(2014) 07 GAU CK 0033

In the Gauhati High Court

Case No : Criminal Rev. No. 5(K) of 2013

Sanjeev Nagar and Others APPELLANT

Vs

State of Nagaland and Others RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Antiquities and Art Treasures Act, 1972 — Section 25(1) — Constitution of India, 1950 - Article 19, 21, 226, 227 — Criminal Procedure Code, 1973 (CrPC) - Section 154, 155, 155(2), 156, 156(1) — Evidence Act, 1872 - Section 27 — Penal Code, 1860 (IPC) - Section 120(B), 120B, 120-B, 147, 148

Citation : (2015) 1 GLT 457

Hon'ble Judges : Prasanta Kumar Saikia, J.

Bench : Single Bench

Advocate : I. Longjem and S.M. Ozukum, for the Appellant; K. Wotsa, GA, B. Bhuyan and A.K. Bhuyan, for the Respondent

Final Decision : Disposed off

Judgement

Prasanta Kumar Saikia, J.?This petition under Section 482. Cr.PC is filed seeking quashment of FIR dated 6.5.13 filed by Mr. Deben Mech with O.C. Dimapur Police station on 6.5.13. Heard Mr. I. Longjem, learned counsel for the petitioners and Mr. K. Wotsa, learned State counsel appearing for respondent No. 1. Also heard Ms. B. Bhuyan, learned counsel appearing for respondent No. 4 and Mr. A.K. Bhuyan, learned counsel appearing for respondent No. 5.

2. The brief facts necessary for disposal of the present proceeding are that on 2.9.12 one Sunil Jaiswal had filed FIR with O.C. Namchi Police Station, Sikkim alleging that the petitioner Mr. Sanjeev Nagar and his nephew Mr. Ayush Kapoor had cheated the Directors of M/s. Eastern Chemical Industry namely, Sunil Jaiswal and Suvrata Jaiswal. For ready reference, the FIR dated 2.9.2012 is reproduced below:--

"FIR Contents (Attach separate sheet, if required)

To SHO Namchi Police Station South Sikkim District Sikkim Date:-02.09.2012 Sub:-FIR

Sir,

This is to put to your notice that Mr. Sanjeev Nagar and his nephew Ayush Kapoor R/O Maiden Travels 113 Karnani Mansion, Park St Kolkata 25 has cheated our company Directors namely Sunil Jaiswal and Suvrata Jaiswal to the tune of 2.50 crores.

Sir as being a travel agent and a common friend of 15 yrs we trusted him with the admission of our Directors children in USA and also paid him USD 3,50,000/- from a/c No. Suvrata Jaiswal 346010100021924 and Sunil Jaiswal 910010019803772 of Axis Bank Namchi amount to purchase a house where the family would be staying to pursue the course of study of their children in Professional Golf and a dream to represent and play under the National Flag. Sir, Mr. Sanjeev Nagar (email id: maiden@sifly.com) asked Mr. Ayush Kapoor (email id- : maidentravels@gmail.com) to manipulate the original Invoice copy with forging the original email papers of Real Estate Agent in USA by giving wrong Bank details and made us transfer the money in Hongkong by creating a false email address and sending false bank details instead of the original USA Real Estate Agent bank details instead of the original USA Real Estate Agent bank details by duping our firm to the tune of 350000 USD and thus eloping and hiding since August 13 after the money was transferred and is not traceable till date.

His nephew Ayush Kapoor who is at Maiden Travel office is his cover up and tells he has no idea where Mr. Nagar is and he is in constant touch with Sanjeev Nagar with his mobile No. 919830906694.

As being a matter of very serious nature of cheating, fraudulent accent, criminal conspiracy and involving many others I plead to the Honourable Sir to give me justice and take very strict action in punishing the guilty and recovering the company funds.

We have also paid advances to Maiden Travels on account of expenses for flight tickets and travelling fooding and looging expenses to the tune of 50 lacs.

All the details Bank account, transaction and email correspondence, phone nos., travel tickets and admission details copy is enclosed with the application.

Hoping severe and fast action from your end.

Thanking you.

Sd/- Sunil Jaiswal (Sikkim Organics)"

3. On the basis of such FIR, South Namchi P.S. 48(9)/12 under Section 420/409/471/120(B) was registered and investigation was ordered. In course of time, the petitioner No. 1 herein, Sanjeev Nagar has filed an application under

Section 482Cr.P.C. before the Sikkim High Court alleging that such FIR does not disclose any offence and as such, same is liable to be quashed and set aside.

4. On receipt of such application, Crl. M.C. No. 01/2012 was registered and thereafter parties were heard. On hearing the parties, Court come to the conclusion that neither the averments, made in the FIR or the materials, collected during investigation, could make out any of the offences, stated in the FIR and therefore, the Sikkim High Court was pleased to quash the FIR and the consequential proceeding. The relevant part of the judgment is reproduced below:--

"18. There cannot be any second opinion about the proposition enunciated by the Hon''ble Supreme Court. The FIR in this case pertains to offences under Sections 147, 148, 447, 323, 506, 302 of the IPC. This judgment only says where the essential ingredients of any criminal offence are disclosed in the FIR, the Court cannot look into minutest details of the offence in order to quash the criminal proceedings. The allegations in the FIR in the instant case are deficient to constitute any offence and the respondent/complainant cannot take any advantage from this judgment. Even otherwise allegations of inducement are not disclosed in the FIR nor any material/evidence has been gathered during the investigation spreading over a period of more than 5 months. There is no inducement for delivery of money to the accused persons, which is not the case of the complainant himself. In the investigation it is stated that the money was transferred to DBS Bank for purchase of property in USA. It does not inspire the confidence of the Court that for purchase of property in USA the money is transferred to Hongkong. In any case no link of the accused with the account in DBS Bank Honkong has been either alleged or established by any evidence during the investigation in last almost six months.

19. In a similar case where FIR does not disclose any offence, the Hon''ble. Supreme Court in Satish Mehra Vs. State of N.C.T. of Delhi and Another, , held as under-

"15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often man not gets protracted. A prosecution which is bound to become lame or a sham ought to interdict in the interest of justice as continuance thereof will amount to an abuse of me process of law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extraordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations leveled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused."

20. The petitioner has alleged that the respondents are misusing the police agency to harass him. The investigation conducted so far has also not been able to conclude or prima facie establish any allegation disclosing the cognizable offence.

21. For what has been stated above, this petition is allowed. The FIR No. 48(9)12 dated 03.09.2010 and the consequential proceedings against the petitioner are hereby quashed."

5. Being aggrieved, the informant preferred a Special Leave Petition before the Apex Court of the Country vide Special Crl. No(s).4751/2013. The Hon''ble Apex Court accepted the special leave petition and issued notice to the respondent therein. The Court was also pleased to stay the operation of the order dated 26.2.2013 passed in Crl M.C. No. 01/2012.

6. In the meantime, respondent No. 5 herein has filed an FIR before the O.C. East Police Station Dimapur on 6.5.2013 alleging that he and other partners of Eastern Chemical Industry were cheated by the petitioners. On the basis of such FIR, Dimapur PS. Case No. 134/13 under Section 420/409/471 read with 66D ITA Act 2000 was registered. The registration of the FIR was followed by regular investigation. During the course of such investigation, the petitioners Nos. 1 and 2 herein were arrested and were later released on bail. It may be stated that in Namchi PS. Case No. 48(9)/12, petitioner No. 1 was arrested and later released on bail whereas petitioner No. 2 was granted anticipatory bail.

7. Being aggrieved by the FIR lodged with O.C. Dimapur Police Station which gave rise to Dimapur P.S. Case No. 134/13, the petitioners herein approached this Court by way of application under Section 482 Cr.P.C. seeking quashment of the aforesaid FIR contending that the FIR in Namchi P.S. Case No. 48(9)/2012 as well as the FIR in Dimapur P.S. Case No. 134/2013 had originated from the same incident.

8. For ready reference the FIR lodged before the O.C. Dimapur is also reproduced below contending that the FIR in Namchi P.S. 48(9)/12, FIR in Dimapur P.S. Case No. 134/13

"To The officer in Charge East Police Station Dimapur Nagaland. Honourable Sir,

Sub:- First Information Report.

This is a most heard rending plight of a first time Entrepreneur in a backward State like ours to your honour for a fast resolution because the events being narrated hereunder have led to almost ruining of my whole business, which I had built from scratch by nurturing the dreams since childhood by building capital in such a difficult place like our state, which your goodself would most kindly appreciate.

Sir, the facts are as under:--

1. Sir, I am a resident of Dimapur since birth and owner of M/s. Eastern Chemical Industry, having its chemicals manufacturing factory unit at United North, Block "B" Burma Camp Dimapur, Nagaland(copy of trade License enclosed herewith). I had brought up this unit with the fruits of my very hard labour since many years and had tried to alleviate the unemployment problem of our state with myself employment initiative in the form of this unit.

2. That Sir, I had planned a visit to USA for business exploration as also business expansion alongwith Mr. Sunil Jaiswal, who is my business partner (copy of Partnership deed with Mr. Jaiswal, enclosed herewith). In this connection, we contacted and discussed with our old acquaintance Mr. Sanjeev Nagar and his nephew Mr. Ayush Kapoor, being Travel Agents with trade name of M/s. Maiden Travels and resident of No. 8, Rajendra Road, Flat No. ID, Bhowanipore, Kolkotta-700020. His business address is at M/s. Maiden Travels, Karnani Mansion, Park Street Kolkota-700016. Since Mr. Nagar also boasted of his links in USA as well as various other countries for making Property investments and business dealings due to his travel agency business and we being simple unsuspecting people of the interior part of the country believed his word to word.

3. Then Sir, after deliberations, discussions over phone, internet, mails, etc over a long period of time, amounts of money were also finalized to be sent for purchase of House as well as also for admission to school of Mr. Sunil Jaiswal''s son, Master Ayushman Jaiswal (copy of the mails is also enclosed herewith).

4. Then Sir, after finalization of amounts, details of bank accounts for Bank transfers of funds was sought for. And then, Mr. Sanjeev Nagar (email ID: maiden@, sify.com) asked his nephew Mr. Ayush Kapoor (email ID:maiden travels@gmail. com) to manipulate the amount in the invoices by forging the original emails/IDs of the Real Estate firms in USA by giving wrong bank account details instead of the original USA Real Estate Bank Agent bank account details by duping our firm to the tune of 350000 USD which was by way of fund transfer from Jaiswal''s bank account as well as the rest of the amount in cash totaling to total of Rs. 3.50 crores in bank transfers as well as cash, and thus eloping and hiding since August 2012 after the money was transferred and is not traceable since. In one instance, when we were able to contact him in earlier times, he threatened us with dire consequences, and told us that, if we dared to come to Kolkata looking after him and, he even threatened that, we will not leave Kolkata back if we went to Kolkata.

5. Sir, I had sent some money through M/s. Sikkim Organics, of which Mr. Jaiswal, my business associate is a partner for sending the same to USA for arranging my visit to USA for a family as also a business exploration trip, since Mr. Sunil Jaiswal also intended to admit his son to a school in USA as well as to buy a home there, so that we could expand our business mere too (copy of registered partnership deed of my firm M/s. Eastern Chemical Industry, Dimapur, Nagaland with Mr. Sunil Jaiswal as partner is enclosed herewith). Again copy of bank statement of M/s. Eastern Chemical Industry Dimapur, Nagaland (firm owned by me) showing part of funds transferred to M/s. Sikkim Organics for my share of expenditure for the USA is also enclosed herewith. Copy of further bank transfer of funds of 1,75,000 USD each from the branches of Axis Bank accounts of Mr. Suvrata Jaiswal and Mr. Sunil Jaiswal amounting to total of 3,50,000 US Dollars for my expenditure to the accounts of Mr. Sanjeev Nagar is also enclosed herewith.

6. Sir, exhibits in the form of copies of Letters/e-mails from the school authorities of Academy of Lakes, USA as well as from John Fahey, President, Saddlebrook Realty stating and confirming the visit and stay of Mr. Nagar at their place in April-May 2012 and again in August 2012 is also enclosed herewith for your perusal and reference. Copy of his business card furnished to them, his visit details and wire instructions were also furnished in his letter (copy enclosed for perusal of your goodself).

7. Sir, Mr. Jaiswal is also on the lookout of Mr. Nagar and Mr. Sunil Kr. Marwaha (co-owner of Mis Maiden Travels) since last many months and copies of Look Out Notice of the Officer in charge of Namchi Police Station, South Sikkim, Sikkim against Mr. Sanjeev Nagar as well as his accomplice co-owners of the firm M/s. Maiden Travels, Mr. Sunil Jaiswal Kr. Marwaha, (who is also in cahoots with Mr. Sanjeev Nagar) is also enclosed herewith.

Sir, as this is very serious case with ramifications to be felt over the rest of my business as well Family life, I heartily pray with folded hand to kindly search for Mr. Sanjeev Nagar and Mr. Marwaha and obtain the amount of Rs. 3.50 crores given by me alongwith my business partner so that, I can remain alive and do business as earlier, otherwise, I would be on the brink of ruining myself and my whole family as most of my working capital funds have been siphoned and duped by Mr. Sanjeev Nagar and Mr. Sunil Marwaha. The signature of Mr. KHEKAHO ASSUMI, resident of H. No. 675, railway colony, Dimapur Nagaland who was witness to all our discussions with Mr. Nagar and also aware of all the payment of funds is also attested hereto, which kindly note.

Thanking you in earnest anticipation and awaiting your swift response.

(Deben Mech)"

9. According to the petitioners herein, the FIR lodged before the O/C which gave rise to East Police Station, Dimapur Case No. 134/2013 and the FIR before the O/C, Namchi P.S. which gave rise to Namchi P.S. Case No. 48(9)/2012 originated

from the same incident, and as such, the FIR before the O/C Dimapur P.S. is the second FIR in respect of incident stated in the FIR before the O/C, Namchi P.S. Since the second FIR in respect of the incident is not permissible under the law, they have prayed for quashment of the FIR before the O/C, East Police Station, Dimapur.

10. In support of its claim, the learned counsel for the petitioner has relied on the decision of the Apex Court in the case of T.T. Antony Vs. State of Kerala and Others, . The relevant part is reproduced below:-.

"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 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 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 right of the citizen 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 the 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 it was, however, observed that it would be appropriate to conduct further investigation does not warrant subjecting a citizen each time to fresh 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

Section 154 and 156 CrPC, any, a case of abuse of the statutory power of investigation in a given case. In our view 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."

11. Notice of this proceeding was served on the respondents. Respondents No. 1 to 3 have filed common counter affidavit whereas respondents No. 4 and 5 too have filed their separate counter affidavit to contend that though some facts are common in both the FIRs aforesaid) yet) the FIR in Namchi P.S. 48(9)/12 and FIR Dimapur P.S. 134/13) in fact) take care of two which are fundamentally different and as such) the FIR lodged before the O/C) Dimapur P.S.) cannot be quashed as prayed for by the petitioners, more so when the case pending before the Dimapur Police Station clearly makes out all the offences specified therein-in the terms of law laid down in the case of R.S. Raghunath Vs. State of Karnataka and another, .

12. The relevant part is reproduced below:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a serious of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Sections 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends to justice, thought it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence of make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence, but constitute only a non-cognizable offence, no investigation is permitted by a police

officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceeding and/or where there is a specific provisions in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

13. In order to bring home his point that two FIRs are fundamentally different, it has been pointed out while in the FIR before the Namchi PS, nothing has been stated regarding mode of payment of money, in the FIR lodged before Dimapur PS, the transactions which took place between the accused petitioners and informant therein and other partners of the company aforesaid had clearly been spelt out.

14. Equally important, the FIR before the O/C, Namchi P.S., does not speak anything about the commissioning of offence by the accused petitioners under the I.T.A. Act But that was not the case in regard to FIR lodged before the O/C, Dimapur P.S. which amongst other things very clearly reveals the commission of offence under the Act aforesaid by the accused petitioners.

15. Similarly, the descriptions qua the accused persons in the FIR before the O/C, Dimapur P.S., is more explicit them that of the FIR lodged before the O/C, Namchi P.S. That apart, the persons who witnessed the payment of money was not mentioned in the Namchi case whereas in the FIR, lodged before the Dimapur PS, the witnesses who were acquainted with facts and circumstances of the incident narrated therein have been named. These are all clear testimonies of the aforesaid two FIR being fundamentally different

16. In that context it has been stated that when the subsequent FIR gives different versions of the same incident, then the subsequent FIR cannot be said to be the second FIR of the incident stated in the First FIR. In that connection, the decision rendered by in the case of Surender Kaushik and Others Vs. State of Uttar Pradesh and Others, has been referred to Anju Chaudhary Vs. State of U.P. and Another, Ram Lal Narang Vs. State (Delhi Administration), has been relied on.

17. The relevant part is reproduced below:--

"24. From the aforesaid decisions, it is quite luminous that the lodgment of tow

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 cognizable 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 me three-Judge Bench in Upakar Singh, the prohibition does not cover the allegations made by the accused in the first FIR alleging different versions 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."

18. Mr. A.K. Bhuyan the learned counsel for respondent No. 5 further contends that when the incident narrated in the first is only a part of incident, narrated in the subsequent FIR, then subsequent FIR cannot always be treated as second FIR of the first incident. In that connection the decision of the Apex Court in the case of Ram Lal Narang Vs. State (Delhi Administration), has been relied on.

19. In Ram lal Narang V. State (Delhi Administration) (supra), an FIR was registered at Delhi against two persons viz., Malik and Mehra under Section 120-B, read with Sections 406 and 420, IPC and after completing the investigation the CBI filed a charge-sheet in the Court of Special Magistrate, Ambala against them alleging that the two conspirators dishonestly obtained possessions of a pair of precious antique pillars by making false representation to the Magistrate and substituted them by fakes. While charges could not be framed due to absence of the accused in the Court, on an application under Section 494 CrPC, moved by the Public Prosecutor, the Magistrate permitted withdrawal of the case and discharged the accused. Subsequently, the genuine pillars were found in a warehouse in London. An FIR was then registered in Delhi under Section 120-B IPC read with 411 IPC and Section 25(1) of the Antiquities and Art Treasures Act 1972 against one Narang and his two brothers.

20. The charge-sheet recited that as a result of conspiracy between the Narang brothers, Malik and Mehra, the fake pillars, which were made by two well-known sculptors at the instance of the Narangs, were substituted by Malik and the genuine ones transported to Bombay and finally smuggled out to London by the Narangs. The Magistrate at Delhi issued process for appearance of the Narangs. A petition was then moved before the Magistrate for dropping the proceeding against them on the ground that the entire second investigation was illegal as a case on the same facts was already pending before the Ambala Court and that the Delhi Court acted without jurisdiction in taking cognizance of the case pursuant to a report of the police based upon such illegal investigation. The Magistrate held the question to be decided by the High Court under Section 186, CrPC. The Narangs thereupon filed appeals under Sections 482 CrPC. to the High Court which were dismissed.

21. Before the Supreme Court two points came to be determined (1) Whether

the two conspiracies, which were the subject-matter of two FIRs and two charge-sheets, were the same and therefore, there was an implied bar to the power of police to investigate into the subsequent FIR and the power of the Court at Delhi to take cognizance of the case upon the report of such information; and (2) What was the duty of the police on discovering that the conspiracy, which was the subject-matter of the earlier case, was part of a larger conspiracy; whether the police acted without jurisdiction in investigating or in continuing to investigate into the case and whether the Delhi High Court acted illegally in taking cognizance of the case?

22. Hon''ble Apex Court held that the question is not whether the nature and character of the conspiracy has changed by the mere inclusion of a few more conspirators as accused or by the addition of one more among the objects of the conspiracy. The question is whether the two conspirators are in substance and truth the same. Where the conspiracy discovered later is found to cover a larger canvas with broader ramifications, it cannot be equated with the earlier conspiracy which covered a smaller field of narrower dimensions.

23. It is also the contention of learned counsel for respondent No. 4 that if one series of acts so connected together as to form the part of the same transactions, more offences than one, committed by one or more persons may be taken care of by FIR more than one. In that connection the decisions rendered by Apex Court in the of Anju Chaudhary Vs. State of U.P. and Another, .

"15. On a 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 cognizable offence shall be reduced to 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 cognizable offence. The purpose of registered an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police 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; offence 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 suspect, then possibility of abuse of investigation 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. [Ref Reeta Nag Vs. State of West Bengal and Others, and Vinay Tyagi Vs. Irshad Ali @ Deepak and Others, .

23. Be that as it may, if the law laid down by this Court in T.T. Antony Vs. State of Kerala and Others, is to be accepted as holding that 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 be 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 preclude from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right torbring the real accused to book. This cannot be the purport of the Code.

40. It is true that law recognizes common trial or a common FIR being registered for one series of acts so connected together as to form the same transaction as contemplated under Section 220 of the Code. There cannot be any straightjacket formula, but this question has to be answered on the facts of each case. This Court in the case of Mohan Baitha and Others Vs. State of Bihar and Another, , held that the expressions ''same transaction'' from its very nature is incapable of exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense in the ordinary use of language must decide whether or not in the very facts of a case, it can be held to be ne transaction.

41. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, 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.

42. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principle and subsidiary, so as to result in one commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction."

24. The learned State counsel Mr. K. Wotsa and Ms. B. Bhuyan, learned counsel appearing for respondent No. 4 have adopted the argument advanced by the learned counsel for respondent No. 5. But then, they further contend that the deed of compromise which was executed after lodging of the Dimapur P.S. Case No. 134/2013 further reveals that the accused petitioners committed the offences which are specified in the FIR lodged before the O/C Dimapur P.S. and it is one more proof of the aforesaid two cases being different.

25. I have carefully considered the arguments, advanced by the learned counsel for the parties having regard to the averments, made in FIRs in question and the documents attached therewith. On perusal of the FIR lodged before the Namchi PS, it is found that the transaction of money between the accused petitioners and the Directors of M/s. Eastern Chemical Industry Ltd. for the purpose of sending their wards to USA for undergoing training meant for professional Golf as well as the defalcation of such money were at the centre stage of both the FIRs, aforesaid.

26. On further perusal of FIRs aforesaid, I have also found that quantum of money involved in both the FIR are also same quantum of such money being Rs. 3,50,000 USD which is equivalent to Rs. 3.5 crores. It is worthwhile to note that such payment was made to the accused petitioners by Sunil Jaiswal and Survrata Jaiswal and such payment was made from their bank account, maintained with the Axis Bank, Namchi.

27. Equally important, both the FIRs reveal that in order to defalcate the money, the accused persons, named in those FIRs, had manipulated not only the original invoices but the original e-mails IDs of the concerned firm as well. On reading both the FIRs aforesaid, it is found that the sameness of both the incident writ large on the very face of aforesaid FIRs and as such, it needs to be held that subsequent FIR is invariably the second FIR in respect of incident, stated in the FIR before the O/C, Namchi P.S.

28. It is true that some addition and alteration has been made here and there in the FIR lodged before the O/C, Dimapur P.S. But such additions/alterations no way go to show that the FIR aforesaid are fundamentally different Quite contrary to it, such addition to alterations, in my firm opinion, were made just to improve

the version stated in the first FIR and it was done only to escape the mischief arising out of observations made in Crl M.C. No. 01/2013.

29. The fact that the FIR before the O/C, Dimapur P.S. was lodged after a gap of about 2 and a half months from the date of passing of order in Crl. M.C. No. 01/2012 and the fact that Hon''ble Sikkim High Court very clearly observed that the FIR before the Namchi P.S., did not disclose any offence having been committed by accused person named therein make such conclusion inevitable.

30. To appreciate the above aspect of the matter well, the relevant part of the judgment rendered by Sikkim High Court is reproduced below:--

"11. I have perused the alleged disclosure statement under Section 27 of the Indian Evidence Act. It reveals that an attempt has been made by the investigating agency to extract a king of confession from the said accused. Even if the face value to the statement is given it only says he prepared a fake e-mail id at the instance of the present petitioner, who happens to be his uncle. No discovery of any fact of material has been made pursuant to the said statement. This speaks volumes about the manner, the investigating agency is conducting this case. The entire statement besides wanting any evidentiary value does not fasten any criminal liability against the petitioner. As a matter of fact there is no disclosure statement under Section 27 of the Evidence Act The offence of cheating is defined under Section 415, which reads as under:--

"415. Cheating:- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omissions caused or is likely to cause damage or harm to that person in body, mind reputation or property, is said "cheat".

Explanation. -A dishonest concealment of facts is deception within the meaning of this section."

12. How the allegations contained in the FIR fall within the purview of this Section could not be explained by the learned Public Prosecutor or even the senior counsel appearing for the respondent-complainant. In what manner any inducement was made to the complainant to part with the money is not disclosed at all. The entire complaint is made on two allegations. The complainant wanted the admission of his children for which 3,50,000/- USD was required to be paid in USA. In this regard no material particular such as the name of the Institution where the admissions is sought or was intended to be sought, the duration of the course, or the fees structure, is disclosed. One cannot believe that a huge amount of Rs. 2.50 crores has been paid by any person without knowing the details of the Institution, course, place and fees structure etc. The entire allegations is devoid of material facts constituting an offence.

13. The second part of the allegation is that the same amount was required to purchase a property in USA. Again neither the FIR not the investigation discloses the place where the property was intended to be purchased, its identification sale price and the name of the vendor etc. These are the essential facts for purchase of any property that too in a foreign country. It is not the case of the complainant that the petitioner herein or for that the matter even Aayush Kapoor were acting as brokers or they had any link with the real estate owners. The essentials ingredients of cheating are absent from the allegations.

14. There is no specific averments or allegation in the FIR regarding fabrication of any document by the petitioner so as to constitute an offence under Section 471. Similar for offence under Section 120B there is no allegation of conspiracy."

31. I have already found that the learned counsel for respondent No. 5 contends that even if two FIRs have been filed in respect of the same incident, the subsequent FIR cannot be quashed as same being the second FIR in respect of the first incident stated in the first one, if subsequent FIR discloses offences not covered by first FIR as has been held in Surender Kaushik & Ors. (supra), Anju Chaudhury v. State of U.P. (supra) and Ram lal Narang (supra). According to learned counsel for the respondent No. 5, since the subsequent FIR. discloses some offences, not disclosed by the earlier one, on this count also, the subsequent FIR cannot be quashed.

32. Nobody is disputing the above legal proposition. Rather such propositions find approval from the provisions, so incorporated in Section 303(3), 303(4) CrPC. However, in the present case, such is not the position. In fact, the FIR before the Dimapur P.S. is the second FIR of the same incident, of course, same is tried to be wrapped up with different clothes by making addition, alteration here and there but it does not change the true nature and feature of the incidents, narrated in the FIR before the O/C, Namchi P.S. and in the FIR before the O/C, Dimapur P.S.

33. In other words, despite there being a clever attempt to project the incident stated in the FIR before the OC Dimapur as different incident from the incident stated in the first FIR, yet, such an attempt could not hide the fact that in the core of the matter, both the FIR takes care of same incident and as such, the FIR with OC Dimapur PS becomes the second FIR of the first incident aforementioned.

34. In the conspectus of what we have discussed herein before, I am constrained to hold that the FIR lodged with the OC PS Dimapur and the FIR lodged with the O/C, Namchi P.S., arose out of same incident and therefore, the FIR lodged with Dimapur P.S., being the second FIR in respect of incident stated in the FIR lodged with O/C, Namchi P.S., is liable to be quashed and set aside.

35. In the result, I have no hesitation in holding that FIR with Dimapur PS which was lodged on 6.5.2013 is the second FIR and as such, same is unsustainable and is liable to be quashed and set aside. Accordingly, the FIR dated 6.5.2013 and consequential proceedings stand quashed. The proceeding is allowed and

disposed of.

