

(2015) 10 MAD CK 0068

In the Madras High Court

Case No : Criminal O.P. No. 4069 of 2009

Arunachalam Sugar Mills Ltd.

APPELLANT

Vs

Inspector of Police, C.B.I

RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 20, 21, 226

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 173, 173(2), 482

Citation : (2015) 10 MAD CK 0068

Hon'ble Judges : A. Selvam, J.

Bench : Single Bench

Advocate : A. Ramesh, Senior Counsel for Gupta and Ravi, for the Appellant; K. Srinivasan, Spl. Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A. Selvam, J.—This Criminal Original Petition has been filed under section 482 of Code of Criminal Procedure, 1973 praying to call for records relating to Calendar Case No. 176 of 2008 pending on the file of Chief Judicial Magistrate Court, Puducherry and quash the same.

2. It is averred in the petition that the petitioner has been arrayed as 3rd accused in C.C. No. 176 of 2008. The case of the prosecution is that the petitioner has hypothecated 45,000 Sugar bags in Vijaya Bank, Puducherry and after some time, the petitioner and others have clandestinely removed the same and under such circumstances, on the basis of the complaint given by the Senior Manager of Vijaya Bank, Puducherry, the respondent has taken up investigation and filed a final report and the same has been taken on file in C.C. No. 176 of 2008. Further it is averred in the petition that with regard to same set of facts, a complaint has been lodged in Keelpennathur Police Station in Crime No. 115 of 2005 and under such circumstances, present petition has been filed for getting the relief sought therein.

3. On the side of the respondent, a detailed counter has been filed, wherein, it

has been contended inter alia to the effect that all the averments made in the petition are false and ultimately prayed to dismiss the same.

4. The learned senior counsel appearing for the petitioner has repeatedly contended that with regard to offences alleged to have been committed by the present petitioner and other accused, an earlier complaint has been lodged in Keelpennathur Police Station and the same has been registered in Crime No. 115 of 2005 and subsequently, the respondent has registered a case in R.C. No. 3/E/2007/CBI/BS & FC/BLR and conducted investigation and ultimately filed a final report on the file of the Court below and the same has been taken on file in C.C. No. 176 of 2008. Since an earlier First Information Report has been registered in Crime No. 115 of 2005, the registration of second First Information Report is not permissible under law. Under such circumstances, entire proceeding of C.C.NO.176 of 2008 is liable to be quashed.

5. The learned Special Public Prosecutor has also equally contended that the respondent has not known anything about the case registered in Crime No. 115 of 2005 on the file of Keelpennathur Police Station, but on the basis of the complaint given to the respondent, a case has been registered in R.C. No. 3/E/2007/CBI/BS & FC/BLR and a detailed investigation has been conducted and ultimately a final report has been laid and the same has been taken on file in Calendar Case No. 176 of 2008 and since there is no deviation nor lapses on the part of the respondent, the relief sought for in the present petition cannot be granted and therefore, the present petition is liable to be dismissed.

6. The learned senior counsel appearing for the petitioner has drawn the attention of the Court to the following decisions:

"(a) T.T. Antony Vs. State of Kerala and Others, , wherein at paragraph No. 27, the Hon"ble Supreme Court has observed as follows:

"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 Cr.PC 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) Cr.PC. 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."

(b) Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation and Another, , wherein at paragraph Nos. 59 and 60, the Hon"ble Supreme Court has observed as follows:

"59. In the light of the specific stand taken by CBI before this Court in the earlier proceedings by way of assertion in the form of counter affidavit, status reports, etc., we are of the view that filing of the second FIR and fresh charge-sheet is violative of fundamental rights under Articles 14 , 20 and 21 of the Constitution since the same relate to alleged offence in respect of which an FIR had already been filed and the court has taken cognizance. This Court categorically accepted CBI's plea that killing of Tulsiram Prajapati is a part of the same series of cognizable offence forming part of the first FIR and inspite of the fact that this Court directed CBI to "take over" the investigation and did not grant the relief as prayed, namely, registration of fresh FIR, the present action of CBI filing fresh FIR is contrary to various judicial pronouncements which is demonstrated in the earlier part of our judgment.

60. In view of the above discussion and conclusion, the second FIR dated 29.4.2011 being RC. No. 3(S)/2011/Mumbai filed by CBI is contrary to the directions issued in judgment and order dated 8.4.2011 by this Court in Narmada Bai v. State of Gujarat and accordingly the same is quashed. As a consequence, the charge sheet filed on 4.9.2012, in pursuance of the second FIR, be treated as a supplementary charge-sheet in the first FIR. It is made clear that we have not gone into the merits of the claim of both the parties and it is for the trial court to decide the same in accordance with law. Consequently, Writ Petition (Crl.) No. 149 of 2012 is allowed. Since the said relief is applicable to all the persons arrayed as accused in the second FIR, no further direction is required in Writ Petition (Crl.) No. 5 of 2013."

7. From a cursory reading of the decisions rendered by the Hon"ble Supreme Court, with regard to same set of facts, second FIR is not legally maintainable. In the instant case, with regard to offence alleged to have been committed by all the accused, Senior Manager, Vijaya Bank, Puducherry has lodged a complaint in Keelpennathur Police Station and the same has been registered in Crime No. 115 of 2005 and the same has been kept in abeyance. On the basis of the same set of facts, in the year 2007, another complaint has been given to the respondent and the same has been taken on file in R.C. No. 3/E/2007/CBI/BS & FC/BLR and ultimately, the respondent has conducted a detailed investigation and filed a final report and the same has been taken on file in Calendar Case No. 176 of 2008.

8. As already stated, an earlier complaint has been given and the same has been

registered in Crime No. 115 of 2005 on the file of Keelpennathur Police Station, but on the very same set of facts, another complaint has been given to the respondent and the respondent has conducted investigation and subsequently filed a final report.

9. As per the dictum laid down by the Hon"ble Supreme Court, on the same set of facts, second FIR is not permissible under law. In the instant case, as narrated earlier, only on the basis of the second complaint, the respondent has conducted investigation and filed a final report and the same is not permissible under law and therefore, the entire proceeding of C.C. No. 176 of 2008 is liable to be quashed.

In fine, this Criminal Original Petition is allowed and the proceeding in C.C. No. 176 of 2008 pending on the file of Chief Judicial Magistrate, Puducherry is quashed in respect of the present petitioner. However, this order has not created any impediment to proceed the case registered in Crime No. 115 of 2005 on the file of Keelpennathur Police Station, Thiruvannamalai District.