

Baljeet Singh vs State Of Punjab & Another on 16 May, 2011

Author: Ritu Bahri

Bench: Ritu Bahri

Crl. Misc. No. M-27843 of 2010

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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

Crl. Misc. No. M-27843 of 2010 (O&M)
Date of Decision : 16.5.2011

Baljeet Singh

..... Petitioner

Versus

State of Punjab & another

..... Respondents

CORAM : HON'BLE MS. JUSTICE RITU BAHRI

Present : Mr. J.S. Gill, Advocate
for the petitioner.

RITU BAHRI, J.

This petition under Section 482 Cr.P.C. has been filed seeking quashing of FIR No. 27 dated 21.5.2003 under Section 420, 409, 406, 467, 468, 471, 465, 120-B IPC and 13(1)(c)(d) read with 13 (2) Prevention of Corruption Act, 1988 registered at Police Station Vigilance Bureau, Ludhiana, District Ludhiana and all subsequent proceedings arising therefrom including the supplementary challan submitted against the petitioner in the Court of learned Special Judge, Ludhiana on 6.3.2009.

Brief facts of the case are :-

That the petitioner was appointed as Block Development and Panchayat Officer on 19.11.1990. In the year 2000, he was Crl. Misc. No. M-27843 of 2010 promoted as

District Development and Panchayat Officer. Grievance of the petitioner is that he has been named in the FIR registered by the Vigilance Bureau, Ludhiana, as one of the alleged accused persons. An FIR No. 17 dated 28.3.2003 under Sections 379 & 406 IPC already stood registered at police station Machhiwara with regard to the same subject matter.

The petitioner was posted as BDPO Machhiwara on 14.7.1997 and as such was in charge of almost 102 Gram Panchayats falling under the said Block. Gram Panchayat Mannewal vide resolution dated 30.5.2000 decided to auction 381 Kanals 14 Marlas of the land belonging to the Gram Panchayat on lease, whereafter a public auction was announced on 7.6.2000. This auction was postponed to 15.6.2000 due to lack of sufficient number of Auction Purchasers. The auction was further postponed to 19.7.2000 due to the same reason. On 4.8.2000, the land was auctioned in favour of three persons namely Amandeep Singh, Madan Singh and Paprgat Singh for a period of 7 years. The land was 'Banjar Qadim', therefore, as per the terms & conditions of the auction the lessees were to properly level the land and make it fit for cultivation. The land leased out for seven years for this purpose, was permissible under the Rules. The auction was carried out under the supervision of the Administrator and was approved by the petitioner.

Further it was submitted that auction so held was further submitted for approval to the then DDPO Sh. Bhajan Singh, who granted the approval on the same day. After completing the formalities, the lessees took possession of the land.

Crl. Misc. No. M-27843 of 2010 The lessee carried out levelling of the land and no complaint was received by the petitioner from any quarter till 9.4.2001 when the petitioner was transferred from Machhiwara to Block Ludhiana-II. The first complaint with regard to the lessees violating the terms & conditions of the auction was received in the office of BDPO in July 2002. As per the complaint, there was illegal lifting of sand from the Panchayat land by the lessees which was in complete violation of the terms and conditions of the auction. Thereafter various other complaints were also made to DSP Police, Samrala on 29.8.2002 and vide letter No. 731 dated 17.12.2002 even the DDPO, Ludhiana informed the Deputy Commissioner, Ludhiana about the said illegal lifting of sand. The officials of Police Station, Machhiwara lodged an FIR No. 17 dated 28.3.2003 under Sections 379, 406 IPC against the accused. The petitioner was not named as an accused in the aforementioned FIR. Before lodging of the FIR on 11.3.2003, the DDPO, Ludhiana exercising his powers under the Act cancelled the auction held on 4.8.2000. The lessees challenged the said order before the learned Commissioner, who stayed the order of the DDPO. On 8.8.2002, one of the lessees namely Amandeep Singh also filed a suit for injunction against the Gram Panchayat and the Secretary. Vide order dated 18.11.2002, Court of learned Addl. Civil Judge (Sr. Divn.), Ludhiana restrained the Gram Panchayat from interfering in the activities of the petitioner Amandeep Singh from removing the sand for levelling the land for cultivation.

FIR No. 27 dated 21.5.2003 under Section 420, 409, 406, 467, 468, 471, 465, 120-B IPC and 13(1)(c)(d) read with 13(2) Crl. Misc. No. M-27843 of 2010 Prevention of Corruption Act, 1988 was

registered at Police Station Vigilance Bureau, Ludhiana, District Ludhiana on a secret information by Vigilance Police. In this F.I.R, the estimated monetary loss was assessed at Rs. 3 crore. The period of alleged complaint of illegal sand mining was fixed from the year 2000 to 2003. It is alleged that the petitioner has committed the offence while working as BDPO in the year 2000.

Supplementary challan, which has been submitted against the petitioner, the Vigilance Bureau has inducted two Patwaris on the allegation that the said Patwaris had shown the land in dispute to be cultivable and the lessee getting wheat and paddy crop from the year 2000 to 2004 and as such both the Patwaris also connived with the accused. The allegation in the FIR is that the illegal sand lifting is being done and the land has been dug up for almost 15 feet deep. The lessee can not be getting wheat and paddy crop from the year 2000 to 2004. It is alleged that only petitioner has been included as accused, whereas after he had been transferred in the year 2001. The other BDPOs, who joined after transfer of the petitioner in April 2001 till 2003 have been left out. As per the FIR registered by the DSP, Vigilance sand mining continued unabated from the year 2000 till 2003 and the loss for the total 3 years is pegged at Rs. 3 crores.

During the pendency of this Criminal Miscellaneous vide order dated 30.9.2010 (Annexure P-8) charge has been framed against the petitioner by the learned Special Judge, Ludhiana. As per this order, Gurnam Singh Sarpanch (accused No.1) in connivance Crl. Misc. No. M-27843 of 2010 with accused Harcharan Singh Marwaha have sold sand amounting to crore in rupees and have caused loss to the Government in crores. They have also embezzled the grants of the village. They have prepared forged documents and in this way they have committed an offence under Sections 420, 409, 406, 467, 468, 471, 465, 120-B IPC and 13(1)(c)(d) read with 13(2) Prevention of Corruption Act, 1988. the charges were framed against 28 accused, which includes Gurnam Singh Sarpanch, Mohinder Singh, Member Panchayat, Devinder Singh, Panchayat Secretary, Sucha Singh, Kuldip Singh and Chaman Lal, Contractors of Gurnam Mineral. Baljit Singh, present petitioner / accused No.21 against whom charges have been framed. The charge-sheet Annexure P-9 is dated 8.10.2010.

Mr. Gill learned counsel for the petitioner has argued that the challan presented against the petitioner in FIR No. 27 dated 21.5.2003 under Section 420, 409, 406, 467, 468, 471, 465, 120-B IPC and 13(1)(c)(d) read with 13(2) Prevention of Corruption Act, 1988 registered at Police Station Vigilance Bureau, Ludhiana, District Ludhiana is liable to be quashed on the ground that this is a second FIR arising out of the same incident. He has placed reliance on the judgment of the Hon'ble Supreme Court in the case of T.T. Antony vs. State of Kerala 2001(3) R.C.R. (Criminal) 436 and Babubhai vs. State of Gujarat & others 2010(5) R.A.J. 267.

The Supreme Court in 2001(3) RCR Criminal 436 in the case of T.T. Antony vs. State of Kerala had considered the case in which the F.I.R had been registered under Section 154 sub Crl. Misc. No. M-27843 of 2010 clause (i). More than one information was given to the police in respect of the same incident. The information received during investigation will fall under Section 162 Cr.P.C. The second F.I.R cannot be registered on receipt of subsequent information. In the case before Supreme Court, the F.I.R had been registered under Section 307 IPC. During investigation, the victim died. Second F.I.R was not required to be registered under Section 302 IPC. In para 20 and 21, the Supreme Court had observed as under:-

20. The scheme of the Cr.P.C. is that an officer in charge of a Police Station has to commence investigation as provided in Section 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 Section 169 or 170 of Cr.P.C., as the case may be, and forward his report to the concerned Magistrate under Section 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 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 Crl. Misc. No. M-27843 of 2010 further reports; this is the import of sub-section (8) of Section 173 Cr.P.C.

21 From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C.

only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 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 offences. On receipt of information about a cognizable offence or an 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 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 of the Cr.P.C.

In a subsequent judgment rendered in the case of Babubhai vs. State of Gujarat & others 2010(5) R.A.J. 267, the Crl. Misc. No. M-27843 of 2010 Supreme Court has examined the proposition where two F.I.R in respect of the same occurrence are permissible. It is held that if the F.I.R in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences alleged to have been committed in the course of same transaction or the same occurrence as the one alleged in the first FIR. There is no prohibition in accepting the second FIR. It is the first information of a cognizable offence recorded by the Officer In-charge of the Police Station. It sets the machinery of criminal law in motion and marks the commencement of the investigation which ends with the formation of an opinion under Section 169 or 170 Cr.P.C, as the case may be.

Mr. Gill, learned counsel for the petitioner has vehemently argued that once the procedure for the auction had been followed as per law and no complaint had been received during the time when he was posted as BDPO, he has been unnecessarily dragged as an accused in the FIR registered by the Vigilance Bureau. All the other BDPOs, who had functioned after he had relinquished the charge in 2001 till 2003 have been given clean chit by the Vigilance Bureau. DDPO Sh. Bhajan Singh, who had approved the auction has also been given a clean chit. The auction had been cancelled on receipt of complaint in the year 2002 but the lessees challenged that order and got stay from the Court vide order dated 18.11.2002, in the civil suit filed by the lessees an injunction had been granted against

the Gram Panchyat not to interfere in the process of lessees lifting sand from the Panchayat land to ultimately make it cultivable.

In view of the above factual position, no case under CrI. Misc. No. M-27843 of 2010 Sections 420, 409, 406, 467, 468, 471, 465, 120-B IPC and 13(1)(c)

(d) read with 13(2) Prevention of Corruption Act, 1988 is made out against the petitioner and the FIR, presentation of challan, and order dated 30.9.2010 framing of charge against him are liable to be quashed.

Heard learned counsel for the petitioner. After going through the entire facts of the case, a reference has been made to the order dated 30.9.2010 while framing charge against the accused. It has been specifically observed that after the completion of formalities of lease deed, four contractors started excavating the sand beneath the land of the Panchayat from 4.8.2000 and started selling the same in the market. All the above four contractors sold the sand from 4.8.2000 till March 2003. On 12.2.2003 Vigilance Bureau, Ludhiana conducted surprise checking of the above said Panchayati land along with BDPO Machhiwara and official witnesses and officers of Mining Department. Videography was done at the spot. Photographs were also taken. It was also found that all the above said four contractors were excavating sand beneath the above said land of Panchayat and they were found taking this sand to the market and they were found taking this sand to the market in trucks and trolleys, whereas 9 contractors of Gurnam Mineral of Mining Department (accused No. 12 to 20) were issuing receipts of Rs. 100/- per truck as royalty. There were pits of about 15 to 20 feet deep. As per the report of the said department, it was revealed that 1,20,000 metric ton sand has been extracted from the said land which comes out to 20,000 trucks of sand. The cost of the sand sold in those CrI. Misc. No. M-27843 of 2010 trucks was found to be 3 crores.

As per the report of the Agriculture Department, there was no possibility of crops to grow in the said land having deep pits. The purpose of giving the land on lease to make it cultivable within seven years as per the terms & conditions of the lease deed. An important fact has come to the notice that vide resolution dated 9.8.2000 scribed by Davinder Singh, Secretary of Panchayati land measuring 381K-14M and 2 Acres the name of Madan Singh contractor was not there. The original resolution was found to have been lost. A forged jamabandi for the year 1960 was attached. As per the forged Jamabandi the land had been given on lease in connivance with Devinder Singh, Panchayat Secretary, BDPO Machhiwara Baljit Singh and all four contractors Amandeep Singh etc. in order to cause wrongful gain to them and in order to do corruption by selling sand worth Rs. 3 Crores to the Government. The contractors have deposited in the Government Treasury only Rs. 1,25,225/-. Patwari Rampal (accused No. 25 since deceased) had prepared Khasra girdawari for the year 2000-2003 depicting wheat and paddy grown in the said land. Similarly, Balwinder Singh Patwari (accused No.24) had prepared false Khasra girdawari for the year 2003-2004 by showing crops grown in the above said land having deep pits. The receipts issued by all 9 Contractors of Gurnam Mineral of Mining Department were in possession of the police. These Contractors were not entitled to receive any royalty on the sand extracted from the Panchayat land. The said royalty had been deposited with the department of Mining (G.M. Industries Ludhiana) CrI. Misc. No. M-27843 of 2010 from April 2000-2003. On 5.3.2009, supplementary challan had been presented against three

accused viz. Harbans Singh Mining Officer, Ludhiana, Accused No.21, Baljit Singh BDPO Machhiwara and accused No.23 Harcharan Singh Marwaha. In the said supplementary challan accused No. 22 Gurshish Singh Mining Officer and accused No. 26 Bhajan Singh DDPO were found innocent and no challan was presented against them.

Statement under Section 161 Cr.P.C. of Pritam Ram Chowkidar have been recorded, who has stated that forged documents were prepared by Gurnam Singh, Sarpanch and Davinder Singh, Panchayat Secretary.

The objection of the petitioner is that charge has been framed against him as an accused when he had merely submitted the proceedings of the auction. While considering the framing of charge against him, there is a statement of Rattan Singh Patwari under Section 161 Cr.P.C. that BDPO Baljit Singh (accused No.21) and Panchayat Secretary Davinder Singh (accused No.7) asked him to prepare jamabandi 1960-61 showing the land as sandy and banjar kadeem. He has stated that, the abovesaid jamabandi was not signed by him, which was appended with the auction papers of the panchayati land. Baljit Singh BDPO and Panchayat Secretary Davinder Singh used the copy of the jamabandi at the time of auction of the said panchayati land.

Chanchal Kumar, Superintendent of the office of BDPO and Narinder Kaur Sr. Asstt. BDPO have stated that there is no entry CrI. Misc. No. M-27843 of 2010 in the dispatch register regarding the dispatch of the said document. The Panchayati land in this document has been wrongly shown as 'banjar kadeem'. The alleged offence has been committed at its very inception i.e. in the year 2000 when resolution was passed and the land was auctioned on the basis of jamabandi for the year 1960-61, which was fraudulently attached with the resolution by BDPO Baljit Singh accused No.21 by showing the land as 'banjar kadeem' although the same was cultivable at that time.

The arguments of the learned counsel for the petitioner that two FIRs on the same cause of action can not be registered, as per the Hon'ble Supreme Court judgment in the case of -does not go with the facts of the present case. The ratio of the judgment that FIR No. 17 dated 28.3.2003 was registered under Sections 379 & 406 IPC, whereas in the present FIR No. 27 dated 21.5.2003, in which the petitioner had been arrayed as an accused under Section 420, 409, 406, 467, 468, 471, 465, 120-B IPC and 13(1)(c)(d) read with 13(2) Prevention of Corruption Act, 1988 registered at Police Station Vigilance Bureau, Ludhiana, District Ludhiana, for his active participation for preparing the forged document and fraudulently attaching the jamabandi shows his connivance. In the case of Babubhai vs. State of Gujarat & others (supra) Hon'ble the Supreme Court has held that two FIRs in respect of same occurrence are permissible. The relevant part of the judgment reads as under :-

"Criminal Procedure Code, Section 154- Counter claim- Two F.I.Rs in respect of same occurrence whether permissible (yes)

- Held :-

Crl. Misc. No. M-27843 of 2010 (1) Filing an FIR pertaining to a counter claim in respect of the same incident having a different version of events, is permissible.

(2) In case the FIRs are not in respect of the same cognizable offence of the same occurrence giving rise to one or more cognizable offences nor are they alleged to have been committed in the course of the same transaction or the same occurrence as the one alleged in the First FIR, there is no prohibition in accepting the second FIR. 2006(1) RCR (Crl.) 675 : 2006(1) Apex Criminal 224, 2009(1) RCR (Crl.) 3 : 2008(6) RAJ 555.

14. In Upkar Singh Vs. Ved Prakash & Ors. (2004) 13 SCC 292, this Court considered the judgment in T.T. Antony (supra) and explained that the judgment in the said case does not exclude the registration of a complaint in the nature of counter claim from the purview of the court.

What had been laid down by this Court in the aforesaid case is that any further complaint by the same complainant against the same accused, subsequent to the registration of a case, is prohibited under the Cr.P.C.

because an investigation in this regard would have already started and further the complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence, will be prohibited under section 162 Cr.P.C.

However, this rule will not apply to a counter Crl. Misc. No. M-27843 of 2010 claim by the accused in the first complaint or on his behalf alleging a different version of the said incident. Thus, in case, there are rival versions in respect of the same episode, the Investigating Agency would take the same on two different FIRs and investigation can be carried under both of them by the same investigating agency and thus, filing an FIR pertaining to a counter claim in respect of the same incident having a different version of events, is permissible.

15. In Rameshchandra Nandlal Parikh v.

State of Gujarat & Anr. 2006(1) R.C.R. (Criminal) 675 : 2006(1) Apex Criminal 224;

(2006)1 SCC 732, this Court reconsidered the earlier judgment including T.T. Antony (supra) and held that in case the FIRs are not in respect of the same cognizable offence or the same occurrence giving rise to one or more cognizable offences nor are they alleged to have been committed in the course of the same transaction or the same occurrence as the one alleged in the First FIR, there is no prohibition in accepting the second FIR.

16. In Nirmal Singh Kahlon v. State of Punjab & Ors. 2009(1) R.C.R. (Criminal) 3:

2008(6) R.A.J. 555 : (2009) 1 SCC 441, this Court considered a case where an FIR had already been lodged on 14.6.2002 in respect of the offences committed by individuals. Subsequently, the matter was handed over to the Central Bureau of

Investigation (CBI), which during investigation collected huge amount of material and also recorded Crl. Misc. No. M-27843 of 2010 statements of large number of persons and the CBI came to the conclusion that a scam was involved in the selection process of Panchayat Secretaries. The second FIR was lodged by the CBI. This Court after appreciating the evidence, came to the conclusion that matter investigated by the CBI dealt with a larger conspiracy.

Therefore, this investigation has been on a much wider convass and held that second second FIR w as permissible and required to be investigated."

In the present case applying the ratio of the judgment of the Hon'ble Supreme Court in the case of Babubhai vs. State of Gujarat & others (supra) the FIR No. 17 dated 28.3.2003 was registered under Sections 379 & 406 IPC, and the second FIR No. 27 dated 21.5.2003, the investigating agency has gathered much more evidence by recording statements of the witnesses and by extending the scope of the alleged occurrence from 2000 to 2003, which related to the illegal mining of sand has registered the FIR under Section 420, 409, 406, 467, 468, 471, 465, 120-B IPC and 13(1)(c)(d) read with 13(2) Prevention of Corruption Act, 1988 Police Station Vigilance Bureau, Ludhiana, District Ludhiana. Registration of second FIR is, therefore, justified as per the law laid down by the Hon'ble Supreme Court.

After going through the contents of the second FIR and order dated 30.9.2010 (Annexure P-8) framing of charge, no ground is made out to quash the FIR in view of the parameters laid down by the Hon'ble Supreme Court in the cases of State of Haryana vs. Crl. Misc. No. M-27843 of 2010 Bhajan Lal and others, 1992 Suppl.(1) SCC 335, Som Mittal vs. Government of Karnataka (2008) 3 Supreme Court Cases 574 and S. Khushboo vs. Kanniammal & Anr. 2010(2) RCR (Criminal)

793.

The petition stands dismissed.

16.5.2011
'sp'/G.arora

(RITU BAHRI)
JUDGE