

(2018) 04 RAJ CK 0040

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 2283 of 2018

**Shri Chattamal Sindhi And Ors @APPELLANT@Hash State Of Rajasthan
And Ors**

Date of Decision : 27-04-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 420, 467, 468, 471
Constitution of India, 1950 — Article 19, 21, 226, 227

Citation : (2018) 04 RAJ CK 0040

Hon'ble Judges : KANWALJIT SINGH AHLUWALIA, J

Bench : Single Bench

Advocate : Nitesh Rawat, Aladeen Khan, Anil Tiwari

Final Decision : Allowed

Judgement

Present petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.410/17, registered at Police Station Man Town, District Sawai

Madhopur, for offences under Sections 420, 467, 468 and 471 IPC.

Complainant Tunnu Swarnakar lodged an FIR alleging therein that the petitioner herein had obtained forged document regarding ownership of Shop

No.21, Near PWD Chowki. It will be apposite here to reproduce the document which, according to the complainant-tenant, is a forged document:-

dk;kZy; uxjikfydk lokbZek/kksiqj Å?ekad 4759 fnukad 28@12@

LokfeRo iek.k i=

iekf.kr fd;k tkrk gS fd Jh NRrkey iq= lUrqey fIU/kh utfj;k lokbZek/kksiqj

nqkdu ua- 21] PWD pkSdh ds ikl] dh lEiw.kZ jkfâ??k u- pkj esa tek gks pqdh gSA
bl nqdku ij budk iw.kZ LokfeRo gSA

dqy jkfâ??k 12250@& lkbZt 10x7 gSA

vf/kâ??kk""kh vf/kdkjh

uxjikfydk] lokbZ ek/kksiqj

There is no denial by the complainant that the said document was indeed signed and was issued by the Executive Officer, Municipal Council, Sawai

Madhopur.

Learned counsel for the complainant has submitted that the shop was allotted to the petitioner. Therefore, he himself was a tenant and not the owner,

hence, it is wrongly stated in the above document that the petitioner is owner of the shop. If the certificate to this effect is issued by the Executive

Officer, the petitioner cannot be held liable for cheating or forgery of a document. Learned counsel for the complainant submitted that the petitioner

could not sell the shop in question and therefore, by selling the shop to Raj Kumar Moolani, petitioner committed breach of condition of allotment and

hence, he has committed the offence of forgery and cheating. If there is any breach of condition of allotment, allotment of the petitioner can be

canceled by the Municipal Council. Tenant who is embroiled in a litigation and against whom eviction proceedings have been initiated, cannot say that

by selling the shop the petitioner landlord has committed offence of cheating.

It is not denied that on the same self allegations complainant had earlier lodged FIR No.169/2016. In the said FIR, investigating agency submitted Final

Report in negative form. The said report in negative form was accepted by the court of competent jurisdiction. Therefore, on the self same allegations

second FIR could not be lodged. Annexure-2 document which is alleged to be forged, was executed on 28.12.1998. After two decades, veracity of the

said document in a second FIR cannot be questioned.

Learned counsel for the complainant has submitted that in the first FIR on the same self allegations he had filed a protest petition. This court in Bhor

Lal @ Bhoriya v. State of Rajasthan & Anr., S.B. Criminal Misc. Petition No.1275/2018, decided on 04.04.2018, has held as under:-

â??It will be appropriate to reproduce following observations made by the Supreme Court in Amitbhai Anilchandra Shah v. Central Bureau of

Investigation & Anr., (2013) 6 SCC 348:

â??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. Anthony

(supra), 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 paragraph Nos. 19, 20 and 27 of that judgment are relevant which read as under:

19. The scheme of Code of Criminal Procedure is that an officer in charge of a police station has to commence investigation as

provided in Section 156 or 157 Code of Criminal Procedure 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

Code of Criminal Procedure, as the case may be, and forward his report to the Magistrate concerned Under Section 173(2) Code of Criminal

Procedure. 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

Code of Criminal Procedure.

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

Code of Criminal Procedure only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of

Section 154 Code of Criminal Procedure. 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 Code of Criminal Procedure.

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 Code of Criminal Procedure 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) Code of Criminal Procedure. It would clearly be beyond the purview of Sections

154 and 156 Code of Criminal Procedure, 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 Code of

Criminal Procedure 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.

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54. In the light of the factual details, since the entire larger conspiracy is covered in the first FIR dated 01.02.2010 and in the

investigation of the said FIR, the CBI, after investigating Tulsiram Prajapati's encounter recorded a finding in supplementary charge sheet dated

22.10.2010 filed in the killings of Sohrabuddin and Kausarbi case that the said encounter was a fake one, we are satisfied that the decision in Ram Lal

Narang (supra) would not apply to the facts of the case on hand. Even otherwise, as pointed out by learned senior Counsel for the Petitioner, in

Ramlal Narang (supra), the chargesheet filed pursuant to the first FIR was withdrawn which was a fact which weighed with this Court while

delivering the judgment in the second case.

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58.1. This Court accepting the plea of the CBI in Narmada Bai (supra) that killing of Tulsiram Prajapati is part of the same series of cognizable

offence forming part of the first FIR directed the CBI to ""take over"" the investigation and did not grant the relief prayed for i.e., registration of a fresh

FIR. Accordingly, filing of a fresh FIR by the CBI is contrary to various decisions of this Court.

58.2 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 cognizable offence. On completion of investigation and on the basis of evidence collected, Investigating Officer has to form an opinion Under

Section 169 or 170 of the Code and forward his report to the concerned Magistrate Under Section 173(2) of the Code.

58.3 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 cognizable 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 cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.

58.4 Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable 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 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 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 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 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.

58.5 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.â??

In view of law laid by the Supreme Court followed by this court in the case of Bhoori Lal @ Bhooriya (supra), the impugned FIR being second FIR cannot be sustained. Remedy available to the complainant is to file protest petition and not to file second FIR. In case protest petition is dismissed, further remedy available to the petitioner is to file a revision petition or a petition under Section 482 Cr.P.C. before this court. The complainant by bypassing the procedure cannot reapproach the police for getting registered the second FIR on same self allegations.]Therefore, this court finds no justification to sustain the second FIR qua the same documents, on same self allegations and therefore, the impugned FIR is quashed. The petition stands allowed.