



2024:DHC:8474



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 1785/2022 & CRL.M.A. 7583/2022**

SANAULLA ZULFIQAR AHMED KHANPetitioner

Through: Mr. Himanshu Sharma with Ms.
Ankita, Advocates.

versus

STATE OF DELHI & ANR.Respondents

Through: Ms. Priyanka Dalal, APP
Mr. Rajan Raj, Mr. Pulkit Kamboj,
Advocates for R-2.
SI Manoj Kumar, SI Akshay Yadav,
PS Paschim Vihar West.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. This petition has been filed under Section 482 CrPC seeking to quash FIR No.785/2020 dated 15.10.2020 registered at Police Station Paschim Vihar, West, New Delhi for offences under Section 420 read with Section 34 IPC.

2. The facts, in brief, leading up to the filing of the petition are as follows:-

- a) It is stated that Respondent No.2 completed his pilot training and got his license on 07.08.2013. On coming to know that respondent No.2 was looking to join as a pilot, Accused No. 2 and Accused No.3 approached Respondent No.2 and introduced themselves as



Directors of a company named ABC Aviation and Training Services Pvt. Ltd.

- b) It is stated that on 18.11.2014, Respondent No.2 was called by Accused No.3 for a written test for appointment as a pilot. He was then called by Accused No.5 who asked him to deposit Rs. 25,00,000 for the self training programme. On 22.11.2014, Respondent No.2 visited the office of the accused persons at the airport in Bangalore and handed over Rs. 25,00,000 to accused No.3.
- c) It is stated that after submitting the said amount, Rs. 35,000 was further demanded to conduct the test and after conducting the test, Accused No.3 further demanded Rs.10,00,000 for a change in aircraft programme cum training. Accused No.5 in continuance of the demand collected a demand draft of Rs. 5,00,000 from Respondent No.2.
- d) It is stated that Accused No.3 sent an offer letter through email for a cost of Rs. 37,00,00 and further in pursuance of the above mail, an additional amount of Rs. 2,00,000 was demanded by Accused No.3 and 5 which was then deposited by Respondent No.2 in the bank account of the accused persons.
- e) It is stated that in the month of March and April 2015, the accused persons did not answer the calls of Respondent No.2. It is stated that the Respondent No.2 threatened to initiate legal proceedings against the accused. It is further stated that on 13.11.2015 under the fear of legal action, accused No.2 and 3 deposited Rs.33,000 in the account of Respondent No.2.



- f) It is stated that after repeated requests and demands, accused No.2 on behalf of other accused persons issued two cheques dated 15.7.2017 amounting to Rs. 18,50,000/- each i.e. Rs. 37,00,000/- in total which were then dishonoured by the bank. A case under Section 138 Negotiable Instruments Act was filed by Respondent No.2 against the accused persons and the same is pending before the Ld. Metropolitan Magistrate.
- g) It is stated that Respondent No. 2 on 27.8.2019 filed an application under section 156 (3)Cr.PC before the Ld. Chief Metropolitan Magistrate praying for registration of an FIR for offences under Section 420, 406, 34 r/w 120B IPC. The Ld. Chief Metropolitan Magistrate vide order dated 06.10.2020 in Complaint Case No. 13613/2019, directed registration of an FIR, in pursuance of which FIR No. 785 of 2020 was registered against the petitioner and other accused persons for offences under section 420 r/w 34 IPC.
- h) The petitioner has approached this court seeking to quash the FIR No. 785 of 2020 on the ground that an earlier FIR, i.e., FIR No. 198 of 2017 was filed on 14.9.2017 in Bangalore on the same set of facts and allegations by the Respondent No.2. It is further stated that the factum of an earlier FIR was concealed from the Ld. Chief Metropolitan Magistrate therefore the present FIR is to be quashed on the ground that two FIRs cannot be filed for the same offence.
3. Learned Counsel for the petitioner submits that the present FIR at Delhi was lodged without informing the Ld. Chief Metropolitan Magistrate about the earlier FIR registered at P.S Cubbon Park, Bangalore filed by



Respondent No. 2 and other persons. In the earlier FIR, i.e., FIR No. 198/2017 the allegations by the Petitioner are that the co-accused persons have cheated the complainants of a sum of Rs 4 crore on the pretext of providing them jobs in the airlines sector and chargesheet has been filed in the earlier FIR.

4. Learned Counsel for the petitioner also submits that on the set of facts, as stated in the Complaint, if an offence has taken place in Bangalore then the complaint is not maintainable in Delhi.

5. Learned counsel for the petitioner also submits that there is a delay of over 3 years in filing the application u/s 156 (3) CrPC which was not taken into consideration before cognizance was taken by the Magistrate.

6. Learned Counsel for the petitioner places heavy reliance on the Judgment of T.T Anthony vs. State of Kerala & Ors., **2001 (6) SCC 181**, in which the Apex Court has observed as under:-

“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) 2 SCC 322 : 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.”

7. The learned Counsel for the Petitioner while relying on the aforesaid Judgment submits that in the present case, Respondent No.2 has registered a second FIR on the same set of facts and for the same offence alleged, by concealing material facts from the learned Chief Metropolitan Magistrate.

8. *Per contra*, learned Counsel for the Respondent states that in the earlier complaint filed in Bangalore, the complainant in the present case is not a complainant and his name figures as a victim.

9. Learned Counsel for the Respondent places reliance on Babubhai vs. State of Gujarat, (2010) 12 SCC 254 in which the Apex Court has held that in case of a subsequent FIR, the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether:-

(i) The FIRs relate to the same incident in respect of the same occurrence or are in regard to incidents which are two or more parts of the same transaction.

OR



- (ii) Where the version of the second FIR is different and they are in respect of two different crimes/incidents.

In case of (ii), the second FIR is permissible.

10. Learned Counsel for the Respondent also relies on the case of Anju Choudhary v. State of U.P., (2013) 6 SCC 384 in which the Apex Court has observed that one can give an example of the same group of people committing theft in a similar manner in different localities falling under different jurisdictions. Even if the incidents were committed in close proximity of time, there could be separate FIRs and institution of even one FIR stating that a number of thefts has been committed would not debar the registration of another FIR. When the offences alleged to be committed in the two FIRs are different and distinct and lodged by different persons in relation to occurrences which are alleged to have occurred at different points of time, against different people and for different offences, the requirement of proof in both cases was completely distinct and different.

11. Heard the learned Counsels for the parties and perused the material on record.

12. The Status Report on record indicates that the learned ASJ was directed to verify whether the complainant in the present case, i.e., Respondent No.2 made any statement before the Investigating Officer of FIR 198/2017 registered at P.S. Cubbon Park, Bangalore. A notice was served u/s 91 Cr.P.C to SHO/Cubbon Park. As per the reply of the said notice it is revealed that statement of complainant/ Respondent No.2 u/s 161 CrPC was recorded by the IO and his name is mentioned in the list of witnesses in the chargesheet. This means that the Respondent No.2 is not the



Complainant. Furthermore, the complainant/ Respondent No.2 was examined in the present case, states that he has never visited the said police station or was examined by IO in the earlier case.

13. The Supreme Court in Shiji v. Radhika, (2011) 10 SCC 705, has observed as under:-

“18. Having said so, we must hasten to add that the plenitude of the power under Section 482 CrPC by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.”

14. In Gian Singh v. State of Punjab, (2012) 10 SCC 303, while dealing with the power of High Court to quash criminal proceedings under Section 482 Cr.P.C., the Supreme Court observed as under:-

"61. The position that emerges from the above discussion can be summarised thus : the power of the



High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society... "

15. Coming to the facts of this case, the Petitioner-accused has represented himself as the director of a company and on the pretext of proving a job to the Respondent No.2-complainant and duped him of Rs.37,00,000/-. The status report indicates that the earlier FIR was registered by a different complainant.

16. The accused persons including the Petitioner have duped the complainant and other persons of a large sum of money. This court in the exercise of its power under Section 482 CrPC must proceed with utmost care and caution. Each victim can file a separate complaint and separate FIR can be registered as it is a separate offence qua the victim.



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17. This Court is not in a position to quash the FIR on the basis of an earlier FIR filed on a similar set of facts and offences as the FIR was filed by a different complainant. Applying the test of sameness as laid down by the Apex Court in Babubhai v. State of Gujarat (2010) 12 SCC 254, the complainant in the present case has not filed the earlier complaint.

18. A reading of the allegations in the FIR and the status report, it is evident that petitioner along with other accused persons has been accused of duping several persons of a substantial amount of money. The present FIR cannot be quashed on ground of an earlier complaint being filed.

19. Accordingly, the present petition is dismissed along with pending applications, if any.

SUBRAMONIUM PRASAD, J

OCTOBER 29, 2024

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