

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT BENCH JAIPUR

J U D G M E N T

Bhim Sen Garg

Vs. State of Rajasthan &
Others

(SB Civil Writ Petition No.1027/06)

Date of Judgment : 13th June, 2006

PRESENT

HON'BLE MR. JUSTICE KS RATHORE

Mr. SR Bajwa, Sr. Advocate with
Mr. VP Bishnoi, for the petitioner.
Mr. Mohd. Aslam, for the respondents.

REPORTABLE

By way of this writ petition the petitioner prayed for a writ of mandamus for quashment of FIR No.21/06 dated 27.1.06 registered at Police Station Transport Nagar, Jaipur for the offences punishable under Sections 465, 469, 471, 120-B, I.P.C. and Section 65 of Information Technology Act, 2000.

During the course of investigation, the Investigating Officer has deleted the offence under Section 65 of the I.T. Act, 2000 from the purview of investigation and has proceeded to

undertake further investigation only in regard to the offences under Sections 465, 469, 471, 120-B IPC.

In the First Information Report, it has been alleged that some news items were published in the Newspaper which were containing aspersions against Cabinet Minister in Govt. of Rajasthan Shri Rajendra Singh Rathore, founded on some statement of one Ved Prakash Saini. In the report it has also been stated that on the basis of the newspaper reporting an enquiry was launched by the I.G.P. (Special and Economic Offences), C.I.D., Jaipur.

The reporting in newspaper related to allegations on Cabinet Minister Shri Rajendra Singh Rathore pertaining to his involvement in an incident about prostitution by one Vanita wife of Ved Prakash Saini.

During the course of enquiry launched by the I.G.P. (Special and Economic Offences), C.I.D., Jaipur, statements of victim Vanita, petitioner Bhim Sen Garg, Police Officers Arun Macha and Pyara Singh etc. were recorded.

Vanita, in her statement recorded during the course of enquiry stated that she was in custody at Police Station Shyam

Nagar, Jaipur on 10.6.2005 in connection with F.I.R. No.168/05, she had reported a News Reporter that she had never gone with any Minister or his P.A.

On the conclusion of the enquiry it was found that Vanita had been sent for prostitution by her husband on 10.6.2005 to some other three persons. As such, Mahaka Bharat had published scandalous news on the basis of which the Minister's name was being dragged in the controversy.

In the aforesaid backdrop, on the basis of inquiry report, an F.I.R. No.217/05 was registered under Sections 5 and 6 of PITA Act at Police Station Jamwa Ramgarh, Jaipur. The investigation of the same was given to the Additional Superintendent of Police and it was found that no Minister or his P.A. was found to be involved in the incident.

During the course of investigation of F.I.R. no. 217/05, a notice was given to the petitioner-Editor of Mahaka Bharat for providing the original C.D. on the basis of which newspaper reporting was done. In response to the notice, it is alleged that petitioner showed inability in providing the original C.D. However, a copy of C.D. was provided to the Additional

Superintendent of Police by one employee of Mahaka Bharat, namely; Shri K.M. Sharma-Accounts Officer. And on receipt of copy of C.D. it was sent to FSL Jaipur for examination and a report was also given. In the report it was found that C.D. was found interpolated and it was also alleged that in the original interview by Electronic Media as also in the statement recorded under Section 164 Cr.P.C. before Magistrate, Vanita had categorically stated that she had not gone with any Minister, but Bhim Sen Garg had removed the said portions from the C.D. and by way of interpolation, committed forgery and on the basis of the interpolated C.D., a scandalous news item was published in Mahaka Bharat with an object to stigmatize the image of a particular Minister in State Government.

For the offence committed by the petitioner FIR No.21/06 was registered at Police Station, Transport Nagar on 27.1.06 for the offences punishable under sections 465, 467, 471 and 120-B IPC and Section 65 of Information And Technology Act, 2000 and later on during investigation, the offence under Section 65 of the IT Act, 2000 has been deleted from the purview of investigation.

The FIR no.21/06 registered at P.S. Transport Nagar is challenged by the petitioner on the ground that the impugned FIR which has been lodged against the petitioner is outcome of blatant and flagrant malicious action on the part of State Police at behest of Cabinet Minister Shri Rajendra Singh Rathore. It is also submitted that the alleged FIR has been lodged by Shri Pradeep Mohar, Additional Superintendent of Police (Special and Economic Offences) C.I.D. (C.B.), Jaipur. And after alleging allegation, learned counsel for the petitioner submitted that the FIR has been lodged against the petitioner with ulterior motive and to wreak vengeance on the petitioner with a view to spite him due to private and personal grudge.

It is also contended that the impugned FIR has been lodged in utter disregard of the provisions contained in Code of Criminal Procedure as also the Evidence Act. And from reading the FIR in question it is clearly borne out that no cognizable offence is said to have been committed by the petitioner. When the contents/allegations, even if controverted, do not disclose commission of any cognizable offence, then the Police loses its power to investigate under Section 156 (1)

Cr.P.C. without prior order of a Magistrate in consonance with the provisions contained in Section 155(2) Cr. P.C. Under such circumstances, the Investigating Agency would not have the requisite power to investigate as per Section 156 Cr. P.C. Thus, the alleged FIR completely defies the entire scheme relating to powers of investigation contained in the Code of Criminal Procedure.

Learned Sr. Counsel Mr. Bajwa submitted briefs on account of which the impugned FIR has been lodged.:-

(I) An earlier F.I.R.No. 217/2005 of Police Station Jamwa Ramgarh was registered for offence punishable under Sections 5 and 6 of PITA Act, in the wake of entire controversy arising in Print and Electronic Media, against number of persons.

(II) That in the said F.I.R. investigation was carried out by the Additonal Superintendent of Police (Special and Economic Offences) C.I.D. (C.B.)-the complainant in the impugned FIR. The subject matter of his investigation was the incident, which took place on 10.3.2005 wherein victim Vanita was forced for prostitution by her husband, at the hands of number of persons.

(III) Additional Superintendent of Police (Special and Economic Offences), C.I.D. (C.B.) conducted investigation in

F.I.R. No.217/05 and during the course of his investigation he came to the conclusion that Ram Pratap Gupta, Vijay Singh Meena, Sardar Singh, Ved Prakash Saini, Bajrang and Badri Narain were involved in the said offence. But, however, he from his investigation, did not find Cabinet Minister Shri Rajendra Singh Rathore to be involved in the incident and to be *prima facie* guilty of the said offence.

(IV) Subsequent to the conclusions of Additional Superintendent of Police (Special and Economic Offences) C.I.D. (C.B.) in his investigation in FIR No.217/05 PS Jamwa Ramgarh he ventured to lodge the impugned FIR as a complainant for the alleged false evidence created by Bhim Sen Garg-Editor, Mahaka Bharat, through newspaper reporting and the C.D. Footage.

(V) The impugned FIR is squarely related to the false evidence about involvement of Cabinet Minister Shri Rajendra Singh Rathore, founded on the basis of tempered C.D. recording.

After formulation of aforesaid points Mr. Bajwa submitted that whenever an Investigating Officer is of the opinion that some false evidence was given to implicate a particular accused, then as per the scheme of Cr. P.C., the Investigating Officer is supposed to give his conclusions qua the subject matter of investigation as also complicity of the

accused, in the form of a negative report/final report qua the accused and at the same time has to recommend action against the person giving false information against that accused under Section 182 or 211 I.P.C.

The impugned FIR is also challenged on the ground that the FIR has been lodged for the offences in question on the basis of the so-called interpolated C.D. The impugned FIR is also challenged on the ground that it is nowhere borne out that the disputed C.D. in question was ever in the conscious, exclusive custody/control/dominion of the petitioner as the alleged C.D. was handed over to the Police by one Shri K.M. Sharma, employee of the petitioner. Thus, the contents of the entire FIR even if taken on their face value, do not disclose that the petitioner, in any manner, was himself involved in the process of alleged tempering of the C.D. in question. In the absence of the identification of the accused, who were actually involved in preparing the C.D., the petitioner cannot be hauled up for the said offence.

Learned Senior Counsel Shri Bajwa also mentioned the dates and events of the incident and submitted that on

10.3.2005, the alleged involvement of Cabinet Minister Shri Rajendra Singh Rathore in sex orgy which had allegedly taken place in R.T.D.C. Hotel- “Jheel Pryatak” in Village Jamwa Ramgarh.

On 16.6.2005, in FIR No.168/05 Police Station Shyam Nagar, Jaipur, Vineeta had been arrested under P.I.T.A. and was interviewed by Print/Electronic Media. During interviews involvement of concerned Minister in the sex orgy relating to 10.3.2005 was revealed. On 21.9.2005, the news regarding involvement of the Minister has been published in the Hindi Daily News Paper “Mehka Bharat”. On 21.9.2005, Inspector General of Police Shri Liyakat Ali was deputed to conduct inquiry about the allegations of involvement of the Minister and Shri Liyakat Ali submitted interim report on 26.9.2005 wherein the Minister was absolved. And on 26.9.2005 Shri Liyakat Ali in the capacity of informant filed FIR under PITA Act at Police Station Jamwa Ramgarh regarding the sex orgy involving the Minister and FIR No.217/05 under PITA was registered. The statement of Vineeta under Section 164 Cr.P.C. was recorded in FIR

No.217/05 on 28.9.2005 and in the aforesaid FIR challan has been filed against six persons for the offences under PITA on 23.11.05. After filing of challan Shri Pradeep Mohan Sharma, Additional Superintendent of Police C.I.D. filed impugned FIR No.21/06 at Police Station Transport Nagar on 27.1.2006 against the petitioner Bhim Sen Garg for the offences under Sections 465, 469, 471, 120-B I.P.C.

In the impugned FIR, it is alleged against the petitioner that the petitioner is found guilty of tempering of C.D. in respect of words as well as pictures; forgery was committed by the petitioner to defame the Cabinet Minister and C.D. was misused and on its basis false news was published in the daily Hindi News Paper “Mehka Bharat”.

Mr. Bajwa further submitted that the purpose of cheating. Section 471 IPC contemplates use of forged document. Thus, it is only when ingredients of Section 465 IPC are clearly spelt out in FIR, then the other two offences can be pressed into service.

Mr. Bajwa further submitted that the FIR in the eye of law does not sustain as the original C.D. is not on record. On

the basis of some copy no report regarding altering of C.D. can be given. The copy of C.D. was not recovered from the personal custody of the petitioner. Offence under Section 469 IPC regarding forgery of C.D. for the purpose of harming reputation is also not made out for the simple reason that FIR completely fails to spell out allegations of forgery itself. And regarding offence under Section 471 IPC there is no allegation in the FIR that the petitioner used the C.D.

It is also contended that the alleged impugned FIR is second FIR and referred the case of T.T. Antony wherein Hon'ble the Supreme Court has held that no second FIR in respect of an offence which was subject matter of investigation in an earlier FIR can be registered. Therefore, second FIR giving it a colour of independent offences under Sections 465, 468, 469 and 471 IPC has been registered with a calculated design to harass the petitioner.

Learned counsel for the petitioner also alleged malice and mala fide allegation against the sitting Cabinet Minister and submitted that the influence of sitting Cabinet Minister for lodging second FIR has been used and Press was

gagged and right to information was crushed. Selective targeting of “Mahaka Bharat” while other news-papers and news channels were conveniently left out.

And after alleging the malafide allegation against the Minister concerned, learned counsel Mr. Bajwa referred legal bar in registering impugned FIR as no separate FIR can be registered against the alleged fabrication of false evidence by a witness in the earlier FIR. No second FIR for the same subject matter can be registered and the impugned FIR is hit by Section 162 Cr.P.C.

It is also contended that the impugned criminal proceedings initiated against the petitioner are pre mature as the concerned Minister has not been exonerated finally as yet and the Trial Magistrate may invoke offence under Sections 366/376 IPC and may commit the same to Court of Session and Sessions Court after recording statement of prosecutrix Smt. Vineeta may proceed against the concerned Minister under Section 319 Cr. P.C.

Further stated that the original C.D. might be produced during the trial and the allegations against the Minister might be

fully endorsed and the trial court may believe the contents of C.D. as true and may rely on the statement of petitioner in that trial as a truthful witness. So after conclusion of trial only it will be clear as to whether the concerned Minister has been rightly indicted and as to whether the contents of C.D. are genuine. If the trial court concludes otherwise, only then the stage to proceed against the petitioner in respect of fabrication/forgery will arise. Till then any exercise to initiate proceedings against the petitioner is per se pre mature.

It is also contended that the alleged FIR is false at its face value in accordance with the test laid down by Hon'ble the Supreme Court in the case Bhajan Lal as the allegation do not constitute impugned offence and allegations are prompted by malice and legal bar engrafted in Code stand attracted, should be made applicable to the present petition.

Learned counsel for the petitioner has placed reliance on the judgments reported in 2004 (12) Supreme Court Cases 195; 2004(7) SCC 768; 2004 (7) Supreme Court Cases 775; AIR 1997 Supreme Court 3433; AIR 1993 Supreme Court 2644; AIR 1993 Supreme Court 2466; 1995 (4) Supreme Court

Cases 392; 2001 (6) Supreme Court Cases 181 TT Antony Vs. State of Kerala and case of Bhajan Lal.

Per contra, learned counsel appearing for the State emphatically denied the submissions made on behalf of the petitioner that the State police has taken any action at the behest of the Cabinet Minister Shri Rajendra Singh Rathore as alleged by the petitioner. It is also denied that the contents of the FIR speaks volumes about the malafide and ulterior motives and denied that the FIR has been lodged to wreak vengeance on the petitioner allegedly with a view to spite him due to private and personal grudge. And there is no question of violation of any provision contained in the Code of Criminal Procedure and Evidence Act as the FIR in question clearly discloses commission of cognizable offence and the investigation of FIR No.217/05 lodged with Police Station Jamuwa Ramgarh for offence under section 5 and 6 of PITA Act is concerned, the same was an altogether different incident. It was only when the petitioner in his newspaper prominently reported about the alleged involvement of a Cabinet Minister of the State Shri Rajendra Singh Rathore and alleged cover up thereof by the

Police that he was required to produce the Compact Disk on the basis of which the aforesaid news item was published. When C.D. was provided by the Accounts Manager of the petitioner Shri K.M. Sharma to the Investigating Officer, this C.D. was sent to State Forensic Science Laboratory for examination. The report of the State Forensic Science Laboratory indicated as under:-

“Thirty three clip-discontinuities have been detected in the video footage of the file AVSEQ01.DAT All these clips joined together make a 9 minutes 46 seconds video footage, which indicate postproduction editing.

Audio examination reveal that the audio recording in the video footage is also cut & broken at some places which correspond with video clip joints.”

And the conclusion of Forensic Science Laboratory clearly proved that the electronic record contained on the Compact Disk by way of audio and video was tempered with and another Compact Disk was prepared by fabrication. This C.D. was made basis of news paper reports published in daily newspaper Mahaka Bharat wherein allegations were made not only against the Minister but also against the State Police that it

had tried to cover up the incident. It is therefore, denied that the allegations contained in the FIR do not disclose any cognizable offence. In fact, the result of the examination by the State Forensic Science Laboratory categorically stated that total play time of the AVSEQ01.DAT file contained in the MPEGAV folder is 9 minutes 46 seconds. In the whole of the duration of this time, the report detected 33 clip discontinuities in the video footage of the said file. All these clips when joined together make a 9 minutes 46 seconds video footage which clearly indicate post production editing. Audio examination further revealed that the audio recording in the video footage was also cut and broken at some places which correspond with video clip joints. The investigating officer of the FIR No.217/05 further requested the State F.S.L. to get an explanation note on the technical terminologies used in the report of their examination. It was thereafter that the office of the Director, Police FSL Rajasthan, Jaipur vide letter dated 25.1.2006 supplemented the aforesaid report by clarifying certain technical terminologies.

It is further submitted that the Investigating Officer of FIR No.217/05 was concerned with the investigation of the

offences under sections 5 and 6 of the PITA Act and in the course of investigation when it was transpired that electronic report contained on the C.D. was tempered with and another C.D. was prepared by way of fabrication which was substantiated from the report of the State F.S.L., this constituted another and independent offence punishable under sections 465, 469, 471, 120B IPC and section 65 of Information Technology Act, 2000. He, therefore, lodged this FIR with the Police Station, Transport Nagar within whose jurisdiction the registered office of Mahaka Bharat is located and C.D. was received by the investigating officer. It is, therefore, denied that any scheme contained in the Code of Criminal Procedure was violated. It is denied that any novel method was adopted for lodgment of the FIR. It is also denied that the FIR is intended to harass, humiliate and malign the petitioner. It is denied that FIR has been lodged at the behest of Shri Rajendra Singh Rathore. It is denied that the allegations in the impugned FIR would have constituted an offence under section 182/211 IPC for giving false information. As already submitted, the fabrication of the C.D. was an independent and separate offence

punishable under sections 465, 469, 471, 120B IPC and section 65 of Information Technology Act, 2000. It is denied that the FIR has been lodged with a view to tiding over the alleged predicament under section 155(2) Cr. P.C.

It is denied that the State F.S.L. do not give report on the basis of examination of a copy of the C.D. which is interpolated. This precisely is the allegation against the petitioner that he prepared an interpolated C.D. giving completely a new version to it and fabricating its contents. Such a C.D., therefore, cannot be considered as a secondary evidence as for the purpose of offences alleged to have been committed by the petitioner, this C.D. would constitute primary evidence.

The C.D. was handed over by Shri KM Sharma Accounts Manager of the petitioner on his behalf in response to the notice given by the investigating officer. When the investigating officer handed over the notice to the person present in the registered office of the Mahaka Bharat, Shri KM Sharma upon receiving telephone instructions from the petitioner handed over the subject C.D. to the Investigating

Officer. In so far as the identification of the accused is concerned, the same would be the subject matter of investigation and petitioner cannot invite this Hon'ble Court into prejudging the issue which are essentially in the domain of the investigating officer. Learned counsel for the State with regard to argument that second FIR is barred being hit by provisions of Section 157 and 162 Cr. P.C. submitted that the case of T.T. Antony Vs. State of Kerala and Others reported in 2001 (6) SCC 181 has not been correctly appreciated and understood by the petitioner as Hon'ble the Supreme Court has observed as under:-

“20. From the above discussion it follows that under the scheme of the provisions of Section 154, 155, 156, 157, 162, 170 and 173 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 FIR and consequently there can be no fresh investigation on receipt of every subsequently 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 FIR 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 Cr. P.C.”

And the respondent State by referring the observation made by Hon’ble the Supreme in the case TT Antony tried to distinguish the present case and submitted that the second FIR according to the Supreme Court judgment is barred only in relation to the same cognizable offence or the same occurrence or the same incident giving rise to one or more cognizable offences. Such restriction cannot be applied in the facts of the present case where the FIR has been lodged against the petitioner on the basis of an altogether occurrence and for a different offence and being FIR against another set of accused and not against the same set of accused who have been offenders in the FIR No.217/05. In the present FIR No.21/06 the allegation against the accused is with regard to terming with and fabrication of electronic record contained on the Compact

Disk (CD) which found basis of the newspaper report dated 21.9.2005. This offence has been *prima facie* established by report of the Forensic Science Laboratory.

In view of this fact, it would be clearly evident that the FIR in question is not only pertains to different set of offence but also relates to a different occurrence which has taken place in a different transaction and against different set of accused. There would be therefore, no prohibition for lodgment of a new FIR even though the discovery of the fact with regard to the fabrication of the electronic record contained on the CD may have come to surface during the course of investigation of another FIR No.217/05.

Learned counsel for the State in support of his submissions, has relied upon the following judgment:-

1. AIR 2004 SC 4320 Upkar Singh Vs. Ved Prakash & Others;
2. 2002 (1) SCC 714 Kari Choudhary Vs. Mst. Sita Devi & Ors;
3. 2006 (1) SCC 732;
4. 2004 (7) SCC 768 Gangadhar Janardhan Mhatre Vs. State of Maharashtra & Others;
5. 2003 (12) SCC 241 Hemraj and Another Vs. State of Punjab;
6. 1999(3) SCC 259 Rajesh Bajaj Vs. State of Delhi;

7. 2003(4) SCC 579 Indian Railway Construction Co. Ltd. Vs. Ajay Kumar;
8. 2002(4) SCC 160 First Land Acquisition Collector & Others Vs. Nirodhi Prakash Ganguly;
9. 2004(5) SCC 223 State Vs. Jayapaul;
10. 2004(5) SCC 230 S. Jeevanatham Vs. State;
11. 2005(1) SCC 122 Zandu Pharmaceuticals Works Ltd. & Ors. Vs. Mohd. Sharaful Haque and Another;
12. 2003(11) SCC 251 M. Narayandas Vs. state of Karnataka& Ors;
13. 2002(3) SCC 89 State of Karnataka Vs. M. Devendrappa & Another;
14. 1996(2) SCC 37 State of H.P. Vs. Pirthi Chand And Another;
15. 2000 (8) SCC 115 Mahavir Prasad Gupta & Another Vs. State of National Capital Territory of Delhi & Anr.
16. 2005 (2) WLC 612 Ravi Shankar Srivastava Vs. State of Rajasthan & Others.

Having heard rival submissions of the respective parties and upon careful perusal of the relevant provisions of Cr. P.C. and IPC and after carefully reading of the judgments referred by the respective parties to decide this question whether the FIR No.21/06 dated 27.1.06 registered at Police Station, Transport Nagar, Jaipur for the offence punishable under Sections 465, 469, 471 and 120-B IPC at its face value is false and deserves to be quashed and set aside or not.

As the learned counsel for the petitioner raised several legal questions regarding maintainability of the disputed

impugned FIR in question and the petitioner referred Section 156 Cr. P.C. and more particularly Section 156(1) and (2). The provisions of Section 156 Cr. P.C. is reproduced hereunder:-

156. Police Officer's power to investigate cognizable cases.-

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

Thus, section 156 deals with the power of the police officer to investigate cognizable cases and as per sub section (1) any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the

provisions of Chapter XIII. And in sub section 2, no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

By referring Section 156, learned counsel for the petitioner tried to make out the case that the contents of the FIR itself borne out that no cognizable offence can be said to have been committed. Since no cognizable offence is made out therefore, the investigating agency has power to investigate into the matter.

Whereas the contents of FIR clearly indicates that the clips disc continuities out broken A V footage, post production editing whereas Vineeta in her statement deposed before the Magistrate under Section 164 Cr. P.C. categorically has not mentioned the involvement of the Minister and his P.A. and this statement has been erased. And since the petitioner himself has shown the inability to produce original C.D., the copy of the same was obtained and sent to the FSL for examination and the offence is made out under sections 465, 469, 471 and 120-B

IPC which is cognizable. Thus, the police officer is empowered to investigate into the matter under Section 156 Cr. P.C.

I have also perused Section 465 of IPC. As referred by the learned counsel for the petitioner Section 465 deals with the punishment for forgery “whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. And after referring Section 465 of IPC, learned counsel for the petitioner tried to make out the case that the petitioner cannot be liable for forgery until and unless clear allegation against the petitioner is made out that the petitioner himself has fabricated/tempered with the electronic record. As evident by the reply submitted on behalf of the respondent and as not disputed by the respondent and the petitioner that the copy of the C.D. was handed over by the petitioner’s Accountant Shri KM Sharma in the office of Mahaka Bharat for which the petitioner has instructed him on telephone and the allegation can only be established after conducting the investigation.

Upon perusal of Section 468 IPC as referred by the petitioner which contains whoever commits forgery, intending

that the (document or electronic record forged) shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. And section 471 contains whoever fraudulently or dishonestly uses as genuine any (document or electronic record) which he knows or has reason to believe to be a forged (document or electronic record), shall be punished in the same manner as if he had forged such (document or electronic record).

As stated here in above, in my considered view, the conclusion can only be drawn after investigation whether any offence is made out or not and in the instant writ petition since the petitioner has challenged the legality of the FIR and prayed for quashment of the FIR in question therefore, this court is only confined to determine the question whether the impugned FIR at its face value is false or not.

As the petitioner relied upon the case of T.T. Antony wherein Hon'ble the Supreme Court has held as under:-

“After registering the FIR and commencing investigation, registering of second FIR or

successive FIRs in respect of the same incident and crime and making of fresh investigations pursuant thereto would be irregular which call for interference by High Court under Articles 226 and 227 or Cr. P.C. and interference by Supreme Court under Article 136 with the fresh investigation to prevent abuse of statutory power of investigation or otherwise to secure ends of justice”.

Learned counsel appearing on behalf of the respondents also placed reliance on the judgment of TT Antony and relied on para 20 which reads as under:-

20. From the above discussion it follows that under the scheme of the provisions of Section 154, 155, 156, 157, 162, 169, 170 and 173 Cr. P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirement of Section 154 Cr. P.C. Thus there can be no second FIR 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 an incident giving rise to a cognizable offence or offences and on entering the FIR 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 Cr. P.C.”

Applying the ratio decided by Hon’ble the Supreme Court in the case of TT Antony, in the instant case, second FIR is of-course barred only in relation to same cognizable offence or same occurrence or the same incident giving rise to one or more cognizable offence wherein the present FIR has been lodged against the petitioner on the basis of altogether different occurrence and for a different offence and being FIR against another set of accused and not against the same set of accused who have been offenders in the FIR No.217/05. In the FIR in question, the allegation against the accused is with regard to tempering with and fabrication of electronic record on the Compact Disk (CD) and which is established by Forensic Science Laboratory Report given by the FSL on 21.9.2005.

Thus, even in view of the Hon'ble Supreme Court as held in the case of TT Antony wherein Hon'ble Supreme Court has said that 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 Cr. P.C.

The petitioner strongly pleaded that the impugned FIR has been lodged against the petitioner under the influence of the sitting Cabinet Minister and alleged several malafides against the Cabinet Minister. Not only mere assertion of the allegation but it was categorically stated that the selective targeting of “Mahaka Bharat” while other news-papers and news channels were conveniently left out as the sitting Cabinet Minister having private and personal grudge.

The allegations of malafide against the Cabinet Minister Shri Rajendra Singh Rathore are liable to be rejected at the outset because the petitioner has not impleaded him as party respondent to the writ petition and without he being a party to

the writ petition, no such allegations against him can be accepted as allegations of mala fide and mere assertion of mala fide allegation does not survive.

I am also not convinced with the submission made on behalf of the petitioner that the FIR in question is hit by Section 162 Cr. P.C. and the criminal proceedings initiated against the petitioner cannot be said to be pre mature as stated by the learned counsel for the petitioner.

As both the learned counsel for the parties have placed heavily reliance on the judgment of Hon'ble Supreme Court in the case of "State of Haryana & Others Vs. Bhajan Lal and Others reported in AIR 1992 Supreme Court 604 wherein Hon'ble the Supreme Court has laid down certain tests/guidelines where the High Court may in exercise of powers under Art. 226 or under S. 482 of Cr. P.C. may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases.

The point of determination which are laid down by Hon'ble the Supreme Court 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 allegation in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under S. 156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.
- 3) Where the uncontested allegations made in the FIR 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 FIR do not constitute a cognizable offence but constitute only a non cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S. 155(2) of the Code.
- 5) Where the allegations made in the FIR 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.

Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases enumerated above, calling for exercise of extraordinary powers or inherent powers, quashing of FIR was not justified.

Now as per the test laid down by Hon'ble the Supreme Court it is to be seen that the FIR in question constitute any cognizable offence against the petitioner or not. Bare perusal of the contents of the FIR and the factual aspect that the news which was published in the Daily News Paper of the alleged involvement of Cabinet Minister Shri Rajendra Singh Rathore in sex orgy on 21.9.05 and during enquiry and after obtaining a copy of C.D. and the report submitted by the F.S.L. itself borne out that the C.D. is found tempered with and fabricated and thus on the basis of the report of FSL the FIR No.21/06 registered by the Police against the petitioner and in view of the test laid down by Hon'ble Supreme Court in the case of Bhajan Lal, the first information report at its face value can not be said to be false and prima facie constitute offence and make out the case against the accused.

Learned counsel for the respondents referred the case of Upkar Singh Vs. Ved Prakash & Others of Hon'ble Supreme Court reported in AIR 2004 SC 4320 wherein the Supreme Court has distinguished the case of TT Antony and held that there can be no bar for lodgment of two FIRs even in respect of the same incident because different version may come by the rival parties who lodge counter cases against each other.

And also referred the case of Hon'ble Supreme Court in the case Kari Choudhary Vs. Mst. Sita Devi and Others reported in 2002 (1) SCC 714 wherein Hon'ble the Supreme Court has held that although there cannot be two FIRs against the same accused in respect of the same case but when there are rival version in respect of the same episode, they would take the shape of two different FIRs and investigation can be carried on under both of them.

Hon'ble the Supreme Court further explaining the case of T.T. Antony in the case reported in 2006(1) SCC 732 held that a separate FIR can be lodged in respect of an independent and distinct offences and that the second FIR could not be prohibited on the ground that some other FIR had been filed

against the accused in respect of certain other allegations. It was further made clear that in the case of TT Antony, the second FIR in relation to same cognizable offence or same occurrence or incident and against same accused is barred not with regard to different offence and against different accused.

With regard to mala fide allegation against the Minister concerned, the respondent placed reliance on the judgment in the case Indian Railway Construction Co. Ltd. Vs. Ajay Kumar reported in 2003 (4) SCC 579 wherein Hon'ble the Supreme Court has observed as under:-

“22. Neither learned single Judge nor the Division Bench has examined the question as to practicability or otherwise of holding the enquiry in the correct perspective. They have proceeded on the footing as if the order was mala fide; even when there was no specific allegation of mala fides and without any specific person against whom mala fides were alleged being impleaded in the proceedings. Except making a bald statement regarding alleged victimization and mala fides, no specific details were given.

23. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held

established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deducted as a reasonable and inescapable inference from proved facts. It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in E.P. Royappa V. State of T.N. Courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration."

And I am not convinced with the submission made on behalf of the petitioner and the allegation alleged against the

police as well as against the Cabinet Minister that the police was acting under the influence of Cabinet Minister Shri Rajendra Singh Rathore and were trying to save him in order to get a pat on their back from the said Minister.

I am also not convinced with the submission made on behalf of the petitioner that the alleged FIR is outcome of gross mala fides on the part of the concerned Minister. And in view of the settled proposition of law, the allegation of mala fide against the Minister concerned without impleading him as party are not sustained as held by Hon'ble the Supreme Court in the case of Indian Railway Construction (supra).

It is the burden of the petitioner to establish mala fide alleged against the police officials and the Minister concerned. Mere assertion of mala fide allegation would not enough and in support of such allegation specific material should be placed before the Court as held by Hon'ble the Supreme Court in the case "First Land Acquisition Collector and Others Vs. Nirodi Prakash Ganguly reported in 2004(4) SCC 160.

Thus, in view of the test laid down by Hon'ble the Supreme Court in the case Bhajan Lal and as observed here in

above, the impugned FIR No.21/06 cannot be said to be false at its face value and the petitioner also not able to prove the malice against the Minister concerned and police officials.

In view of the observations made here in above, the present petition is not the rarest of rares case which requires any interference while exercising extraordinary power under Article 226 of Constitution of India.

Thus, no interference whatsoever is required in the impugned FIR No. 21/06 dated 27.1.06 and the petitioner has utterly failed to make out any case that the FIR in question is false at its face value.

Consequently, the writ petition fails and is hereby dismissed with no orders as to cost.

(KS RATHORE), J.