

HIGH COURT OF KERALA**Date of Decision: 1st December 2023****Bench: Justice P.G. Ajithkumar**

CRL.REV.PET NO. 355 OF 2019

CRL.REV.PET NO. 379 OF 2019

M. Mohammed Kunhi **Petitioners****Versus****State of Kerala and V. Hashim** **Respondents****Legislation and Rules:**

Sections 419, 420, 465, 467, 468, 471, 120B, 34 Indian Penal Code, 1860

Code of Criminal Procedure (Cr.P.C.)

Subject:

Challenging the order dated 04.12.2018 in CMP No.6734 of 2017 in CC 2339/2015 of Judicial Magistrate of First Class-I, Hosdrug. The revision petitions contest the dismissal of the discharge application concerning alleged offenses related to property fraud and forgery.

Headnotes:

Property Fraud and Forgery - Impersonation of U. Raghavan in Property Sale – Allegations against Mohammed Kunhi (4th Accused) for executing a sale deed fraudulently in favor of V. Hashim, after acquiring property through forged documents. [Paras 1-5]

Dismissal of Discharge Application – Challenging the validity of the second FIR based on the principle that there cannot be two FIRs for the same incident. The court examined whether the FIRs were based on the same set of facts. [Paras 6-10]

Distinction Between FIRs – Court found substantial differences in the allegations and complainants in both FIRs, hence not attracting the bar of a second FIR. [Paras 11-17]

Dismissal of Revision Petitions – Court held that the revision petitions lack merit as both FIRs pertain to different aspects of the alleged offense, leading to the dismissal of the revision petitions. [Para 18]

Referred Cases:

- Mathews Mar Ivaniose v. Dr.Thomas Mar Athanasious [2014 (4) KLT SN 107 (C.No.13)]
- Prameswaran Nair v. Surendran [2009 (1) KLT 74]
- Amith Bai Anil Chandra Shah v. CBI [2013 (2) KLT SN 65 (Case No.75) SC]
- Awadesh Kumar Jha Akilesh Kumar Jha v. State of Bihar [AIR 2016 SC 373 = 2016 AIAR (Criminal) 247]
- Surender Kaushik and others v. State of Uttar Pradesh and others [(2013) 5 SCC 148 = 2013 SCAR (Criminal) 394]
- Amit Kapoor v. Ramesh Chander and another [(2012) 9 SCC 460]
- T.T Antony v. State of Kerala and others [(2001) 6 SCC 181]
- Upkar Singh v. Ved Prakash and others [(2004) 13 SCC 292]
- Tarak Dash Mukharjee v. State of Uttar Pradesh and others [2022 (2) KLD 435 (SC)]
- Babubhai and others v. State of Gujarat and others [(2010) 12 SCC 254]
- Anju Chaudhary v. State of U.P. And another [(2013) 6 SCC 384]
- Mahesh Chand v. B.Janardhan Reddy and another [(2003) 1 SCC 734]

Representing Advocates:

For Petitioner: Suresh Kumar Kodoth, Sri.K.P.Antony Binu (CRL.REV.PET NO. 355 OF 2019), P.C.Noushad, C.K.Sreedharan, E.A.Haris (CRL.REV.PET NO. 379 OF 2019)

For Respondents: Smt.Seena C., Public Prosecutor (State of Kerala), Adv Jawahar Jose (V. Hashim)CrI.R.P.Nos.355 and 379 of 2019

ORDER

Sri.U.Raghavan, son of Kannan, Kunnummel, a retired teacher expired on 28.08.2003. He had 22 cents of land comprised in resurvey No. 291/3-C of Balla Village. Sale Deed No.359 of 2007 alienating the said property was executed on 05.07.2007 in the name of Sri.U.Raghavan. It was in favour of Smt.Gracy Jacob. Her husband is a witness in that document. Subsequently, the said property was alienated in favour of Sri.Muhammed Kunhi. He in turn executed sale deed No.4673 of 2009 on 30.10.2009 alienating the said 22 cents of land in favour of Sri.V.Hashim. Alleging that Sri.Mohammed Kunhi, knowing fully that the property belonging to Sri.U.Raghavan was got transferred by forging a sale deed by impersonation, he had executed sale deed in favour of Sri.V.Hashim and received an amount of Rs.22 lakhs. With the said allegations, Sri.V.Hashim filed a complaint before of the Judicial Magistrate of the First CrI.R.P.Nos.355 and 379 of 2019 Class-I, Hosdurg alleging offences punishable under Sections 419, 420, 465, 467, 468, 471 and 120B read with Section 34 of the Indian Penal Code, 1860 (IPC). The complaint was forwarded to the Hosdurg Police Station, which followed an investigation and filing of the final report against all the four persons aforementioned. On taking cognizance, all the four accused were summoned. The accused entered appearance and filed C.M.P.No.6734 of 2017 seeking discharge. That petition was dismissed by the court below as per the order dated 04.11.2018. The said order is under challenge in these revision petitions.

2. The 4th accused filed CrI.R.P.No.355 of 2019. Accused Nos.1 and 2 filed CrI.R.P.No.379 of 2019. Accused No.3 is no more.

3. Heard the respective counsel for the petitioners, learned Public Prosecutor and the learned counsel for the 2nd respondent/defacto complainant.

4. The 1st accused is Smt. Gracy Jacob in favour of whom the first sale deed namely, document No.359/2007 was executed.

CrI.R.P.Nos.355 and 379 of 2019 Her husband, who attested the sale deed and identified the executant who allegedly impersonated late U.Raghavan, before the registering authority is the 2nd accused. The scribe of the document is the 3rd accused. The 4th accused is Sri.Mohammed Kunhi, who purchased the property from the 1st accused and later alienated in favour of the 2nd Respondent Complainant.

5. On the basis of the final report, case was taken on file as C.C.No.2260 of 2016. The first witness in the case is the 2nd respondent. The second witness is one Sethunath. He is son of late U.Raghavan. Sri.Sethunath earlier filed a complaint before the court below with the allegation that the accused therein forged document No.359 of 2007 impersonating his father. From his statement in police report, it is seen that on getting information from the village officer when he approached to remit tax for the property in question he came to know that some other persons approached that office for the payment of tax for the same property, and in his enquiry, he knew creation of document No.359 of 2007 falsely. His further statement is that he filed a complaint before the Magistrate which was sent CrI.R.P.Nos.355 and 379 of 2019 for investigation and simultaneously he filed O.S.No.126 of 2012 before the Sub Court, Hosdurg for getting the said document set aside. The crime registered on the basis of his complaint, crime No.865 of 2012 was referred stating it to be 'civil nature'. It was in the meantime the 2nd respondent filed another complaint before the court below, which ensued an investigation and filing of the present final report.

6. The petitioners along with the 3rd accused filed C.M.P.No. 6737 of 2017 seeking discharge on the ground that having the first FIR relating to the same offences was referred, a second FIR and the investigation are prohibited and illegal. On that ground, the petitioners sought discharge. They contended before the court below that the proceedings initiated on the basis of a second F.I.R. as illegal and in that regard they placed reliance on the decision in **Mathews Mar Ivaniose v. Dr.Thomas Mar Athanasious [2014 (4) KLT SN 107 (C.No.13), Prameswaran Nair v. Surendran [2009 (1) KLT 74] Amith Bai Anil Chandra Shah v. Central Bureau of Investigation [2013 (2) KLT SN 65 (Case No.75) SC, CrI.R.P.Nos.355 and 379 of 2019 Awadesh Kumar Jha Akilesh Kumar Jha v. State of Bihar [AIR 2016 SC 373 = 2016 AIAR (Criminal) 247]** and **Surender Kaushik and others v. State of Uttar Pradesh and others [(2013) 5 SCC 148 = 2013 SCAR (Criminal) 394]**. The court below considered the facts of the case in the light of principle of law laid down in the above mentioned decisions and held that from the materials contained in the final report and the documents submitted therewith it could not be said that both the FIRs. were regarding the same set of facts. It was further observed that only if a trial is held, it could be ascertained whether the two FIRs. were registered with respect to the same facts. On the ground that

the petitioner failed to establish sameness of two FIRs., the court below dismissed the petition for discharge.

7. The learned counsel appearing for accused Nos.1 and 2 submits that the basic facts constituting the offence alleged in both the FIRS. are the same; inasmuch as the allegations are that the property of late U.Raghavan was alienated by creating a false document by impersonation. The only difference is that CrI.R.P.Nos.355 and 379 of 2019 the 4th accused later executed a document in favour of the 2nd respondent. It is accordingly contended that there is no difference between the offences involved in both the cases. It is further submitted that when a crime was registered and investigated already, the second complaint before the police can only be statement under section 161 of the Code and for that reason also the second F.I.R. and investigation became illegal. On that ground, it is contended that proceedings in C.C.No.2339 of 2016 is illegal and a futile exercise, and the charge in the case would only be groundless.

8. The court below after dismissing the petition for discharge decided to frame a charge against all the accused. That is the order challenged in this revision. The Apex Court in **Amit Kapoor v. Ramesh Chander and another [(2012) 9 SCC 460]** delineated the ambit and scope of the power which the High Court can exercise under Section 397 of the Code. The Court is vested with the power to call for and examine the records of an inferior Court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order CrI.R.P.Nos.355 and 379 of 2019 made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the Court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. After referring to a slew of judgments the Apex Court held that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.

9. Therefore, the revisional jurisdiction is a very limited one and cannot be exercised in a routine manner. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. And, where the Court is dealing with the question as to whether the charge

has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Crl.R.P.Nos.355 and 379 of 2019

10. The learned counsel for the petitioners in both the revision petitions submit that the genesis of both the cases is the same, and except for adding one more accused in the second F.I.R. there is no noticeable difference in the allegations constituting the offence. Relying on the principle laid down by the Apex court that a second FIR in regard to the same offence is prohibited, the learned counsel canvassed for a position that the proceedings in CC No. 2339 of 2015 are illegal and for that reason, the court below ought to have discharged the petitioners.

11. In **T.T Antony v. State of Kerala and others [(2001) 6 SCC 181]** the Apex court held that an FIR postulated by Section 154 of the Code is the earliest and the first information of a cognizable offence recorded by an officer in charge of the police station. It sets the criminal law into motion and marks the commencement of the investigation. An investigation ends up with the formation of opinion under Section 169 or 170 of the Code, as the case may be and forwarding of a police report under Section 173. Once an F.I.R. Crl.R.P.Nos.355 and 379 of 2019 is registered, all other information made orally or in writing, after the commencement of the investigation will be statements falling under Section 162 of the Code. It was accordingly held that no such second information or statement can be treated as an FIR, as it would be a second F.I.R. and the same cannot be in conformity with the scheme of the Code. The principle of law that there cannot be two F.I.R. with respect to the same incident was reiterated by a three-Judge bench of the Apex Court in **Upkar Singh v. Ved Prakash and others [(2004) 13 SCC 292]**. The Apex court following the said proposition of law in **Tarak Dash Mukharjee v. State of Uttar Pradesh and others [2022 (2) KLD 435 (SC)]** held that if multiple FIRs by the same person against the same accused are permitted to be registered in respect to the same set of facts and allegations, it will result in the accused getting entangled in multiple criminal proceedings for the same offence. Therefore registration of multiple FIRs is nothing, but abuse of the process of law. It was further held that the act of registration of such subsequent FIR on the same set of facts and allegations at the instance of the Crl.R.P.Nos.355 and 379 of 2019 same informant will not stand the

scrutiny of Articles 21 and 22 of the Constitution of India, and therefore the proceedings pursuant to the second FIR are illegal. In view of that, it is to be considered whether both the FIRs were registered on the same set of facts.

12. In **Upkar Singh [(2004) 13 SCC 292]**, the Apex court held that the prohibition for a second FIR does not cover a second FIR, allegations of which are different although relating to the same incident. It was held that the concept of sameness has been given a restricted meaning in the above context.

Reiterating the said principle the Apex Court in **P.Sreekumar v. State of Kerala [(2018) 4 SCC 579]** held that it is for the court to decide whether the allegations in two FIRs regarding the same incident, but laid by two different persons are same and comes within the mischief of the bar to a second FIR.

13. The principle of sameness was dialated by the Apex Court in **Surender Kaushik and others v. State of Uttar Pradesh and others [(2013) 5 SCC 148]**. It was held, “24. From the aforesaid decisions, it is quite luminous that Crl.R.P.Nos.355 and 379 of 2019 the lodgment of two 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 offence. What is prohibited is any further complaint by the same complainant 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 the three-Judge Bench in Upkar Singh (supra), the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version 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.

14. In **Babubhai and others v. State of Gujarat and others [(2010) 12 SCC 254]**, the Apex Court held that it is quite possible that more than one piece of information be given to the Police Officer in- charge of the Police Station in respect of the same incident involving one or more than one cognizable offences. In such a case, he need not enter each piece of information in the Diary. All other information given orally or in Crl.R.P.Nos.355

and 379 of 2019 writing after the commencement of the investigation into the facts mentioned in the First Information Report will be statements falling under Section 162 of the Code. In such a case 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 both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is affirmative, the second FIR is liable to be quashed.

15. The law laid down in **Babubhai [(2010) 12 SCC 254]**, was explained and reiterated by the Apex Court in **Anju Chaudhary v. State of U.P. And another [(2013) 6 SCC 384]**.

16. As stated, if both the FIRs are with the same set of allegations and the offences constituting from the allegations are the same, the second FIR and the proceedings following such second FIR are illegal. If there is no sameness, if the nature of allegations and the facts involved and also the persons CrI.R.P.Nos.355 and 379 of 2019 aggrieved are different, the bar would not be applied. In the instant case, from the statement of the second witness Sethunath in C.C.No.2339 of 2015, it is seen that the allegations in his complaint based on which the first FIR was registered was essentially regarding creation of document dated 27.01.2007 impersonating late U.Raghavan. It was in the name of Smt.Gracy Jacob. Subsequently the 4th accused who obtained property from Smt.Gracy Jacob alienated the property in question in favour of the 2nd respondent. The allegation of the 2nd respondent in his complaint are the fraudulent inducement by the 4th accused in the matter of execution of sale deed dated 30.10.2009 and receipt of Rs.22 lakh as sale consideration from the 2nd respondent. Conspiracy hatched by accused Nos. 1 to 4 for the purpose of executing sale deed in favour of the 2nd respondent are also essential parts of the allegations to constitute the offences alleged therein. In that view of the matter, allegations in the two F.I.Rs. have substantial difference. The complainants are different. All the accused are not common. In such circumstances, it cannot be said that both the FIRs are CrI.R.P.Nos.355 and 379 of 2019 regarding the same offence and based on the same set of facts. Therefore the contention of the learned counsel for the petitioners that the charge in C.C.No.2339 of 2015 would only be groundless for the reason that it is based on a second FIR regarding the same incident is untenable.

17. The learned counsel for the 2nd respondent would submit that only if the first complaint has been dismissed on merits, there can be a bar for the 2nd complaint and the proceedings thereon would become illegal. He avails assistance in this regard of the principle of law laid down by the Apex Court in **Mahesh Chand v. B.Janardhan Reddy and another [(2003) 1 SCC 734]**. Here, the first crime was registered on the basis of the complaint of Sri.Sethunath. The second crime was registered on the basis of a complaint filed by the 2nd respondent Both were filed before the court and forwarded for investigation invoking the provision of Section 156(3) of the code. When FIRs were registered based on those complaints and final report after investigation were filed, the character of the proceedings changed and both became cases arose on CrI.R.P.Nos.355 and 379 of 2019 police reports. Therefore, the plea of the learned counsel for the 2nd respondent that there is no bar to the present case since the first complaint was not decided on merits does not assume importance in this case.

18. Of course, the first crime was referred stating that the dispute was of civil nature. That was at a time when the suit filed by Sri. Sethunath was pending. A full-fledged investigation was held only in the second case and the final report charging the petitioners with the offences mentioned herein before, was later filed. In the above circumstances, this case does not attract the bar of the second FIR. These revision petitions are devoid of merits. Accordingly, these revision petitions are dismissed.

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