

(2019) 11 CHH CK 0042
In the Chhattisgarh High Court
Case No : Criminal Revision No. 418 Of 2017

Pramod Singh

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 21-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 19, 21, 226, 227
Code Of Criminal Procedure, 1973 — Section 154, 155, 156, 157, 162, 169, 170, 173, 173(2), 173(8), 228, 482
Indian Penal Code, 1860 — Section 147, 148, 294, 323, 506, 506B
Scheduled Castes And Scheduled Tribes (Prevention Of Atrocity) Act, 1989 — Section 3(i)(x)

Citation : (2019) 11 CHH CK 0042

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : Manoj Paranjape, Reena Singh

Final Decision : Allowed

Judgement

1. Challenge in this revision is to the order dated 03.03.2017 passed by Special Judge (Atrocities)/Sessions Judge, Mahasamund, in Special Criminal Case No.H-30/2016, whereby the learned trial Court has rejected the application of the applicant filed under Section 228 CrPC for discharging him of the offence levelled against him.

2. Brief facts of the case are that the applicant is facing trial under Section 294, 323, 506 IPC and Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, 1989 (for short 'the Act, 1989'). The applicant's application filed under Section 228 Cr.P.C. for discharging him of the offence has been rejected by the trial Court. Hence, this revision petition.

3. Learned counsel for the applicant submits that the incident took place on 20.09.2016 at about 11.00 am, and out of the same incident two FIRs have been registered against the applicant, which is not permissible in law and the trial

Court has completely ignored this significant aspect of the matter. He further submits that Chandrahas Chandrakar has lodged the 1st FIR and his statement was recorded but he did not disclose the fact of occurrence of any other offence and subsequently the written report has been lodged, which itself shows the intention of the complainant. It is settled position of law that the expression 'same transaction' from its very nature is incapable of exact definition. He also submits that where two incidents are of different times with involvement of different person, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the Court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial. It is next submitted that accusation made in the FIR do not constitute any offence under the Act 1989 as the complaint is false or stems out of malafides to blackmail or to wreck some personal vengeance for settling and scoring personal vendetta or by way of some counter blast or found to be misused of judicial process. He also submits that it is the duty of the court to examine and judicially scrutinize whether on its facts, the FIR and challan do constitute any offence under the Act. The applicant is facing two criminal trial for the same incident, therefore, the impugned order is liable to be set aside. In support of his argument, he placed reliance on the decision of Hon'ble Supreme Court in the matter of Amitbhai Anichandra Shah Vs. Central Bureau of Investigation and another (2013) 6 SCC 348.

4. On the other hand, learned State counsel supports the impugned order. He also placed reliance on the decision of Hon'ble Supreme Court in the matter of P. Sreekumar Vs. State of Kerala and others (2018) 4 SCC 579 .

5. I have heard the learned counsel for the parties and perused the record.

6. It is clear from the documents on record that two crimes have been registered against the applicant, the first Crime No. is 166/2016 and another one is 168/2016. Both the crime numbers were registered in Police Station Patewa, District Mahasamund. It is pertinent to mention here that on the same day i.e. 20.09.2016, after interval of 1 ½ hours, two FIRs were lodged against the applicant, First FIR having Crime No.166/2016 was lodged at 13.00 PM and second having Crime No.168/2016 lodged at 14.30 PM. The most interesting aspect of the FIRs is that the date and time of occurrence of incident is same i.e. 20.09.2016 at 11.00 AM. The first FIR having Crime No.166/2016 has been lodged by complainant Chandrahas Chandrakar under Sections 147, 148, 294, 506-B and 323 IPC and the second FIR having Crime No.168/2016 has been lodged by Praduman Khadiya under Sections 294, 323, 506-B IPC and Section 3 (I) (x) of the Act, 1989.

7. The Hon'ble Supreme Court has elaborately discussed the identical issue in the matter of Amitabh (supra) and held in para 37, which reads thus:-

37. This Court has consistently laid down the law on the issue interpreting the

Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T. Antony 2001 SCC (Cri) 1048, this Court has categorically held that registration of second FIR (which is not a cross-case) is violative of Article 21 of the Constitution. The following conclusion in paras 19, 20 and 27 of that judgment are relevant which read as under : (SCC pp. 196-97 & 200)

"19. The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC 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 the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. 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 sub-section (8) of Section 173 CrPC.

20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. 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 cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. 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 same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.

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 CrPC 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 1979 SCC (Cri) 479 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) 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 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."

The above referred declaration of law by this Court has never been diluted in any subsequent judicial pronouncements even while carving out exceptions.

8. In the instant case, according to the record, for the same incident, two FIRs were registered against the applicant and two charge sheets were also filed against him. These two FIRs are not counter FIR to each other. That apart, complainant Praduman Khadiya is witness to Crime No.166/2016, his name was in the witness list at Sl. No.2 and the police registered the case against the applicant after 1 ½ hours in different sections, which is not permissible in law.

9. Thus, from the aforesaid discussion and in the light of decision of Hon'ble Apex Court in the matter of Amitbhai (supra), the impugned order, therefore, cannot be sustained and the same deserves to be set aside.

10. Accordingly, the revision is allowed. The impugned order dated 03.03.2017 is set aside.