REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 408 OF 2018
(Arising out of S.L.P.(Crl.)No.7970 of 2014)

P. Sreekumar ....Appellant(s)

VERSUS

State of Kerala & Ors. ....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) Leave granted.

2) This appeal is directed against the final judgment and order dated 27.05.2014 passed by the High Court of Kerala at Ernakulum in Criminal M.C. No.2641 of 2007 whereby the High Court allowed the petition filed by the accused-respondent No.3 herein and quashed the FIR(Annexure II),

charge-sheet(Annexure III) and all consequent proceedings arising therefrom pending as C.C. No.2682 of 2002 on the file of the JFCM-II, Ernakulum.

3) Facts involved in the case lie in a narrow compass so also the issue involved in the appeal is a short one. The facts are mentioned hereinbelow:

4) There is one public charitable Trust by name - Vidyodaya Trust (hereinafter referred to as "the Trust") having its office at S.N. Junction, Palarivattom in the State of Kerala. The Trust is engaged in the educational activities and runs educational institutions in the State of Kerala.

5) The appellant herein is one of the Chief Executive Trustees of the Trust whereas respondent No.2 herein is one of the Trustees and respondent No.3 was a Treasurer of the Trust at the relevant time.

6) On 17.10.2001, respondent No.2 (Trustee) filed a private complaint against the appellant, respondent No.3 (Treasurer) and three Bank officials of the Bank in the Court of Chief Judicial Magistrate, Ernakulum (CC No.15877 of 2001) under Section 200 of the Code of Criminal Procedure, 1973 (Annexure-P-14).

7) In the complaint, it was *inter alia* alleged that the appellant, respondent No.3 and three bank officials conspired together to defraud the Trust and to give effect to their conspiracy managed to siphon off around Rs.42 lacs of the Trust from its Bank accounts by manipulation and forging the accounts books and several documents of the Trust.

8) Pursuant to the aforesaid complaint, an FIR in Crime Case No.817 of 2001 for the offences punishable under Sections 408, 409, 420, 467, 468, 473, 477 read with Section 34 of the Indian Penal Code, 1908 (hereinafter referred to as "IPC") was

registered wherein the appellant, respondent No.3 and three bank officials were named as accused persons in relation to commission of the alleged crime.

9) The aforesaid incident also led to filing of the FIR No.5 of 2002 by the appellant (Chief Executive Trustee) against respondent No.3 (Treasurer of the Trust) in North Police Station, Ernakulum under Sections 406, 409, 465, 467 and 471 of IPC. It was *inter alia* alleged therein that respondent No.3 was the person, who indulged into the fraud and forgery and he managed to take away the money belonging to the Trust by misusing his post. Pursuant to this FIR, respondent No.3 (Treasurer of the Trust) was arrested and later enlarged on bail.

10) Thereafter, the police made investigation in relation to FIR No.5 of 2002 and submitted charge-sheet No.166 of 2002 (Annexure- P-17).

11) So far as Crime Case No.817 of 2001 arising out of Complaint Case No.15877 of 2001 is concerned, it was registered against the appellant, respondent No.3 and three Bank officials for commission of the offences punishable under Section 408, 409, 420, 467, 468, 473, 477 read with Section 34 of IPC. The police made investigation in this case and filed their final report on 06.02.2003 stating therein that no case was made out against appellant and three bank officials (described in the report as Accused Nos.2, 3, 4 and 5). These four accused were, therefore, discharged from Crime Case No.817 of 2001. (Annexure-P-18).

12) Respondent No. 2, i.e., the Trustee, however, felt aggrieved by the final report dated 06.02.2003, filed a protest petition (CC No. 28 of 2004) before the Chief Judicial Magistrate, Ernakulum and prayed therein for taking cognizance of the offences mentioned in the final report. The Chief Judicial

Magistrate issued summons to the appellant and respondent No.3 to appear before the Court on 22.07.2004.

13) Respondent No.3 filed a Criminal M.C. No.2641 of 2007 before the High Court of Kerala seeking to quash the final report filed in Crime Case No.5 of 2002 pending in the Court of JMFC II at the instance of the appellant against him.

14) In his application, respondent No.3, in substance, contended that he cannot be made to face two trials on the same set of facts and for the same offences in two different Courts. He, therefore, prayed that so far as Crime Case No.5/2002 filed by the appellant against him and the charge-sheet filed therein are concerned, the same are liable to be quashed.

15) In the meantime, two Criminal Misc. Applications under Section 482 of the Code were

filed in the High Court of Kerala being Criminal M.C. No. 1732 of 2004 and Criminal M.C No. 2641 of 2007.

16) So far as Criminal M.C. No.1732 of 2004 is concerned, it was filed by the appellant herein wherein he sought quashing of the proceedings pending against him in the Court of Judicial First Class Magistrate Court II, Ernakulum (Crime Case No.5 of 2002) in relation to Complaint Case No.2682 of 2002.

17) So far as Criminal M.C. No.2641 of 2007 is concerned, it was filed by respondent No.3 against the appellant challenging the FIR/charge-sheet filed against him by the appellant (C.C. No.2682 of 2002) in the Court of JMFC-II, Ernakulum.

18) By impugned order, the Single Judge of the High Court dismissed the Criminal M.C. No.1732/2004, which was filed by the appellant, and declined to quash the proceedings challenged

therein. It was observed by the Single Judge, "it is not possible to quash the complaint at this stage".

19) So far as the Criminal M.C. No.2641/2007 is concerned, the Single Judge, by the same impugned order, allowed the said Criminal M.C. and quashed the FIR and the charge-sheet filed pursuant thereto.

20) The appellant, felt aggrieved by the dismissal of his petition (Criminal M.C. No.1732/2004) by the High Court, filed two SLPs being SLP(Crl.) No.6319/2014 and the present SLP in this Court against the order by which the High Court had quashed the FIR/charge-sheet filed against respondent No.3 and had allowed Criminal M.C. Application 2641 of 2007.

21) This Court, on 06.03.2018, dismissed the appellant's SLP No.6319/2014 as having become infructuous because during its pendency, the appellant and other three bank officials were

discharged by the competent Court from the case. The appellant, therefore, did not pursue the SLP.

22) With these background facts, the question for consideration in this appeal is as to whether the High Court (Single Judge) was justified in allowing the Criminal M.C. No.2641/2007 filed by respondent No.3 and thereby was justified in quashing the FIR/charge-sheet filed against respondent No.3 and all consequential proceedings arising out of the FIR/charge-sheet pending as C.C. No.2682 of 2002 on the file of JMFC-II, Ernakulum.

23) Heard Mr. Jayant Bhushan, learned senior counsel for the appellant, Ms. Liz Mathew, learned counsel for respondent No.1 and respondent No.2, who appeared in person.

24) Having heard the learned counsel for the appellant and respondent No.2, who appeared in person, we are inclined to allow the appeal and set

aside the impugned order passed in Cri. M.C.No. 2641 of 2007.

25) The question, which fell for consideration before the High Court, was that if two FIRs are filed in relation to the same offence and against the same accused, whether the subsequent FIR was liable to be quashed or not.

26) The Single Judge placed reliance on three decisions of this Court reported in **State of Haryana & Ors.** vs. **Bhajanlal,** (1992) Supp(1) SCC 335, **Madhu Limaye** vs. **State of Maharashtra,** 1977 (4) SCC 551 and **R.P. Kapur** vs. **State of Punjab,** AIR 1960 SC 866 and quashed the second FIR/charge-sheet under Section 482 of the Code.

27) In our view, the High Court had committed jurisdictional error in quashing the subsequent FIR/charge-sheet, which was filed at the instance of the appellant against respondent No.3 without adverting to the law on the subject.

28) In our opinion, the law on the subject which governs the controversy involved in the appeal is no more *res integra* and settled by the decision of this Court (three-Judge Bench) in the case reported in **Upkar Singh** vs. **Ved Prakash & Ors.,** (2004) 13 SCC 292 and also by the subsequent decisions.

29) Their Lordships after examining all the previous case laws on the subject laid down the following proposition of law in the following words speaking through Justice N. Santosh Hegde:

> **"23. Be that as it may, if the law laid down by this Court in T.T. Antony case1 is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.**

24. We have already noticed that in T.T. Antony case1 this Court did not consider the legal right of an aggrieved person to file counterclaim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter-complaint is permissible.

25. In the instant case, it is seen in regard to the incident which took place on 20-5-1995, the appellant and the first respondent herein have lodged separate complaints giving different versions but while the complaint of the respondent was registered by the police concerned, the complaint of the appellant was not so registered, hence on his prayer the learned Magistrate was justified in directing the police concerned to register a case and investigate the same and report back. In our opinion, both the learned Additional Sessions Judge and the High Court erred in coming to the conclusion that the same is hit by Section 161 or 162 of the Code which, in our considered opinion, has absolutely no bearing on the question involved. Section 161 or 162 of the Code does not refer to registration of a case, it only speaks of a statement to be recorded by the police in the course of the investigation and its evidentiary value."

30) The aforesaid principle was reiterated by this Court (Two Judge Bench) in **Surender Kaushik & Ors.** vs. **State of U.P. & Ors.,** (2013) 5 SCC 148 in the following words:

"24. From the aforesaid decisions, it is quite luminous that 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, 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."

31) Keeping the aforesaid principle of law in mind when we examine the facts of the case at hand, we find that the second FIR filed by the appellant against respondent No.3 though related to the same incident for which the first FIR was filed by respondent No.2 against the appellant, respondent No.3 and three Bank officials, yet the second FIR being in the nature of a counter-complaint against

respondent No.3 was legally maintainable and could be entertained for being tried on its merits.

32) In other words, there is no prohibition in law to file the second FIR and once it is filed, such FIR is capable of being taken note of and tried on merits in accordance with law.

33) It is for the reasons that firstly, the second FIR was not filed by the same person, who had filed the first FIR. Had it been so, then the situation would have been somewhat different. Such was not the case here; Second, it was filed by the appellant as a counter-complaint against respondent No.3; Third, the first FIR was against five persons based on one set of allegations whereas the second FIR was based on the allegations different from the allegations made in the first FIR; and Lastly, the High Court while quashing the second FIR/charge-sheet did not examine the issue arising in the case in the light of law laid down by this

Court in two aforementioned decisions of this Court in the cases of **Upkar Singh** (supra) and **Surender Kaushik** (supra) and simply referred three decisions of this Court mentioned above wherein this Court has laid down general principle of law relating to exercise of inherent powers under Section 482 of the Code.

34) In the light of the foregoing discussion and the four reasons mentioned above, we are unable to agree with the reasoning and the conclusion of the High Court and are, therefore, inclined to set aside the impugned order.

35) The Magistrate will now proceed to try and decide the case on merits and while doing so, he will be free to examine all the issues arising in the case from all the angles in the light of the evidence that will be adduced by the parties.

36) If the Magistrate finds that the material brought on record against any person(s) including

the appellant herein in the evidence indicating the involvement of any such person(s) in commission of the alleged offences, he will be free to proceed against any such person(s) in accordance with law and bring the proceedings to its logical end uninfluenced by any of our observations.

37) Let the trial before the concerned Magistrate be over, as directed above, within a year as an outer limit.

38) With these observations and directions, the appeal succeeds and is accordingly allowed. Impugned order passed in Criminal M.C No. 2641/2007 is set aside. As a result, C.C. No.2682 of 2002 on the file of the JMFC-II, Ernakulum is restored to its file for being tried on merits in accordance with law.

.....J.
[R.K. AGRAWAL]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
March 19, 2018