

HIGH COURT OF JAMMU & KASHMIR AT JAMMU

Petition u/s 561-A Cr.R.P No.115/2006
Cr.M.P. No.114/2006

Date of order : 12.04.2012

Lal Shoor and others V/S State

CORAM:

HON'BLE MR. JUSTICE MOHAMMAD YAQOOB MIR, JUDGE

APPEARING COUNSEL:

For the Petitioner(s) : Mr. Rupak Ratta, Advocate.
For the Respondents(s) : Mrs. Z.S.Watali, Dy. AG.

Whether to be reported in digest/journal Yes

1. It is no more res integra that exercise of power under Section 561-A Cr.P.C is rarely to be exercised so as to avoid abuse of process of the court or otherwise to secure ends of justice. Instant case on birds eye view appear to be one such case which warrants exercise of the said power.

2. The contention of the learned counsel that for the occurrence as alleged in the FIR No. 263/2006 dated 7.10.2006 registered at Police Station Gandhi Nagar, Jammu is the same occurrence regarding which earlier FIR was lodged and registered as crime No.35 dated 8.7.2006 at Police Station Sunder Bani.

3. The investigation of the case as registered at Sunder Bani culminated in presenting chargesheet and finally accused Surinder Singh faced trial for commission of offence punishable under Section 376 RPC. On conclusion of the trial the accused earned acquittal as is clear from the judgment dated 31.03.2008. In the said judgment statement of prosecutrix Mst. Manju Devi has been recorded wherein she has stated that the accused never committed rape upon her.

Her father, Puran Chand also refuted the prosecution story by stating that her daughter never told him that she has been raped. Same is the position stated by the Vidya Devi maternal mother of the prosecutrix based on which acquittal was the only result.

4. The investigation of the case FIR No.263/2006 registered at Police Station Gandhi Nagar, Jammu continued, but later on, same was stayed. While comparing the allegations contained in first FIR No.35/2006 dated 08.07.2006 registered with Police Station, Sunder Bani and the second FIR No. 263/2006 dated 7.10.2006 registered with Police Station, Gandhi Nagar Jammu, the occurrence is the same. To make it more clear in the second FIR, the prosecutrix has alleged that five months back accused No.1 i.e., Surinder Singh had committed rape upon her, if we count five months w.e.f 7.10.2006 i.e., the date of registration of second FIR occurrence would date, back to month of May 2006. The first FIR has been registered on 8.7.2006 so it clearly and amply provides that occurrence is same even otherwise while going through the allegations as recorded in the first FIR and second FIR date of occurrence and incident is one and the same. Now what has been done intelligently is that in the first FIR, commission of offence punishable under Section 376 where as in the second FIR commission of offence punishable under Section 313, 420/120-B RPC have been shown committed, allegations vis-à-vis commission of offence punishable under Section 313, 420/120-B was also existing in the earlier FIR. But on investigation, the Investigation Officer concluded that only offence punishable under Section 376 RPC is made out based on which accused faced the trial and earned acquitted.

5. Now question is as to whether registration of second FIR is valid or not, answer has to be in negative. Hon'ble Apex Court in the judgment "T.T.Antony versus State of Kerala and others", "Damodaran P. and other versus of Kerala and others" and State of Kerala and others versus Revada Chandrasekhar and others" (AIR 2001 SC 2637) has settled the issue by holding that there can be no second FIR in respect of same cognizable offence to the same incident and occurrence.

6. The petitioner Surinder Singh has faced the trial for commission of offence punishable under Section 376 RPC relatable to same occurrence and when the prosecutrix in the same occurrence has stated that the accused never committed rape upon her, the commission of offence punishable under Section 313, 420/120-B totally looses relevance.

7. It shall be quite appropriate to quote following portion of para 18 and 19 of the judgment.

"18. An information given under sub-section (1) of Section 154 of Cr.P.C is commonly known as First Information Report (FIR) though this term is not used in the Code. It is very important document. And as its nick name suggests it is the earliest and the first information of a cognizable offence recorded by an officer-in-charge of a police station. It sets the criminal law into motion and marks the commencement of the investigation which ends up with the formation of opinion under Sections 169 or 170 of Cr.P.C., as the case may be, and forwarding of a police report under Section 173 of Cr.P.C. It is quite possible and it happens not infrequently that more informations than one are given to a police officer-in-charge of a police station in respect of the same incident involving

one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 of Cr. P.C. apart from a vague information by a phone call or cryptic telegram, the information first entered in the station house diary, kept for this purpose, by the police officer-in-charge of police station is the First Information Report—F.I.R. postulated by Section 154 of Cr.P.C. All other information 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 of Cr.P.C. 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 the Cr.P.C. Take a case where an FIR mentions cognizable offence under Sections 307 or 326 I.P.C. and the investigating agency learns during the investigation or receives a fresh information that the victim died, no fresh F.I.R under Section 302 I.P.C need be registered which will be irregular, in such a case alteration of the provision of law in the first FIR is the proper course to adopt.”

“19. 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 ha has to form opinion under Sections 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 further reports; this is the import of sub-section (8) of section 173 Cr.P.C.”

8. Viewed thus, while applying the law as has been laid down by the Hon'ble Apex Court, the second FIR No. 263/2006 dated 7.10.2006 registered with Police Station, Gandhi Nagar Jammu is held to be not valid so is quashed, respondent police shall close the case accordingly.

Petition disposed of as above.

**(Mohammad Yaqoob Mir)
Judge**

Jammu,
12.04.2012
Surinder