

(2016) 01 RAJ CK 0215

**RAJASTHAN HIGH COURT (JAIPUR BENCH)**

**Case No:** Cr. Misc. Petition No. 5263 of 2015

Smt. Narbada Devi

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision:** Jan. 8, 2016

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 120B, Section 420, Section 467

**Citation:** (2016) 3 RajCriC 1273

**Hon'ble Judges:** Mr. Banwari Lal Sharma, J.

**Bench:** Single Bench

**Advocate:** Mr. Jitendra Shrimali, Public Prosecutor, Mr. Daulat Sharma, Advocate, for the Respondent No. 2 Complainant; Mr. Umesh Kumar Sharma, Advocate, for the Petitioners

**Final Decision:** Allowed

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**Judgement**

Mr. Banwari Lal Sharma, J. - The petitioners have preferred this miscellaneous petition under Section 482 Criminal Procedure Code for quashing the FIR No. 66/2015, registered at Rs. Thanagazi, District Alwar, for the offence under Sections 420, 467 and 120B IPC.

2. The brief facts of the case are that the respondent No.2 complainant filed a criminal complaint against the petitioners Nos. 1 and 2 and one Ramkaran in the court of the learned Judicial Magistrate, Thanagazi (Alwar), which was forwarded under Section 156(3) Criminal Procedure Code to the SHO, PS Thanagazi, Alwar for registration of FIR and investigation where the FIR No. 66/2015 was registered as under -

Isok esa

Jheku~ U;kf;d eftLVs~V lkgc Fkkukxkth (vyoj)

1- jkes"ojn;ky iq= ewypUn tkfr czkgkz.k mez 39 lky fuoklh vkekyk rglhy Fkkukxkth ftyk vyoj jkt0 ifjoknhA

cuke 1 ueZnk nsoh iRuh Jh xaxklgk; tkfr czkgkz.k mez djhc 61 lky fuoklh vkekyk&rglhy Fkkukxkth ftyk vyoj] jkt0 2 t;jke iq= Jh xaxklgk; tkfr gfj;k.kk czkgkz.k mez djhc 28 lky fuoklh vkekyk rglhy Fkkukxkth ftyk vyoj] jkt0 3 jkedj.k iq= NkT;k tkfr tkafxM+ mez djhc 70 lky fuoklh ?kSry rglhy Fkkukxth ftyk vyoj jkt0 vfHk;qDrx.kA gLrxklk vUrxZr /kkjk 467] 120ch] 420 Hkkjrh; n.M lafgrk vf/kfu;ue] egksn; ifjoknh dh vksj ls fuEufyf[kr fuosnu gS&

1- ;g gS fd vkjkth [kljk uEcj 136] 139 jdck 0-25 gSDVs;j okds xzke /kSry rglhy Fkkukxkth ftyk vyoj jkt0 esa fLFkr pyh vkrh gS tks vkjkth fnukad 30-04-2013 ls igys vfHk;qDr la[k&4 jkedj.k iq= NkT;k tkfr tkafxM+ mez djhc 70 lky fuoklh ?kSry rglhy Fkkukxkth ftyk vyoj jkt0 ds uke jktLo fjdkMZ esa ntZ pyh vkrh FkhA ftl vkjkth ij vfHk;qDr la[k&4 (sic) dkfct gksdj dk"r djrk pyk vk jgk Fkka

2- ;g gS fd mDr vkjkth dks ifjoknh jkes"oj n;ky us vfHk;qDr la[k&3 ls [kjhn dj fnukad 30-04-2013 dks iath;u dk;kZy; Fkkukxkoth esa iathd`r dj fy;k rFkk jftLV~s"ku ds ckn ls mDr vkjkth ifjoknh ds uke ls jktLo fjdkMZ esa pyh vkrh gSA ftl ij ifjoknh jkes"oj n;ky dkfct gksdj dk"r dj jgk gSA

3- ;g gS fd jkedj.k iq= NkT;k us fnukad 30-04-2013 dks mDr vkjkth dks cspus ds ckn vfHk;qDr la[k 1 yxk;r 2 us feydj ,d bdjkjukek 100 :i;s dh oSY;w dk rS;kj fd;k Fkk ftl bdjkjukes esa mDr vkjkth dks jkedj.k }kjk vfHk;qDr la[k ,d ueZnk nsoh dks 4-25 yk[k esa cspus dk djky fd;k x;k gSA djky dh lEiw.kZ jkf"n esa ls ,d yk[k X;kjg gtkj :i;s ueZnk nsoh ds }kjk jkedj.k dks lkbZ isVs esa fn;s gksus ds ckjs esa crk;k x;k gSA

4- ;g gS fd vfHk;qDrx.k ds }kjk ftl LVkEi isij ij bdjkjukek rS;kj fd;k x;k gS og bdjkjukek fuEu vk/kkjksa ij QthZ gksuk ik;k x;k gSA

d & vfHk;qDrx.kksa ds }kjk ftl LVkEi isij ij bdjkjukek rS;kj fd;k x;k gS ml LVkEi isij ds ihNs LVkEi isij [kjhnus okys ds gLrk{kj ugha gS vkSj LVkEi osUMj ds jftLV~j esa jkedj.k dzsrk ds gLrk{kj ugha gSA

[k & vfHk;qDrx.kksa ds }kjk LVkEi isij ij bdjkjukek rS;kj fd;k x;k gS og uksVs;jh ifCyd }kjk gLrk{kfjr o eqnzkafr rks gS ysfd uksVfj;y ,DV ds rgr bdjkjukek dks izsLdzkbc jftLV~j esa bUnzkt ugha fd;k x;k gS vkSj uk gh jftLV~j esa bdjkjukes dk fooj.k fy[kk x;k gS vkSj uk gh bdjkjukes ds i{kdkjksa ds }kjk jftLV~j esa gLrk{kj fd;s x;s gSa tks dkuwuu vko";d FksA

x & bdjkjukek esa jkedj.k dh QksVks ij jkedj.k ds gLrk{kj ugha gSA

?k & vfHk;qDrksa ds }kjk tks bdjkjukek rS;kj fd;k x;k gS og bdjkjukek fnukad 10-04-2013 ds ckn rS;kj fd;k x;k Fkk ysfd bl ij tks rkjh[k vafdr dh xbZ gS og 13-03-2013 vafdr dh xbZ gS tks xyr gSA

b & vfHk;qDrx.kksa ds }kjk lkbZ isij tks bdjkjukek rS;kj fd;k x;k gS] og 100 :i;s ds Lis"ky ,Msflo fVfdV yxkdj rS;kj fd;k x;k gSA vkSj u gh og iathd`r gSA

5- ;g gS fd mDr vfHk;qDrx.kksa us feydj tks bdjkjukek rS;kj fd;k gS og ifjoknh jkes"ojn;ky ds fgrksa dks izHkkfor djus ds vk"K; ls rS;kj fd;k gSA

6- ;g gS fd vfHk;qDr us cS;ukek esjs gd esa rgjhj djkdj iathd`r dj;k gS mlesa ;g mYys[k ugha gS fd mlus bl vkjkt dh ucZnk nsok dks fodz; dh gqbZ gS ckn esa vfHk;qDr jkedj.k us eq>s ;g crk;k fd og ftl vkjkt dks eq>s csp jgk gS og gj izdkj ls ikd lkQ gS mlus eq>ls tSj c; dh iwjh jkf"K izkIr dh gS mUgksaus esjk gd ekjus o esjh tehu gM+ius ds vk"K; ls fiNyh rkjh[k dk QthZ bdjkjukek fy[kk;k gSA vfHk;qDrx.k uEcj 1&2 o 3 us lktf"K o ngjfhk lfu/k djs ;g dk;Zokgh dh gSA

7- ;g gS fd vfHk;qDr ucZnk us ,d nok rdehy eqgk;nk dk xyr rF;ksa ds vk/kkj ij fd;k gS ml nkos esa tc eSa U;k;ky; esa gkftj gqvk rc eq>s bl bdjkjukeka dh tkudkj gqbZ gS rFkk tkudkj gksus ds ckn eSaus vfHk;qDrx.kksa ls bl QthZ bdjkjukeka ds ckjs esa crk dh rks vfHk;qDrx.k eq>ls jkthukek djus dk dgrs jgs fd tks U;k;ky; esa eqdnek fd;k gS mls [kRe dj nsaxs bl dkj.k esa vfHk;qDrx.kksa ds f[kykQ eqdnek djuk vko";d ugha le>k fdUrQ vc fnukad 20-03-2015 dks vfHk;qDrx.kksa us jkthukek djus o esjk gd ekuus ls bUdkj dj fn;k bl dkj.k ifjokn vUnj fe;kn is"K gSA

8- ;g gS fd mDr ?kVuk dh fjksVZ eqLrxhl Fkkuk Fkkukxkt esa fnukad 21-03-2015 dks djkus x;k rks Fkkus okysa us fjksVZ ntZ djus ls euk dj fn;k vkSj vnkyr Jheku~ esa dk;Zokgh djus ds fy;s dgk bl ij fcuk nsjh mDr vfHk;ksx Jheku~ dh Isok esa is"K gSaA

9- ;g gS fd vfHk;ksx i= ij U;k; "kqYd ,d ;k pLk gSA

10- ;g gS fd vfHk;ksx i= Jheku~ ds Jo.k {ks=kf/kdkj esa vkrk gSA vr% vfHk;ksx i= is"K dj fuosnu gS fd /kkjk 156(3) tkIr QkStnkjh ds rgr~ tkWap gsrq eqdkeh iqfyl Fkkuk Fkkukxkt dks Hksttkt dj eqyfteku ds f[kykQ l[r ls l[r dkuwuh dk;Zokgh dh tkosA

3. The investigation of this FIR No. 66/2015 is still pending. However, prior to this complaint, the respondent No.2 - complainant submitted a written report to the SHO, PS, Thanagazzi on 06.07.2014, to the following effect -

"Isok esa]

Jheku~ Fkkukf/kdkjh Fkkuk Fkkukxkt ftyk vyoj jktOA

fo"K;& QtZdkjh nLrkost dh dwVjpuk djus vij/k ckcrA

Jheku]

ifjoknh jkes"oj n;ky iq= Jh ewypUn tkfr czkgkz.k vk;q djhc 38 fuoklh vkekyk rglhy Fkkukxkt Fkkuk Fkkukxkt ftyk vyoj dk fuoklh gwWaA fuEu rF; ds lkFk izFke lwpuk fjksVZ vfHk;qDrx.k Jhefr ucZnk iRuh xaxklgk; czkgkz.k vk;q djhc 60 lky fuoklh xzke vkekyk] t;jke iq= xaxklgk; czkgkz.k mez djhcu 40 lky is"kk nqdkunkjh fuoklh vkekyk] xksiky iq= lqvkyky czkgkz.k mez djhcu 38 lky] fgrsUnz dqekj iq= jktsUnz izlkn tkfr czkgkz.k mez djhcu 40 lky is"kk LVkEi fodzsrk rglhy iflj Fkkukxkt fuoklh frokM+h ekSgYyk dLck ukjk;.kiq rglhy Fkkukxkt ftyk vyoj o vU; vfHk;qDrx.kksa ds fo:) bl izdkj ls fuosnu gS fd Jhefr ucZnk nsok us bdjkjukek cS; 100@& :i;s dk jkedj.k iq= NkT;k

[kkrrh fuoklh ?kSry dk vfHk;qDrx.k us feydy vkjth [k0ua0 136] 139 jdck 0-25 ,dM+ okds xzke /kSry dks dz; djus dk djkj 4-25 yk[k esa djuk crkdj ,d yk[k 11 gtj :i;s lkbZ nsuk crkdj QthZ bdjkjukek rS;kj fd;kA jkedj.k us feu izfroknh jkes"oj n;ky dks jftLV~MZ i= fnukad 30-04-2013 dks vkjth dks fodz; fd;k gSA ml oDr mDr tehu ij jkedj.k Lo;a dk dCtk Fkk ,oa cspdj jkes"oj n;ky "kekZ dks laHkyok fn;k x;k Fkka bdjkjukek fookfnr okn esa rS;kj fd;k x;k gSA vfHk;qDrx.k o buds lkFk vU; O;fDr;ksa us feydy mDr bdjkjukek cS; dh fuEu rF;ksa ,oa dkuwuh fcUnqvksa ds vk/kkj ij dwVjpuk dh xbZ gSA ;g bdjkjukek QthZ esjs gd dks izHkkfor djus dh ea"kk ls cukdj vfHk;qDr fgrsUnz dqekj LVkEi oS.Mj ds jftLV~j esa jkedj.k [kkrrh iq= NkT;k ds gLrk{kj ugha gS rFkk uk gh 100@& :i;s LVkEi ds ihNs dzsrk ds :i esa jkedj.k [kkrrh ds gLrk{kj gS rFkk jkedj.k [kkrrh dh igpku ds ckcr dksbZ izek.k ugha gSA fookfnr nLrkost bdjkjukek cS; ds LVkEi dks ifCyd uksVsjh }kjk lR;kfir djrs oDr uksVsjh ifCyd jftLV~j esa mDr rFkkdfFkr bdjkjukek ij uksVsjh ifCyd }kjk fdLh izdkj dk dksbZ jftLV~s"ku uEcj ugha gS fdLh izdkj dh jlhn la;k dk mYys[k Hkh ugha fd;k x;k gSA bdjkjukek cS; ds LVkEi isij ds izR;sd i"B ij xokgku ds jkedj.k dh igpku ds :i esa gLrk{kj ugha gSA rFkkdfFkr bdjkjukek cS; ij MhM jkbZVj ds uk rks gLrk{kj gS vkSj u gh mlds jftLV~s"ku dzekad] "kCnksa] lkbu] iSjvkks vkfn dh la;k vafdr gSA jkedj.k dh QksVks ij jkedj.k ds gLrk{kj ugha gS vkSj jkedj.k dh QksVks dks Hkh izekf.kr ugha fd;k x;k gS bls vfHk;qDrx.k dh dwVjpuk izekf.kr gksrh gSA Jheku~ vfHk;qDrx.k us lktckt gksdj bdjkjukek cS; dh dwVjpuk ij izkFkhZ dh tehu vkSj iSlk gM+i djus dh uh;r ls izkFkhZ dks vkfFkZd o ekufld uqdlku igqWapkus ds fy, vkijkf/kd "kM~;a= dh jpuk dh gSA budk d`R; Hkkjrh; n.M lafgrk dh /kkjksvksa 463] 467] 468] 471 o 120 ch ds izko/kkuksa ds rgr n.Muh; vijk/k dkfjr fd;k gSA vr% izkFkZuk i= is"k dj fuosnu gS fd dwVjpuk dj fookfnr bdjkjukek cS; rS;kj djus ds tqeZ esa izFke lwpuk fjiksVZ ntZ dj dkuwuh dk;Zokgh djus dh d`ik djsaA"

4. On the said report, the police registered FIR No. 118/2014 and after investigation, submitted negative final report, wherein it was found as under :-

rQ~rh" esa ik;k fd jkedj.k }kjk ucZnk nsok ds fnukad 13-03-2013 dks [kljk uEcj 136&139 dk bdjkjukek jkedj.k }kjk dj;k x;k ftlesa LVkEi fodsZrk }kjk LVkEi dzsrk ds gLrk{kj LVkEi ij o LVkEi jftLV~j esa ugha gS] u gh LVkEi ij dzsrk jkedj.k dh QksVks ij jkedj.k ds gLrk{kj gS@uk gh fdLh ds }kjk vkbMsUV QkbZ fd;k gqvk gS uk gh MhM jkbZVj ds uk rks gLrk{kj gS uk gh mldk jftLV~j] dzekad] "kCnksa] ykbZuksa] iSj vkfn dh la;k vafdr gSa fd bls i"pkr~ jkedj.k }kjk blh [kljk uEcj dks jkes"ojn;ky iq= ewypUn ds uke jftLV~h djokbZ xbZ gS ftlesa ucZnk nsok us jkedj.k ds f[kykQ eq0ua0 108@13 /kkjk 420-406-120B IPC dk ntZ dj;k ftlesa jkedj.k ds f[kykQ pktZ"khV ua0 110@13 fdrk dh tkdj U;k;ky; Jheku~ eas is"k dh xbZ Fkh rFkk jkedj.k us ucZnk nsok ds f[kykQ eqdnek ua0 109@13 /kkjk 467, 468, 471 o 120B IPC ntZ dj;k Fkk ftlesa FR No. 111/13 fdrk dh tkdj is"k U;k;ky; Jheku~ CJ(JD) JM lk0 Fkkukxkth esa is"k dh tk pqdh gSA eqdnek eqLrxhl jkes"oj n;ky o vizkFkhZ ucZnk nsok dk U;k;ky; Jheku~ ADJ No. 2 vyoj esa ;FkkfLFkfr dk nok py jgk ftlesa U;k;ky; Jheku~ us ucZnk nsok ds i{k esa Qslyk fn;k gqvk gS ftlds lEcU/k esa eqdnek eqLrxhl jkes"oj n;ky us Jheku~ gkbZdksVZ t;iqj esa eqLrxhl jkes"oj n;ky ds i{k esa ;Fkk fLFkfr dk vkns"k tkjh gks pqdh gSA bl tehu dk U;k;ky; Jheku~ ADJ No. 2 vyoj esa VkbZVy dk nok fopkj/khu py jgk gS tks flfoy uspj

dk ekeyk gksuk ik;k x;k gSA vr% eqdnek ggtk esa FR 250/14 vne odw flfoy uspj fnukad 22-12-2014 esa fdrk dj okLrs Lohd`fr U;k;ky; Jheku~ dh Isok esa is"k gSA"

5. As per the investigating officer, the said FR is pending before the concerned court.

6. The learned counsel for the petitioner submits that the first FIR No. 118/2014 has resulted into negative final report. Thereafter, on the same facts, the respondent No.2 - complainant has lodged second FIR against the petitioners, who are already accused in the first FIR, therefore, second FIR is not maintainable. The learned counsel relied upon the judgments delivered in the cases of T.T. Antony v. State of Kerala and Ors. [(2001)] 6 SCC 181 and Babu bhai v. State of Gujarat and Ors. [(2010) 12 SCC 254].

7. The Investigating Officer Shri Sachin Sharma, SHO, PS Thanagazi, Alwar is present in person and submitted factual report, which is taken on record.

8. The learned Public Prosecutor submitted that since at the time of first FIR No. 118/2014, civil suit was pending between the parties before the learned ADJ No.2, Alwar therefore, negative final report was submitted but now offences under Section 420, 467 and 120B IPC have been made out against the petitioners, therefore, this petition may be dismissed.

9. Learned counsel for the respondent No.2 also supported the arguments advanced by the learned Public Prosecutor.

10. I have considered that rival submissions made at the Bar.

11. In the matter of T.T. Antony (supra), the Hon"ble Supreme Court observed that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognisable offence or same occurrence giving rise to one or more cognisable offences which is first entered in station house diary by officer in charge of the police station can be regarded as FIR under Section 154 Criminal Procedure Code All such subsequent informations will be covered by Section 162 Cr.P.C. Officer in charge of the police station has to investigate not merely the cognisable 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 Cr.P.C. Even if after conclusion of the investigation pursuant to filing of the FIR and submission of report under Section 173(2) Cr.P.C., the officer in charge of the police station comes across any further information pertaining to the same incident, he can make further investigation, normally with the leave of the court and forward the further evidence, if any collected, with further report or reports under Section 173(8) Cr.P.C.

12. In the matter of Babubhai (supra), the Hon"ble Supreme Court again observed that subsequent to registration of an FIR, any further complaint in connection with the same or connected offence relating to the same incident or incidents which e re

part of the same transaction, is not permissible.

13. Here, in the case in hand, the facts regarding the incident pertaining to FIR No. 66/2015 (Annex. 1) have already been reported in FIR No. 118/2014. Therefore, the subsequent FIR No. 66/2015 is not maintainable in view of the aforesaid pronouncements of the Hon"ble Supreme Court.

14. In view of the above, this petition deserves to be allowed and is hereby allowed. The FIR No. 66/2015, registered at P.S. Thanagazi, Alwar is quashed being a subsequent FIR.

15. However, the Investigating Officer will have liberty to submit subsequent material before the Magistrate concerned after seeking leave of the concerned court.