HIGH COURT OF TRIPURA AGARTALA

CRL. PETN NO.29 OF 2021

Sri Jitendra Chaudhury

S/o- Late Matahari Chaudhury, Resident of Bijay Kumar Chowmuhani P.O.-Agartala, Pin-799001, P.S. West Agartala, Dist:- West Tripura.

Vs.

1. The State of Tripura.

2. Sri Satyajit Paul,

S/o- Sri Tapash Paul, Resident of Vill:- Sonatala P.O.- Sonatala, P.S. Khowai Pin-799201 District- khowai, Tripura.

3. Sri Dipak Malakar

S/o: Sri Dilip Malakar Resident Of: Hapania, Madhya Para, P.S.- Amtali, P.O. Amtali

Pin-799130, District: West Tripura, Agartala.

For the Petitioner(s) : Mr. S. Sarkar, Sr. Advocate.

Ms. S. Banik Deb, Advocate.

For the Respondent(s) : Mr. S.S. Dey, Advocate General.

Ms. A. Saha, Advocate.

Date of hearing : 18.11.2021.

Date of delivery of

Judgment & Order : 18.12.2021

Whether fit for reporting: YES.

JUDGMENT AND ORDER

Heard Mr. S. Sarkar, learned senior counsel assisted by Ms. S. Banik Deb, learned counsel appearing for the petitioner as well as Mr. S.S. Dey, learned Advocate General assisted by Ms. A. Saha, learned counsel appearing for the State-respondents.

- 2. This instant criminal petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing the following FIRs being; 1) FIR dated 31.05.2021 vide Amtali P.S. Case No.73/2021 registered under Sections 120(B)/153/153(A)/109/506 of IPC & 2) FIR dated 01/06/2021 vide Khowai P.S. Case No.56/2021 registered under Sections 153/120(B)/506 of IPC.
- 3. In the instant criminal petition, the petitioner has prayed for the following reliefs:-
 - "a) Admit the instant petition.
 - b) Call for the records and case proceeding of
 - (1) Amtali P.S. Case No.73/2021 dated 31/05/2021 registered under Sections 120(B)/153/153(A)/109/506 of IPC
 - (2) Khowai P.S. Case No.56/2021 dated 01.06.2021 registered under Sections 153/120(B)/506 of IPC.)
 - c) Notify the respondents.

AND

d) After hearing both sides be pleased to quash the aforesaid two sets of FIR against the accused petitioner.

AND

- e) Pending hearing and final disposal of the instant case this Hon'ble Court be pleased to stay the further proceedings of
- (1) Amtali P.S. Case No.73/2021 dated 31/05/2021 registered under Sections 120(B)/153/153(A)/109/506 of IPC
- (2) Khowai P.S. Case No.56/2021 dated 01.06.2021 registered under Sections 153/120(B)/506 of IPC."
- 4. It is the case of the petitioner that the private respondents have registered FIRs vide Amtali P.S. Case No.73/2021 dated 31.05.2021 and Khowai P.S. Case No.56 of 2021 dated 01.06.2021 on the sole statement which has been posted in the social media of the petitioner which is reproduced here-under:-

"Sesh ke finished korun ("Finish the end")"

- 5. Further multiple FIRs have been filed all though out the State of Tripura in various police stations.
- 6. Mr. S. Sarkar, learned Sr. counsel appearing for the petitioner submits that the petitioner is a Ex-Minister, Lok-Sabha MP and holding Senior position in the National Political Party [CPI(M)]. An illegal case is registered due to motivation in a vindictive manner against the petitioner and has prayed for quashing the FIRs on the ground that said statement which has been posted in the social media cannot be read along with any other post which was made by other

accused-persons and this needs to be read as a 'standalone' statement. The said statement is not provoking or disturbing the peace and harmony of the State and will not attract any penal provisions of IPC under which the said FIRs have been registered. Learned senior counsel relied upon, the judgment of the Apex Court passed in Patricia Mukhim Vs. State of Meghalaya and Ors., reported in 2021 SCC Online SC 258. Further with regard to the filing of multiple FIRs in the various police stations throughout the State of Tripura, learned Sr. counsel submitted that for one cause of action, there cannot be multiple FIRs as the intention of registering the FIR which is 'First Information' Report', the terminology, 'First' needs to be given priority to the person who has the knowledge and has filed the complaint and in pursuance, thereof, an FIR has been issued. There cannot be any second person and second FIR and so on. On this point, the learned Sr. counsel appearing for the petitioner has relied upon paragraph-30 & 59 of the judgment of the Apex Court in *Arnab Ranjan Goswami* Vs. Union of India and ors., reported in (2020) 14 SCC **12** which is reproduced here-in-below:-

[&]quot;30. The fundamental basis on which the jurisdiction of this Court has been invoked under Article 32 is the filing

of multiple FIRs and complaints in various States arising from the same cause of action. The cause of action was founded on a programme which was telecast on R. Bharat on 21.04.2020. FIRs and criminal complaints were lodged against the petitioner in the States of Maharashtra, Rajasthan, Madhya Pradesh, Telangana and Jharkhand besides the Union Territories of Jammu and Kashmir. The law concerning multiple criminal proceedings on the same cause of action has been analyzed in a judgment of this Court in T.T. Antony v State of Kerala ("T.T. Antony"). Speaking for a two judge Bench, Justice Syed Shah Mohammed Quadri interpreted the provisions of Section 154 and cognate provisions of the CrPC including Section 173 and observed:

"20...under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC, only the earliest or the first information in regard to commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus, there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.

59. As we have noted earlier, multiple FIRs and complaints have been filed against the petitioner in several states and in the Union Territories of Jammu and Kashmir. By the interim order of this Court dated 24.04.2020, further steps in regard to all the complaints and FIRs, save and except for the investigation of the FIR lodged at Police Station Sadar, District Nagpur City were stayed. The FIR at Police Station Sadar, District Nagpur City has been transferred to N.M. Joshi Marg Police Station in Mumbai. We find merit in the submission of Mr Kapil Sibal, learned Senior Counsel that fairness in the administration of criminal justice would warrant the exercise of the jurisdiction under Article 32 to quash all other FIRs (save and except for the one under

investigation in Mumbai). However, we do so only having regard to the principles which have been laid down by this Court in T.T. Antony. The filing of multiple FIRs arising out of the same telecast of the show hosted by the petitioner is an abuse of the process and impermissible. We clarify that the quashing of those FIRs would not amount to the expression of any opinion by this Court on the merits of the FIR which is being investigated by the N.M. Joshi Marg Police Station in Mumbai."

- In view of the same, while challenging the action of the respondents in registering multiple FIRs against the petitioner, learned Sr. counsel appearing for the petitioner has prayed for quashing the above-mentioned FIRs.
- 8. Mr. S.S. Dey, learned Advocate General appearing for the State-respondents submitted that the petitioner is not an ordinary person but he is the Ex-Minister of the State and was also Member of Parliament (Lok Sabha) as well as holding a senior position in a national political party, CPI(M). One provoking word of the petitioner would have a serious disaster and would lead to law and order problem and being a leader of the country he cannot take the side of one section of the society and make a statement to attack the other section of the society. He further contended that this statement cannot be read as a 'stand alone' statement but in continuation of the other statements made and in pursuance of the events occurred

and the circumstances prevailing, all statements made by the accused persons need to be read together in its sequence to understand the impact that would bring on to the society and thus he prayed to reject the contention as a 'stand-alone' statement which is not having any serious impact of provoking the public.

- 9. Further with regard to the registering of multiple FIRs, argument has been advanced for rejecting the contention as the FIRs were registered on the complaints received and they needs to be investigated whether it is a single FIR or multiple FIRs as registering of multiple FIRs cannot be restricted in order to protect the law and order and on this point also learned Advocate General has prayed for rejecting the case of the petitioner.
- 10. The learned Advocate General also placed before this Court an order passed in *Crl. Petn No.28 of 2021* title as *Sri Bhanulal Saha Vs the State of Tripura & Ors.*, against one of the accused, where this Court was not inclined to quash the FIR and further prayed to dismissing the criminal petition in its entirety and allow the prosecution to proceed with the investigation.
- 11. Heard and perused records.

- The petitioner herein is an accused in (1) FIR No. 73/2021 dated 31.05.2021 in P.S. Amtali registered under Section 120(B)/153/154A/109/506 of IPC & (2) FIR No. 56/2021 dated 01.06.2021 in P.S. Khowai registered under Section 153/120B/506 IPC and prayed to quash the above said FIRs.
- The *de facto* complainant, Mr. Dipak Malakar, R/o Hapania under the Jurisdiction of P.S. Amtali on 31.05.2021 filed a complaint against Mr. Bhanulal Saha and Mr. Bijan Dhar for posting on Facebook (social media). The said persons happen to be CPI(M) leaders and have posted instigating posts on 30.05.2021.
- (i) The relevant portion of the complaint against Mr. Bhanulal Saha were:-
 - "For mass resistance of their bricks, kicks, petrol bombs etc, keep handy sticks, sickle, door bar, shovel, fish knife, axe, pickaxe, iron pipes etc. (Legally vegetarian weapon) in every houses by everyone irrespective of men, women, teenagers and old persons. Gather courage to face outsider attackers. It is not a crime to take up things in hand for self defence. It is impossible to protect life and property without resistance. Young age you turn into fire. Hundreds-thousands of youths be ready. Resist lumpens and ruling party goons with courage. Join people actively from the locality and be in leadership." (2) "Where there are bullying by five goons there must be carried out protest meeting/rally of five hundred people Mass leader Jyoti Basu."
- (ii) The relevant translated portion of the complaint against Mr. Bijan Dhar were:-

" (1) Today at Badharghat area those who carried out the attack at house to house, if police doesn't take any action, then culprits must be taught a lesson by everyone collectively, not acceptable any more. 2.' Everyone be ready, where there is an attack there must carry out resistance."

In continuation, the complainant alleged against the petitioner herein that "On last night i.e. 30.05.2021, it has also seen that one conspiratorial post is "Finish the end (Sesh ka finished korun)". His apprehension is that the CPI(M) leaders criminally conspired with others to incite and intimidate different political workers in order to spoil peace and harmony in the State of Tripura.

- 14. The other complainant before P.S. Khowai on 01.06.2021 alleged that Mr. Bhanulal Saha, Mr. Bijan Dhar and Mr. Jitendra Choudhary being political leaders of CPI(M) party have posted instigating posts in Facebook and would cause law and order problems. Specific allegation is made against Mr. Bhanulal Saha. In so far as against Mr. Jitendra Choudhary, the petitioner herein is concerned, the screenshot of the said Facebook post is enclosed and requested to take action.
- In so far as the allegations against Mr. Jitendra Choudhury, the petitioner herein is concerned, this petition needs to be decided as to whether the post " Sesh ka finished korun" (Finish the End) needs to be considered as 'stand alone'

statement and whether it attracts Section 120(B), 153, 153(A), 109 and 505 of IPC.

The full extract of Sections 120(A), 120(B), 153,

153(A), 109 and 505 of IPC are reproduced herein-under:-

" Section 120(A) of IPC:-

- [120A. **Definition of criminal conspiracy**.—When two or more persons agree to do, or cause to be done,—
- (1) an illegal act, or
- (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Section 120(B) of IPC:-

"[120B. Punishment of criminal conspiracy.—

- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
- (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

Section 153 of IPC:-

"153. Wantonly giving provocation with intent to cause riot-if rioting be committed-if not committed- Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending of knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Section 153A of IPC

"153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—

- (1) Whoever—
- (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or
- (b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, [or]
- [(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc.—(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Section 109 of IPC

- "109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence. Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment. Illustrations
- (a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.
- (b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.
- (c) A and B conspire to poison Z. A in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

Section 506 of IPC.

***506. Punishment for criminal intimidation**.—Whoever commits, the offence of criminal intimidation shall be punished with imprison-

ment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

16. The ingredients of Offences:-

- i) Section 109 of IPC-abetment-
- 1) Abetment either by instigation, conspiracy or aiding;
- 2) The principal act of abetment must have been committed
- ii) Section 120 of IPC- Criminal Conspiracy-
- 1) There must have been existence of design to commit offence;
- 2) Such offence should be punishable with imprisonment;
- 3) The accused concealed the existence of such design;
 - a) by an overt act or illegal omission;
- b) by knowingly making a false representation;
 - 4) The accused did say voluntarily;
- 5) He thereby intended to facilitate or knew that he would thereby facilitate the commission of such offence.
 - ii) Section 153 of IPC- Essential ingredients of offence
 - 1) The accused did not act which is illegal;
 - 2) He caused the provocation to others by such
 - 3) He did so malignantly or wantonly;
- 4) He did so with the intention that his provocation will cause the offence of rioting or knowing that it is like to cause the offence of rioting.
 - iii) Section 153A of IPC- Ingredient of Offence

act;

Mens rea is essential ingredient of the offence.

iv) Section 506 of IPC- Criminal Intimidation

- 1) The accused threatened someone with injury to his person, reputation or property, or to the person, reputation or property of another in whom the former was interested;
- 2) The accused did so with intent to cause alarm to the victim of offence.
- 3) The accused did so to cause the victim to perform any act which he was not legally bound to do.
- 17. First Information Report under Section 154 of Cr.P.C. is reproduced herein-under:-

"154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

[Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that--

- (a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such persons choice, in the presence of an interpreter or a special educator, as the case may be;
- (b) the recording of such information shall be videographed;
- (c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.]
- (2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.
- (3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information

discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

18. First information: Meaning. - The first information is that information which is given to the police first in point of time, on the basis of which the investigation commences and not that which the police may select and record as first information. But when the formation, which is given to the police, is vague and indefinite in character, it cannot be treated as first information. Accordingly, any telephone message to the police station if too cryptic, cannot constitute and FIR- AIR 1975 SC 1453: 1975 Cr.LJ 1201: (1975) 4 SCC 257. Similarly, any anonymous telephone message at police station that firing had taken place at a taxi stand, though first in point of time, does not by itself clothe it with the character of first information report-AIR 1970 SC 1566:1970 Cr LJ 1415:(1970) 2 SCC 113. An FIR is not intended to be a very detailed documents and is meant to give only the substance of the allegations made-AIR 1985 SC 1384: 1985 Cr. LJ 2009: (1985) 3 SCC 703. The information under the section must unmistakably relate to the commission of a cognizable offence- Binay v. State 1997 Cr LJ 362 (SC). Once an information is laid before a police officer in compliance with the requirement of sec. 154, the police officer is obliged to

enter it in prescribed form and register the case-1992 Supp (1) SCC 335; 1992 Cr LJ 526; see also 1992 Cr. LJ 1558 (HP).

Cryptic information simply to the effect that there was commotion in the village as firing and brickbatting was going on, cannot be treated as an F.I.R. as it neither discloses commission of a cognizable offence or names of assailants –*SK* Ishague v. State (1995) 3 SCC 392: 1995 Cr.LJ 2682.

The officer-in-charge of a police station is not obliged to prepare an FIR on any fabulous information received from somebody who does not disclose any authentic knowledge about commission of the cognizable offence-*Binay v State 1997 Cr. LJ 362(SC).*

- 19. When there are two F.I.Rs.- The legal position is that there cannot be two F.I.Rs against the same accused in respect of the same case. But, when there are rival versions in respect of the same episode, they would normally take the shape of two different F.I.Rs and investigation can be carried on under both of them by the same investigating agency- *Kari v. Sita Devi(2000) 1 SCC 714*.
- 20. Second FIR, when tenable.-Second FIR for the same incident cannot be allowed to be registered. But, circumstances may arise where recording of second or subsequent FIR is permissible. *In Shiv Shankar v. State of Bihar (2012) 1 SCC*

130 the apex court expressed the view that the law does not prohibit filing or entertaining of a second complaint even on the same facts, provided that the earlier compliant has been decided on the basis of insufficient materials or has been passed without understanding the nature of the complaint or where the complete facts could not be placed before the court and the applicant came to know of certain facts after the disposal of the first complaint. The court applied the test of full consideration of the complaints on merits.

- Tripura, Ex-member of Parliament (Lok Sabha) and Member of CPI(M) Central Committee. There is a post that appeared in social media, in his Facebook page in Bengali version "Sesh ke finished karon" (Finish the end).
- During the course of arguments, it is brought to the notice of this Court that one of the accused, Mr. Bijan Dhar expired recently in the month of October, 2021. However, it is not for this Court to go into the issue, since it is not before this Court in the present petition.
- 23. There is no denial by the petitioner about the said posting on his Facebook page is not by him. The only argument is made on the premise of (i) 'stand alone' statement and not

attracting above penal provisions (ii) multiple FIRs on the same cause of action not tenable.

- 24. At the very outset, this Court is convinced with the argument of the petitioner that for the same set of allegations, the petitioner should not be allowed to answer to different FIRs and investigation before different police stations. Whether filing of such multiple FIRs at different locations is part of a larger design to cause prejudice and harassment to the accused or not, in law it is by now well settled that investigation should be permitted only at one location.
- 25. With regard to the quashing of the FIRs, this Court finds that it is premature to come to a conclusion in favour of the petitioner since there is no denial by the petitioner on the posting of the said statement and it becomes immensely necessary to investigate into the matter and file charge-sheet to know the impact and intensity of the statement made since the petitioner is a politician and his statement goes in a long way and it might also lead to law and order problem. Unless the investigation is completed and charge-sheet is filed at the threshold, quashing of FIR on the ground that the statement made is 'stand alone' cannot be accepted since the posting on the Face book during the above period made by the persons from the said political party, needs a serious examination. The

investigating agency must be allowed to gather evidence and investigate the contentions in the FIR.

- 26. In view of the above serious allegations and discussion, the FIR dated 31.05.2021 vide Amtali P.S. Case No.73/2021 and FIR dated 01.06.2021 vide Khowai P.S. Case No. 56/2021 needs to be investigated.
- 27. In view of the above this Court is not inclined to quash the FIR dated 01.06.2021 vide Khowai P.S. Case No. 56/2021 and FIR dated 31.05.2021 vide Amtali P.S. Case No.73/2021. However, the enquiry into different FIRs should be at one location.
- 28. The instant criminal petition is disposed of with above observations.

JUDGE

suhanjit