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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2122 OF 2010

Manoj Kumar ... Appellants

Versus

State of Uttrakhand ...Respondent

ORD ER

Heard Mr. S.P. Singh, learned senior counsel appearing for the appellant and Mr. Ashok Kumar Sharma, learned counsel appearing for the respondent.

It is submitted by Mr. Singh, learned senior counsel for the appellant that Ved Prakash, father of the deceased had submitted an application on 24.8.1993 alleging, inter alia, that on that day about 7.10 a.m. he and his wife had left for their duties and his dauther Km. Bharti was left alone at the house and when he came back from the college, he found his daughter hanging from the roof. He reported to the police by way of application and it was treated as an FIR. Elaborating the submissions, it is urged 2

by him that on 26.8.1993 Ved Prakash coming to know certain aspects from one Vinod Sharma, PW-2, about the involvement of Manoj Kumar, the appellant herein, who had come out from the room of Ved Prakash, submitted another report on 26.8.1993 to the Station House Officer, Police Station, Mangalore, giving the details about the fact that was disclosed to him by PW-2. In this backdrop, it is put forth by learned counsel for the appellant that there are two FIRs in respect of the same transaction and, therefore, the investigation having carried on the base of the second FIR, the trial is totally vitiated. Learned counsel for the appellant has referred to certain authorities which we shall advert to a later stage.

Mr. Ashok Kumar Sharma, learned counsel appearing for the State, submitted that it was not a second FIR and, in any case, it would not vitiate the trial. It is his submission that it will come within the spectrum of investigation and when the accused has gone through the whole gamut of trial, he is not entitled to put forth such a submission on the ground that the trial is vitiated. Learned counsel for the State would say that in any event it can be a curable irregularity and not an illegality which

would make the trial null and void. It is put forth by him assuming investigation is carried on, on the basis of a 2 nd FIR, the matter should be left for the trial and it should be tested on the touchstone of prejudiced.

Presently, we shall refer to certain authorities cited at the bar. In T.T. Antony v. Sta te of Kera l a and others 1 , while dealing with the legal validity of lodging of a second FIR, the Court posed the following question: -

> "(i) Whether registration of a fresh case, Crime No. 268 of 1997, Kuthuparamba Police Station on the basis of the letter of the DGP dated 2.7.1997 which is in the nature of the second FIR under Section 154 CrPC, is valid and it can form the basis of a fresh investigation;"

And thereafter proceeded to rule as follows: -

> "17. Sub- section (1) of Section 154 CrPC contains four mandates to an officer in charge of a police station. The first enjoins that every information relating to commission of a cognizable offence if given orally shall be reduced to writing and the second directs that it be read over to the informant; the third requires that every such information whether given in writing or reduced to writing shall be signed by the informant and the fourth is that the substance of such information shall be entered in the station house diary. It will be apt to note here a further directive contained in sub-section (1) of Section 157 CrPC which provides that immediately on receipt of the information the officer in charge of the police station shall send a report of every cognizable offence to a Magistrate empowered to take

1 (2001) 6 SCC 181

cognizance of the offence and then proceed to investigate or depute his subordinate officer to investigate the facts and circumstances of the case. Sub- section (2) entitles the informant to receive a copy of the information, as recorded under sub- section (1), free of cost. Sub- section (3) says that in the event of an officer in charge of a police station refusing to record the information as postulated under sub- section (1), a person aggrieved thereby may send the substance of

such information in writing and by post to the Superintendent of Police concerned who is given an option either to investigate the case himself or direct the investigation to be made by a police officer subordinate to him, in the manner provided by CrPC, if he is satisfied that the information discloses the commission of a cognizable offence. The police officer to whom investigation is entrusted by the Superintendent of Police has all the powers of an officer in charge of the police station in relation to that offence.

18. An information given under sub- section (1) of Section 154 CrPC is commonly known as first information report (FIR) though this term is not used in the Code. It is a very important document. And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 CrPC. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the first information report -- FIR postulated by Section 154 CrPC. All other informations made orally or in writing after the commencement of the investigation into the

cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 CrPC. No such information / s tatement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of CrPC. Take a case where an FIR mentions cognizable offence under Section 307 or 326 IPC and the investigating agency learns during the investigation or receives fresh information that the victim died, no fresh FIR under Section 302 IPC need be registered which will be irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H -- the real offender -- who can be arraigned in the report under Section 173(2) or 173(8) CrPC, as the case may be. It is of course permissible for the investigating officer to send up a report to the Magistrate concerned even earlier that investigation is being directed against the person suspected to be the accused."

After so stating, the two- Judge Bench opined that an officer-in- charge of a police station has to commence investigation as provided under Section 156 or 157 of the Code of Criminal

Procedure (for short "the Code") on the basis of entry of the First Information Report, on coming to know of the commission of a cognizable offence and on completion of investigation and on the basis of evidence collected, he has to form an opinion under

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Section 169 or 170 of the Code as the case may be, and forward his report to the Magistrate concerned under Section 173(2) of the Code. Thereafter, the Court proceeded to state that even after filing of 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 leave of the Court and if collects further evidence, oral or documentary, he is obliged to forward the same with one or more reports as contemplated under sub- section (8) of Section 173 of the Code. Elaborating further, it has been held that: -

> "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."

The Court distinguished the decision in Ram Lal Nara ng v.

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Sta te (Delhi Admn.)2 and after adverting to the facts in detail, opined thus: -

> "This Court indicated that the real question was whether the two conspiracies were in truth and substance the same and held that the conspiracies in the two cases were not identical. It appears to us that the Court did not repel the contention of the appellant regarding the illegality of the second FIR and the investigation based thereon being vitiated, but on facts found that the two FIRs in truth and substance were different -- the first was a smaller conspiracy and the second was a larger conspiracy as it turned out eventually. It was pointed out that even under the Code of 1898, after filing of final report, there could be further investigation and forwarding of further report. The 1973 CrPC specifically provides for further investigation after

forwarding of report under sub- section (2) of Section 173 CrPC and forwarding of further report or reports to the Magistrate concerned under Section 173(8) CrPC. It follows that if the gravamen of the charges in the two FIRs -- the first and the second -- is in truth and substance the same, registering the second FIR and making fresh investigation and forwarding report under Section 173 CrPC will be irregular and the court cannot take cognizance of the same."

In Upka r Singh v. Ved Pra k as h and others 3 , a three-Judge Bench adverted to the facts, addressed the issue pertaining to correctness of law in T.T. Anton y (supra) and observed as follows: -

"17. It is clear from the words emphasised hereinabove in the above quotation, this Court in the case of T.T. Antony v. State of Kerala has not excluded the registration of a complaint in the nature of a counter- case from the purview of the Code. In our opinion, this Court in that case only held

2 (1979) 2 SCC 322
3 (2004) 13 SCC 292

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. This prohibition noticed by this Court, in our opinion, does not apply to counter- complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident."

While dealing with Ram La l Nara ng (supra) the Court observed thus: -

"22. A perusal of the judgment of this Court in Ram Lal Narang v. State (Delhi Admn.) also shows that even in cases where a prior complaint is already registered, a counter-complaint is permissible but it goes further and holds that even in cases where a first complaint is registered and investigation initiated, it is possible to file a further complaint by the same complainant based on the material gathered during the course of investigation. Of course, this larger proposition of law laid down in Ram Lal Narang case is not necessary to be relied on by us in the present case. Suffice it to say that the discussion in Ram Lal Narang case is in the same line as found in the judgments in Kari Choudhary and State of Bihar v. J.A.C. Saldanha 4 . However, it must be noticed that in T.T. Antony case, Ram Lal Narang case was noticed but the Court did not express any opinion either way."

In Ka r i Choudh a r y v. Sit a Devi 5 an FIR was lodged by the first respondent that few persons from outside entered the bedroom of her daughter- in- law and committed her murder.

4 (1979) 2 SCC 322
5 (2002) 1 SCC 714

During the process of investigation, the police formed an opinion that the murder of the deceased had taken place in a manner totally different from the version stated by the first respondent in the FIR, for the police found that the murder was committed pursuant to a conspiracy hatched by her mother- in- law. The investigating agency sent a report to the Court that the allegations of earlier FIR were false and continued the investigation informing the court that they had registered another FIR. The first FIR filed a protest complaint stating that the allegations in the first FIR were correct. The Chief Judicial Magistrate rejected the same. The High Court in the first criminal revision directed the Magistrate to conduct an enquiry under Section 202 of the Code. The police, in the mean time, proceeded with the investigation on the new discovery and finally concluded the investigation and filed the charge sheet on 31.3.2000. In the said charge sheet the first respondent and her two other daughters- in- law, her son and few others were arrayed as accused. The Chief Judicial Magistrate committed the case to the Court of Session which thereafter framed the charges. At that juncture, the first respondent approached the High Court for quashing of the criminal proceeding and the High Court quashed

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the same. When the said order was assailed before this Court, the question arose whether the second FIR could have been registered. Dealing with the said contention, the learned Judges observed thus: -

> "Of course 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. Even that apart, the report submitted to the court styling it as FIR No. 208 of 1998 need be considered as an information submitted to the court regarding the new discovery made by the police during investigation that persons not named in FIR No. 135 are the real culprits. To quash the said proceedings merely on the ground that final report had been laid in FIR No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it."

In Amitbhai Anilchandra Shah v. Central Bureau of

Investiga t i o n and anot he r 6 , the two Judge- Bench distinguished the decisions in Nir m a l Singh Ka h lo n v. Sta te of Punjab 7 , Ram La l Nara ng (supra), Upka r Singh (supra) and Ka r i Choudh a r y (supra) and thereafter proceeded to state as follows: -

> "56. The ratio laid down in Kari Choudhary case is heavily relied on by the learned ASG appearing for CBI. In that decision, it was held that when there are two 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. While there is no quarrel as to the above proposition, after carefully considering the factual position, we are of the view that the said decision is not helpful to the case on hand."

6 (2013) 6 SCC 348
7 (2009) 1 SCC 441

While recording the conclusions, the Court opined thus: -

> "58.2. The various provisions of the Code of Criminal Procedure clearly show that an officer- in- charge of a police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the first information report, on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of the evidence collected, the investigating officer has to form an opinion under Section 169 or 170 of the Code and forward his report to the Magistrate concerned under Section 173(2) of the Code."

> "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."

Taking note of the aforesaid decisions, we are obliged to state that an FIR is neither a piece of substantive evidence nor does it form the spine of a criminal case. It basically sets the criminal law in motion for the purpose of investigation relating to an offence or offences with regard to an incident. It is noticeable that a particular incident can have number of offences forming a different part of the same transaction and some times may constitute distinct crimes which would come in a larger spectrum. That apart, there can be a chain of events. In certain

cases, counter FIRs are lodged. There is no illegality in lodging a counter FIR as per the pronouncements in T.T. Antony (supra) and Upka r Singh (supra), and investigation can be carried out in that regard. What is observed in certain cases, as we find, when

an investigation continues on the basis of the second FIR, pertaining to the same transaction, on being challenged the whole investigation is quashed. There can be no shadow of doubt that registration of an FIR or a second matter is done by the police authorities. The informant or victim, in reality, brings certain facts which he comes to know at a later stage to the knowledge of the investigating agency and the investigating agency without recording a statement under Section 161 of the Code of Criminal Procedure or treating it as a part of a material collected through investigation records an FIR. As is seen, if an investigation proceeds on that basis, it has been made liable for quashment.

The principle in criminal jurisprudence requires a fair and truthful investigation. If an investigating agency which has been conferred the power to investigate on the basis of an FIR, if a second FIR as regards the same transaction is introduced, as viewed, it is likely to be abused, i.e. keeping in mind the interest

of the accused. From the point of view of the victim when such information comes within the knowledge of the Investigating Officer, he can treat it as a part of continuing investigation under the Code and eventually file the charge sheet or an additional charge sheet as contemplated under Section 173 of the Code. The interests of both are involved. A fair investigation, conceptually speaking, is acceptable facet of criminal jurisprudence, similarly it is also the duty of the courts to see whether the investigation carried out really causes prejudice to the accused requiring the court to exercise the power under Section 482 or Article 226 of the Constitution to quash the same, or it has looked into the interest of both the accused and the victim and, therefore, it should be left for the trial Court to see the veracity of the truth of allegations that has come out in investigation.

The question that emerges whether such an illegality is committed by an Investigating Officer by treating a further

material or information as a second FIR warranting obliteration of the whole investigation to destroy the interest of the victim in entirety, or in such cases it should be left to the trial Court to test

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the propriety and veracity of the same on the touchstone of two concepts, namely, prejudice to the accused; and the determination of the guilt of the accused on the anvil of the evidence brought on record which is creditworthy to protect the interest of the collective at large. One can cite an example. In a case of a group fight many are done to death but dead body of one is found and an FIR is lodged in respect of one death under Section 302 read with other sections of the Indian Penal Code and the investigation commences. At a later stage, either the informant or someone finds the skeletons of the dead bodies at a different place, supposed to be missing, and he reports to the police and the police treat it as a second FIR and carries on the investigation. Whether in these circumstances the second FIR should be quashed and no investigation should be allowed to continue or if any investigation has commenced and certain material has come against some persons, they should be allowed to go scot- free solely on the ground that investigation in respect of second FIR is not tenable.

In view of the aforesaid analysis, whether the FIR and the investigation in pursuance thereof should be straightway

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quashed or should it require a scrutiny during trial of the permissible matter of prejudice, and truthfulness of the evidence collected on the basis of second FIR. That is the fundamental question.

Therefore, we are of the considered opinion that the decision in Upka r Singh (supra) and the decisions that express the similar legal propositions are required to be scrutinized and, accordingly, we refer the lis to a larger Bench.

Let the papers be placed before the Hon’ble the Chief Justice

of India for constitution of appropriate larger Bench.

.....J
(DIPAK MISRA)

NEW DELHI; .....J.
MAY 22, 2014. (N.V. RAMANA)

ITEM NO.103 COURT NO.5 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 2122 OF 2010

MANOJ KUMAR Appellant (s)

VERSUS

STATE OF UTTRAKAHND Respondent(s)

(With appln(s) for permission to file additional documents,exemption from filing O.T. and office report)

Date: 22/05/2014 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE N.V. RAMANA
(VACATION BENCH)

For Appellant(s) Mr. S.P. Singh, Sr.Adv.
Mr. Parful Bharuka, Adv.
Mr. S.S.Nehra, Adv.
Ms. Barkha, Adv.

For Respondent(s) Mr. Ashok Kumar Sharma, Adv.
Mr. Vikalp Mudgal, Adv.

Mr. Mukesh Verma, Adv.
Mr. Jatinder Kumar Bhatia, Adv.

UPON hearing counsel the Court made the following
O R D E R

The matter is referred to larger Bench in terms of the signed order.

(NAVEEN KUMAR)
COURT MASTER

(RENUKA SADANA)
COURT MASTER

(Signed order is placed on the file)