
(2005) 01 OHC CK 0027
In the Orissa High Court
Case No : CRLMC No. 2149 of 2003

Bubana Nayak alias Biswajit Siromani	APPELLANT
Vs	
State of Orissa	RESPONDENT

Date of Decision : 25-01-2005

Acts Referred:

Constitution of India, 1950 — Article 19, 21, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 156, 157, 162
Penal Code, 1860 (IPC) — Section 294, 302, 307, 323, 326

Citation : (2005) CLT 547 (Suppl CrI) : (2005) CriLJ 2524 : (2005) 1 OLR 553

Hon'ble Judges : I.M. Quddusi, J

Bench : Single Bench

Judgement

I.M. Quddusi, J.—Heard learned counsel for the petitioner and the learned Addl. Government Advocate.

2. In this case the petitioner has challenged the registration of a subsequent case on the First Information Report lodged relating to an incident for which earlier a First Information Report was already lodged.

3. The brief facts of the case are that a First Information Report was lodged on 24.4.2003 at Khandapara Police Station which was registered as First Information Report No. 47 of 2003 under Sections 448/294/323, I.P.C. corresponding to G.R. Case No. 77 of 2003 pending in the Court of J.M.F.C., Khandapara. Thereafter a charge-sheet was submitted by the Investigating Officer and the learned Magistrate has taken cognizance thereon vide Order dated 16.5.2003 for the offences punishable under Sections 448/294/323, I.P.C. After lodging the First Information Report dated 24.4.2003, the complainant lodged another First Information Report of the same incident, which was registered as First Information Report No. 56 of 2003 for the offence punishable u/s 376, I.P.C. corresponding to G.R. Case No. 92 of 2003. The same was lodged on 14.5.2003. In the earlier First Information Report, the allegation of rape was not there. But in the subsequent First Information Report it has been alleged by

the complainant that she was raped by the petitioner at the time of incident.

4. A question has arisen before this Court as to whether for the same incident a further First Information Report can be registered or not.

5. In Section 154, Cr.P.C. it has been provided that every information relating to the commission of a cognizable offence, if given orally to an Officer-in-Charge of Police Station, shall be reduced to writing by him and be read over to the informant and shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by in-charge of the Police Station. Once the information has been given to the Officer-in-Charge of the Police Station concerned for commission of cognizable offence of an incident which has been reduced to writing and a case has been registered on the basis of the information, the same would be the first information and the report will be called as the First Information Report and as such any information given to the Officer-in-Charge of the Police Station subsequently cannot be termed as First Information Report as there cannot be two First Information Reports for the same.

6. In the case of T.T. Antony Vs. State of Kerala and Others, the Apex Court has held as follows :

"An information given under Sub-section (1) of Section 154 of Cr.P.C. 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 into motion and marks the commencement of the investigation which ends up with the formation of opinion under Sections 169 or 170 of Cr.P.C., as the case may be, and forwarding of a police report u/s 173 of Cr.P.C. It is quite possible and it happens not infrequently that more information 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 of Cr.P.C. Apart from a vague information by a phone call or 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. - F.I.R. postulated by Section 154 of Cr.P.C. All other information 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 u/s 162 of Cr.P.C. No such information/statement can properly be treated as an F.I.R. 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 the Cr.P.C. Take a case where an FIR mentions cognizable offence under Sections 307 or 326, I.P.C. and the investigating agency learns during the investigation or receives a fresh

information that the victim died, no fresh FIR u/s 302 I.P.C. 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 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 u/s 173(2) or 173(8) of Cr.P.C. as the case may be. It is of course permissible for the investigating officer to send up a report to the concerned Magistrate even earlier that investigation is being directed against the person suspected to be the accused.

The scheme of the Cr.P.C. is that an officer in charge of a Police Station has to commence investigation as provided in Sections 156 or 157 of Cr.P.C. 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 evidence collected he has to form opinion under Sections 169 or 170 of Cr.P.C., as the case may be, and forward his report to the concerned Magistrate u/s 173(2) of Cr.P.C. 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, Cr.P.C."

7. The Hon"ble Apex Court further in the above case has held as under :

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"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.P.C. 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 Narangs" case (supra) 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 u/s 173(2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156, Cr.P.C. may, a case of abuse of the statutory power of investigation in a given case. In our view a case of a 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 underway 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 Article 226/227 of the Constitution.

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The correct course of action should have been to take note of the findings and the contents of the report, streamline the investigation to ascertain the true and correct facts, collect the evidence in support thereof form an opinion under Sections 169 and 170, Cr.P.C. as the case may be and forward the report/reports u/s 173(2) or Section. 173(8), Cr.P.C. to the concerned Magistrate. The course adopted in this case, namely, the registration of the information as the second FIR in regard to the same incident ad making a fresh investigation is not permissible under the scheme of the provisions of the Cr.P.C. as pointed out above, therefore, the investigation undertaken and the report thereof cannot but be invalid. We have, therefore, no option except to quash the same leaving it open to the investigating agency to seek permission in Crime No. 353/ 94 or 354/94 of the Magistrate to make further investigation forward further report or reports and thus proceed in accordance with law.

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8. In view of the above-mentioned cases, it is well settled that the registration of the information as the second F.I.R. in regard to the same incident is not permissible under the law and if the report u/s 173(2) Cr.P.C. has been filed before the Magistrate in respect of the F.I.R. registered earlier, it is always open for the Investigating Officer to make further investigation under Sub-section (8) of Section 173 Cr.P.C. and forward his report to the Magistrate concerned or if no such report has been filed and the investigation has not been concluded the further information may be treated the statement as part of the record for the purpose of further investigation. Therefore, as in the instant case, the second F.I.R. of the same incident as F.I.R. No. 56 of corresponding to G.R. Case No. 92 of 2003 has been registered which is not permissible under the law, in the opinion of this Court, it is a fit case for exercising the power u/s 482 Cr.P.C, Therefore, the petition is allowed. The F.I.R. No. 56 of 2003 corresponding to G.R. Case No. 92 of 2003 pending in the Court of the learned J.M.F.C., Khandapada is quashed. However, it will be open for the Investigating Officer of the case relating to F.I.R. No. 47 of 2003 corresponding to G.R. Case No. 77 of 2003 to treat the second F.I.R. as the statement u/s 162 Cr.P.C. and proceed with the investigation and submit his report u/s 173(2) Cr.P.C.

9. The CRLMC is disposed of accordingly.