



GAHC010242572022

Page No.# 1/20



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1205/2022

NURUL HUDA BARBHUIYA
S/O SAJJADUR RAHMAN BARBHUIYA @ SAJJAD ALI BARBHUIYA
R/O GANGPAR DHUMKAR PT.IV,
P.S. AND DIST. HAILAKANDI

VERSUS

THE STATE OF ASSAM AND ANR
TO BE REP. BY THE PP, ASSAM

2:ANISUL ISLAM CHOUDHURY
S/O ABDUR RAZAK CHOUDHURY
R/O LAKHIRBOND PT.II

P.S. AND DIST. HAILAKANDI
PIN-78815

WITH

Crl.Pet./1193/2022

NURUL HUDA BARBHUIYA
S/O SAJJADUR RAHMAN BARBHUIYA
@ SAJJAD ALI BARBHUIYA
R/O GANGPAR DHUMKAR PT.IV

P.S. AND DIST. HAILAKANDI

VERSUS



THE STATE OF ASSAM AND ANR.
TO BE REP. BY THE PP
ASSAM

2:JASMIN BEGUM LASKAR
D/O GIAS UDDIN LASKAR
R/O BORBOND PT.II
P.S. AND DIST. HAILAKANDI
PIN-788151

Advocate for the petitioner : 1. Mr. K. A.Mazumder
Advocate for the respondent : 1. Mr. D. Das, Public Prosecutor, Assam.
2. Mr. A.M. Barbhuiya, (respondent No. 2).

Date of judgment : 02.04.2024

BEFORE

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT AND ORDER (CAV)

1. By this common judgment, it is proposed to dispose of Criminal Petition No. 1193/2022 as well as Criminal Petition No. 1205/2022 as the incidents involved in both cases are common and the offence in both the cases was allegedly committed, on 29.09.2020, by the present petitioner against Ms. Jasmin Begum Laskar who is the respondent No. 2 of Criminal Petition No. 1193/2022.



2. Heard Mr. K. A. Mazumder, learned counsel for the petitioner in both the Criminal Petitions. Also heard Mr. A. M. Barbhuiya, learned counsel for the respondent No. 2 in both the Criminal Petition as well as Mr. D. Das, learned Additional Public Prosecutor, Assam, who has appeared for the respondent No. 1.

3. During the course of hearing of both the Criminal Petitions which were heard jointly by this court, it has come to the light that for the incident which was alleged to have committed on 29.09.2020 by the present petitioner against one Jasmin Begum Laskar, who is the respondent No. 2 in Criminal Petition No. 1193/2022, three separate criminal cases were registered at different points of time against the present petitioner.

4. In Criminal Petition No. 1205/2022, the petitioner has approached this court under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing and setting aside of the criminal proceedings in G.R. Case No. 2046/2020 corresponding to Hailakandi P.S. Case No. 845/2020 as well as the charge sheet No. 73/2021 dated 27.03.2021, which was filed in connection with the said case.

5. On the other hand, the Criminal Petition No. 1193/2022 has been registered under Section 482 of the Code of Criminal Procedure, 1973 on an application under the said provision, by the petitioner, seeking quashing and setting aside of the criminal proceedings emanating from the complaint case filed by the respondent No. 2 of the Criminal Petition No. 1205/2022, which was registered as C.R. Case No. 741/2020. The said complaint petition was forwarded to the Officer-In-Charge of Hailakandi Police Station with a direction by Judicial Magistrate First Class Hailakandi by its order dated 30.01.2021 to register the said complaint as an FIR and to investigate the case. On receipt of

the said complaint, the Hailakandi P.S. Case No. 189/2021 was registered (corresponding to G.R. Case No. 521/2021) under Section 384/365/323/406/420/376/511 of the Indian Penal Code and ultimately, on completion of the investigation, charge sheet was laid bearing charge sheet No. 231/2021 dated 22.06.2021 under Section 376/420 of the Indian Penal Code. The petitioner has also prayed for setting aside and quashing of the said charge sheet as well as the proceedings of G.R. Case No. 521/2021 corresponding to Hailakandi P.S. Case No. 189/2021.

6. Out of the three criminal cases which were instituted against the present petitioner in relation to the incident which had occurred on 29.09.2020, the first case, that is Hailakandi P.S. Case No. 814/2020 was registered under Section 366/34 of the Indian Penal Code on filing of an FIR, on 30.09.2020, by the respondent No. 2 of Criminal Petition No. 1205/2022, namely, Anisul Islam Choudhury, before the Officer-In-Charge of Hailakandi Police Station, *inter alia*, alleging that on 29.09.2020, the petitioner along with three others had abducted the wife of the first informant, namely, Jasmin Begum Laskar, and their two-years-old child.

7. During the course of investigation of Hailakandi P.S. Case No. 814/2020, Ms. Jasmin Begum Laskar, (respondent No. 2 of Criminal Petition No. 1193/2022), had given her statement before the Judicial Magistrate under Section 164 of the Code of Criminal Procedure, 1973, on 06.10.2020, and in the said statement, she had stated, *inter alia*, that her husband, namely, Anisul Islam Choudhury, (respondent No. 2 of Criminal Petition No. 1205/2022), used to torture her physically and mentally, continuously. She had also stated that the respondent No. 2 of Criminal Petition No. 1205/2022, namely, Anisul Islam Choudhury, had pronounced talaq upon her about one year earlier, and they

were residing separately thereafter.

8. It is also stated by Ms. Jasmin Begum Laskar in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 that she developed relationship with the petitioner as she was inflicted torture by her husband, Anisul Islam Choudhury. The victim has further stated that she on her own had eloped with the petitioner on 28.09.2020 and thereafter, on 29.09.2020, they got married before the Kazi and since then they were living peacefully. It is pertinent to mention herein that the petitioner was granted pre-arrest bail by the court of learned Sessions Judge, Hailakandi on 15.10.2020 in connection with Hailakandi P.S. Case No. 814/2020. It is also pertinent to mention herein that during the course of examination the victim Jasmin Begum Laskar refused to get medically examined.

9. In this case, the petitioner has also submitted an additional affidavit on 15.12.2023, whereby, he has brought on record the final reports submitted by the Investigating Officer in Hailakandi P.S. Case No. 814/2020. The said final report has been numbered as Final Report No. 339/2020 and has been forwarded to the court of learned Chief Judicial Magistrate, Hailakandi by the Officer-In-Charge of Hailakandi Police Station on 23.11.2020.

10. The second case against the present petitioner out of the same incident was registered as Hailakandi P.S. Case No. 845/2020, (corresponding to G.R. Case No. 2045/2020) under Section 120B/494/498/380 of the Indian Penal Code read with Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The said case was registered on filing on an FIR by the respondent No. 2 of Criminal Petition No. 1205/2022, namely, Anisul Islam Choudhury on 06.10.2020 before the Officer-In-Charge of Hailakandi Police Station. It is pertinent to mention herein that in the said FIR even the

respondent No. 2 of Criminal Petition No. 1193/2022, namely, Jasmin Begum Laskar has been shown as a co-accused. In this case also, the petitioner was granted pre-arrest bail on 28.01.2021. After completion of the investigation in Hailakandi P.S. Case No. 845/2020, the Investigating Officer had laid the charge-sheet bearing charge-sheet No. 73/2021 dated 27.03.2021 under Section 120B/494 of the Indian Penal Code read with Section 75 of the Juvenile Justice (Care & Protection of Children) Act, 2015 against the present petitioner and the respondent No. 2 of Criminal Petition No. 1193/2022, namely, Jasmin Begum Laskar.

11. The third case against the present petitioner in respect of the same incident which was alleged to have been committed on 29.09.2020 was filed by the respondent No. 2 of Criminal Petition No. 1193/2022, namely, Jasmin Begum Laskar, who on 18.12.2020 had filed a complaint before the court of learned Chief Judicial Magistrate, Hailakandi against the petitioner Nurul Huda Barbhuiya, wherein she has alleged that on 29.09.2020 the present petitioner with the help of the accused No. 2, named in the complaint, namely, Nabin Huda Barbhuiya had kidnapped her, along with her minor child and had compelled her to have forcibly sexual intercourse with the petitioner. It was also alleged that the petitioner had administered some medicine which made the complainant unconscious during which the petitioner took some private pictures of the complainant and threatened to release the same and by that way blackmailed her. On receipt of the said complaint, the learned Judicial Magistrate First Class, Hailakandi examined the complainant under Section 200 of the Code of Criminal Procedure, 1973 and had found a *prima facie* opinion that there were ingredients of offence under Section 361/511 of the Indian Penal Code and directed the Officer-In-Charge of Hailakandi Police Station to register a case and



cause investigation and thereafter submit the final form. Accordingly, the Officer-In-Charge of Hailakandi Police Station treating the said compliant as an FIR registered the Hailakandi P.S. Case No. 189/2021 corresponding to G.R. Case No. 521/2021 and initiated the investigation. Ultimately, on completion of the investigation, the Investigating Officer had laid the charge sheet bearing charge sheet No. 231/2021 on 22.06.2021 under Section 420/376 of the Indian Penal Code against the present petitioner.

12. Mr. K. A. Mazumder, learned counsel for the petitioner has submitted that the petitioner has been subjected to three separate criminal proceedings in respect of the same offence which was alleged to have been committed on 29.09.2020.

13. Learned counsel for the petitioner has submitted that when the investigation of Hailakandi P.S. Case No. 814/2020 was going on, which was registered on the basis of the First Information Report filed by the respondent No. 2 of Criminal Petition No. 1205/2022, namely, Anisul Islam Choudhury on 30.09.2020, the Officer-In-Charge of Hailakandi Police Station ought not to have entertained a second FIR on 06.10.2020 in respect of the same incident as it was barred by Section 162 of the Code of Criminal Procedure, 1973.

14. Learned counsel for the petitioner has also submitted that the Investigating Officer in the Hailakandi P.S. Case No. 814/2020 has submitted Final Report No. 339/2020. Under such circumstances, for the same incident another Investigating Officer could not have laid the charge sheet No. 73/2021 against the present petitioner as well as the victim Jasmin Begum Laskar herself under Section 120B/494 of the Indian Penal Code.

15. Learned counsel for the petitioner has also submitted that in the

third FIR which was registered on the basis of the compliant by the victim, namely, Jasmin Begum Laskar, it was clear that she was compelled by her husband Anisul Islam Choudhury to lodge the third FIR when Jasmin Begum Laskar went back to her previous husband again. It is also submitted that the allegations levelled against the present petitioner in the third FIR/compliant dated 08.12.2020 as well as first FIR dated 30.09.2020 relates to the same incident.

16. It is also submitted by the learned counsel for the petitioner that the Investigating Officer of the Hailakandi P.S. Case No. 845/2020 as well as Hailakandi P.S. Case No. 189/2021 failed to take into consideration that the victim had refused to undergo medical examination in Hailakandi P.S. Case No. 814/2020, which was first in time to be registered on the basis of the FIR lodged by respondent No. 2 of Criminal Petition No. 1205/2022.

17. Learned counsel for the petitioner has also submitted that in Hailakandi P.S. Case No. 814/2020, while giving her statement under Section 164 of the code of Criminal Procedure, 1973 the respondent No. 2 of Criminal Petition No. 1193/2022 namely Ms. Jasmin Begum Laskar had made categorical statement that the respondent No. 2 of Criminal Petition No. 1205/2022, namely Anisul Islam Choudhury, who was her husband for 14 years used to torture her physically and mentally. She had also stated that Anisul Islam Choudhury had pronounced talaq upon her and was staying separately in her husband's house, but the husband that is, Anisul Islam Choudhury on various occasion tried to forcibly have physical relationship with her. It is also stated by Jasmin Begum Laskar that she developed friendship with the present petitioner and started having love affairs and she also confided the present petitioner about the atrocities perpetrated on her by Anisul Islam Choudhury

and accordingly, on 28.09. 2020, she took her younger son and eloped with the petitioner. However, on the next day that is on 29.09.2020 when her husband called her, she had sent back the son to her husband and on 29.09.2020, she got married to the petitioner before the Kazi.

18. Learned counsel for the petitioner has submitted that when for the same incident, one Investigating Officer in one case that is, Hailakandi P.S. Case No. 814/2020 had submitted the final report, on the basis of the evidence by the same witnesses, for the same incident, charge sheet could not have been laid on the basis of subsequent FIRs in two separate cases that is Hailakandi P.S. Case No. 845/2020 and Hailakandi P.S. Case No. 189/2021 as the same is prohibited under law.

19. Learned counsel for the petitioner has also submitted that the materials available on record including the statement of the victim Jasmin Begum Laskar made under Section 164 of the Code of Criminal Procedure clearly shows that the relationship between the petitioner and Jasmin Begum Laskar was consensual in nature and therefore, the question of presence of ingredients of offence under Section 376 of the Indian Penal Code does not arise in this case.

20. Learned counsel for the petitioner has also submitted that by filing successive FIRs and also compelling Jasmin Begum Laskar to file FIR against the present petitioner with regard to the same incident that is the incident which occurred on 29.09. 2020 the respondents have abused the process of court and the subsequent FIRs were filed by the respondent No.2 of the Criminal Petition No. 1205/2020 Anisul Islam Choudhury only for wrecking vengeance against the present petitioner and to settle personal score with him.



21. Learned counsel for the petitioner has submitted that when for the same offence in the first FIR, which was lodged by the respondent No. 2 of Criminal Petition No. 1205/2022, the Investigating Officer has submitted the final report, then in absence of any credible evidence against the present petitioner the filing of subsequent FIRs on the same incident is manifestly attended with *malafide* and it clearly shows that the subsequent FIRs were filed maliciously with ulterior motive for wrecking vengeance on the present petitioner with a view to settle personal grudge against the present petitioner.

22. Learned counsel for the appellant has submitted that filing of successive FIRs on the same subject matter is an abuse of the process of court and under such circumstances it is the duty of the constitutional courts to exercise its powers under Section 482 of the Code of Criminal Procedure, 1973 and to quash such manifestly illegal criminal proceedings. In support of his submissions learned counsel for the petitioner has cited a ruling of the apex court of India in "***Pramod Suryabhan Pawar Vs. The State of Maharashtra,***" reported in **(2019) 9 SCC 608**, wherein the apex court has observed as follows:-

“6. Section 482 is an overriding section which saves the inherent powers of the court to advance the cause of justice. Under Section 482 the inherent jurisdiction of the court can be exercised (i) to give effect to an order under CrPC; (ii) to prevent the abuse of the process of the court; and (iii) to otherwise secure the ends of justice. The powers of the court under Section 482 are wide and the court is vested with a significant amount of discretion to decide whether or not to exercise them. The court should be guarded in the use of its extraordinary jurisdiction to quash an FIR or criminal proceeding as it denies the prosecution the opportunity to establish its case through investigation and evidence. These principles have been consistently followed and reiterated by this Court. In Inder Mohan Goswami v. State of Uttaranchal [Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1 :

(2008) 1 SCC (Cri) 259] , this Court observed : (SCC p. 10, paras 23-24)

“23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent powers to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of the court, and

(iii) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”

23. To fortify his submissions, learned counsel for the petitioner has also cited a judgment of the apex court in the case of “**Shambhu Kharwar Vs. The State of Uttar Pradesh**” (judgment dated 12th August 2022 in Criminal Appeal No. 1231/2022). Learned counsel for the petitioner has also cited judgment a ruling of apex court in the case of “**Abhishek Vs. State of Madhya Pradesh**” reported in 2023 live law (SC) 731 as well as as the judgment of the apex court in the case of “**State of Haryana Vs. Ch. Bhajan Lal,**” reported in “**AIR 1992 SC 604.**”

24. On the other hand, Mr. A. M. Barbhuiya, learned counsel for the respondent No. 2 in both the criminal petitions has submitted that the criminal petitions filed by the present petitioner is liable to be dismissed as in both the cases namely, Hailakandi P.S. Case No. 845/2020 as well Hailakandi P.S. Case No. 189/2021, the Investigating Officer had found sufficient materials during the

investigation to prosecute the present petitioner under Section 120B/494 read with Section 75 of the Juvenile Justice (Care & Protection of Children) Act, 2015 as well as under Section 420/376 of the Indian Penal Code.

25. Learned counsel for the respondent has submitted that the marriage between the respondent of Criminal Petition No. 1205/2022, namely, Anisul Islam Choudhury and the respondent No. 2 of Criminal Petition No. 1193/2022, namely, Jasmin Begum Laskar has not been legally dissolved and therefore, the question of Jasmin Begum Laskar, marrying the petitioner Nurul Huda Barbhuiya during the subsistence of her marriage with Anisul Islam Choudhury does not arise and same only amounts to an offence under Section 494 of the Indian Penal Code as well as Section 497 of the Indian Penal Code.

26. Learned counsel for the respondent has also submitted that in the second FIR filed by the respondent No. 2, namely, Anisul Islam Choudhury, he had made specific allegations against the present petitioner. He has also submitted that in view of specific allegations made against the present petitioner in the second FIR which constitute cognizable offences, it was not open for this court to embark upon an enquiry so as to verify the reliability or genuineness or otherwise of the allegations made in the FIR.

27. In support of his submissions, learned counsel for the respondent has cited a ruling of apex court of India in the case of "***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others***" reported in "***Live Law (2021) SC 211.***"

28. Learned counsel for the respondent has submitted that in exercise of powers under Section 482 of the Code of Criminal Procedure, 1973 which are inherent powers of the court, the court should not normally interfere with the

investigation or a criminal proceeding unless there is an abuse of the process of court. It is in only exceptional cases the court should in exercise of powers under 482 of the Code of Criminal Procedure, quash a criminal proceeding.

29. Learned counsel for the respondent has submitted that in the instant case both the FIRs sought to be quashed by the present petitioner have resulted into filing of charge sheet against the present petitioner which itself shows that there are materials against the present petitioner in the said criminal proceeding and therefore, the said criminal proceedings are not liable to be interfered with by this court in exercise of its inherent powers. The learned counsel for the respondent has therefore prayed for dismissing both the criminal petitions filed by the petitioner.

30. I have considered the submissions made by learned counsel for both the sides carefully and also perused the materials available on record as well as also gone through the judgments cited by both the sides.

31. In the instant case, the three FIRs which was lodged against the present petitioner on separate occasions, that is the first FIR was lodged on 30.09.2020, the second FIR was lodged on 06.10.2020 and the third FIR was lodged on 08.12.2020, in all the FIRs the incidents relate to 29.09.2020 on which date it was alleged that the present petitioner had kidnapped the wife of the respondent No. 2 of Criminal Petition No. 1205/2022 who is also the respondent No. 2 in the Criminal Petition No. 1193 of 2022, namely, Ms. Jasmin Begum Laskar. There is no dispute at the bar regarding the fact that the offence which is alleged in both the two FIRs and criminal proceedings which is sought to be quashed relates to 29.09.2020 and there is also no dispute at the bar that the first FIR dated 30.09.2020 filed by Anisul Islam Choudhury also relates to the same incident. It is also apparent that during the investigation of the



Hailakandi P.S. Case No. 814/2020 which was registered on the basis of the first FIR lodged by Anisul Islam Choudhury on 30.09.2020, the Investigating Officer has submitted the final report No. 339/2020. It also appears from record that during the investigation of the Hailakandi P.S. Case No. 814/2020 the statement of the victim, that is, Jasmin Begum Laskar was recorded under Section 164 of the Code of Criminal Procedure, 1973 and during which she had stated that she was subjected to physical and mental torture by her husband Anisul Islam Choudhury and who also had pronounced talaq upon her and since the pronouncement of talaq she was staying separately in her husband's house. It also transpires from the Final Report No. 339/2020 that the victim Jasmin Begum Laskar had stated during the investigation of Hailakandi P.S. Case No. 814/2020 that she herself eloped with the petitioner along with her younger son, however on the next day, she had sent her son to the husband and she also stated that she does not want to go back to her husband Anisul Islam Choudhury. It also transpires from the record that the Investigating Officer of Hailakandi P.S. Case No. 814/2020 had found insufficient evidence against the present petitioner and therefore, the final report was submitted before the court of learned Chief Judicial Magistrate, Hailakandi on 23.11.2020.

32. It also appears that the second FIR dated 06.10.2020 was filed by Anisul Islam Choudhury during the pendency of the investigation of Hailakandi P.S. Case No. 814/2020 which was registered on the basis of the first FIR filed by him on 30.09.2020.

33. It also appears that the third FIR was registered on the basis of a complaint filed by Jasmin Begum Laskar on 08.12.2020, wherein the allegation also related to the same incident which had occurred on 29.09.2020. It is also pertinent to mention herein that while submitting charge sheet in Hailakandi P.S.

Case No. 189/2021 which was registered on the basis of the third FIR lodged with regard to the alleged offence on 29.09.2020, the Investigating Officer has mentioned in the charge sheet that during investigation he came to know through reputed persons of the locality that the complainant-cum-victim Jasmin Begum Laskar had lodged the FIR due to pressure by her husband Anisul Islam Choudhury to harass the petitioner. The observations made by the Investigating Officer in the charge sheet clearly shows that the third FIR was filed against the present petitioner for wrecking vengeance and for settling the personal scores.

34. Though, in exercise of powers under Section 482 of the Code of Criminal Procedure, 1973 the criminal proceedings after filing of the charge sheet should normally not be disturbed or quashed, however, if it comes to the notice of the court that continuance of criminal proceeding would be abuse of the process of court, if same is found to be manifestly attended with malafide or if same is found to be maliciously instituted with an ulterior motive for wrecking vengeance on the accused with a view to spite him due to private or personal grudge the court would interfere to prevent the miscarriage of justice.

35. In the instant case apparently all the three First Information Report filed against the present petitioner relate to the incident which had occurred on 29.09.2020, and regarding which the Investigating Officer of Hailakandi P.S. Case No. 814/2020 had submitted Final Report No. 339/2020 after full investigation.

36. In the instant case, the subsequent FIRs filed on 06.10.2020 and 08.12.2020 in the considered opinion of this court, are hit by the embargo of Section 162 of the Code of Criminal Procedure, 1973, as after filing of the first FIR any subsequent statement relating to the offence which is the subject matter of the first FIR would not be treated as an FIR, but will be regarded as

statement under Section 162 of the Code of Criminal Procedure, 1973. The observations made by the Supreme Court of India in the case of **"T.T. Antony Vs. State of Kerala"** reported in **"(2001) 6 SCC 181"** are relevant in this regard, wherein it was observed by the apex court as here under: -

"18. An information given under sub-section (1) of Section 154 CrPC 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 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. 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 CrPC. 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 CrPC. All other informations made orally or in writing after 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 CrPC. 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 CrPC. 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) CrPC, 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.

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 to 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.

37. In the instant case for the reasons mentioned hereinabove as the Investigating Officer of Hailakandi P.S. Case No. 814/2020 was under an obligation to investigate not merely the offence reported in the FIR, but also

other connected offences found to have been committed in the course of the same transaction and hence the second FIR dated 06.10.2020 as well as third FIR dated 08.12.2020 are barred under the provision of the Code of Criminal Procedure, 1973 as well as per the observation of the apex court in the case of "**T.T. Antony Vs. State of Kerala**" (supra). The options which were available to anyone who has been aggrieved due to submission of final report in Hailakandi P.S. Case No. 814/2020 was to file a protest petition in the Hailakandi P.S. Case No. 814/2020 or to go for further investigation under Section 173 (8) of the Code of Criminal Procedure, 1973, however same was not done in the present case, instead, subsequent FIRs on the same subject matter was registered not once but twice, and in both the cases charge sheet was laid against the present petitioner which is not permissible under law. The instant case is a case where multiple subsequent FIRs with regard to the same incident was filed against the present petitioner in flagrant violation of the provisions of the Code of Criminal Procedure, 1973 as well as the mandate of the apex court in the case of "**T.T. Antony Vs. State of Kerala**" (supra). Hence this court is of the considered opinion that for the ends of justice to prevent the miscarriage of justice, the criminal proceedings of G.R. Case No. 2045/2020 corresponding to Hailakandi P.S. Case No. 845/2020 as well as criminal proceeding of G.R. Case No. 521/2020 corresponding to Hailakandi P.S. Case No. 189/2020 are liable to be quashed and set aside.

38. For the reasons stated herein above the Criminal Petition No. 1205/2022 as well as Criminal Petition No. 1193/2022 are hereby allowed and the charge sheet No. 73/2021 dated 27.03.2021 filed against the present petitioner in G.R. Case No. 2045/2022 as well as charge sheet No. 231/2022 dated 22.06.2021 filed in G.R. Case No. 521/2021 and the criminal proceedings



emanating therefrom are hereby quashed and set aside.

39. Registry to send a copy of this judgment the concerned trial courts.

JUDGE

Comparing Assistant