

(2016) 11 GAU CK 0056

In the Gauhati High Court

Case No : Crl.Pet. No. 988 of 2014 and 707 of 2015

Md. Amir Uddin

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 21-11-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 193, Section 196, Section 199, Section 34, Section 419, Section 420, Section 468

Citation : (2016) 6 GauLJ 683 : (2016) 5 GauLT 358

Hon'ble Judges : M.R. Pathak, J.

Bench : Single Bench

Advocate : Ms. P. Lahkar, Mr. S.K. Muktar and Mr. R. Ahmed, Advocates, for the Petitioner; S.M. Baruah, Addl. P.P, Mr. H.R.A. Choudhury, Md. Giash Uddin and Mr. M. Buragohain, Advocates, for the Respondent No. 2

Final Decision : Allowed

Judgement

M.R. Pathak, J. (Oral) - Heard Mr. Sheikh Muktar, learned counsel for the petitioners and Ms. SM Baruah, learned Additional Public prosecutor. Also heard Mr. HRA Choudhury, learned senior counsel, assisted by Mr. Giash Uddin learned counsel for the respondent No. 2 in the both the petitions.

2. In Criminal Petition No. 988 of 2014, the petitioners have challenged the FIR dated 11.07.2014, registered as Hojai Police Station Case No. 370 of 2014, under Sections 193/196/199/420/419/468/34 of the Indian Penal Code corresponding to GR No. 1470 of 2014 arising out of the complaint lodged by the respondent No. 2.

3. On 10.12.2014, the Court issued notice to the respondents in the aforesaid Crl. Ptn. No. 988/2014, making it returnable by 19-01-2015 and in the interim, was pleased to suspended the further proceedings of said Hojai PS Case No. 370/2014 (corresponding to GR No. 1470/2014) with regard to the petitioners till the returnable date i.e. 19-01-2015, which was subsequently extended from time

to time and on 22-03-2016, the said order of suspension was extended until further order.

4. In spite of such stay order of the Court, the concerned police officer, after completion of the investigation of said Hojai PS Case No. 370/2014, submitted the charge sheet in it, vide No. 272 dated 31-12-2014, under Sections 193/194/199/420/419/468/34 IPC against the petitioners and further, the Inspector & Officer-in-Charge of Hojai Police Station forwarded the same to the learned Sub Divisional Judicial Magistrate (SDJM, in short), Sankardev Nagar, Hojai.

5. Being aggrieved with the same, the petitioners have preferred Criminal Petition No. 707 of 2015 praying for quashing the said charge sheet No. 272 dated 31-12-2014, submitted in Hojai PS Case No. 370/2014 (corresponding to GR No. 1470/2014), under Sections 193/196/199/420/419/468/34 IPC.

6. On 08-09-2015, the Court while issuing notice to the respondents in the aforesaid Crl. Ptn. No. 707/2015, in the interim suspended the further proceedings of said GR Case No. 1470/2014 (arising out of Hojai PS Case No. 370/2014), pending in the Court of Judicial Magistrate First Class, Sankardev Nagar, Hojai.

7. As both the criminal petitions have arisen from the same police case and the parties have also agreed to it, both the petitions are taken up together for final disposal.

8. The petitioners contended that on 21-05-2011 one Md. Ataur Rahman, as a complainant, filed a complaint petition before learned SDJM, Sankardev Nagar, Hojai being CR No. 547/2011, alleging that his late grandfather Amir Ali was the owner and possessor of a plot measuring 2 Kathas 10 Lechas, under Dag No. 73 of K.P.Patta No. 82 and 2 Bighas under Dag No. 68 of K.P.Patta No. 68 together 2 Bighas 2 Kathas 10 Lechas at village Jayantia Basti under Mouja-Hojai, District-Nagaon covered by land of Abdul Khalikh in the North, land of Kari Namwar Ali in the South, land of Ataur Rahman (complainant) in the East and land of Abdul Khalikh in the West. The said informant stated that the present petitioners No. 1 to 5 purchased the said land from the heirs of the said deceased in phase manner and enjoyed its possession whereas the complainant enjoyed only 3 Kathas 10 Lechas in part, as Adhiyar Rayat, in place of his late father Mujammil Ali. As the complainant learnt that the owners of the said land desired to sale the same, he intended to purchase the same by paying proper value to which the land owners have agreed. But as conspired by the present petitioner No. 3 the petitioner Nos. 1 and 2 without the knowledge of the complainant by fixing the photographs of petitioner Nos. 6, 7 & 8 in place of the pattadars, the witness Nos. 3, 4 & 5 of the case, without obtaining any sale permission, executed a forged registered deed of sale of the aforesaid land on 29-10-2009 vide No. 2115 before the Senior Sub-Registrar of Nagaon district, wherein the petitioner Nos. 4 and 5 brothers of the petitioner No. 3, fraudulently identified themselves as

Witness Nos. 3 & 4 of the said complaint petition and signed the said sale deed as signing witness identifying the purchaser, the petitioner No.3. The complainant also stated that he came to know about the said forged sale deed on 21-06-2010 and after obtaining certified copy of the said sale deed, he filed the said complaint for taking necessary action against the accused petitioners and others involved in the case by registering a criminal case under proper sections and to direct the officer-in-charge of Hojai police station to take appropriate action.

9. In the said complaint, the complainant named 8 (eight) witnesses on his behalf including Md. Nooruddin Laskar, the present respondent No. 2, Md. Jahur Uddin, Md. Rahim Uddin and Md. Burhan Uddin amongst others. After perusing the said complaint, the learned SDJM, Sankardev Nagar, Hojai by his order dated 24-05-2011, forwarded the said complaint to the O/C of Hojai police station, directing him to register the same as a police case and to submit their report after investigation. Accordingly, the said complaint dated 21-05-2011 was considered as an FIR and it was registered as Hojai PS Case No. 138/2011, corresponding to GR No. 558/2011, under Sections 193/196/199/420/419/468/34 IPC.

10. It is submitted by the petitioners that the concerned Investigating Officer, after due investigation, vide No. 83/2014 dated 30-04-2014 submitted the Final Report in said Hojai PS Case No. 138/2011, corresponding to GR No. 558/2011 and requested the authority to relieve the accused persons, i.e. the petitioners herein from the case.

11. The petitioners also contended that another grandson of said late Amir Ali, Md. Nooruddin Laskar, the present respondent No. 2, who was witness No. 1 to the aforesaid complaint petition dated 21-05-2011 of said Md. Ataur Rahman, being CR No. 547/2011, later registered as Hojai PS Case No. 138/2011, wherein the police filed the fire 2 final report on 30-04-2014, preferred another complaint petition before the learned SDJM, Sankardev Nagar, Hojai on 11-07-2014 against the petitioners for the same offence with regard to the same very parcel of land described in the schedule of CR No. 547/2011, i.e. Hojai PS Case No. 138/2011, which was registered on 11-07-2014 as Hojai PS Case No. 370/2014, corresponding to GR No. 1470/2014, under Sections 193/196/199/420/419/468/34 IPC.

12. Mr. Muktar, learned counsel for the petitioners submitted that for the same offence there cannot be two separate proceedings on two separate FIRs. Mr. Muktar from the complaint/FIR of respondent No. 2 pertaining to Hojai PS Case No. 370/2014 pointed out before the Court that for the land involved in the case already two suits being Title Suit Nos. 22 and 57 of 2010 are pending before the Court, wherein the parties have entered their appearance and filed written statements. Mr. Muktar further placed before the Court that Witness Nos. 3, 4 and 5 of the informant/complainant, Md. Ataur Rahman named in the FIR/ Complaint with regard to Hojai PS Case No. 138/2011 on 31.08.2013 and 25.02.2014 respectively submitted that they have personally signed the Sale

Deed in question involved in the case. On behalf of the petitioners it is also urged that in the first case, i.e. Hojai PS Case No. 138/2011 corresponding to GR No. 558/2011 police have already filed the fire 2 Final Report on 30-04-2014 and being failed in the said case, the respondent No. 2, brother and relative of informant/complainant of Hojai PS Case No. 138/2011 has now filed the second FIR in the matter with regard to same offence for same land and therefore the FIR pertaining to Hojai PS Case No. 370/2014 (corresponding to GR No. 1470/2014), the said police case as well as the charge sheet No. 272 dated 31-12-2014, submitted in said Hojai PS Case No. 370/2014 being bad in law should be set aside and quashed.

13. Appearing on behalf of the respondent No. 2, Mr. HRA Choudhury, learned senior counsel submitted that though the police vide No. 83/2014 dated 30-04-2014 submitted the Final Report with regard to Hojai PS Case No. 138/2011 (corresponding to GR No. 558/2011), it was objected by the complainant and by an order dated 13-10-2014, passed in GR No. 1470/2014 (arising out of Hojai PS Case No. 370/2014) learned SDJM, Sankardev Nagar, Hojai considering the said objection of the complainant and the dispute of the case directed the Officer-in-Charge of Hojai Police Station for further investigation of the case and to submit final form (report) at the earliest. Mr. HRA Choudhury also placed before the Court that on the prayer of the concerned investigating officer of Hojai PS Case No. 370/2014 for amalgamation of the said case with the Hojai PS Case No. 138/2011 under Sections 193/196/199/420/419/468/34 IPC, the learned SDJM, Sankardev Nagar, Hojai on 18-12-2014 allowed the said prayer of the I/O concerned directing him to do the needful and accordingly, the I/O of the Hojai PS Case No. 370/2014 finding sufficient materials against the petitioners submitted the charge sheet in the case vide No. 272 dated 31-12-2014 against the petitioners. Mr. Choudhury as such prayed for rejection and dismissal of both the criminal petitions.

14. But it is to be noted herein that the learned SDJM, Sankardev Nagar, Hojai directed the Officer-in-Charge of Police Station for further investigation and submission of Final Form by an order dated 13-10-2014 that has been passed in the GR No. 1470/2014, which has arisen out of Hojai PS Case No. 370/2014 and not with regard to Hojai PS Case No. 138/2011, corresponding to GR No. 558/2011. Moreover, the order of amalgamation of Hojai PS Case No. 138/2011 with Hojai PS Case No. 370/2014 corresponding to GR No. 1470/2014 was passed by learned SDJM, Sankardev Nagar, Hojai on 18-12-2014 after the proceeding of said Hojai PS Case No. 370/2014, corresponding to GR No. 1470/2014 was suspended by this Court on 10-12-2014 in the Criminal Petition No. 988/2014. Further, the charge sheet in said Hojai PS Case No. 370/2014 (corresponding to GR No. 1470/2014) was also submitted vide No. 272 dated 31-12-2014 under Section 193/196/199/420/419/468/34 IPC after the proceeding of said Hojai PS Case No. 370/2014 corresponding to GR No. 1470/2014 was stayed by this Court on 10-12-2014 as noted above.

15. Therefore, the order of amalgamation of Hojai PS Case No. 138/2011 with Hojai PS Case No. 370/2014 by the order dated 13-10-2014 passed by learned SDJM, Sankardev Nagar in GR No. 1470/2014 as well as the submission of charge sheet in said Hojai PS Case No. 370/2014 (corresponding to GR No. 1470/2014) on 31-12-2014, after the order of suspension of the said proceeding by this Court on 10.12.2014 in the Criminal Petition No. 988/2014 are not tenable in the eye of law.

16. In the case of T.T. Antony v. State of Kerala, reported in (2001) 6 SCC 181, the Hon"ble Apex Court have held that -

"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 cognisable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. 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 cognisable 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."

17. The Hon"ble Supreme Court in the case of Amitbhai Anilchandra Shah v. CBI reported in (2013) 6 SCC 348 have held that -

"The above referred declaration of law by this Court in the case of T.T. Antony (supra) has never been diluted in any subsequent judicial pronouncements even while carving out exceptions."

18. In the said case of Amitbhai Anilchandra Shah (supra), the Hon"ble Supreme Court, in para 58, have also observed that -

"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 cognisable 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.

Even after filing of such a report, if he comes into possession of further information or material, there is no need to 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 which is evident from sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognisable offence satisfies the requirements of Section 154 of the Code. 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 cognisable offence or the same occurrence or incident giving rise to one or more cognisable offences.

Further, on receipt of information about a cognisable offence or an incident giving rise to a cognisable offence or offences and on entering FIR in the station house diary, the officer in charge of the police station has to investigate not merely the cognisable 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 of the Code. Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report(s) to the Magistrate. 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 cognisable 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 under Section 173(2) has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution.

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.

Administering criminal justice is a two-end process, where guarding the ensured rights of the accused under the Constitution is as imperative as ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the court of law to protect and shield the rights of both. Thus, a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognisable offence has to be struck by the court. Accordingly, 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 cognisable offences. As a consequence, in our view this is a fit case for quashing the second FIR to meet the ends of justice.

The investigating officers are the kingpins in the criminal justice system. Their reliable investigation is the leading step towards affirming complete justice to the victims of the case. Hence they are bestowed with dual duties i.e. to investigate

the matter exhaustively and subsequently collect reliable evidences to establish the same."

19. The Hon"ble Supreme Court in the case of Anju Chaudhary v. State of U.P., reported in (2013) 6 SCC 384 have held that -

"14. On the plain construction of the language and scheme of Sections 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognisable offence shall be reduced into writing by the officer-in-charge of a police station. This implies that there has to be the first information report about an incident which constitutes a cognisable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of Section 154 of the Code. These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police. Therefore, second FIR for the same incident cannot be registered. Of course, the investigating agency has no determinative right. It is only a right to investigate in accordance with the provisions of the Code. The filing of report upon completion of investigation, either for cancellation or alleging commission of an offence, is a matter which once filed before the court of competent jurisdiction attains a kind of finality as far as police is concerned, may be in a given case, subject to the right of further investigation but wherever the investigation has been completed and a person is found to be prima facie guilty of committing an offence or otherwise, re-examination by the investigating agency on its own should not be permitted merely by registering another FIR with regard to the same offence. If such protection is not given to a suspect, then possibility of abuse of investigating powers by the police cannot be ruled out. It is with this intention in mind that such interpretation should be given to Section 154 of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, reinvestigation or de novo investigation is beyond the competence of not only the investigating agency but even that of the learned Magistrate. The courts have taken this view primarily for the reason that it would be opposed to the scheme of the Code and more particularly Section 167(2) of the Code."

20. In the case of Yanob Sheikh v. State of W.B., reported in (2013) 6 SCC 428 the Hon"ble Apex Court have held that -

"12. On this principle of law, we have no hesitation in stating that the second FIR about the same occurrence between the same persons and with similarity of scope of investigation cannot be registered and by applying the test of similarity, it may then be hit by the proviso to Section 162 of the Code."

21. The Hon'ble Supreme Court in the case of *Surender Kaushik v. State of U.P.*, reported in (2013) 5 SCC 148 have held that -

It is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognisable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in *Upkar Singh* [(2004) 13 SCC 292], the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible."

22. In the present case the incident with regard to the Hojai PS Case No. 138/2011 (corresponding to GR No. 558/2011) is the same to the Hojai PS Case No. 370/2014 (corresponding to GR No. 1470/2014). Moreover, the complainant/informant of the first FIR pertaining to Hojai PS Case No. 138/2011 and the complainant/informant of the second FIR pertaining to Hojai PS Case No. 370/2014 are own relatives and further the complainant/informant of the second FIR of said Hojai PS Case No. 370/2014, the respondent No.2 herein, was the witness No.1 in the first complaint/FIR of Hojai PS Case No. 138/2011 that was lodged by one Md. Ataur Rahman and in both the complaints/FIRs the accused persons are same, i.e. the petitioners of both the criminal petitions.

23. In the cases in hand, the substance of the allegations in both the FIRs pertaining to Hojai PS Case No. 138/2011 and Hojai PS Case No. 370/2014 are identical to each other and further, both the FIR deals with the offences punishable under Sections 193/196/199/420/419/468/34 IPC. From the perusal of the FIRs of both the Hojai PS Cases, noted above that are annexed to the petitions, this Court is of the view that the alleged offences under the second FIR, in substance, are alike with the alleged offences under the first FIR and both the FIRs clearly illustrates that it has evolved from the same transaction and in any case, the second FIR cannot be said to have arisen from a different matter with that of the alleged offences under the first FIR. Therefore, the question of fresh or further investigation based on the said second FIR i.e. with regard to Hojai PS Case No. 370/2014 filed in connection with the same and connected alleged cognisable offence as that of Hojai PS Case No. 138/2011, that too, not being a counter case, cannot be allowed to be made by the investigating agency

and therefore, needs to be interfered with.

24. For the reasons above the registration of the second FIR lodged by the respondent No.2 in the same police station being Hojai PS Case No. 370/2014 corresponding to GR No. 1470/2014 for the same occurrence, against the same accused persons, as that of Hojai PS Case No. 138/2011 corresponding to GR No. 558/2011 and not being a counter FIR, being impermissible in law; therefore, to prevent abuse of the process of the Court and to secure the ends of justice, in exercise of the power under Section 482 of the CrPC, the FIR lodged by the respondent No. 2 on 11-07-2014 being Hojai PS Case No. 370/2014 corresponding to GR No. 1470/2014 is hereby quashed and consequently, all proceedings against the petitioners, taken on the basis of said Hojai PS Case No. 370/2014 also stand quashed.

25. With the aforesaid observation both the criminal petitions stands allowed.