

(2005) 04 AHC CK 0079
In the Allahabad High Court
Case No : Criminal Revision No. 1425 of 2005

Anurag Tripathi

APPELLANT

Vs

State of U.P. and Station Officer

RESPONDENT

Date of Decision : 25-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Law (Amendment) Act, 1932 — Section 7
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 156(3), 162, 173(2)
Penal Code, 1860 (IPC) — Section 302, 307, 332

Citation : (2005) CriLJ 3474

Hon'ble Judges : V.K. Chaturvedi, J

Bench : Single Bench

Advocate : G.S. Chaturvedi and L.K. Dwivedi, for the Appellant; V.S. Misra, A.B.L. Gour, S.P.S. Raghav, Rajiv Gupta, Saurabh Gour, Dileep Kumar and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

V.K. Chaturvedi, J.—This revision is preferred against the judgment and order dated 14.03.2005 passed by the Chief Judicial Magistrate, Sant Ravi Das Nagar in Misc. Case No. 41 of 2005, Anurag v. Sushil and Ors., whereby application moved by the revisionist u/s 156(3), Cr.P.C. has been rejected.

2. Heard Sri G.S. Chaturvedi, Senior counsel assisted by Sri L.K. Dwivedi, counsel for the revisionist, Sri V.S. Misra, learned Government Advocate assisted by and A.G.A. and Sri A.B.L. Gour, senior counsel assisted by Sri Saurabh Gour, Sri S.P.S. Raghav, Sri Dileep Kumar, counsel for newly impleaded respondents.

3. Relying upon the decisions of the Apex Court in Upkar Singh v. Ved Prakash and Ors., 2005 (26) AIC 91 (S.C.) and Kari Choudhary v. Mst. Sita Devi and Ors., 2002(45) ACC 342 (S.C.), learned counsel for the revisionist contended that where a F.I.R. has been registered, a second F.I.R. of the same offence is not prohibited.

4. On the other hand, learned Government Advocate as well as learned counsel for newly impleaded respondents, vehemently contended that once a F.I.R. is registered, then it is duty of the Investigating Officer to find out the offenders and second F.I.R. of the same incident is not permissible in law. It is also contended that only in cross cases in view of law laid down in Upkar Singh's case (supra), second F.I.R. is permissible.

5. Learned Government Advocate further contended that the revisionist was in judicial custody, therefore, it was prime duty of the police officers to save him and since a F.I.R. has already been registered by the police against unknown persons and investigation is in progress, therefore, second F.I.R. by a witness is prohibited.

6. Brief facts of the case are that revisionist Anurag Tripathi is at present detained in Naini Central Jail, Allahabad. In relation to some cases in district Varanasi, the revisionist was taken to Varanasi in police custody and while coming back from Varanasi to Allahabad in Govt. vehicle in police custody, on 5.3.2005 at about 4.30 P.M. the vehicle in which he was travelling in police custody, was attacked near Gopiganj. In this incident, one police driver Sarjeet died and two others received injuries. A F.I.R. of this incident was lodged by Yamuna Prasad Gupta, a constable accompanying the revisionist in the Govt. vehicle, in police station Gopiganj, Sani Ravidas Nagar at crime No. 94/2005, u/s 302, 307, 332 IPC and 7, criminal Law Amendment Act against unknown persons. Copy of the F.I.R. is annexure-1.

7. Case of the revisionist is that it is he who was targeted in the above attack, he continued in police custody and after coming back to Central Jail, Naini, Allahabad he wrote an application dated 6.3.2005 through Jail Superintendent, Central Jail, Naini to the Chief Judicial Magistrate, Sant Ravidas Nagar for the same incident dated 5.3.2005 at about 4/4.45 P.M., a copy of which is annexure-2. In this application, the revisionist prayed that his F.I.R. be lodged against nine persons named in the application. Another application was also given by him on 9.3.2005 before the C.J.M., Gyanpur, Bhadohi, Sant Ravidas Nagar u/s 156(3) Cr.P.C. against nine persons with the prayer that Station Officer, Police Station Gopiganj, be directed to register and investigate the case so that justice may be done. This application was registered as Misc. Case No. 41/2005. It has been stated in the application that the revisionist was targeted in this incident by the opposite parties who are named in the application and who also hurled bombs and opened indiscriminate firing, in which one Police driver died on the spot and two other police officers excluding the revisionist received injuries.

8. The revisionist was also medically examined in Naini Jail at 12 Noon on 6.3.2005. His injury report is annexure-1 to the rejoinder affidavit which indicates that he received two abraded contusions and one abrasion. Injury no. 1 was kept under observation and he was advised X ray for chest.

9. The application moved by the revisionist referred to above was heard by the C.J.M., Sant Ravi Das Nagar, who vide his order dated 14.3.05 after discussing the decision in Upkar Singh's case and Kari Choudhary's case (supra), arrived at the conclusion that in both the cases a counter report can be lodged but in the case in hand, constable Yamuna Prasad Gupta has already lodged a report against unknown persons at crime No. 94/2005, u/s 302, 307, 332 IPC & 7, Criminal Law Amendment Act, at police station Gopiganj and the revisionist has not given any proof that F.I.R. of case crime No. 94/2005 is against him or informant of the case is having inimical terms with him and in view of facts of the case, law cited by the revisionist's counsel is not applicable and in the later part of the order, observing that the revisionist has not filed any injury report in his support, and since a F.I.R. has already been registered and investigation is being carried out, there is no need or justification for issuing a direction to register and investigate the matter on the revisionist's application and ultimately rejected the application by the impugned order.

10. Counsel for both the parties have placed reliance on the judgments in Upkar Singh's case and Karl Choudhary's case (supra), but counsel for the revisionist contended that once a F.I.R. is lodged against unknown persons and the applicant is one of the injured in the case, who was targeted by opposite parties in the incident and who luckily escaped, in such set of circumstances, the C.J.M. should have passed an order on his application. The Chief Judicial Magistrate has committed illegality and error by misinterpreting the law cited above, therefore, the impugned order be set aside.

11. Learned Government Advocate and counsel for newly impleaded respondents contended that the revisionist is a witness of case crime No. 94/2005, as such he has no right to lodge a report as it is not a counter version of the incident.

12. No order has yet been passed by the Chief Judicial Magistrate against the opposite parties who were named in the application u/s 156(3), Cr.P.C. They have also not yet been arrayed as opposite parties in the present revision but since they themselves moved an application for their impleadment to be heard before passing any order which also shows their anxiety, they were heard. In a criminal case, it is settled that no person has a right to be heard if no order has been passed against him. In the present case, neither cognizance was taken against them nor any order has been passed against them but since they themselves approached the Court by moving impleadment application, they were also heard.

13. A counter affidavit has been filed by Umesh Kumar Pandey, Investigating Officer of case crime No. 94/2005. In paragraph 5 of the counter affidavit, he has given a detailed version and has also averred that Anurag Tripathi had received no injury. But the fact remains that Anurag Tripathi was examined in Central Jail, Naini on 6.3.2005 itself and his injury report is annexure-1 to the Rejoinder affidavit.

14. It is very unfortunate on the part of the I.O. that one Police driver has lost his life in this incident and two others received injuries and the incident took place on 5.3.2005, but no arrest has yet been made. The I.O. has also stated progress in the investigation in paragraph 5 of the counter affidavit.

15. In paragraph 7 of the counter affidavit, it has been averred by the I.O. that contents of the application u/s 156(3), Cr.P.C. and contents of the F.I.R. are same and identical but the application is moved just to twist the entire story.

16. Section 154, Cr.P.C. which provides for information in cognizable cases, reads as under :

"154(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.

(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 Sub-sectionCD 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. "

17. In Upkar Singh's case (supra), it has been held by the Apex Court that so far as counter case was concerned, even T.T. Antony's case did not prevent filing of second F.I.R. It only restricts filing of second F.I.R. where the accused were the same.

18. Paragraph 16 & 17 of the decision in Upkar Singh's case, are as follows:

"16. Having carefully gone through the above judgment, we do not think that this Court in the said cases of T.T. Antony v. State of Kerala and Ors. has precluded an aggrieved person from filing a counter case as in the present case. This is clear from the observations made by this Court in the above said case of T.T. Antony v. State of Kerala and Ors. in paragraph 27 of the judgment, wherein, while discussing the scope of Sections 154, 156 and 173(2), Cr.P.C., this is what the Court observed:-

"In our view, a case of fresh investigation based on the second or successive

F.I.Rs., not being a counter case filed in connection with the Same or connected cognizable offences alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first F.I.R. either investigation is under way or final report u/s 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power u/s 482, Cr.P.C. or under Articles 226/227 of the Constitution."

"17. It is clear from the words emphasized hereinabove in the above quotation, this Court in the case of T.T. Antony v. State of Kerala and Ors., 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 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 u/s 162 of the Code. This prohibition noticed by this Court, in our opinion, does not apply to counter complaint by the accused in the Ist complaint or on his behalf alleging a different version of the said incident."

19. In paragraph 17 of this decision, it has been specifically laid down, "In our opinion, this Court in that case only held 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....."

20. In the present case, F.I.R. of case crime No. 94 of 2005 was lodged by a police officer against unknown persons whereas the application u/s 156(3), Cr.P.C. was moved by the revisionist naming certain persons, as such case of Upkar Singh (supra) appears to have been misinterpreted by the Judicial Magistrate.

21. Paragraph 23 of Upkar Singh's decision (supra) reads as follows :

"23. Be that as it may, if the law laid down by this Court in T.T. Antony's case is to be accepted as holding a second complaint in regard to the same incident filed as a counter complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given herein below i.e. if in regard to a crime committed by the 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 legitimate right to bring the real accused to books. This cannot be the purport of the Code."

22. In Kari Choudhary's case (supra) in paragraph 10 of the judgment, the Apex Court held thus :

"10. Learned counsel adopted an alternative contention that once the proceeding

initiated under F.I.R. No. 135 ended in a final report, the police had no authority to register a second F.I.R. and number it as F.I.R. 208. 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 by 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 proceeding 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. "

23. The ratio laid down in both the cases referred to above is that there cannot be two first information reports against the same accused in respect of the same incident and ultimate object of investigation is to find out whether the offences alleged have been committed and if so, who have committed.

24. One more interesting feature can be noted here that the alleged incident had taken place on 5.3.05 but statement of Anurag Tripathi (revisionist) has not been recorded by the Investigating Officer as yet. In paragraph 4 of the rejoinder affidavit, it has been averred that Anurag Tripathi has received injuries as apparent from the injury report, even then the I.O. has given a false statement in paragraph 5 of his counter affidavit without making any investigation in this regard under the influence of Udaibhan Singh, who is a M.L.A. from Aural, Sant Ravidas Nagar and till date no arrest has been made.

25. In view of above discussion, there is no force in the contention raised by the counsel for newly impleaded respondents and learned Government Advocate.

26. In that view of the matter, simply because the police lodged a F.I.R. at crime No. 94/2005 against some unknown persons, whether in a bonafide manner or for some ulterior consideration for protecting the real accused persons, it cannot be said that if injured-revisionist subsequently moves an application u/s 156(3), Cr.P.C. naming the accused persons, his application u/s 156(3) is not maintainable. The Chief Judicial Magistrate does not appear to have correctly interpreted the law cited above. Application of the revisionist for registration of a case is not against the same accused persons and ultimate object of the investigation is to find out whether the offences alleged have been committed and if so by whom.

27. As a result of above discussion, the Chief Judicial Magistrate appears to have committed manifest error and illegality in rejecting the revisionist's application u/s 156(3), Cr.P.C.

28. Accordingly, this revision is allowed, The impugned order dated 14.3.2005 passed by C.J.M., Sant Ravidas Nagar in Misc. Case No. 41/2005, Anurag v.

Sushil and Ors. is set aside and matter is remanded to the C.J.M. concerned to pass appropriate orders in the light of observations made above in accordance with law.