

Reserved

Court No. 48

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Case :- CRIMINAL MISC. WRIT PETITION No. - 4014 of 2021

Petitioner :- Dr. Vijay Kumar Sharma

Respondent :- State Of U.P. And 2 Ors

Counsel for Petitioner :- Vijay Kumar Dixit, Ashok Mehta (Senior Adv.)

Counsel for Respondent :- G.A.

Hon'ble Munishwar Nath Bhandari, J.

Hon'ble Ajai Tyagi, J.

(As per : Hon'ble Munishwar Nath Bhandari, J.)

The writ petition has been filed for following reliefs which are quoted hereunder for ready reference :-

"I. To issue a writ order or direction in the nature of mandamus commanding and directing the Respondent No. 2 & 3 to treat Case Crime No. 385 of 2019 as the Main Case Crime and to merge all the other Case Crimes/FIRs registered in Bike-Bot matter at PS: Dadri and elsewhere in State of UP, as statements u/s 162 of the Cr.P.C. and to merge these subsequent FIRs in main Case Crime No. 385/2019.

II. To issue a writ order or direction in the nature of mandamus commanding and directing the Respondent No. 2 & 3 to treat the Charge Sheet filed in Case Crime No. 385/2019 on 01.02.2021 as the Main Charge Sheet and all the subsequent additional Charge Sheets filed thereafter the Main Charge Sheet, to be treated as Supplementary Charge Sheet as to main Charge Sheet and be merged to the main charge sheet in Case Crime No. 385/2019.

III. To issue writ order or direction in the nature of mandamus commanding and directing the Respondent No. 2 to initiate Trial Proceedings at the earliest, in Main Case

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Crime No. 385/2019 and to only conduct one trial proceeding for all the connected matters which are merged and added to the Main Case Crime No. 385/2019 as prayed in Prayer I & II hereinabove.

IV. To issue writ order or direction in the nature of mandamus commanding and directing the Respondent No. 2, not to subject Petitioner for each and every time of fresh investigation/remand in favour of Respondent No. 3 and to stop issuing multiple routine remand orders against the Petitioner, in respect of the same offence arising out of same incident, facts, grounds, cause of action, course of transaction and evidences or consequences thereupon in the 'Bike-Bot' matter, which are similar and identical to the main Case Crime No. 385/2019, wherein which the Petitioner has already been taken under judicial remand since 19.11.2020."

Shri Ashok Mehta, learned Senior Counsel, assisted by Shri Vijay Kumar Dixit, appearing for the petitioner has pressed the writ petition mainly in reference to first prayer and information report at Annexure-14 describing the number of cases registered against the petitioner.

Learned counsel for the petitioner submits that hundreds of FIRs have been registered against the petitioner. In pursuant to it, the petitioner is produced for remand in reference to each FIR whereas after the first FIR, subsequent FIRs should have been taken to be statement under Section 162 Cr.P.C. A prayer was made to the Police Authorities not to produce the petitioner for remand in each FIR rather subsequent FIR be taken as statement under Section 162 Cr.P.C.

The detailed facts pertaining to the case have been given. It is seriously opposed by learned counsel for the respondents. It is stated that petitioner alongwith other accused had cheated around 3 lacs persons involving around Rs. 4,000 crores. It is resulted in separate first information report on different dates and in reference to different

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transactions. Shri Manish Goyal, learned Additional Advocate General assisted by Shri Syed Ali Murtaza, appearing for the respondents thus seriously opposed the prayer made by learned counsel for the petitioner.

The facts referred by learned counsel for the petitioner show that number of FIRs have been registered against Noble Cooperative Bank Limited and other accused.

An investor company, namely, Garvit Innovative Promoters Limited (hereinafter referred to as "GIPL") was incorporated to carry out business of rental of bikes on the pattern of Ola/Uber. It was after taking investments from the public for purchase of bikes to be rented out. The rental received, out of it, was to be paid to the investors. The authorised representative of GIPL opened a bank account in the Noble Cooperative Bank Limited. The amount of investments by various investors came in the bank accounts of GIPL. The Noble Cooperative Bank Limited to which petitioner is the Chief Executive Officer transferred the funds elsewhere, as was directed by the authorised signatory of GIPL. A request was thereupon made by the GIPL to the Noble Cooperative Bank Limited to issue around 2,61,000 cheques for distribution of dividend and monthly rental to the investors. The cheques were issued by the bank alleged to be without knowledge of the petitioner. There was no approval by him for printing of 2,61,000 cheques for its issuance.

The allegations of fraud, if any, could have been made against GIPL and the officers of the Cooperative Bank for issuance of cheques without the knowledge and permission of the petitioner. It could not have been against the petitioner. The bank intimated about the illegalities committed by the GIPL by sending a letter to the Reserve Bank of India and FIU. It was leaked thus the promoters of GIPL started threatening the petitioner. The promoter of GIPL Shri Sanjai Bhati and others were arrested and despite the cooperation of the petitioner and statement under Section 161 Cr.P.C. recorded by

Economic Offence Wing, Meerut, petitioner was also arrested. The petitioner even cooperated with the Agency yet the case was registered against him alongwith others resulting in several remands pursuant to each FIR.

Learned Senior Counsel appearing for the petitioner submitted that in view of the judgment of Supreme Court in the case of **T.T. Antony Versus State of Kerala and others** reported in **(2001) 6 SCC 181**, this Court should direct the respondents to treat subsequent FIRs after the first, to be statement under Section 162 Cr.P.C. The reference of the judgment in the case of **Amish Devgan Versus Union of India and others** reported in **(2021) 1 SCC 1** has also been given.

In the case of *T.T. Antony (supra)*, several FIRs were registered in reference to one incident. The Apex Court directed to treat subsequent FIRs to be a statement under Section 162 Cr.P.C. The prayer is to apply the judgment aforesaid and grant the prayer.

The writ petition has been seriously opposed by learned counsel for the respondents. It is submitted that the argument of learned counsel for the petitioner in reference to the judgment of the Apex Court in the cases of *T.T. Antony (supra)* and *Amish Devgan (supra)* may not be accepted as both the judgments are not applicable on the facts of this case. It is even the judgment of the Apex Court in the case of **Arnab Ranjan Goswami Versus Union of India and others** reported in **(2020) 14 SCC 12**. In the cases referred to above, there was one incident giving rise to several FIRs disclosing one or more cognizable offence, therefore, the direction of the nature required in those cases were given by the Apex Court. Since the facts of this case are distinguishable, the judgments may not be applied so as to restrain the police to produce the petitioner on remand in reference to FIRs. The transactions herein are by different person resulting in separate FIR. The prayer is, accordingly, to dismiss the writ petition.

We have considered the rival submissions of the parties and perused the record.

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The writ petition was filed with multiple prayers but while arguing it, learned counsel for the petitioner mainly pressed prayer no.1. It is to treat all subsequent FIRs after the first to be an statement under Section 162 Cr.P.C. and, accordingly, remand of the petitioner may not be permitted in reference to each FIR. The prayer was made even in reference to the number of cases registered by the Enforcement Wing at Annexure-14.

The facts available on record show registration of a number of FIRs against the petitioner by different persons in reference to their own transactions. We are not recording finding on the facts as it would be a subject matter of trial and any comment at this stage may affect either of the parties. However, for the appreciation of the argument of learned Senior Counsel, we are referring the allegations contained in the FIR and the charge-sheet. It has been disclosed that 2,61,000 cheques were issued by the Noble Cooperative Bank Limited to various investors. It was involving huge amount. The issuance of the cheques by the bank is said to be on the instruction of the GIPL. The allegations further show transfer of the amount received from the investors leaving hardly any balance in the bank account of GIPL. The transfer of the entire amount was in the knowledge of the bank yet they issued around 2,61,000 cheques. The amount involved therein is not negligible but running in crores. The investors lodged first information report in reference to their own transaction.

Owing to the facts referred above, the issue for consideration before the Court is as to whether all subsequent FIRs after the first to be treated statement under Section 162 Cr.P.C. and, accordingly, restrain the respondents to produce the petitioner on remand in reference to each FIR. The issue aforesaid alone has been formulated for the reason that at this stage, learned counsel for the petitioner did not press another prayers.

Learned Senior Counsel appearing for the petitioner has mainly relied on the judgment of the Supreme Court in the cases of *T.T.*

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Antony (supra) and *Amish Devgan (supra)*. The reliance has been placed even on the judgment in the case of *Arnab Ranjan Goswami (supra)*.

We are first taking the judgment of the Apex Court in the case of *T.T. Antony (supra)* as to whether law laid down by the Apex Court therein would be applicable to the facts of this case. In the case of *T.T. Antony (supra)*, an FIR was registered on an incident when a Minister came to Kannur District of State of Kerala to inaugurate evening branch of a Cooperative Bank. Violent demonstrations were staged by the members of youth wing of rival political party. The police had to open fire to protect the Minister and public apart from private properties at two places. Out of the firing, five persons died while six others received injuries. More than 100 persons suffered injuries in *lathi* charge while few police personnel also received injuries. An FIR was lodged and registered as Case Crime No.353 of 1994. After three years, another FIR bearing Case Crime No. 268 of 1997 was registered pursuant to report of Inquiry Commission. The Apex Court considered the issue as to whether registration of subsequent FIR out of one and same incident was proper. Referring to Sections 154, 162, 186 Cr.P.C. apart from other provisions, it was held that any FIR arising out of the same incident subsequent to the first FIR should be taken as statement under Section 162 Cr.P.C. The relevant para of said judgment is quoted hereunder for ready reference :

“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 Cr.P.C 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 Ram Lal Narang Versus State (Delhi Admn.), (1979) 2 SCC 322, it

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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.P.C. It would clearly be beyond the purview of Section 154 and 156 Cr.P.C. 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.P.C. or under Article 226/227 of the Constitution.”

In the said case, the Apex Court noted second FIR out of same incident. The significance of the word “same incident” is relevant for the reason that FIRs are not out of same incident giving rise to one or more cognizable offences. It is out of separate transactions by different investors, therefore, the judgment of the Apex Court in the case of *T.T. Antony (supra)* would not be applicable to the facts of this case.

The next judgment referred by learned counsel for the petitioner is in the case of *Amish Devgan (supra)*. Paras 123 and 125 of the said judgment have been referred by learned Senior Counsel and are quoted hereunder :

“123. In Arnab Ranjan Goswami’s case, the proceedings in

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the subsequent FIRs were quashed as the counsel for the complainants in the said case had joined the petitioner in making the said prayer. However, in the present case, we would like to follow the ratio in T.T. Antony which is to the effect that the subsequent FIRs would be treated as statements under Section 162 of the Criminal Code. This is clear from the following dictum in T.T. Antony:

“18. An information given under sub-section (1) of Section 154 Cr.P.C. is commonly known as first information report (FIR) though this term is not used in the Code. It is a very important document. And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 Cr.P.C., as the case may be, and forwarding of a police report under Section 173 Cr.P.C.. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 Cr.P.C. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the first information report — FIR postulated by Section 154 Cr.P.C. All other informations made orally or in writing after

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the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 Cr.P.C. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of Cr.P.C. Take a case where an FIR mentions cognizable offence under Section 307 or 326 IPC and the investigating agency learns during the investigation or receives fresh information that the victim died, no fresh FIR under Section 302 IPC need be registered which will be irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H — the real offender — who can be arraigned in the report under Section 173(2) or 173(8) Cr.P.C., as the case may be. It is of course permissible for the investigating officer to send up a report to the Magistrate concerned even earlier that investigation is being directed against the person suspected to be the accused.”

125. *Lastly, we would also like to clarify that Section 179 of*

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the Criminal Code permits prosecution of cases in the court within whose local jurisdiction the offence has been committed or consequences have ensued. Section 186 of the Criminal Code relates to cases where two separate charge-sheets have been filed on the basis of separate FIRs and postulates that the prosecution would proceed where the first charge-sheet has been filed on the basis of the FIR that is first in point of time. Principle underlying Section 186 can be applied at the pre-charge-sheet stage, that is, post registration of FIR but before charge-sheet is submitted to the Magistrate. In such cases ordinarily the first FIR, that is, the FIR registered first in point of time, should be treated as the main FIR and others as statements under Section 162 of the Criminal Code. However, in exceptional cases and for good reasons, it will be open to the High Court or this Court, as the case may be, to treat the subsequently registered FIR as the principal FIR. However, this should not cause any prejudice, inconvenience or harassment to either the victims, witnesses or the person who is accused. We have clarified the aforesaid position to avoid any doubt or debate on the said aspect.”

We are again required to look into the facts of the case of *Amish Devgan (supra)*. It was a case where several FIRs in different States were registered pursuant to a telecast where Amish Devgan said to have made objectionable comments. The broadcast was heard by many persons resulting in registration of several FIRs. The facts aforesaid show that FIRs therein were also out of the same incident. It was out of one broadcast on the television. The Apex Court, thus applied the judgment in the case of *T.T. Antony (supra)*.

There exist significance to the word “same incident” giving rise to one or more cognizable offence. The case in hand is not having one incident but different and separate incident. The judgment of the Apex

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Court in the cases referred to above would apply when several FIRs are registered out of one incident.

Two issues have been decided therein in judgment *supra*. The first is that one incident giving rise to more than one cognizable offence cannot result in separate FIR for each cognizable offence involved therein. The investigation has to be one in respect of all the cognizable offences involved in one incident. It should not result in submission of charge-sheet in reference to each cognizable offence and, therefore, it was held that police should not register separate FIR for each cognizable offence involved in one incident. The Apex Court has even clarified the position aforesaid by giving illustration.

The illustration given in para 123 in the case of *Amish Devgan (supra)* is relevant. In a case where initially FIR was registered for the offence under Section 307 or 326 Indian Penal Code but during the course of investigation, the injured/victim dies then a fresh FIR for the offence under Section 302 Indian Penal Code is not required to be registered rather necessary alteration in the FIR can be made. At this stage, we may further add that FIR registered for one or more offences is not a final word rather in the investigation if any other offence is detected, the charge-sheet is to be filed for all offences found involved despite not mentioned in the FIR.

The other illustration given by the Apex Court that a person H having killed wife W informs the police that she has been killed by unknown person. During the course of the investigation, truth is detected that wife was killed by mother or sister of informant-husband H. It would not require registration of fresh FIR on it.

In view of the above, an incident involving more than one cognizable offence should not result in registration of separate FIR for each cognizable offence. The aforesaid is one part of the issue decided by the Apex Court.

The second issue is as to whether several FIRs can be registered

in reference to one incident and if it has been registered, the subsequent FIR, after the first, be treated as statement under Section 162 Cr.P.C. The second issue decided by the Apex Court can apply only when there are several FIRs out of one incident. The word “one incident” is of great relevance and for that, the Apex Court has given illustration. One incident may result in several FIRs but subsequent FIR, after the first, is to be treated as a statement under Section 162 Cr.P.C. The facts of the cases cited by learned counsel for the petitioner shows several FIRs out of one incident/occurrence which is not the case here. In the instant case, each FIR is registered by a different person and in regard to the separate incident with him and accordingly, it was registered separately, thus the judgment of the Apex Court in the case of *T.T. Antony (supra)* or even in the case of *Amish Devgan (supra)* would not apply.

The judgment in the case of *Amish Devgan (supra)* refers to certain illustration to clear the legal position and crystallize the issue as to when subsequent FIR to be treated as a statement under Section 162 Cr.P.C.

The facts of this case would not attract any of the judgments referred by learned counsel for the petitioner to restrain the respondents for sending the petitioner on remand in reference to each FIR.

The facts involved in the case of *Arnab Ranjan Goswami (supra)* is also considered. It was also a case where several FIRs were out of one incident. To attract all the judgments referred by learned counsel for the petitioner, it should be one incident. Those judgments would not apply in the cases where for separate incident, may be involving in same cognizable offence, separate FIRs have been registered. The evidence in reference to each FIR would also be in reference to the individual case.

In the light of the discussion made above, we are unable to accept the prayer made by the petitioner.

The writ petition is, accordingly, dismissed with a note that other than the prayer pressed during the course of argument and has been dealt with, we have not touched other issues having not being pressed.

The writ petition is **dismissed** with aforesaid.

Order Date :- 25.6.2021

Shubham

Justice
Munishwar
Nath Bhandari

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