

(2006) 01 CAL CK 0012
In the Calcutta High Court
Case No : C.R.R. No. 2614 of 2003

Abdul Hai Mondal and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 06-01-2006

Acts Referred:

Arms Act, 1959 — Section 25, 26, 27, 9
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 154, 162, 173, 173(2), 173(8)
Explosives Act, 1884 — Section 9
Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 323

Citation : (2006) 3 CHN 502

Hon'ble Judges : Arun Kumar Bhattacharya, J

Bench : Single Bench

Advocate : Haradhan Banerjee and Subhabrata Das, for the Appellant;
Subhasish Pachhal, for the Respondent

Judgement

Arun Kumar Bhattacharya, J.—The hearing stems from an application u/s 482 Cr. PC filed by the petitioner praying for quashing the FIR being No. 54 dated 01.07.98 of P.S. Haroa, North 24-Parganas, pending in the Court of Id. SDJM, Basirhat, North 24-Parganas.

2. The petitioners' contention as per above application is that on 30.06.98 at about 10.00 a.m. accused Sahid Munshi, Sibobrata Das etc. accompanied by a few henchmen being armed with deadly weapons assembled at Gazitola fishery. Out of them one anti-social element viz Sirajul Biswas threatened the petitioners to dispossess them declaring that- even if police personnel come, they would not be spared if the petitioners tried to intimidate them, for which an FIR was lodged on behalf of the petitioners, and Haroa P.S. Case No. 52 dated 30.06.98 under Sections 148/149/447/435/379 IPC /25/27 Arms Act was started, and the investigation is still pending. Due to flow of accused persons, as the petitioners were scared about loss of their lives and properties, an information was lodged on behalf of the petitioners on 01.07.98 with S. P., North 24-Parganas regarding

unlawful assembly of the accused persons along with their hired henchmen at about 10.00 a.m. with an intention to trespass into the fishery of the petitioners.

3. At the instance of A.S.I. Dilip Chandra Das, Haroa P. S. Case No. 53 dated 30.06.98 under Sections 148/149/325/326/307/353/332/379 IPC/25/26 of Arms Act/9(b) of the Indian Explosive Act was started for trespassing into the fishery, unlawful assembly armed with deadly weapons and firing at the possessors of the fishery and police personnel, and severely assaulting a few police constables, one of whom lost eyesight completely, and the investigation is still pending. As the accused persons are basically criminal in nature, they dared to interfere with the possession of the petitioners which was protected by deployment of police personnel by order of High Court dated 23.03.90 passed in CR. No. 3095(W)/90.

4. The accused persons hatched up a conspiracy against the petitioners through one Habibur Baidya who lodged a complaint being registered as FIR No. 54 dated 01.07.98 inter alia alleging that on 30.06.98 at about 9.30 a.m. when the de facto complainant was busy with works at Alaghar of the fishery, Zamat AH Mondal (since deceased) and Ors. being armed with deadly weapons attacked him and other cultivators, and in such gangwar Habul Patra sustained bullet-injury on chest and succumbed to injuries and that the de facto complainant and other cultivators including few backward women and children were also injured, and when the local villagers assembled there for rescuing them, the petitioners fled away after looting Rs. 15,567/- and setting fire to the Alaghar, in which chargesheet was submitted on 12.12.90 in G.R. Case No. 546/98 under Sections 148/149/447/323/397/302/435/324/379 IPC.

5. On the self-same incident the accused persons lodged another FIR being No. 58 dated 02.07.98 under Sections 147/148/149/326/307 IPC/25/26 of Arms Act through one Smt. Ranjana Sardar inter alia alleging that on 30.06.98 at about 11.00 a.m. when the de facto complainant along with other women were proceeding towards Gagramari village, Alam Mondal and some other fishery owners of Gazitola fired at them without any rhyme or reason, and Razak Mondal and Abdul Rahman Mondal fired, for which some of the women were injured and admitted to Calcutta Hospital and Haroa Hospital. The investigation in that case is still pending.

6. All the FIRs made by the petitioners as well as accused persons relate to the same cause of action, and the police lodged respective cases against the accused and created multiplicity of proceedings. By entertaining the later two FIRs lodged by the accused persons, the police authorities have caused abuse of the process of law which are not tenable in law. The FIR being No. 53 dated 30.06.98 lodged by A.S.I. Dilip Chandra Das was the first information given about commission of cognizable offence, and as such the second complaint being FIR No. 54 dated 01.07.98 is not entertainable in the eye of law and the investigation proceeded on the basis of the same is also without jurisdiction which is liable to be quashed.

7. Mr. Banerjee, Id. Counsel for the petitioners, on referring the cases of T.T.

Antony Vs. State of Kerala and Others, Supreme 742 at 746 and Krishna Chandra Chaudhury Vs. The State of West Bengal, advanced argument contending 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. Mr. Banerjee further contended that only information about commission of a cognizable offence which is first entered in the station house diary by Officer-in-Charge of the police station can be regarded as FIR u/s 154 Cr. PC and all subsequent information will be covered by Section 162. The Officer-in-Charge of the police station, Mr. Banerjee contended, 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, and even if after conclusion of the investigation pursuant to filing of the FIR and submission of report u/s 173(2) the Officer-in-Charge of the police station comes across any further information pertaining to the same incident, he can make further investigation, normally with the leave of the Court and forward further evidence, if any collected, with further report or reports u/s 173(8). Mr. Banerjee further submitted that after registering the FIR and commencing investigation, registering of second FIR or successive FIRs in respect of the same incident and crime and making of fresh investigation pursuant thereto would be irregular which calls for interference by High Court under Articles 226/227 or Section 482 Cr. PC so as to prevent abuse of statutory power of investigation or otherwise to secure ends of justice. Mr. Pachhal, Id. Counsel for the State, on the other hand, contended that the fact of the first FIR being No. 53 dated 30.06.98, is quite different from the fact stated in the second FIR being No. 54 dated 01.07.98 where death of a person on account of firing took place and the specific names of the accused persons and the role played by them have been borne out, and as such the question of quashing the said FIR 54 does not arise at all.

8. Before opening the discussion, the brief facts of the two cases as borne out in FIR 53 dated 30.06.98 under Sections 148/149/326/307/353/332/379 IPC/25/26 of Arms Act/9(b) of I.E. Act lodged at the instance of A.S.I. Dilip Chandra Das of Haroa P. S. and FIR 54 dated 01.07.98 under Sections 148/149/447/326/307/302/435/379 IPC/25/26 of Arms Act/9(b) of I.E. Act lodged at the instance of Habibur Baidya need be stated:

FIR 53: On 30.06.98 at about 10.00 a.m. about 1500/2000 persons belonging to a certain political party being armed with deadly weapons proceeded towards Gazitola fishery with a view to taking possession of the said fishery and started firing and hurling bombs. The possessors of the fishery and their men also exchanged fire towards them. Giving a deaf ear to the request of the police personnel who were in the temporary camp there, the attackers also fired and hurled bomb towards them resulting in injuries of some police personnel. For private defence and for security of arms the police personnel were compelled to shoot fire, but the attackers being furious trespassed into the fishery and in order

to kill assaulted the police personnel severely with dao, sword etc. thereby causing severe injuries of them. The possessors of the fishery fled away in the meantime out of fear. The attackers looted away money, wristwatch, revolvers, rifle, cartridge etc., set fire to the Alaghar and drove them out of the fishery in the afternoon. Accordingly, the case was started against 1500/2000 unknown supporters of a political party.

FIR 54: The de facto complainant has been cultivating the khas and benami land of Gazitola fishery for a long time. On 30.06.98 at about 9.30 a.m. while he along with others was busy with works at their Alaghar the accused persons (22 in number i.e. all the petitioners and one Zamat Ali Mondal) under the leadership of Zamat Ali Mondal being armed with weapons attacked them. The said Zamat Ali Mondal and Abdul Hai Mondal fired towards them, for which Habul Patra sustained bullet injuries on his chest at the fire shot by Zamat and he succumbed to injuries at Basirhat Hospital. The accused persons indiscriminately fired from musket, pipeguns and guns and hurled bombs thereby causing injuries of the de facto complainant, other cultivators, backward women and children. When the villagers of the locality came to resist, the accused persons fled away after setting fire to some Alaghar and looting away cash of Rs. 15,567/- and other Articles. After investigation the police submitted chargesheet being No. 69 dated 12.12.2000 under the aforesaid provisions.

9. On a comparison and critical examination of the above two FIRs being Nos. 53 and 54 it would appear that whereas the time of occurrence in respect of the first is 10.00 a.m., it is 9.30 a.m. in respect of the second, whereas the first case was started against enumerable unknown persons belonging to a certain political party, the names and the part played by the offenders in the second are specific, whereas the first FIR mainly relates and/or is confined to the attack on police personnel, the second relates to attack on the de facto complainant, other cultivators etc. and death of one person due to firing, about which there is no whisper in the first.

10. As observed in the case of T. T. Antony (supra), 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 transaction or the same occurrence and file one or more reports as provided in Section 173 Cr. PC. To ascertain whether a series of acts are parts of the same transaction, it is essential to see whether they are so connected together as to constitute a whole which can be properly described as a transaction, as was observed in the case of Kashiram Jhunjhenwalla v. Firm of H.R.G. Rai reported in 39 CWN 703. The mere fact that two offences are committed at the same time or place is not necessary or decisive as an indication of their being so connected as to form the same transaction. In the three-Judges Bench decision in State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and

Another, it was observed: "What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case... Now, a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently they would not form part of the same transaction but would constitute a different- transaction or transactions". In another three- Judges Bench decision in Balbir Vs. State of Haryana and Another, it was observed:" For several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is commonality of purpose and design, where there is continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of same transaction".

But if in one case the accused is alleged to have killed a person without any junction with the accused in other case, then it cannot be treated as the same offence or even different offences "committed in the course of same transaction".

The main test is continuity of action and community of purpose, that is, there should be a continuous operation of acts leading to the same end, and a common purpose should run through all the acts. To constitute unity of purpose the mere existence of some general purpose or design is not sufficient. There can be no continuity of action where each act is a completed act in itself and the original design is accomplished so far as that act is concerned. It is the immediate purpose of offence which determines the character of particular transaction. If the aim of the accused on different occasions was directed towards effecting different purposes, the transactions are different. Here, the first FIR is against 1500/2000 unknown persons where the names of the present petitioners do not find place at all nor there was any scope for it as they claim to be the possessors of the fishery, whereas those 1500/2000 persons were attackers. In the second FIR, the aim of the accused/petitioners at different time was directed towards effecting different purpose. So, neither the facts of both the cases are same nor the second FIR can be held to form one and the same transaction. In other words, the factual foundation of both the cases being quite different, separate and distinct, the second FIR does not fall within the purview of same transaction.

11. Quashing of proceeding to prevent abuse of the process of the Court or otherwise to secure the ends of justice may be done where: (1) it appears that there is a legal bar against the institution or continuance of criminal proceeding in respect of the offence alleged e.g. absence of requisite sanction, or (2) the allegations in the FIR or the complaint even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged, or (3) the allegations made against the accused person do constitute an offence alleged but

there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In this connection, reference may be made to the case of R.P. Kapur Vs. The State of Punjab, and State of Haryana and others Vs. Ch. Bhajan Lal and others, . It is to be borne in mind that the power to quash an FIR by this Court can be exercised very sparingly and with circumspection and that too in the rarest of the rare cases. At this stage the Court cannot inquire about reliability or genuineness or otherwise of the allegations made in the FIR nor it can inquire whether the allegations are likely to be established or not, as was held in the case of M. Narayandas v. State of Karnataka reported in 2004 SCC (Cri) 118 .

12. Therefore, viewed in the light of the above discussion, the contention of the Id. Counsel for the petitioners is not at all sustainable.

13. Accordingly, the revisional application be dismissed.

14. Liberty is given to the Id. Counsel for the O. P. /State to communicate the gist of the order to the Id. Court below, and the Id. Court below is to act upon such communication.