



GAHC010044842022

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THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Crl. Pet. No. 194/2022

Jekirul Hussain,
Aged about 49 years,
S/o Late Letiful Hussain,
R/o-Amguri Gaon,
P.O.-Meteka P.S.-Sivasagar,
Dist.- Sivasagar, Assam.
Pin-785697

.....Petitioner

-Versus-

1. State of Assam,
Represented by the Public Prosecutor,
Assam.
2. Roshanara Begum
W/o Jekirul Hussain,
C/o Romjan Ali,
R/o-South Sarania Road,
House No. 124, Ulubari,
Guwahati, P.O.-Ulubari,



District –Kamrup (Metro), Assam,
Pin- 781007.

.....Respondents

Advocates for the appellant : Mr S N Tamuli,
Ms A Begum
Advocate for the respondent : Mr P S Lahkar, APP.

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Judgment : 16.12.2022

JUDGEMENT AND ORDER (ORAL)

Heard Mr S N Tamuli, learned counsel assisted by Ms A Begum, learned counsel appearing for the petitioner and Mr P S Lahkar, learned Additional Public Prosecutor, appearing on behalf of the State of Assam/respondent No. 1.

2. This is an application filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973, praying for setting aside/quashing the FIR dated 14.04.2021, which was registered as Sivasagar PS Case No. 447/2021 and the charge sheet No. 104/2021, dated 03.05.2021 and the entire proceeding of PRC Case No. 634/2021, arising out of Sivasagar PS Case No. 447/2021, under Section 498(A) of the Indian Penal Code, 1860

3. It is submitted by the learned counsel for the petitioner that the respondent No. 2 is the wife of the present petitioner. After their marriage they lived together as husband and wife and out their wedlock two children were born, but subsequently, the respondent No. 2 left the house of her husband and started to live in the house of her parents and, thereafter,

lodged four FIRs against the present petitioner on the same ground of physical torture and harassment.

4. It is also submitted by the learned counsel for the petitioner that if multiple first information reports by the same person against the same accused are permitted to be registered in respect of the same set of facts and allegation, it will result in the accused getting entangled in multiple criminal proceedings for the same alleged offence. The registration of such multiple FIRs is nothing but the abuse of the process of law.

5. In support of his submission, the learned counsel for the petitioner has cited one case-law:-

2022 Live Law (SC) 731; (*Tarak Dash Mukharjee and others –vs. State of Uttar Pradesh & Ors.*)

6. On the other hand, learned Additional Public Prosecutor has fairly submitted that the multiple FIRs, which have been lodged against the petitioner by the same informant in the same set of incident, are not permissible under the law.

7. I have considered the submissions of learned counsel for the parties. I have also gone through the documents available in the record.

8. It appears from the record that on 12.10.2019, the present respondent No. 2 as informant has lodged a written FIR before Gorchuk Police Station alleging that since 01.04.2018, she is living at her parent's house at Guwahati due to torture of her husband and his family members. At Sivasagar, she constructed a house from her own money, which is now in their possession. On 06.02.2016, she had purchased one four-wheeler vehicle, Swift



Desire VXI, by her own money which was registered in her name at Guwahati. At present, the vehicle is in the custody of her husband. She came to know that the vehicle had been transferred from her name to the name of her husband. Thereafter, she has lodged the FIR, which is the first FIR against the present petitioner and on the basis of the said FIR a case was registered vide Gorchuk PS Case No. 761/2019, under Sections 498A/420/468 IPC.

9. The second FIR was lodged on 11.11.2019, before the SP, Sivasagar alleging that she was married to the petitioner and out of their wedlock two children were born and from 01.04.2018, she is living with her parents at Guwahati. The informant further alleged that the accused petitioners drove her out from her matrimonial home. It is also alleged that the petitioner changed the name of the informant in registration certificate of her vehicle into his name and accordingly, using the same. The informant also stated that she had filed complaint to DTO and Police at Guwahati and she had also filed maintenance case at Family Court, Guwahati.

10. On receipt of the said FIR, a case was registered vide Sivasagar PS Case No. 1206/2019 under Section 498A/406/468 IPC.

11. It is seen from the record that the third FIR was lodged on 02.09.2020, before the In-charge, Joysagar Police Outpost, under Sivasagar Police Station stating, *inter alia*, that her marriage was solemnized with the petitioner on 16.04.2007 and out of their wedlock two children were born. It is alleged that after lapse of few days, her husband, i.e., the petitioner and his mother Putola Begum, sister Gulena Begum and brother in law, Nasimuddin Ahmed had tortured her physically and mentally and drove her out from her matrimonial home on 01.04.2018 along with her children and, thereafter, she took shelter in the house of her

parents. She further alleged that she had purchased a Swift Desire vehicle which was registered in her name. She also alleged that her husband, i.e., the petitioner transferred the registration of her vehicle in his name by forging her signature. It is also alleged that there was a plot of land, measuring 3 Kathas at Julagaon. She had many tenanted houses over the said land. She further alleged that the petitioner used to collect rent from the said tenanted houses and he misappropriated an amount of Rs. 1,40,000/-.

12. On the basis of the said FIR, another case was registered vide Sivasagar PS Case No. 1029/2020, under Sections 498(A)/420/406/506/34 IPC.

13. The fourth FIR which has been challenged in this criminal petition was lodged on 14.04.2021, stating inter alia that she is the married wife of Jekirul Hussain. His family consists of two children. From the day of marriage with her husband, along with his family members, i.e., his mother, sister, brother-in-law, niece have been torturing her both physically as well as mentally. Once the torture was so extreme, that they had compelled her to take an attempt to commit suicide. Finally, on 01.04.2018, her husband and his family drove her out along with her two children. She returned to the house of her parents at Guwahati. It is also alleged that her husband took away her Stridhan articles, gold, valuable dresses, etc. It is further alleged that he visited her matrimonial house to take back her certificates, bank pass-book, cheque book etc. but the petitioner and her family members did not allow her to enter into their house.

14. On the basis of the ejahar lodged on 14.04.2021, another case was registered vide Sivasagar PS Case No. 447/2021, under Section 498(A) IPC.



16. It appears from the record that since 01.04.2018, the informant was not living with the present petitioner. The first FIR and the second FIR was lodged in the year 2019 and the third FIR was lodged in the year 2020 and the fourth FIR was lodged in the year 2021, in the same set of incident, in connection with the incident prior to 01.04.2018.

17. Second FIR is a consecutive FIR filed after the information on the commission of a cognizable offence has also been given to the Police Officer under Section 154 CrPC. It means that the second FIR would relate to the initial FIR in regards to the same offence, that has been committed or the same accused persons, who have committed it. There could be various possibilities here and that is why the law has to be specific in permitting the registration of the second FIR.

18. The possibility of filing second FIR came up in the case of ***Ram Lal Narang vs. State of Delhi***; reported in **(1979) 2 SCC 322**. In this case, the first FIR was revealed to be a part of a larger conspiracy that was only disclosed in the second FIR. The issue was whether the two conspiracies are identical. The court held that even though some of the conspirators were same in both the two events, the objectives were different. It cannot be said that both FIRs refer to the commission of the same offence

19. This case paved the way for the interpretation and permissibility of filing the second FIR under CrPC. However, the law on registering the second FIR is still developing. There are instances, where the Courts have entertained these issues but the views are still evolving.

20. The permissibility of registering the second FIR is to protect the fundamental right of an accused against double jeopardy to maintain the rule of fair investigation and not to allow the



police to abuse their investigating powers under CrPC. These three-fold safeguards prevent registration of the second FIR as held in the case of **Anju Choudhury vs. State of UP; (2013) 6 SCC 384.**

21. The legality of the second FIR was extensively discussed in the case of **T T Antony vs. State of Kerala; (2001) 6 SCC 181.** The Court established the taste of sameness, which means that unless in both the two cases, while the first and second FIR is registered respectively, the FIRs appear to be substantively different from each other, such as in facts and circumstances, the second FIR cannot be filed. This means that the facts and circumstances, giving rise to two FIRs must be different or the offence committed in the two must be different or the person accused of committing the offence is different. Only then, the second FIR is permissible.

22. The Court further observed that the scheme of provisions starting from Section 154 of CrPC to Section 173 CrPC, that is from the starting to the ending of the investigation, relates to the earliest or the first information, given in the commission of a cognizable offence. This is what satisfies the requirement of Section 154 CrPC. Thus, there is no scope to start a fresh investigation on receipt of every subsequent information received in respect of the same cognizable offence.

23. The Court can apply the test of sameness when-

- i) It has to examine the facts and circumstances that are giving rise to two FIRs.
- ii) In trying to find out whether it relates to the same incident, the Court

has to either look at the occurrence of the two incidents and their relationship with each or the transactions of the occurrence, if it has occurred in parts.

iii) If it finds out that the occurrence of the offence is the same or the different transaction forms the part of the same occurrence, the second FIR is liable to be quashed.

iv) But if the two occurrences are based on different versions and two different crimes, the second FIR shall sustain.

v) This will also cover those situations, where the Police gets subsequent informant through practice, convenience and preponderance in further investigation, allowed under Section 173(8) CrPC.

24. Hence, at the end of further investigation, if both the gravamen of charges in the two FIRs is in substance and truth, the same, the second FIR cannot be filed.

25. While the test of sameness was consistently adopted by various Courts since the 2001 judgment, a contention in its applicability came up in the case of ***State of Jharkhand –Vs. Lalu Prasad @ Lalu Prasad Yadav; (2017) 3 SCC (Cri.) 569.***

26. The Court in this case was faced with an issue of whether the test of sameness can be applied in the commission of the same kind of offence. The Court firstly acknowledged the difference between the commission of the same offence and the same kind of offence. Both are two different situations. In cases, where a second FIR is filed in the commission of the same offence, the second FIR is liable to be quashed through the test of sameness. This situation will lead to a case of double jeopardy under Article 20 (2) of the Constitution of

India, which prohibits the prosecution of a person twice for the same offence.

27. Whereas, the test of sameness is not applicable where similar kinds of offences are committed. It is because the offence in itself can be different in this scenario. However, they may be of a similar nature. For instance, murder and culpable homicide are similar in nature, but are two different offences under the Indian Penal Code, 1860. Another example is housebreaking and trespass. Both are similar in nature but are two different offences. The Police in such cases are supposed to register an FIR in every single time.

28. Where the offence registered under the second FIR occurs as a consequence of an offence alleged to have occurred in the first FIR, the test of consequence is to be applied. In the case of ***C Muniappan & Ors. vs. State of Tamil Nadu; (2010) 9 SCC 567***, the Court held that the offences alleged to have occurred in both the FIRs are the same and thus, the second FIR will not be permissible. This test of consequence has been reiterated by the Court in the case of ***Amitbhai Anil Chandra Shah vs. CBI; (2013) 6 SCC 348***.

29. The test of consequences is also to be applied in cases where the offence disclosed in the first FIR is not the same as the offence disclosed in the second FIR. In this case, a second FIR is permissible. This may include a situation where the second FIR is lodged by different persons and in different police stations. In the case of ***Chirag M Pathak vs. Dollyben Kantilal Patel; (2018) 1 SCC 330***. This issue came up where six FIRs were lodged based on identical facts, but in different police stations, by six different cooperative societies. The Supreme Court accepted all the FIRs based on the reasoning that they are lodged by different persons and the totality of factual allegations constitute the commission of different offences. Hence, the FIRs were not overlapping.

30. In the case of ***Arnab Ranjan Goswami vs. Union of India; (2020) 14 SCC 12***, the issue before the Court was whether multiple FIRs can be filed in different states based on the same cause of action. The Supreme Court held that lodging multiple FIRs is not permissible to stifle the right of the journalistic freedoms under Article 19 (1) (a) of the Constitution of India. The Court was conscious of the fact that there is a need to ensure that the criminal process does not assume the character of a vexatious exercise by registering multiple FIRs and thus, fair treatment should be ensured through the parameters of Article 14. There must, thus, be a balance in the exercise of journalistic freedoms and the power to investigate under CrPC.

31. The observation in the case of ***T T Antony (supra)*** was challenged in the case of ***Upkar Singh vs. Ved Prakash & Ors (2004) 13 SCC 292***; on the grounds that the Court in that case did not consider the right of the aggrieved to file counter claims. If the second FIR on the same offence and against the same person is barred, then it would jeopardize the right of the victim in case, a false FIR is lodged by the accused first and then another FIR is lodged by the victim, narrating his side of the story. This means that cross-FIRs are permissible.

32. Another situation that has been considered by the Court is that where the accused comes with a different version or counter claims, the same has to be investigated different as maintained in the case of ***Babu Bhai vs. State of Gujarat; (2010) 12 SCC 254***. Further, a similar position was observed in the case of ***Surender Kaushik & Ors. Vs. State of Uttar Pradesh & Ors.; (2013) 5 SCC 148***, arising out of SLP (Crl.) No. 2077 of 2010] where the Court concluded that the concept of sameness precluded the counter FIR, filed by

the victim relating to the same offence.

33. The meaning of the concept of sameness is restricted and what is precluded is any further complaint by the complainant for the registration of the case for an investigation that has already begun. This essentially means that the counter version of the FIR takes two different shapes. The Supreme Court has reiterated the position of these two abovementioned cases in the case of ***P. Sreekumar vs. State of Kerala & Ors.; (2018) 4 SCC 579***. In cases, where a separate transaction occurs after the first FIR has been lodged, it cannot be considered as a part of the same transaction within the meaning of further investigation under Section 173 (8) CrPC, as held in the case ***of Awadesh Kumar Jha @ Akhilesh Kumar vs. State of Bihar; (2016) 3 SCC 8***. However, what amounts to the same transaction is devoid of the exact meaning. The Court in the case ***Mohan Baitha & Ors. vs. State of Bihar & Anr.; (2001) 4 SCC 350***, observed that the meaning of the term same transaction cannot be given an artificial or technical meaning. That is why common sense is to be applied to find out whether the facts of the case form a part of the same transaction.

34. Further in the case of ***Nirmal Singh Kahlon vs. State of Punjab & Ors.; (2009) 1 SCC 441***, it was considered that a second FIR is maintainable in the case where a new discovery is made factually. However, these situations do not include a case where the investigation has been initiated on an illegal basis. In cases, where the initiation of an investigation is based on a false case, the criminal proceedings under Section 482 of the CrPC will govern the situation. In this case, another fresh FIR can be filed to initiate an investigation.



35. Reverting back to the present case, as I have already stated that the petitioner and the respondent are husband and wife. Since 01.04.2018, they are living separately. Definitely, the incident occurred prior to 01.04.2018, but the FIR was lodged in the same set of incident, i.e., physical and mental torture and transfer of registration certificate from the name of the respondent No. 2 to the present petitioner without her consent etc. It is seen that the four FIRs were lodged on four different dates on the same set of incident but the case was initiated accordingly by the same person against the same accused.

36. Applying the principle of the aforesaid legal proposition, in the present case also, I am of the view that the FIR dated 14.04.2021, which was registered vide Sivasagar PS Case No. 447/2021, under Section 498(A) of the Indian Penal Code, 1860, is not permissible under the provision of law.

37. In the result, the prayer of the petitioner is allowed. The FIR dated 14.04.2021, which was registered vide Sivasagar PS Case No. 447/2021, Charge sheet No. 104/2021, dated 03.05.2021, against the present petitioner and the entire proceeding of PRC Case No. 634/2021, arising out of Sivasagar PS Case No. 447/2021, are accordingly, quashed.

38. Criminal Petition stands disposed of.

JUDGE

Comparing Assistant