Upkar Singh vs Ved Prakash & Ors on 10 September, 2004

Equivalent citations: AIR 2004 SUPREME COURT 4320, 2004 (13) SCC 292, 2004 AIR SCW 5017, 2004 ALL. L. J. 3436, 2004 (10) SRJ 121, 2004 (1) ORISSALR 43, 2004 (7) ACE 262, 2005 (1) CALCRILR 36, 2004 (5) SLT 520, 2004 CRI(AP)PR(SC) 697, (2006) 3 GUJ LR 1873, (2004) 7 JT 488 (SC), (2005) 26 ALLINDCAS 91 (SC), (2005) 1 BOMCR(CRI) 198, (2005) 1 EASTCRIC 141, (2005) 51 ALLCRIC 673, (2004) 3 ALLCRIR 2450, (2005) 1 BLJ 285, 2005 SCC (CRI) 211, (2004) 4 ALLCRILR 659, (2004) 3 CURCRIR 233, (2004) 4 JLJR 79, (2004) 3 KER LT 444, (2004) 7 SCALE 563, 2004 ALLMR(CRI) 3118, (2004) 4 RECCRIR 294, (2005) ILR (KANT) 1912, (2005) 2 GCD 1250 (GUJ), (2005) 1 RAJ CRI C 60, (2005) 2 CURCRIR 215, (2005) 1 RAJ LR 289, (2004) 4 PAT LJR 157, (2005) 25 ALLINDCAS 809 (PAT), (2004) 3 BLJ 560, (2004) 4 CRIMES 20, 2004 (2) ALD(CRL) 906, (2005) 1 WLC (RAJ) 538

Bench: N. Santosh Hegde, S.B. Sinha, A.K. Mathur

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           CASE NO.:
Appeal (crl.)  411 of 2002

PETITIONER:
Upkar Singh

RESPONDENT:
Ved Prakash & Ors.

DATE OF JUDGMENT: 10/09/2004

BENCH:
N. Santosh Hegde, S.B. Sinha & A.K. Mathur

JUDGMENT:
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J U D G M E N T SANTOSH HEGDE, J.

This Court while granting leave in this appeal doubted the correctness of the judgment of this Court in the case of T.T. Antony vs. State of Kerala and Ors. 2001 (6) SCC 181, hence referred this case to Hon'ble Chief Justice of India for being heard by a larger Bench, in these circumstances this appeal is now before us for final disposal and to consider the correctness of law laid down in the case of T.T. Antony vs. State of Kerala and Ors. (supra).

The facts of the case necessary for the disposal of this appeal are as follow :-

In regard to an incident which took place on 20th of May, 1995 at about 10.00 AM, a complaint was lodged by the 1st respondent herein with the Sikhera Police Station in the village Fahimpur Kalan. In the said complaint appellant herein and some others persons were arrayed as accused. On the basis of the said complaint the police registered a Crime under Sections 452 and 307 IPC against the appellant and other named persons therein in Crime No. 48 of 1995 of that Police Station.

Appellant alleges that he too lodged a complaint in regard to the very same offence against the respondents herein for having committed offences punishable under Sections 506 and 307 IPC as against him and his family members but since the said complaint was not entertained by the police concerned, he tried to approach the Superintendent of Police and District Magistrate and having failed in his attempts to get his complaint registered he filed petition under Section 156 (3) of the Criminal Procedure Code before the Judicial Magistrate, Muzaffarnagar.

The learned Magistrate having found prima facie case as per his order dated 11th July, 1995 directed the police, Sekhera Police Station to register a Crime against the accused persons named in the said complaint of the appellant and to investigate the same and submit a report within 2 months.

In view of the directions issued by the Magistrate the concerned police registered a Crime No. 48-A of 1995 under Sections 147, 148,149 and 307 IPC.

Being aggrieved by the said order of the Magistrate directing the registration of a complaint the 1st respondent herein preferred a Criminal Revision Petition before the IIIrd Additional Sessions Judge, Muzaffarnagar. The learned Sessions Judge after considering the arguments allowed the Revision Petition and the order of the Magistrate, directing registration of a criminal case against the respondents herein at the instance of the appellant, was set aside.

Being aggrieved by the order of the learned Sessions Judge the appellant herein filed a criminal miscellaneous petition before the High Court of Judicature at Allahabad, the High Court by the impugned order dated 10th of April, 2001 following an earlier judgment of the same court in the case of Ram Mohan Garg vs. State of U.P. 1990 (27) A.C.C. 438 dismissed the Revision Petition. From the impugned judgment, it is seen in the said judgment of the Ram Mohan Garg vs. State of U.P. a Division Bench of that Court had held :-

"So far as the registration of a cross case on the basis of the First Information report is concerned, that does not appear to be permissible after the investigation in respect of a crime has commenced in views of the provisions of Section 162 Cr. P.C. However, it was always possible that during investigation of a crime the version set up in the first Information report may be found to be false version and some other person really responsible to the crime may be chargesheeted after a fair investigation. Hence, it was not necessary that a fresh first information report should have been registered on the basis of Annexure-3 which is a letter dated 22-6-89 to the Director General of

> Police in view of the provision of Section 162 Cr. P.C. However, it is always permissible in law for an aggrieved person to file a complaint before the competent Magistrate which can be investigated. Simultaneously according to the provisions of the Criminal Procedure Code."

The High Court understood the ratio of the judgment of the Division Bench in Ram Mohan Garg's case as laying down a principle in law that in regard to one single incident , there could not be a case and a counter case, as could be seen from the following observations of the High Court found in the impugned judgment now before us :-

> "Of course two F.I.Rs are not permissible in respect to one and same incident because the subsequent F.I.R. is hit by Section 162 Cr. P.C".

By the time this appeal came to be considered for grant of leave by this Court on 21st of March, 2002, this Court had delivered the judgment in T.T. Antony's case wherein this Court framed the following question among others for consideration ;-

(i) Whether registration of a fresh case, Crime No. 268 of 1997 which is in the nature of second FIR under Section 154 Cr. P.C. was valid and could form the basis of a fresh investigation?"

> Answering the above question this Court held :-
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> "In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 Cr.PC. 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 Cr.PC. 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 Cr.PC. 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 Cr PC".

This observation of the High Court in said case of T.T. Antony is understood by the learned counsel for the respondents as the Code prohibiting the filing of a second complaint arising from the same incident. It is on that basis and relying on the said judgment in T.T. Antony's case an argument is addressed before us that once a FIR registered on the complaint of one party a second FIR in the nature of counter case is not registrable and no investigation based on the said second complaint could be carried out.

Having perused the judgment in T.T. Antony's case, we really do not think this Court in that case has laid down any such proposition of law.

To understand the ratio of the judgment in T.T. Antony's case, it is necessary for us to note the facts of that case in brief :

> In the said case 2 incidents occurred on the very same day consequent to a decision taken by a Minister to inaugurate the function of an evening branch of a co-operative bank which was opposed by members of a political group and in that process the 1st incident took place in the proximity of the town hall at a place called Kutupuramba in Kerala and the second incident took place in the vicinity of a Police Station at the same place. During the said 2 incidents, on the orders of Executive Magistrate and Deputy Superintendent of Police, the police open fired as a result of which 5 persons died and 6 persons were injured amongst the demonstrators. In regard to the incident which took place near the town hall the police registered a Crime No. 353 of 1994 under Sections 143, 147, 148 332, 353 324 and 307 read with Section 149 IPC along with some other offence while in regard to the incident which took place near the Police Station a crime was registered under Crime No. 354 of 1994 under Sections 143, 147 148, 307 and 427 read with Section 149 IPC and other offences named therein. Both the offences were registered on the date of incident itself.

During the pendency of the said cases the political Government of the State changed and the new Government appointed a Commission of Inquiry and on the report of the Commission, an investigation was directed to be conducted by the Deputy Inspector General of Police concerned who after urgent personal investigation registered Crime No. 268 of 1997 under Section 302 IPC against the Minister who was present at the time of the incident, the Deputy Superintendent of Police, the Executive Magistrate who ordered the firing and certain police constables.

The registration of the said crime came to be challenged before the High Court by way of a writ petition and learned Single Judge of the High Court directed the case to be re-investigated by CBI. But in a writ appeal the Division Bench of the High Court quashed the FIR in Crime No. 268 of 1997 as against the Additional Superintendent of Police but it directed a fresh investigation by the State police headed by one of the three Senior Officers named in the judgment in stead of fresh investigation by CBI as directed by the learned Single Judge. It is the above directions of the Division Bench that came to be challenged by way of different appeals before this Hon'ble Court in the case of T.T. Antony (supra) and connected cases. In this factual background this Hon'ble Court, as stated above, came to the conclusion that a subsequent FIR on the same set of facts is not in conformity with the scheme of the Code for the reasons stated therein.

Having carefully gone through the above judgment, we do not think that this Court in the said cases of T.T. Antony vs. State of Kerala & Ors. has precluded an aggrieved person from filing a counter case as in the present case. This is clear from the observations made by this Court in the above said case of T.T. Antony vs. State of Kerala & Ors. in paragraph 27 of the judgment wherein while discussing the scope of Sections 154, 156 and 173 (2) Cr.PC, this is what the Court observed :-

> "In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable

> offences alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173 (2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.
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> PC or under Articles 226/227 of the Constitution"

Emphasis supplied.

It is clear from the words emphasized hereinabove in the above quotation, this Court in the case of T.T. Antony vs. State of Kerala & Ors. has not excluded the registration of a complaint in the nature of a counter case from the purview of the Code. In our opinion, this Court in that case only held any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount an improvement on the facts mentioned in the original complaint, hence will be prohibited under Section 162 of the Code. This prohibition noticed by this Court, in our opinion, does not apply to counter complaint by the accused in the 1st complaint or on his behalf alleging a different version of the said incident.

This Court in Kari Choudhary vs. Mst. Sita Devi & Ors. 2002 (1) SCC 714 discussing this aspect of law held :-

> "Learned counsel adopted an alternative contention that once the proceedings initiated under FIR no. 135 ended in a final report the police had no authority to register a second FIR and number it as FIR No. 208. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency. Even that apart, the report submitted to the court styling it as FIR No. 208 of 1998 need be considered as an information submitted to the court regarding the new discovery made by the police during investigation that persons not named in FIR No. 135 are the real culprits. To quash the said proceedings merely on the ground that final report had been laid in FIR No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offence alleged have been committed and, if so, who have committed it".

(Emphasis Supplied) In State of Bihar vs. J.A.C. Saldanna 1980 AIR SC 326, this Court considering Section 3 of the Police Act and Section 173 (8) of the Code held :-

> "The power of the Magistrate under Section 156 (3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out hereinbefore. The power conferred upon the Magistrate under Section 156 (3) can be exercised by the Magistrate even after

> submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in section 173 (8).

Therefore, the High Court was in error in holding that the State Government in exercise of the power of superintendence under Section 3 of the Act lacked the power to direct further investigation into the case. In reaching this conclusion we have kept out of consideration the provision contained in Section 156 (2) that an investigation by an officer-in-charge of a police station, which expression includes police officer superior in rank to such officer, cannot be questioned on the ground that such investigating officer had no jurisdiction to carry on the investigation;

otherwise that provision would have been a short answer to the contention raised on behalf of respondent 1.

This clearly shows that if concerned police refused to register a counter complaint, it is open to the Magistrate at any stage to direct the police to register the complaint brought to his notice and an investigate the same.

This Court in the case of Ram Lal Narang vs. State (Delhi Administration) 1979 (2) SCC 322 held :-

> "Even in regard to a complaint arising out of a complaint on further investigation if it was found that there was a large conspiracy than the one referred to in the previous complaint then a further investigation under the court culminating in another complaint is permissible".

A perusal of the judgment of this Court in Ram Lal Narang's case (supra) not only shows that even in cases where a prior complaint is already registered, a counter complaint is permissible but it goes further and holds that even in cases where a 1st complaint is registered and investigation initiated, it is possible to file a further complaint by the same complainant based on the material gathered during the course of investigation. Of course, this larger proposition of law laid down in Ram Lal Narang's case is not necessary to be relied on by us in the present case. Suffice it to say that the discussion in Ram Lal Narang's case is in the same line as found in the judgments in Kari Choudhary and State of Bihar vs. J.A.C. Saldanna (supra). However, it must be noticed that in T.T. Antony's case Ram Lal Narang's case was noticed but the Court did not express any opinion either way.

Be that as it may, if the law laid down by this Court in T.T. Antony's case is to be accepted as holding 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 herein below 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 books. This cannot be the purport of the Code.

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

In the instant case, it is seen in regard to the incident which took place on 20th May, 1995, the appellant and the 1st respondent herein have lodged separate complaints giving different versions but while the complaint of respondent was registered by the concerned police, 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.

For the reasons state above, this appeal succeeds and the impugned orders of the High Court and the learned Additional Sessions Judge are set aside and that of the Magistrate restored.