

Neutral Citation No. - 2024:AHC-LKO:72485-DB

A.F.R.

Court No. - 9

Case :- CRIMINAL MISC. WRIT PETITION No. - 8151 of 2024

Petitioner :- Pundrik Kumar Pandey Alias Pundrik Pandey

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko And 3 Others

Counsel for Petitioner :- Alok Kirti Mishra, Dharmesh Kumar Dwivedi

Counsel for Respondent :- G.A.

alongwith

Case :- CRIMINAL MISC. WRIT PETITION No. - 8254 of 2024

Petitioner :- Arpit Srivastava And 2 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And 3 Others

Counsel for Petitioner :- Abhishek Srivastava

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Mohd. Faiz Alam Khan, J.

(Oral)

1. We have heard Shri Abhishek Srivastava, counsel for the petitioners at length and the learned A.G.A. who appears for the State-respondents and Shri Manoj Kumar Singh, the counsel appearing for the informant, the sitting MLA of Mahasi Constituency, Bahraich.

2. Since both writ petitions arise out of same F.I.R. they are being dealt with by a common order.

3. It is the case of the petitioner-Pundrik Kumar Pandey @ Pundrik Pandey, that the Opposite party no.4, the sitting MLA has been representing Mahasi Constituency for the past 15

years and the applicant-Pundrik Kumar Pandey @ Pundrik Pandey, was earlier working as a Journalist and he used to write against the Opposite party no.4, as a result whereof the Opposite party no.4 became inimical to the petitioner. The petitioner is currently posted as a Teacher in Government Primary School, U.P.S. Chaugoi, Block-Jamuha, District Shravasti, and the deceased Ram Gopal Mishra was the cousin brother-in-law of the petitioner and for this reason the petitioner went along with the dead body of Ram Gopal Mishra to the Dharna site near the Medical College. He wanted to only accompany the body when it was being taken for post mortem. However, more than 5000 people had gathered near the dead body and they were protesting. Since Opposite party no.4 is an influential person he has engineered the lodging of the impugned F.I.R. to settle his personal grudge against the petitioner under Sections 191(2), 191(3), 3(5), 109(1), 324(2), 351(3), 352 & 125 of the B.N.S.

4. The F.I.R. was lodged after eight days of the incident and it is pre-meditated and delayed and lodged after much deliberation. The petitioner has a gun license and the Respondent no.4 wants to get such license cancelled, therefore, a false allegation has been made in the F.I.R. that a shot was fired in air.

5. The Counsel appearing on behalf of the applicants/petitioners namely Arpit Srivastava, Anuj Kumar Singh @ Anuj Singh Raikwar, Shubham Kumar @ Shubham Mishra in Criminal Misc. Writ Petition No.8254 of 2024 regarding challenge being raised to the same F.I.R. has argued before this Court that the Opposite party no.4, sitting MLA of Mahasi Constituency had lodged the impugned F.I.R. on 18.10.2024 under Sections 191(2), 191(3), 3(5), 109(1), 324(2), 351(3), 352 & 125 of the B.N.S. 2023 at Police Station Kotwali Nagar, District Bahraich, against seven named accused persons namely Arpit Srivastava, Petitioner no.1; Anuj Kumar Singh @ Anuj Singh Raikwar, Petitioner no.2; Shubham Kumar @ Shubham Mishra, Petitioner no.3; Kushmendra Chaudhary, Manish Chandra Shukla, Pundarik Pandey and Subhanshu Singh Rana and some unknown persons in relation to an alleged incident that took place on 13.10.2024. In the F.I.R., the allegation was that the petitioners as well as other co-accused along with several other persons had made it difficult

for the Police and the District Administration in getting the dead body of Ram Gopal Mishra to the mortuary and created a ruckus which led to firing of a gun shot in the air and also of smashing of the wind screen of vehicle of the Respondent no.4.

6. It has been submitted that the impugned F.I.R. is the second F.I.R. in relation to the same incident as Shri Dinesh Kumar Pandey, Inspector Incharge of Police Station Kotwali Nagar, District Bahraich, had earlier lodged F.I.R. No.0346 of 2024 on 15.10.2024 under Sections 191(2), 191(3), 3(5), 190, 131, 115(2), 352, 351(3), 125, 326(g), 326(f), 3(5), 121(1) of the B.N.S. 2023 & Criminal Law Amendment Act, 1932 at 09:11 AM at Police Station Kotwali Nagar, District Bahraich, wherein similar facts have been mentioned. It has been submitted that the Petitioner no.1 is a social worker and Nagar Adhyaksh of the Bhartiya Janta Yuva Morcha, Bahraich since 16.09.2021, and he is pursuing his career in politics. Petitioner no.2 is also a social worker and a farmer and Petitioner no.3 is a Graduate and presently working in a private Construction Company. The impugned F.I.R. being the second F.I.R. for the same incident ought to be quashed in view of the law settled by the Hon'ble the Supreme Court in the case of ***Babubhai Vs. State of Gujarat and others reported in (2010) 12 SCC 254.***

7. The counsel for the petitioners has pointed out Paragraphs-2 and 3 of the judgment in *Babubhai Vs. State of Gujarat and others*, from perusal whereof it is evident that on 07.07.2008 some altercation took place between members of Bharwad and Koli Patel Communities regarding plying of rickshaws in the area surrounding Dhedhal village of District Ahmedabad, Gujarat. On the next day i.e. on 08.07.2008 a case, Case Crime No.I-154/2008 was registered at 1730 hours in Police Station Bavla, under Sections 147, 148, 149, 302, 307, 332, 333, 436 and 427 of the Penal Code, 1860, for the incident which had occurred at Village Dhedhal wherein the Sub-Inspector of Bavla Police Station had stated that while he was patrolling in Bavla town, he received a message from the Station House Officer at around 10:00 AM that some altercation/ incident had taken place between two communities at Dhedhal Crossroads. The Sub-Inspector Bavla Police Station thereafter reached the spot where a clash was going on between two communities in Dhedhal Village. He contacted

[4]

the Police Control Room and the Deputy Superintendent of Police sent re-enforcement and when the police reached the spot around 2000 to 3000 persons from both communities armed with various weapons were attacking each other. The police resorted to lopping tear gas shells as well as *lathi* charge to disperse the crowd. Ultimately several rounds of firing were resorted to in order to disperse the mob. In the said incident, more than 20 persons were injured and three houses of members of the Bharwad Community were also set on fire. One person also died. Several police personnel were also injured. The said F.I.R. did not mention the name of any accused. However, another F.I.R. bearing Case number, CR No.1-155/2008 was registered at Bavla Police Station on the same day i.e. on 08.07.2008 at 2235 hours by one Babubhai Popatbhai Koli Patel and he alleged that an incident took place on the same day at around 9:15 a.m. in the Morning in Dhedhal Village. In such F.I.R. he named 18 persons as accused. As per the F.I.R., an incident had occurred on 07.07.2008 in the evening at about 06.30 P.M. It also related to plying Rickshaws and Chhakdas and it also related to altercation between Bharwad and Koli Patel Communities. The complainant stated that the named accused persons not only extended threats to the complainant-informant and his cousin but they also halted vehicles on the road. The informant stated that there were 10-12 persons belonging to Bharwad community assaulting his cousin with sticks. He also saw some named accused from Bharwad community of Dhedhal Village having Tamancha like weapons in their hands and instigating other persons to indulge in violence he named several accused and stated that they assaulted his cousin as well as other Rickshaw pullers saying that they should not pass through the road which belonged to Bharwads. The complainant tried to rescue his cousin but they were stopped and such named accused started the assaulting and abusing him. The informant made specific mention of certain accused inflicting sticks blows on his cousin due to which he became unconscious and the mob thereafter beat up his cousin and other Bharwads from Dhedhal village had also arrived. The details in the F.I.R. related to the vehicles that were stopped and also related to specific incident of the cousin of the informant being attacked with deadly weapons like Revolver and Sticks etc. causing serious injuries.

8. From a perusal of the facts as mentioned in the judgment cited before us in *Babubhai*, it is evident that the accused in both cases filed special criminal applications praying for investigation of the F.I.R. by an Independent Agency like CBI and also praying for quashing of the CR No.I-154 and CR No.I-155/2008 registered at Bavla Police Station.

9. They also prayed for setting aside of the proceedings undertaken by the Sessions Court. The High Court quashed the F.I.R. registered as CR No.I-155/2008 and clubbed the investigation of the F.I.R. along with investigation of the other F.I.R. bearing CR No.I-154 of 2008 to the extent it was feasible. The Court also transferred the investigation to the State CID Crime Branch and directed a new Investigating Officer to investigate with a further clarification that quashing of their subsequent F.I.R. would not mean that the accused in respect of the second F.I.R. had been discharged of the offences as they would continue to face the charges in the initial Criminal Case CR No.I-154 of 2008 in which they also stood arrested.

10. The Supreme Court while considering the Appeal preferred by the appellants who were the accused, noted the arguments raised by the learned Senior Counsel appearing for the parties in the Appeal that the High Court reached the correct conclusion that both crimes were two parts of the same transaction and they occurred at the same place and the version given by Babubhai Popatbhai Koli Patel in CR No.I-155 of 2008 cannot be considered a counter version giving rise to a cross case. The Senior counsel had requested the Supreme Court to dismiss the Appeal. However, the Supreme Court after considering the law as laid down in ***Ram Lal Narang Vs. State (Delhi Administration) reported in (1979) 2 SCC 322***, and in ***T.T. Antony Vs. State of Kerala reported in (2001) 6 SCC 181***, made observations in Paragraph-13 & 14 which are being quoted hereinbelow:-

*“13. In **Ram Lal Narang v. State (Delhi Admn.)** this Court considered a case wherein two FIRs had been lodged. The first one formed part of a subsequent larger conspiracy which came to light on receipt of fresh information. Some of the conspirators were common in both the FIRs and the*

object of conspiracy in both the cases was not the same. This Court while considering the question as to whether investigation and further proceedings on the basis of both the FIRs was permissible held that no straitjacket formula can be laid down in this regard. The only test whether two FIRs can be permitted to exist was whether the two conspiracies were identical or not. After considering the facts of the said case, the Court came to the conclusion that both conspiracies were not identical. Therefore, lodging of two FIRs was held to be permissible.

*14. In **T.T. Antony v. State of Kerala** this Court dealt with a case wherein in respect of the same cognizable offence and same occurrence two FIRs had been lodged and the Court held that: "There can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences." (emphasis supplied)*

The investigating agency has to proceed only on the information about commission of a cognizable offence which is first entered in the police station diary by the officer-in-charge under Section 158 of the Code of Criminal Procedure, 1973 (hereinafter called "CrPC") and all other subsequent information would be covered by Section 162 CrPC. for the reason that it is the duty of the Investigating officer not merely to investigate 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 the investigating officer has to file one or more reports under Section 173 CrPC. Even after submission of

[7]

the report under Section 173(2) CrPC, if the investigating officer comes across any further information pertaining to the same incident, he can make further Investigation, but it is desirable that he must take the leave of the court and forward the further evidence, if any, with further report or reports under Section 173(8) CrPC. In case the officer receives more than one piece of information in respect of the same incident involving one or more than one cognizable offences such information cannot properly be treated as an FIR as it would, in effect, be a second F.I.R. and the same is not in conformity with the scheme of Cr.P.C.”

11. The Court also considered **Upkar Singh Vs. Ved Prakash reported in (2004) 13 SCC 292**, in Paragraph 16 which is being quoted hereinbelow:-

“16. This Court considered the judgment in T.T. Antony and explained that the judgment in the said case does not exclude the registration of a complaint in the nature of counterclaim from the purview of the Court. What had been laid down by this Court in the aforesaid case law is that any further complaint by the same complainant against the same accused, subsequent to the registration of a case, is prohibited under Cr.P.C. because an investigation in this regard would have already started and further the complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence, will be prohibited under Section 162 Cr.P.C. However, this rule will not apply to a counterclaim by the accused in the first complaint or on his behalf alleging a different version of the said incident. Thus, in case, there are rival versions in respect of the same episode, the investigating agency would take the

same on two different FIRs and investigation can be carried under both of them by the same investigating agency and thus, filing an FIR pertaining to a counterclaim in respect of the same incident having a different version of events, is permissible.”

12. The Court considered other judgments as well in Paragraphs 17, 18 and 19 which are being quoted hereinbelow:-

“17. In **Rameshchandra Nandlal Parikh v. State of Gujarat** reported in (2006) 1 SCC 732, this Court reconsidered the earlier judgment including *T.T. Antony* and held that in case the FIRs are not in respect of the same cognizable offence or the same occurrence giving rise to one or more cognizable offences nor are they alleged to have been committed in the course of the same transaction or the same occurrence as the one alleged in the first FIR, there is no prohibition in accepting the second FIR.

18. In **Nirmal Singh Kahlon v. State of Punjab** reported in (2009) 1 SCC 441, this Court considered a case where an FIR had already been lodged on 14-6-2002 in respect of the offences committed by certain individuals. Subsequently, the matter was handed over to the Central Bureau of Investigation (CBI), which during investigation collected huge amount of material and also recorded statements of large number of persons and CBI came to the conclusion that a scam was involved in the selection process of Panchayat Secretaries. The second FIR was lodged by CBI. This Court after appreciating the evidence, came to the conclusion that matter Investigated by CBI dealt with a larger conspiracy. Therefore, this

investigation has been on a much wider canvass and held that second FIR was permissible and required to be investigated.

19. The Supreme Court held as under:

"67. The second FIR, in our opinion, would be maintainable not only because there were different versions but when new discovery is made on factual foundations. Discoveries may be made by the police authorities at a subsequent stage. Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature. If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, in our opinion, as and when the same surfaced, it was open to the State and/or the High Court to direct investigation in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged."

(emphasis supplied by us)

13. Thereafter, the Supreme Court examined the Appeal in the light of the settled legal propositions as mentioned in the cases cited hereinabove.

14. The Court also considered the question of tainted investigation and made certain observations with regard to the plea raised regarding malice in law and the duty of Investigating Agency and emphasized that where the Court comes to a conclusion that there was a serious irregularity in the investigation that had taken place, the Court may direct a further investigation under Section 173(8) Cr.PC, even transferring the investigation to an independent agency, rather than directing a reinvestigation. Several binding precedents were considered with regard to the Court's interference where desired in exceptional circumstances to prevent miscarriage of criminal justice and the direction which the High Court / Any Superior Court can give in such matters to ensure fair trial and

fair investigation. The Court did not interfere in the order passed by the High Court but only modified it to the extent that the Charge-sheet in both the cases and any other consequent thereto were quashed and it observed that in case any of the accused could not get bail because of pendency of the Special Leave to Appeal before the Court, it would be open for him to apply bail or any other relief before the appropriate Forum.

15. The counsel for the petitioners has failed to point out as to how his case is covered with the facts as mentioned hereinabove with regard to *Babubhai Vs. State of Gujarat* as cited by the counsel for the petitioners.

16. Shri Alok Kirti Mishra, has also cited a judgment rendered in *Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and Another reported in (2013) 6 SCC 348*, and has referred to Paragraph-37 thereof which is being quoted hereinbelow:-

“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. 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:

"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 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 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) Cr.PC. It would clearly be beyond the purview of Sections 154 and 156 Cr.PC, 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 Cr.PC or under Articles 226/227 of the Constitution.

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

(emphasis supplied by us)

17. The Court also referred to TT Antony (Supra), Upkar Singh Vs. Ved Prakash (Supra), Babubhai Vs. State of Gujarat (Supra) as well as judgment rendered in ***Chirra Shivraj Vs. State of Andhra Pradesh reported in (2010) 14 SCC 444***, and ***C. Muniappan Vs. State of Tamilnadu reported in (2010) 9 SCC 567***, and the laying down of the “*Consequence test*” i.e. if an offence forming part of the second FIR arises as a consequence of the offence alleged in the first FIR then the offences covered by both the FIRs are the same and, accordingly, the second FIR will be impermissible in law. In other words, the offences covered in both the FIRs shall have to be treated as part of the first FIR.

18. We have gone through the alleged first FIR regarding the same incident which was lodged by one Dinesh Kumar Pandey, the Station House Officer Incharge of Police Station Kotwali Nagar, District Bahraich i.e. F.I.R. No.0346 of 2024 lodged at 09:11 am on 15.10.2024 it relates to the incident that occurred at 07:00 pm on 13.10.2024 when the idols of Devi Durga were being taken for immersion after conclusion of Navratri celebrations and the said procession was attacked by members of a particular community as a result whereof one person was shot dead namely Ram Gopal Mishra which resulted in heavy stonepelting and communal disharmony. The procession which was taking the idols for immersion was stopped and some anti-social elements also incited the members of the general public to abuse and assault public servants /employees and prevent them from carrying out their public duties. The road was blockaded and stonepelting continued unabated also attack was made by *Lathi/Danda* near one T crossing by the name of Peepal Tiraha and Steelganj market. Reference was made to certain persons belonging to the other community whose names were also mentioned in the said FIR, whose shops were attacked and vandalized and one motorcycle was also set on fire. This FIR talks of some anti-social elements vandalizing public property as well as private property of the other community and creating an atmosphere of social disharmony. Reference was made to such unlawful activity being carried out in several neighbourhoods names of which have been given in the said FIR.

19. On the other hand, the F.I.R. that was lodged on 18.10.2024 at 05:11 pm registered as Case Crime No.0347 of 2024 by the Respondent no.4 under Sections 191(2), 191(3), 3(5), 109(1), 324(2), 351(3), 352 & 125 of the B.N.S. at Police Station Kotwali Nagar, District Bahraich, against seven named accused including the petitioners herein has made mention of a specific incident with regard to the dead body of one Ram Gopal Mishra being kept outside the gate of Bahraich Medical College and the crowd raising slogans and protesting the attempt being made by the District Administration and the Police Authorities as well as the CMO from taking the body for autopsy to the Mortuary. The seven named accused were part of a larger group of persons and mention has been made regarding the attempt being made by informant who is a public representative in trying to pacify the members of the crowd and in trying to explain to them the necessity of getting the post mortem done of the deceased-victim and also help being sought from the District Magistrate in this regard. Despite attempt being made by the District Magistrate and the sitting MLA to pacify the crowd, and to take the body of the deceased-victim to the Mortuary, the crowd continued stonepelting which resulted in the smashing of the wind screen of one Car registration number of which has been mentioned in the FIR and firing of one gun shot in the air. This incident happened in between 8:00 pm to 10:00 pm at night on 13.10.2024 and the informant has also referred to evidence being made available in CCTV footage if it is examined by the police during the investigation.

20. The initial FIR that was lodged on 15.10.2024 by the police official concerned related to a general information regarding the incident which happened during the immersion procession of Devi Durga idols where one person was shot as a result whereof crowd got angry and destroyed the shops of the other community through stone-pelting and setting them on fire whereas the FIR that was lodged on 18.10.2024 at 05:11 pm by the public representative, the sitting MLA of Mahasi Constituency with regard to the incident where the named accused alongwith others were holding Dharna Pradarshan with the body of the deceased-victim and not letting the District Administration and the Police Authorities from carrying out their public duties regarding the autopsy of the deceased-

[15]

victim by taking his body to the mortuary for post mortem examination. There was firing of gun shot in the air also.

21. *Prima facie*, we do not find that the second FIR which was lodged on 18.10.2024 and which has been challenged in these petitions to be a part of the same transaction. It is related to a subsequent development and the Section of the B.N.S. invoked in the same are not identical and do not relate to the same incident or the same accused.

22. We, therefore, do not find any good ground to show interference, as prayed for, in these petitions, hence, they are **dismissed**.

Order Date :- 25.10.2024

N.PAL