

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 6781/2021

Ishita Bhardwaj D/o Shri Ashwini Bharadwaj, Aged About 25 Years, Resident Of 677 A, Ganesh Vihar, Niwaroo Road, Jhotwara, Jaipur.

----Petitioner

Versus

- 1. State of Rajasthan, Through P.P.
- 2. Victim D/o Shri K.L. Gautam, R/o House No. D/46, Malviya Nagar, Jaipur.

----Respondents

Connected With

S.B. Criminal Miscellaneous (Petition) No. 3581/2020

Yashraj Bhardwaj S/o Shri Ashiwini Bhardwaj, Aged About 26 Years, R/o 677A, Ganesh Vihar, Niwaroo Road Jhotwara, Jaipur.

----Petitioner

Versus

- 1. State of Rajasthan, Through P.P.
- 2. Victim D/o Shri K.L. Gautam, R/o House No. D/46, Malviya Nagar, Jaipur.

----Respondents

For Petitioner(s)	:	Mr. Swadeep Singh Hore with Mr. Sahajveer Baweja
For Respondent(s)	:	Mr. Shree Ram Dhakar, PP Mr. N.K. Meena

JUSTICE ANOOP KUMAR DHAND

Order

28/04/2026

Reportable

- 1. The instant misc. petition is listed before this Court in pursuance of the directions issued by the Hon’ble Apex Court in the case of **Vijay Kumar and Ors. Vs. State of Rajasthan**

(Petition for Special Leave to Appeal (Crl.) No. 773/2026, decided on 15.01.2026), wherein the Hon'ble Apex Court observed that in various matters, interim orders have been passed in criminal revision petitions and petitions filed under Section 482 Cr.P.C., as a result of which trial relating to serious offences such as murder, rape, dacoity, dowry death, etc., could not proceed and remained stalled/held up due to the passage of considerable time.

2. Directions have been issued to this Court and other High Courts to take up such like matters which are pending since long, on priority and decide the same expeditiously without deferring the hearings to subsequent dates.

3. Since common question of law and facts are involved in both the instant petitions and since these petitions have been submitted against the very same impugned FIR No. 365/2020, registered with the Police Station Jawahar Circle, District Jaipur City (East) for the offences punishable under Sections 376(2)(n), 323, 341 & 384 IPC, therefore, with the consent of counsel for both the sides, final arguments have been heard together and these miscellaneous petitions are being decided by this common order.

4. Learned counsel for the petitioners submits that the prosecutrix, i.e. respondent No.2 'AG' is a major lady. She came in touch with the petitioner Yashraj Bhardwaj in the year 2018 and thereafter, they started residing together in a 'live-in-relationship' from 2018 to 2019. Counsel further submits that on account of some dispute between the parties, the prosecutrix 'AG' filed a complaint under Section 190 Cr.P.C. against the petitioner Yashraj Bhardwaj, for the offences punishable under Sections 376, 384,

323, 342 & 506 IPC before the Court of the Chief Metropolitan Magistrate, Jaipur Metropolitan, Jaipur on 18.02.2020, wherein, it has been alleged that the petitioner Yashraj Bhardwaj developed physical relationship with the prosecutrix 'AG' on the pretext of marriage. He further submits that during pendency of the aforesaid complaint, the prosecutrix 'AG' again stayed with the petitioner in Hotel Moti Mahal at Pushkar for two days i.e. on 27.02.2020 & 28.02.2020 and this fact is further fortified from the statement of an employee, said to be posted in the said hotel, recorded by the Police under Section 161 Cr.P.C. Counsel further submits that the visitors' register of the said hotel was also handed over to the Investigating Officer which indicates that the petitioner-Yashraj Bhardwaj and the prosecutrix 'AG' checked-in the hotel on 27.02.2020 and checked-out on 28.02.2020. He further submits that the petitioner-Yashraj Bhardwaj was not aware about filing of the aforesaid complaint by the prosecutrix against him. Thereafter, the impugned FIR was registered by the prosecutrix 'AG' with the Police Station Jawahar Circle, District Jaipur City (East) on 17.07.2020 with regard to the same allegations, which have been levelled in the aforementioned complaint filed by her against the petitioner-Yashraj Bhardwaj under Section 190 Cr.P.C. before the Court of the Chief Metropolitan Magistrate, Jaipur Metropolitan, Jaipur.

5. Learned counsel further submits that in the meantime, the learned Chief Metropolitan Magistrate, Jaipur Metropolitan, Jaipur, while exercising the powers contained under Section 192 Cr.P.C., sent the complaint for its disposal to the Court of Additional Chief Metropolitan Magistrate No.2, Jaipur Metropolitan, where the

complaint remain pending for a considerable period of time and on 17.07.2021, the prosecutrix 'AG' appeared in-person and withdrew the aforesaid complaint on the ground that she does not wish to continue the proceedings in the said complaint. He further submits that the order dated 17.07.2021 bears signatures of the prosecutrix 'AG' and the same was duly identified by her counsel Mr. Ravindra Kumar. He further submits that under these circumstances, registration of second FIR with regard to the same incident and the same offence, amounts to abuse the process of law and the same is not permissible in the light of the judgment passed by the Hon'ble Apex Court in the case of **T.T. Antony Vs. State of Kerala & Ors.** reported in **(2001) 6 SCC 181**.

6. Learned counsel further submits that so far as, the petitioner-Ishita Bhardwaj is concerned, her name was not mentioned in the first complaint and even in the second FIR registered by the prosecutrix 'AG', no allegations whatsoever were levelled against her. He further submits that the petitioner-Ishita Bhardwaj is married to one-Harish Sharma and on account of matrimonial dispute between the husband and the wife i.e. Ishita Bhardwaj and Harish Sharma, the petitioner-Ishita Bhardwaj lodged an FIR against him under Section 498 IPC. In counter-blast to the aforesaid, her husband-Harish Sharma deposed against the petitioner-Ishita Bhardwaj in the impugned FIR and levelled allegations against the petitioner-Ishita Bhardwaj alleging therein that she sent certain abortion pills to the prosecutrix 'AG' from Jaipur to Kota via courier.

7. Learned counsel further submits that no such allegations were levelled against the petitioner-Ishita Bhardwaj initially, and

the entire story relating to abortion pills was concocted at a later stage to falsely implicate the petitioner-Ishita Bhardwaj in the impugned FIR. He further submits that from the facts narrated as above, registration of the impugned FIR and continuation of the proceedings arising out of the same against both the petitioners amounts to abuse of process of law. Hence, the same is liable to be quashed and set aside.

8. *Per contra* learned Public Prosecutor as well as counsel appearing on behalf of the complainant opposed the prayer made by counsel for the petitioners and submitted that after thorough investigation made by the Investigating Agency, a *prima facie* case was found to be proved against both the petitioners for the abovestated offences, hence, under these circumstances, interference of this Court is not warranted and both the instant miscellaneous petitions are liable to be rejected.

9. Heard and considered the submissions made at the Bar and perused the material available on record.

10. Perusal of the record indicates that on 18.02.2020, the prosecutrix 'AG' filed a complaint against the petitioner Yashraj Bhardwaj under Section 190 Cr.P.C., before the Court of the learned Chief Metropolitan Magistrate, Jaipur Metropolitan, Jaipur. In the aforesaid complaint bearing No. 61/2020, for the offences under Sections 376, 384, 323, 342 & 506 IPC, the prosecutrix 'AG' has alleged that she came in touch with the petitioner on 28.02.2018 and thereafter, they both became friends and a consensual relationship was developed between both of them. She further alleged that on the pretext of marriage, she was subjected to sexual intercourse on multiple occasions between the year 2018

to 2019. It is pertinent to note here that the aforesaid complaint was submitted by the prosecutrix on 18.02.2020. It is utterly shocking that the prosecutrix 'AG', after filing of the aforesaid complaint, again stayed with the petitioner-Yashraj Bhardwaj in Hotel Moti Mahal at Pushkar for two days i.e. on 27.02.2020 & 28.02.2020, especially considering the fact that she has already lodged a complaint against the petitioner-Yashraj Bhardwaj with the allegation that she was subjected to rape by him.

11. In spite of the above, she once again lodged the impugned FIR against the petitioner-Yashraj Bhardwaj with the self same allegations for the same incident and same offences, on 17.07.2020 with the Police Station Jawahar Circle, Jaipur City (East). If the allegations mentioned in the impugned FIR and the complaint filed by the prosecutrix are seen from the bare naked eye, they are almost similar and identical.

12. It is worthy to note here that during pendency of the impugned FIR, the matter was transferred to the Court of the Additional Chief Metropolitan Magistrate No.2, Jaipur Metropolitan No.2, Jaipur by the learned Chief Metropolitan Magistrate, Jaipur Metropolitan, Jaipur, while exercising power contained under Section 192 Cr.P.C. and the matter remained pending before the Court of the learned Additional Chief Metropolitan Magistrate, Jaipur Metropolitan, Jaipur till 17.07.2021, when the prosecutrix 'AG' appeared in person and submitted that she does not wish to peruse any proceedings against the petitioner-Yashraj Bhardwaj and she has also put her signatures on the ordersheet dated 17.07.2021 to this effect. She has been duly identified by her counsel Mr. Ravindra Kumar and therefore, it is clear that the

aforesaid complaint was “dismissed as not pressed” on 17.07.2021 at the instance of the prosecutrix ‘AG’ herself.

13. It is settled preposition of law, as propounded by the Hon’ble Apex Court in the case of **T.T. Antony(Supra)**, that one cannot be allowed to lodge subsequent FIR with regard to the same allegations, same offences and same incident. The Hon’ble Apex Court has held that registration of a subsequent FIR/complaint with regard to the self same allegations is nothing but an abuse of process of law.

14. Their Lordships in the case of **T.T. Antony (Supra)** have held that registration of second F.I.R. in respect of same offence is not only impermissible but it is also violative of Article 21 of the Constitution of India. It has been held in para 19, 20 and 27, as under:-

“**19.** The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of subsection (8) of Section 173 CrPC.

20. From the above discussion it follows that 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 the

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.

21. xxx

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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 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.”

15. Similarly, in the case of **Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation** reported in **(2013) 6 SCC 348**, the Hon’ble Apex Court has held in para 58.5, as under:-

“**58.5.** The first information report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR.”

16. Likewise in the case of **Anju Chaudhary Vs. State of Uttar Pradesh and Anr.** reported in **(2013) 6 SCC 384**, the Hon’ble Apex Court has held that there cannot be two FIRs for the same incident and the same offence. The Hon’ble Court has held in paras 14 and 15, as under:-

“**14.** On the plain construction of the language and scheme of Sections 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognizable offence shall be reduced into writing by the officer-in-charge of a police station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit

and scope of the FIR recorded first, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of Section 154 of the Code. These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police. Therefore, second FIR for the same incident cannot be registered. Of course, the investigating agency has no determinative right. It is only a right to investigate in accordance with the provisions of the Code. The filing of report upon completion of investigation, either for cancellation or alleging commission of an offence, is a matter which once filed before the court of competent jurisdiction attains a kind of finality as far as police is concerned, may be in a given case, subject to the right of further investigation but wherever the investigation has been completed and a person is found to be prima facie guilty of committing an offence or otherwise, re-examination by the investigating agency on its own should not be permitted merely by registering another FIR with regard to the same offence. If such protection is not given to a suspect, then possibility of abuse of investigating powers by the police cannot be ruled out. It is with this intention in mind that such interpretation should be given to Section 154 of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, reinvestigation or de novo investigation is beyond the competence of not only the investigating agency but even that of the learned Magistrate. The courts have taken this view primarily for the reason that it would be opposed to the scheme of the Code and more particularly Section 167(2) of the Code.

15. It has to be examined on the merits of each case whether a subsequently registered FIR is a second FIR about 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 straitjacket formula uniformly applicable to all cases.

This will always be a mixed question of law and facts depending upon the merits of a given case.”

17. Perusal of the allegations levelled in the criminal complaint and the FIR, lodged by the victim against the petitioner, reveals that the allegations in both of the FIRs are verbatim same and identical. There is hardly any difference of comma or full stop between both of them. Once the criminal complaint with regard to the same incident and the same offence is not pressed and withdrawn by the victim, then the successive impugned FIR with regard to the same incident and the same offence is legally not sustainable in the eyes of law and the same is liable to be quashed.

18. Now, this Court refers back to the S.B. Criminal Miscellaneous Petition No.3581/2020, filed by the petitioner-Ishita Bhardwaj. Perusal of both the complaint as well as the impugned FIR, registered by the prosecutrix 'AG' against the co-petitioner Yashraj Bhardwaj, reveals that not a single allegation has been levelled against the petitioner-Ishita Bhardwaj alleging therein that she sent any abortion pills to the prosecutrix 'AG' and after taking the aforesaid pills, the prosecutrix 'AG' has aborted her pregnancy. With no stretch of imagination it can be believed *prima facie* that the petitioner-Ishita Bhardwaj has committed any offence punishable under Section 313 IPC.

19. It is worthy to note here that this allegation was introduced against the petitioner-Ishita Bhardwaj, not by the prosecutrix 'AG', but by the husband of the petitioner-Ishita Bhardwaj, against whom the petitioner-Ishita Bhardwaj has filed an FIR under Section 498A IPC and in counter-blast to the aforesaid, these

allegations have been levelled by her husband-Harish Sharma against the petitioner-Ishita Bhardwaj.

20. Even if the allegations are taken on their face value, in the light of Section 312 and 313 IPC, these offences deal with causing miscarriage and its punishment. For ready reference Section 313 and 313 IPC are reproduced as under:-

“312. Causing miscarriage.—Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

313. Causing miscarriage without woman's consent.—Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Bare perusal of the provisions of above two Sections i.e. Section 312 and Section 313 IPC indicates that a person can be held responsible and punished for this offence, if he voluntarily causes a women with child to miscarry and such miscarriage is not caused in good faith for saving the life of such women.

In the instant case, no such allegations are there against the petitioner-Ishita Bhardwaj that she caused miscarriage of the victim. The only allegation levelled against her is that she sent abortion pills to the victim through courier. Though, no such evidence is available on the record and even if these allegations are taken as they exist, then also sending abortion pills to anyone

does not constitute any offence unless such pills are forcefully given to the victim with the intent to miscarry her pregnancy. No such primary evidence is available in the record which is said to be against the petitioner-Ishita Bhardwaj. Hence, the basic ingredients of the offence under Section 312 and 313 IPC are missing in the instant case.

21. In the considered opinion of this Court, continuation of the proceedings arising out of the impugned FIR against both the petitioners amounts to gross abuse of the process of law. Hence, the proceedings arising out of the impugned FIR are liable to be and are hereby ordered to be quashed and set aside.

22. With the aforesaid observations, both the miscellaneous petitions stand allowed. Stay application and all pending application(s), if any, also stand disposed of.

(ANOOP KUMAR DHAND),J