
as such it cannot be said that she had taken any undue advantage of her incorrect date of birth. It cannot be held that she had secured her employment on the basis of any fraud. In these circumstances, the observations made by this Court in **Hari Parshad Handa's** case (*supra*) and **Chander Singh's** case (*supra*) are fully attracted.

(14) Consequently, we allow the present petition and direct the respondents to correct the date of birth of the petitioner in the service record. Necessary process in this regard shall be completed within a period of four months from the date a certified copy of this order is received.

(15) A copy of the order be given dasti on payment of usual charges.

R.N.R.

Before Nirmal Yadav, J.

JASJIT SINGH BHASIN,—*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER—*Respondents*

CRL. MISC. NO. 36225/M OF 2005

17th March, 2006

Code of Criminal Procedure, 1973—S. 154—Execution of GPA by respondent No. 2 in favour of petitioner No. 2—Allegations against petitioner No. 2 and her husband for forging GPA and selling/transferring property of respondent No. 2—Registration of F.I.R. under various sections of IPC—Compromise between the parties—Another F.I.R. against petitioners—Civil Suit on the instance of respondent No. 2 also filed—Allegations made in second F.I.R. verbatim the same as made in first F.I.R.—Whether a second F.I.R. on the same set of facts and circumstances can be registered—Held, no—Information received after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in F.I.R. would be considered as statements u/s 162 Cr. P.C.—Such information cannot be treated as an F.I.R. and entered in the diary of the police station again—Petition allowed, second F.I.R. quashed while holding the same as an abuse of process of law.

Held, that though it is true that in view of sub-section (8) of Section 173 Cr. P.C., the police can make investigation, obtain further evidence and forward a report or reports to the Magistrate, however, the sweeping power of the 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 F.I.R.s whether before or after filing the final report under section 173 Cr.P.C. It would be clearly beyond the purview of Section 154 Cr.P.C. and would amount to abuse of the statutory power of investigation. A case of fresh investigation based on the second or successive F.I.R.s, not being the counter case, filing in connection with the same or connected cognizable offences would be a fit case for exercise of powers under section 482 Cr.P.C.

(Para 14)

Held, that, the allegations made in the F.I.R. registered at Police Station, Sector 34, Chandigarh are verbatim the same as the allegations made in F.I.R. registered at Dera Bassi. The subject matter and narration of allegations are almost the same. The argument that property in question is different and, therefore, separate F.I.R. is registered is quite fallacious. The basic allegation against the petitioners is that they have forged the general power of attorney of respondent No. 2 in favour of petitioner No. 2 and on the basis of said general power of attorney further transactions have been made. The course adopted by registering second F.I.R. with regard to the same facts and circumstances and making fresh investigation thereof is not permissible under the scheme of the Code of Criminal Procedure.

(Para 14)

Sanjiv Bansal, Advocate for the petitioners.

R.K. Nihalsinghwal, DAG, Punjab,

K.S. Nalwa, Advocate for respondent No. 2.

JUDGMENT

NIRMAL YADAV, J :

(1) The petitioners,—*vide* this petition filed under Section 482 of the Code of Criminal Procedure seek quashing of F.I.R. No. 153, dated 10th June, 2005, registered under Sections 420, 467, 468, 471 and 120-B IPC at Police Station Derabassi (Annexure P-6) as well as the subsequent proceedings arising therefrom.

(2) The facts as culled out from the petition are that petitioner No. 1 is step son of respondent No. 2. Respondent No. 2 is legally wedded wife of late Hardit Singh. From the wedlock of Hardit Singh and respondent No. 2 a daughter namely, Kanwarjit Kaur was born in the year 1943, who is married to Dr. G.S. Kochhar and the couple has a son named Sandeep. Hardit Singh married another lady with the consent of respondent No. 2 and petitioner No. 1 was born out of the second wedlock in the year 1968. Later on, biological mother of petitioner No. 1 died. The petitioner was being brought up and looked after by Hardit Singh and respondent No. 2 as his parents. The life was going smoothly and petitioner No. 1 never had any feeling that he was not the son of respondent No. 2. Petitioner No. 1 was married to petitioner No. 2 on 11th October, 1992.

(3) Petitioner No. 1 purchased house No. 1346, Sector 34-C, Chandigarh through General Power of Attorney dated 2nd August, 1993 duly registered with the Sub Registrar, Chandigarh. The property was transferred in the name of his father Hardit Singh, though the house was constructed on the plot by the petitioner out of the income of the joint Hindu Family property. Petitioner No. 1 along with his sister's son Sandeep purchased land measuring 12 biswas in Sanwara Pargana Basal, Tehsil Kasauli, District Solan from one Yashodha Nand on the basis of a General Power of Attorney and agreement to sell (Annexure P-1) was duly executed between Yashodha Nand on one hand and Jasjit Singh (petitioner No. 1) and Sandeep jointly on the other hand. Since the agricultural land was in Himachal Pradesh and petitioner No. 1 and Sandeep being non-agriculturists, the same could not be transferred without prior permission of the authorities. It was mentioned in the agreement that after permission was granted, the sale deed would be executed in favour of petitioner No. 1 and Sandeep, though possession of the said property was handed over to petitioner No. 1 and Sandeep by the vendor.

(4) Hardit Singh died on 22nd February, 2000. Petitioner No. 1 along with his wife continued living with respondent No. 2 in a very cordial atmosphere. Respondent No. 2 executed a General Power of Attorney in favour of petitioner No. 2 Hargeet Kaur, Wife of petitioner No. 1, on 4th August, 2000 and got the same registered in the office of Sub Registerar Dera Bassi. By virtue of said General Power of Attorney, respondent No. 2 authorised petitioner No. 2 to deal with

all her immovable properties in any manner she liked including the authority to sell off or transfer the said properties. Respondent No. 2 asked petitioner No. 2 to execute a gift deed in favour of petitioner No. 1 in respect of house No. 1346, Sector 34, Chandigarh, accordingly, petitioner No. 2 executed a gift deed dated 5th November, 2004 in favour of petitioner No. 1. Respondent No. 2 had also applied for 'No Objection Certificate' to the Chandigarh Administration for transfer of house in favour of petitioner No. 1 and executed the relevant documents on 18th March, 2005. Besides the above house, petitioner No. 2 also transferred the land measuring 19 marlas in village Lohgarh in favour of petitioner No. 1,—*vide* two separate sale deeds.

(5) Since Sandeep, who had jointly purchased the property in Himachal Pardesh with petitioner No. 1, got greedy, he sold the said property in connivance with the vendor Yashodha Nand to one Rajinder,—*vide* sale deed dated 11th August, 2004 and pocketed the entire sale proceeds without the knowledge and consent of petitioner No. 1. As soon as petitioner No. 1 came to know about the said sale, he approached Sandeep and asked him to hand him over his share of the sale proceeds. But instead of handing over petitioner's share, he started misbehaving with petitioner No. 1. As such, petitioner No. 1 issued a legal notice (Annexure P-2) to vendee Rajinder Singh, vendor Yashodha Nand and Sandeep. At that time, petitioner's sister Kanwarjit Kaur (mother of Sandeep), who had already suffered a set back due to loss in Deep Nursing Home, wanted a share in the property left behind by her father. She also wanted to prevent petitioner No. 1 from proceeding against Sandeep Singh. She manipulated with respondent No. 2 and poisoned her against petitioner No. 1. In furtherance to their *mala fide* intention, sister and brother-in-law of petitioner No. 1 firstly took respondent No. 2 to their house and thereafter got manipulated various complaints and documents on her behalf. They got a complaint lodged in the name of respondent No. 2 with Chandigarh Police which resulted in registration of F.I.R. No. 138, dated 21st May, 2005, under Sections 380, 420, 467, 468, 471, 120-B IPC at Police Station Sector 34, Chandigarh (Annexure P-3). However, a compromise (Annexure P-4) was effected between the parties on 27th May, 2005 before the police authorities. Though the matter was compromised, yet the sister and brother-in-law of petitioner No. 1 manipulated and got a civil suit instituted against the petitioners at the instance of respondent No. 2 on 30th May, 2005. Thereafter,

they got another case registered against the petitioners, at the instance of respondent No. 2, in which the allegations are verbatim the same as contained in F.I.R. (Annexure P-3). On the basis of said complaint F.I.R. No. 153, dated 10th June, 2005, under Sections 420, 467, 468, 471 and 120-B IPC, Police Station Dera Bassi (Annexure P-6) has been registered against the petitioners.

(6) It is pleaded that a perusal of F.I.R., Annexure P-6 would reveal that the allegations contained therein and occurrence alleged are absolutely same and identical as contained in F.I.R., Annexure P-3 registered at Chandigarh. It is pleaded that registration of this F.I.R. is nothing but an abuse of process of law, as *qua* one and the same incident no second F.I.R. can be registered. The Chandigarh Police is already investigating the allegations made in F.I.R.. Annexure P-3. Moreover, respondent No. 2 had also filed a civil suit against the petitioners. The registration of second F.I.R. in such circumstances, is nothing but an attempt made by petitioner's sister and brother-in-law to grab petitioner's share in the property left by his father. It is further pleaded that General Power of Attorney dated 4th August, 2000 is a genuine document which has been duly executed by respondent No. 2 by visiting the office of Sub Registrar, Dera Bassi. It is further pleaded that respondent No. 2 had got executed a revocation deed on 16th May, 2005 revoking the General Power of Attorney dated 4th August, 2000. In case respondent No. 2 had not executed the General Power of Attorney, there was no occasion for her to execute the revocation deed. The factum of execution of revocation deed falsifies the allegations made in both the F.I.R.s. The allegations made in the F.I.R.s—Annexure P-3 and P-6 are similar and rather they are verbatim the same. Respondent No. 2 has also filed a civil suit for declaration to the effect that power of attorney registered in the office of Sub Registrar, Dera Bassi in favour of petitioner No. 2 and subsequent gift deed on the basis of the said power of attorney in favour of petitioner No. 1 in respect of house at Chandigarh is illegal and null and void. A copy of plaint of the aforesaid civil suit is placed on record as Annexure P-5. It is, therefore, pleaded that respondent No. 2 has already availed the civil remedy and therefore, no criminal case is made out against the petitioners.

(7) In the reply filed on behalf of respondent No. 1-State, by way of affidavit of Varinder Singh Brar, D.S.P., Dera Bassi, it is stated that General Power of Attorney dated 4th August, 2000 has been

found to be forged and, therefore, F.I.R. No. 153, dated 10th June, 2005 (Annexure P-6) has been registered. It is stated that since the land measuring 19 marlas situated at village Lohgarh falls within the jurisdiction of Dera Bassi Police, District Patiala, therefore, the F.I.R. has been registered in the Police Station at Dera Bassi, whereas, House No. 1346, Sector 34, Chandigarh falls within the jurisdiction of Chandigarh Police, hence, a separate case has been registered,— *vide* F.I.R. No. 138 dated 21st May, 2005 (Annexure P-3) against the petitioners. Both the occurrences are separate from each other. Since the offences relate to different properties, therefore, separate F.I.R.s have been registered.

(8) In the reply filed by respondent No. 2, she has raised a preliminary objection that petitioners have not come to the Court with clean hands and they have concealed and suppressed the material facts with regard to adoption of petitioner No. 1 by the answering respondent and her late husband. It is further stated that there is no bar against continuance of civil as well as criminal proceedings simultaneously, with regard to the same cause of action. It is pleaded that the allegations in the F.I.R.s are totally different than the averments made in the civil suit. It is denied that F.I.R. is a counterblast to the action taken by petitioner No. 1 against Sandeep, grandson of the answering respondent. It is stated that investigation in the F.I.R. is still pending and report under Section 173 Cr. P.C. is yet to be presented. It is stated that the inherent powers of the High Court under Section 482 Cr.P.C. have to be used very sparingly. It is mentioned that late Hardit Singh had executed a registered Will bequeathing his entire moveable and immoveable properties in favour of the answering respondent. It is pleaded that answering respondent and her late husband had always treated petitioner No. 1 as their son and all efforts were made by the answering respondent to give him the best childhood. It is denied that construction of the house was carried out by petitioner No. 1. In fact, it was carried out under the supervision of her late husband. Even plot was purchased by her husband. It is further stated that petitioners hatched a criminal conspiracy with a view to grab the property of answering respondent, by forging two general powers of attorneys dated 4th August, 2000 in favour of petitioner No. 2 and on the basis of said forged powers of attorneys of the answering respondent, they got a gift deed executed in favour of petitioner No. 1 and submitted the papers for transferring

the house at Chandigarh. The petitioners also forged letter for issuance of 'No Objection Certificate' for gift deed, affidavit of the answering respondent and indemnity bond, dated 18th March, 2005 for the purpose of obtaining 'No Objection Certificate' from the Chandigarh Administration, but they did not succeed in getting the house transferred in the name of petitioner No. 1. On account of forgery committed at Chandigarh, F.I.R. No. 138 dated 21st May, 2005 (Annexure P-3) was registered at Chandigarh. It is further stated that petitioners by using the forged general power of attorney executed two sale deeds with regard to land measuring 19 marlas situated in village Lohgarh, Tehsil Derabassi. With regard to this forgery committed by transferring the property on the basis of forged general power of attorney, F.I.R. No. 153 dated 10th June, 2005 (Annexure P-6) has been registered at Police Station Derabassi.

(9) I have heard learned counsel for the parties and perused the material on record.

(10) Learned counsel for the petitioners has basically raised the question as to whether a second F.I.R. can be registered in the Police Station at Derabassi in the same set of facts and circumstances. Learned counsel argued that from the scheme of provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code of Criminal Procedure only the earlier or first information in regard to commission of cognizable offence satisfies the requirement of Section 154 of the Code of Criminal Procedure. There can be no second F.I.R. and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence or incidents giving rise to one or more cognizable offences. In support, the learned counsel referred to the judgement of the Apex Court reported as **T.T. Antony versus State of Kerala and others, (1)** wherein the Apex Court has held as under :

“..... Apart from a vague information by a phone call or 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-F.I.R. postulated by S. 154 of Cr.P.C. All other information made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the

(1) AIR 2001 S.C. 2637

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 S. 162 of Cr.P.C. No such information/statement can properly be treated as an F.I.R. and entered in the station house diary again, as it would in effect be a second F.I.R. and the same cannot be in conformity with the scheme of the Cr.P.C. The scheme of the Cr.P.C. is that an officer-in-charge of a Police Station has to commence investigation as provided in S. 156 or 157 of Cr.P.C. 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 evidence collected he has to form opinion under S. 169 or 170 of Cr.P.C., as the case may be, and forward his report to the concerned Magistrate under S. 173(2) of Cr.P.C. However, even after filing such a report if he comes into possession of further information or material, he need not register a fresh F.I.R., 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 S. 173, Cr.P.C. Under the scheme of the provisions of S. 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C. only the earlier or first information in regard to the commission of a cognizable offence satisfies the requirements of S. 154, Cr.P.C. Thus there can be no second F.I.R. 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 offence. On receipt of information about a cognizable offence or incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer-in-charge of a Police Station has to investigate not merely the cognizable offence reported in the F.I.R. 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 S. 173 of the Cr.P.C.”

In the case of **Kari Choudhary versus Mst. Sita Devi and others, (2)** also the Apex Court has endorsed the above view.

(11) On the other hand, learned counsel for respondent No. 2 argued that a party who comes to the Court must come with clean hands and the person whose case is based on falsehood has no right to approach the Court. He should be summarily thrown out at any stage of the litigation. In support, the learned counsel referred to **S.P. Changalvaraya Naidu (Dead) by LRs. versus Jagannath (Dead) by LRs and others (3)** and **Ashwani Kumar versus State of Punjab (4)**. It was further argued that there is no bar that civil and criminal proceedings cannot go side by side. Exercise of powers under section 482 of the Code in a case of this nature is an exception and not a rule. While exercising the powers under this Section, the High Court does not function as a Court of appeal or revision and the inherent jurisdiction under this Section should be exercised sparingly. In support of these contentions, the learned counsel referred to **Kamladevi Agarwal versus State of West Bengal (5)**.

(12) On careful consideration of rival submissions, I do find force in the arguments raised by learned counsel for the petitioners. An information given under sub-section (1) of Section 154 of the Code of Criminal Procedure, is known as the first information report with regard to a cognizable offence. After registration of F.I.R. on the basis of such information, the investigation sets into motion, which ends up with the formation of opinion under Section 169 or 179 Cr.P.C. and thereafter forwarding of police report under Section 173 Cr.P.C. Sometime, more information than one are given to the Incharge of the Police Station in respect of the same incident involving one or more than one cognizable offences. In such a situation, every information need not be entered into diary of the police station. All other information, 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 which may come to the notice

(2) (2002) 1 S.C.C. 714

(3) AIR 1994 S.C. 853

(4) 2002 (3) RCR (Criminal) 450

(5) 2001 (4) RCR 522

of Investigating Officer would be considered as statements under Section 162 Cr.P.C. Such an information cannot be treated as an F.I.R. and entered in the diary of the police station again, as it would amount as a second FIR which is not in conformity with the scheme of Code of Criminal Procedure. It is, of course, permissible for the Investigating Officer to send a report to the concerned Magistrate that investigation is being conducted against the person(s) mentioned in the F.I.R. in pursuance of the F.I.R. already registered. Even if after filing of the report under Section 173 Cr.P.C., the Investigating Officer comes into possession of further information or material, he need not register a second or fresh F.I.R., as he is empowered to make further investigation with the leave of the Court. During investigation if he collects more evidence oral or documentary, he is obliged to forward the same under the provisions of sub-section (8) of Section 173 Cr.P.C. The Officer-in-Charge of a Police Station has to investigate not merely cognizable offence reported in the F.I.R., but also other connected offences found to have been committed in the course of same transaction or occurrence and he may file second or more reports as provided under Section 173 Cr.P.C. In the present case, the second F.I.R. (Annexure P-6) has been registered in respect of the same incident and on the same facts at Dera Bassi, whereas, the F.I.R. (Annexure P-3) had already been registered at Police Station Sector 34, Chandigarh.

(13) Learned counsel for the respondents argued that High Court should not assume the role of trial Court and embark upon an enquiry with regard to reliability or sustainability of evidence on a reasonable appreciation of such evidence and further that powers under Section 482 Cr.P.C. should be exercised sparingly with caution and circumspection. There is no doubt with regard to the argument raised by the learned counsel that exercise of powers under Section 482 Cr.P.C. is an exception and not a rule and such powers have to be exercised sparingly. However, in a case where the police transgresses its statutory powers of investigation, the High Court under its inherent powers can prevent such abuse of process of the Court to secure the ends of justice. The Apex Court in **State of Haryana and others versus Bhajan Lal and others**, (6), after taking into consideration its various decisions, has observed as under :

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their

face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.

- (2) Where the allegations in the first information report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by the Police Officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

(14) Though it is true that in view of sub-section (8) of Section 173 Cr.P.C., the police can make investigation, obtain further evidence and forward a report or reports to the Magistrate, however, the sweeping power of the 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 F.I.R.s whether before or after filing the final report under Section 173 Cr.P.C. It would be clearly beyond the purview of Section 154 Cr.P.C. and would amount to abuse of the statutory power of investigation. A case of fresh investigation based on the second or successive F.I.R.s, not being the counter case, filed in connection with the same or connected cognizable offences would be a fit case for exercise of powers under Section 482 Cr.P.C. Coming to the facts of the present case, the allegations made in the F.I.R. (Annexure P-3) registered at Police Station Sector 34, Chandigarh, are verbatim the same as the allegations made in F.I.R. (Annexure P-6) registered at Dera Bassi. The subject matter and narration of allegations, which need not be reproduced for the sake of repetition, are almost the same. The argument that property in question is different and, therefore, separate F.I.R. is registered is quite fallacious. The basic allegation against the petitioners is that they have forged the general power of attorney of respondent No. 2 in favour of petitioner No. 2 and on the basis of said general power of attorney further transactions have been made. The course adopted by registering second F.I.R. with regard to the same facts and circumstances and making fresh investigation thereof is not permissible under the scheme of the Code of Criminal Procedure.

(15) Therefore, continuance of F.I.R. No. 153 dated 10th June, 2005, registered under Sections 420, 467, 468, 471 and 120-B IPC at Police Station Derabassi (Annexure P-6), is clearly an abuse of the process of law and as such, the same is hereby quashed. The investigating agency is, however, at liberty to seek permission of the Magistrate to make any further investigation or forward report or reports with regard to any other additional information or statement and proceed with the matter in accordance with law.

(16) Consequently, the petition is allowed in the above terms.

R.N.R.