

Court No. - 75

Case :- APPLICATION U/S 482 No. - 24871 of 2024

Applicant :- Smt Sangeeta Mishra

Opposite Party :- State Of U.P. And 6 Others

Counsel for Applicant :- Amitabh Tripathi, Saroj Kumar Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Manju Rani Chauhan, J.

1. Heard Sri S.K. Dubey, learned counsel for the applicant, Sri Rizwan Ahmad, learned AGA for the State and perused the record.
2. The applicant has preferred instant application under Section 482 Cr.P.C. assailing validity of an order dated 05.05.2022 passed by Chief Judicial Magistrate, Mathura in Misc. Application No. 2646/XI of 2021¹, vide which application under Section 156(3) Cr.P.C. has been rejected, as well as order dated 21.04.2023² vide which criminal revision against the aforesaid order has been rejected.
3. Brief facts of the case are that a first information report was lodged by Raghvendra Singh, Sub-Inspector on 28.05.2020 at 23:42 hours, under Sections 302 and 201 IPC, bearing Case Crime No. 331 of 2020, Police Station Vrindavan, District Mathura, against unknown, alleging that on 03.05.2020 at about 19:14 hours burnt dead body of one unknown person was found near the boundary wall of fields behind Vaishno Devi Dham. Postmortem report of the aforesaid was conducted, from which it was found that the aforesaid person was done to death by throttling and in order to destroy the evidence, the body was burnt and thrown behind Vaishno Devi Dham.
4. After lodging of the FIR, the police tried by all means to identify the dead body and the same was identified by the applicant Sangeeta

1 Smt. Sangeeta Mishra v. Sachchidanand and others

2 Passed in Criminal Revision No. 300 of 2022 by Additional District Judge, Court No. 3, Mathura

Mishra and her son on the basis of article which was recovered near the dead body, which has been narrated by the Investigating Officer in Parcha dated 08.06.2020 In the said parcha, endorsement regarding application for lodging missing report as moved by the applicant has also been endorsed by the Investigating Officer and the same was registered by the police on 31.05.2020 as missing report no. 37 of 2020.

5. The real fact was that father-in-law of the applicant executed family settlement regarding his property and divided share of their sons which was not within the knowledge of the applicant or her husband. As they were not taken into confidence, a dispute arose among the husband of the applicant, father-in-law, jeth and devar, thus a legal notice was sent by mother-in-law of the applicant to the applicant for compliance of condition of family settlement executed by her husband on 22.06.2019, to which husband of the applicant replied and denied the contents of family settlement.

6. To resolve the aforesaid dispute, one Chandra Mohan (brother-in-law of the applicant) came to her husband and requested her husband to be present at native place so that the matter is amicably settled. Accordingly, the applicant's husband went along with his brother Chandra Mohan at his house on 03.05.2020 and when he did not return, the applicant tried to search for him but he could not be traced.

7. Due to Covid-19 pandemic in the month of May, 2020, the applicant being placed in a difficult situation, could somehow inform the police on 04.05.2020 regarding missing of her husband but the police did not register any missing report. A reminder was given on 28.05.2020 but of no avail. In the meantime, the police ignoring the request of the applicant to lodge missing report, has registered the case being Case Crime No. 331 of 2020, as mentioned above.

8. The police after investigation, on the basis of confessional statement of the applicant, submitted chargesheet against the applicant and she was sent to jail. After being released from jail, she moved an application under Section 156(3) Cr.P.C. on 16.11.2021 requesting to lodge an FIR against real culprits as she was not being heard by the police authorities.

9. The court below has rejected the aforesaid application by order dated 05.05.2022 in a mechanical manner without application of mind on the ground that FIR for murder of husband of the applicant, has already been registered as Case Crime No. 331 of 2020, under Sections 302 and 201 IPC, Police Station Vrindavan, District Mathura, in which the applicant was found guilty and was sent to jail. Once for murder of applicant's husband, the case has been registered and charge sheet has been submitted against her, the contents in the application as moved by the applicant, appear to be suspicious, not deposing confidence so the same cannot be entertained.

10. Against the aforesaid order, the revision filed has also been rejected in a mechanical manner ignoring the settled position of law and without considering the fact that once from the contents of application under Section 156(3) Cr.P.C., cognizable offence is made out and in the facts of the present case the real culprits still go unnoticed, it was duty of the court to direct for registration of FIR in accordance with law.

11. Learned counsel for the applicant while challenging the impugned orders dated 05.05.2022 and 21.04.2023 has invited attention of the court to several judgements passed by the Apex Court and this Court submitting that the order has been passed in a mechanical and arbitrary manner.

12. The ground taken while rejecting the application under Section 156(3) Cr.P.C., as already stated, is that once FIR for the same offence has already been registered and the applicant has been chargesheeted, thus, in so many words for the same offence, second FIR could not be registered and in the contents narrated about the real culprits cannot be believed.

13. Learned counsel for the applicant while addressing this Court on the question as to when second FIR was permissible, he has placed reliance upon a judgement of the Supreme Court in the case of **Babu Bhai v. State of Gujarat and others**³, wherein the Court has held that in case of a subsequent FIR, the Court has to examine the facts and circumstances giving rise to both the FIRs and the 'test of sameness' is to be applied to find out whether both the FIRs relate to the same incident in respect of same occurrence or in regard to the incident which are two or more parts of the same transaction, and in case where the version in the second FIR is different and they are in respect of two different incidents, the second FIR is permissible. Relevant part of the said judgement reads thus:

"21. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the accused in the first FIR comes forward with a different version or counterclaim, investigation on both the FIRs has to be conducted."

14. In the case of **Babu Bhai (supra)**, it has also been discussed that filing an FIR pertaining to a counterclaim in respect to the same incident having a different version of events, is permissible.

3 (2010) 12 SCC 254

15. In the case of **T.T. Antony v. State of Kerala**⁴, the Court dealt with the case wherein in respect of some cognizable offence and same occurrence, two FIRs had been lodged and the 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. In the case of **T.T. Antony (supra)**, the Supreme Court has further observed 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. ... 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.”

16. Thus, the judgement in **T.T. Antony (supra)** does not exclude the registration of a complaint in the nature of counterclaim from the purview of the court. What had been laid down in the aforesaid judgement is that any further complaint by the same complainant against same accused, subsequent to the registration of a case, is prohibited under Cr.P.C. because an investigation in this regard would have already started and further the complaint against the same accused

4 (2001) 6 SCC 181 : 2001 SCC (Cri) 1048

will amount to an improvement on the facts mentioned in the original complaint.

17. The question regarding filing of an FIR pertaining to a counterclaim in respect of same incident, came up for discussion in several judgements. The Supreme Court in the case of **Nirmal Singh Kahlon**⁵, has held as under:

“67. The second FIR, in our opinion, would be maintainable not only because there were different versions but when new discovery is made on factual foundations. Discoveries may be made by the police authorities at a subsequent stage. Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature. If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, in our opinion, as and when the same surfaced, it was open to the State and/or the High Court to direct investigation in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged.”

18. The aforesaid question also came to be discussed in the case of **Ram Mohan Garg v. State of U.P.**⁶, wherein the Apex Court has held thus:

“6. So far as the registration of a cross-case on the basis of the first information report is concerned, that does not appear to be permissible after the investigation in respect of a crime has commenced in view of the provisions of Section 162 CrPC. However, it was always possible that during investigation of a crime the version set up in the first information report may be found to be false version and some other person really responsible for the crime may be charge-sheeted after a fair investigation. Hence, it was not necessary that a fresh first information report should have been registered on the basis of Annexure 3 which is a letter dated 22-6-1989 to the Director General of Police in view of the provision of Section 162 CrPC. However, it is always permissible in law for an aggrieved person to file a complaint before the competent Magistrate which can be investigated simultaneously according to the provisions of the Criminal Procedure Code.”

5 (2009) 1 SCC 441 : (2009) 1 SCC (Cri) 523

6 (1990) 27 ACC 438

19. Thus, the principle in law which can be understood from the above observation is that in regard to one and single incident, there could not be a case and a counter-case as two FIRs are not permissible in respect to one and same incident because the subsequent FIR is hit by Section 162 Cr.P.C.

20. The Supreme Court in the case of **Upkar Singh v. Ved Prakash and others**⁷, has held that second complaint in regard to same incident filed as counter-complaint is not prohibited under Cr.P.C., if in regard to a crime committed by 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.

21. The principle of second FIR has been summarized in the case of **Awadesh Kumar Jha alias Akhilesh Kumar Jha and another v. State of Bihar**⁸, wherein it has been held that, in case, substance of allegations in the second FIR are different from first FIR and related to different transaction, case arising out of second FIR survives. The Court has further held that there can be no second FIR in the event of any further information being received by investigating agency in respect of the same offence or same occurrence, or, same transaction giving rise to one or more offences for which charge-sheet has already been filed by investigating agency. The recourse available with investigating agency in said situation is to conduct further investigation, normally with leave of the court as provided under Section 173(8) Cr.P.C.

7 (2004) 13 SCC 292

8 (2016) 3 SCC 8

22. The legal position is that there cannot be two FIRs 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 FIRs and investigation can be carried on under both of them by the same investigating agency. The aforesaid has been held by the Supreme Court in the case of **Kari Choudhary v. Mst. Sita Devi and others**⁹.

23. Subsequent FIR cannot be considered as different ingredient has been added to justify the second FIR. In the case of **Prem Chand Singh v. State of Uttar Pradesh and another**¹⁰, the aforesaid has been elaborated by the Supreme Court holding that if the substratum of two FIRs are common, the proceedings consequent to the second FIR would be unsustainable.

24. The question regarding permissibility of second FIR was subject matter of consideration in the case of **Nirmal Singh Kahlon v. State of Punjab**¹¹, wherein referring to an earlier decision in the case of **Ram Lal Narang v. State (Delhi Admn.)**¹², the Court opined that the second FIR would be maintainable where new discovery is made on factual foundations about a larger conspiracy. It was stated thus:

"67. The second FIR, in our opinion, would be maintainable not only because there were different versions but when new discovery is made on factual foundations. Discoveries may be made by the police authorities at a subsequent stage. Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature. If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, in our opinion, as and when the same surfaced, it was open to the State and/or the High Court to direct investigation in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged."

9 (2002) 1 SCC 714

10 (2020) 3 SCC 54

11 (2009) 1 SCC 441

12 (1979) 2 SCC 322

25. In the case **Anju Chaudhary v. State of Uttar Pradesh and another**¹³, the Court while referring to earlier decision in **T.T. Antony (supra)**, reiterated that second FIR in respect of same offence or incident forming part of same transaction as contained in first FIR, is not permissible but, where, the offence does not fall within the ambit of first FIR, the second FIR would be permissible. The question as to when registration of more than one FIR was permissible was also discussed in the aforesaid decision and it was further held that the said question would be a mixed question of law and facts and the test of 'sameness' would have to be applied.

26. The Apex Court in the court of **Pattu Rajan v. State of Tamil Nadu**¹⁴, has held that there cannot be any dispute that a second FIR in respect of an offence or different offences committed in the course of same transaction is not only impermissible but also violates Article 21 of the Constitution. The Court has gone to the extent of observing that factors such as proximity of time or place, unity of purpose and design and continuity of action, in respect of a series of acts, have to be considered in order to determine whether such acts form part of the same transaction or not. Thus, finally the view that a second FIR in respect of offence which was different and distinct was permissible has been reiterated in the aforesaid case.

27. This Court in the case of **Beekki Verma v. State of U.P. and another**¹⁵, has observed thus:

“13. In order to examine the impact of more than one FIRs, the Court would be required to look into the facts and circumstances of each case and then apply the 'test of sameness' to find out whether both the FIRs relate to the same incident and to the same occurrence and whether they are in regard to the incidents which are two or more parts of the same transaction, or they relate to two entirely distinct occurrences. It would be only if the second FIR relates to the same

13 (2013) 6 SCC 384

14 (2019) 4 SCC 771

15 2021(5) ADJ 351

incident or where it can be demonstrated that its sub-stratum is the same as that the first FIR, an argument with regard to the criminal proceedings initiated pursuant thereto being vitiated, may be entertained.

14. It is, therefore, seen that lodging of two FIRs would not be permissible in respect of one and the same incident. This would not, however, encompass filing of counter FIR relating to the same and connected cognizable offence. What would be within the scope of prohibition is any further complaint against the same accused subsequent to registration of the case under the Code, for an investigation in that regard would have already commenced, and allowing registration of further complaints, would amount to an improvement of the facts as stated in the original complaint. In order to constitute the 'same transaction', the series of acts alleged against the accused must be connected together in some way by proximity of time, unity of place, purpose or design, and continuity of action. What would be necessary is to find out whether the offences alleged against the accused could be stated to be committed during the same transaction.

15. The question as to whether the subsequently registered FIR is the second FIR relating to the same incident or offence or is based upon distinct and different facts and whether its scope of enquiry is entirely different or not, would have to be examined on the facts and circumstances giving rise to the two FIRs.”

28. Looking into facts of the present case, wherein an application under Section 156(3) Cr.P.C. has been moved by wife of the deceased, narrating certain facts in order to find out real culprits involved in her husband's murder who had gone to the extent of managing an FIR lodged against her, wherein she was sent to jail, the application as moved by the applicant should have been entertained in view of the settled position of law as second FIR is maintainable where, there is a different version and also new discovery is made on factual foundation.

29. From the above discussion it is clear that, in case, second FIR for the same incident is permissible, it is with respect to same incident having a different version of evidence.

30. Learned counsel appearing for the State could not dispute the aforesaid submissions.

31. Considering the facts of the case, submissions made by learned counsel for the parties as well as settled position of law that second FIR for the same incident is permissible when it is with respect to same incident having a different version of evidence, impugned orders dated 05.05.2022 and 21.04.2023 are set aside. The matter is remanded back to the Court of Chief Judicial Magistrate, Mathura to decide the application moved by the applicant under Section 156(3) Cr.P.C., afresh, in view of the settled position of law.

32. The application stands allowed accordingly.

Order Date :- 30.8.2024

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