quashed. He also submits that in any case the petitioner and two other accused persons were acquitted by learned Judicial Magistrate Ist Class, Ambala vide order dated 14.02.2024 (a copy of judgment dated 14.02.2024 is taken on record as Mark "X") and therefore, trial in the present case would be a futility.

3. On the other hand, prayer made herein has been opposed at the instance of learned State counsel while submitting that the FIR in question was registered on the basis of secret information and the petitioner along with the buffaloes was apprehended within the territory of Lalru, District SAS Nagar and upon completion of investigation even challan stands presented before the Illaqa Magistrate on 15.02.2019, thus, the FIR in question warrants no interference.

4. I have heard learned counsel for the parties and gone through the paper book.

5. There is also substance in the arguments raised by the learned Counsel for the petitioner that both the FIRs pertain to the same occurrence, hence only one FIR could be registered. A coordinate bench of this Court in **"Saurav Arora @ Sourav Arora v. UT of Chandigarh", reported as 2022(2) ILR(Punjab) 154** bearing case number CRM-M No.37487 of 2016 decided on 26.04.2022, under identical circumstances held that "theft in Panchkula and consequent recovery of the Activa in Chandigarh" were two incidents which were part of the same transaction and therefore, both these FIRs are 'same' as per the test laid down in **Anju Choudhary Vs. State of**

U.P. & another, 2013(1) RCR (Criminal) 686. Relevant paras No.11 to 14 of **Saurav Arora's** case are reproduced hereunder:

“11. A perusal of the aforementioned judgments in Anju Chaudhary's case (supra) would show that the test of 'sameness' is to be applied to find out whether both the 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. In the present case applying the said test of 'sameness', it would be seen that the FIR in Panchkula pertains to an offence of theft under Section 379 IPC and the challan was submitted under Section 379/411 IPC. The scooter was recovered in Chandigarh by the police of Police Station Manimajra and the FIR was registered under Sections 379/411 IPC. Therefore, both the FIRs/occurrences pertained to one incident/occurrence of theft or it could be said that there were two incidents which are part of the same transaction i.e. theft in Panchkula and consequent recovery of the Activa in Chandigarh. Therefore, it is clear that both these FIRs are virtually identical or 'same' as per the test laid down in Anju Chaudhary's case (supra).

12. The aforementioned judgments of the Hon'ble Supreme Court and this Court would go to show that a second FIR with respect to the same offence/occurrence/incident is thus not maintainable. One of the exceptions to the aforementioned principle is where there are two rival versions in respect of the same episode in which case they would ordinarily take the shape of two different FIRs and the investigation can be carried on under both of them by the same Investigating Agency. Therefore, filing of the second FIR No.672 dated 18.12.2015 (Annexure P-2) registered under Sections 379 and 411 IPC at Police Station Manimajra, Chandigarh and fresh charge-sheet is clearly impermissible in law. In the present case, as has already been mentioned above, there already stood an FIR No.131 registered under Section 379 IPC at Police Station Sector 19, Panckhula. The challan was submitted under Sections 379/411/34 IPC. The

conviction was recorded by the trial Court under Sections 411/34 IPC and ultimately, the accused came to be acquitted for the offences under Sections 411/34 IPC as well. These facts would show that the offences in FIR No.131 are identical to the offences in FIR No.672 (impugned FIR) and the occurrence/incident is one and the same or part of the same transaction.

13. *Thus, it is clearly established that the registration of the second FIR No.672 dated 18.12.2015 registered under Sections 379/411 at Police Station Manimajra, Chandigarh was an abuse of the process of law.*

14. *Therefore, keeping in view the judgments of the Hon'ble Supreme Court and this Court as also the factual matrix of the present case, the FIR No.672 (Annexure P-2) dated 18.12.2015 registered under Sections 379 and 411 IPC at Police Station Manimajra, Chandigarh along with all consequential proceedings arising therefrom are hereby quashed."*

6. Once, the allegations of theft of buffaloes by the petitioner along with two others from the bara of Kaka Singh have not been proved, resulting into his acquittal, any other FIR with the similar allegations except with addition of Section 411 IPC becomes unsustainable and misuse of process of law as unless the theft of buffaloes was established, the petitioner could not be tried for offence under Section 411 IPC.

7. Additionally, as per the records, in terms of allegations levelled by Kaka Singh about the theft of his two buffaloes from his *bara* outside his house on 27.04.2017 situated in village Ramgarh Majra, Police Station Mahesh Nagar, District Ambala, the petitioner along with two others faced trial and were acquitted by the Court of Judicial Magistrate Ist Class, Ambala vide judgment dated 14.02.2024, which has not been assailed so far in the superior Court despite period of filing appeal having expired as per the

information provided by learned counsel representing the petitioner.

8. Resultantly, in view of the discussion made herein above, the present petition is allowed and FIR No.73, dated 27.04.2017, under Sections 379 and 411 IPC, at Police Station Lalru, District SAS Nagar is hereby quashed qua the petitioner.

14.05.2024
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(HARKESH MANUJA)
JUDGE

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