**QUASHING OF MULTIPLE FIRS AND TRANSFER OF INVESTIGATION TO CBI**

Multiple FIRs - Quashing of - Governing principles. Held, where two or more FIRs relate to same incident or relate to incidents which form part of same transactions, subsequent FIRs are liable to be quashed. There can be no second FIR where information concerns the same cognisable offence alleged in the first FIR or the same occurrence or incident which gives rise to one or more cognisable offences. This is because investigation covers not only alleged cognisable offence but also other connected offences. But subsequent FIR relating to different incidents or crimes is maintainable. Filing of a second complaint in regard to same incident as a counter complaint is also not precluded nor is this course of action prohibited by CrPC. TT Antony’s case, referred. (Paras 28-30.1)

Multiple FIRs – Quashing of – A programme telecasted on R Bharat on 21.4.2020 by petitioner (journalist) became the foundation of the allegation of commission of offences under the provisions of Sections 153, 153A, 153B, 295A, 298, 500, 504 and 506 IPC - On basis of this cause of action, several FIRs and criminal complaints lodged against him in different States and UT of J & K - Whether multiple FIRs need to be quashed. Held, yes. Except main FIR [FIR 238 of 2020 dated 22.4.2020] all other FIRs need to be quashed. This is because all FIRs or complaints arose out of one and the same incident and had same cause of action. Complaints were worded in identical terms. Even language, content and sequencing of paragraphs and their numbering were identical. Therefore subsequent FIRs were an abuse of process of law and are quashed. (Para 31)

Ed. : Quashing of those FIRs would not amount to expression of any opinion by Supreme Court on merits of the main FIR.

Constitution of India, 1950

Articles 19(1)(a), 14, 32 - Whether multiple FIRs filed against petitioner (journalist) in different States on basis of same cause of action can be quashed in exercise of power under Article 32. Held, yes. Article 32 recognises the constitutional duty of Supreme Court to protect fundamental rights of citizens. Filing of multiple complaints in multiple states and jurisdictions bearing same foundation has a stifling effect on petitioner's right to speech and expression guaranteed under Article 19(1)(a) and to fair treatment guaranteed by Article 14. This also adversely affects the freedom of a citizen to know of the affairs of the nation and the right of a journalist to ensure an informed society. Though exercise of fundamental right is subject to restrictions but State must ensure least restrictive measure to achieve its aim. In present case, subjecting a journalist to multiple complaints and requiring him to pursue remedies before different High Courts is not the least restrictive method of prosecuting crime. This would result in multiplicity of proceedings and cause unnecessary harassment. Therefore, intervention of Supreme Court is warranted. Except main FIR, all other FIRs quashed. Main FIR would survive as petitioner is not immune from investigation. A balance has to be drawn between exercise of fundamental right under Article 19(1)(a) and investigation of an offence under CrPC.

HELD
Article 32 of the Constitution constitutes a recognition of the constitutional duty entrusted to this Court to protect the fundamental rights of citizens. The exercise of journalistic freedom lies at the core of speech and expression protected by Article 19(1)(a). The petitioner is a media journalist. The airing of views on television shows which he hosts is in the exercise of his fundamental right to speech and expression under Article 19(1)(a). India's freedoms will rest safe as long as journalists can speak to power without being chilled by a threat of reprisal. The exercise of that fundamental right is not absolute and is answerable to the legal regime enacted with reference to the provisions of Article 19(2). But to allow a journalist to be subjected to multiple complaints and to the pursuit of remedies traversing multiple states and jurisdictions when faced with successive FIRs and complaints bearing the same foundation has a stifling effect on the exercise of that freedom. This will effectively destroy the freedom of the citizen to know of the affairs of governance in the nation and the right of the journalist to ensure an informed society. Our decisions hold that the right of a journalist under Article 19(1)(a) is no higher than the right of the citizen to speak and express. But we must as a society never forget that one cannot exist without the other. Free citizens cannot exist when the news media is chained to adhere to one position. (Para 32)

A litany of our decisions – to refer to them individually would be a parade of the familiar – has firmly established that any reasonable restriction on fundamental rights must comport with the proportionality standard, of which one component is that the measure adopted must be the least restrictive measure to effectively achieve the legitimate state aim. Subjecting an individual to numerous proceedings arising in different jurisdictions on the basis of the same cause of action cannot be accepted as the least restrictive and effective method of achieving the legitimate state aim in prosecuting crime. The manner in which the petitioner has been subjected to numerous FIRs in several States, besides the Union Territories of Jammu and Kashmir on the basis of identical allegations arising out of the same television show would leave no manner of doubt that the intervention of this Court is necessary to protect the rights of the petitioner as a citizen and as a journalist to fair treatment (guaranteed by Article 14) and the liberty to conduct an independent portrayal of views. In such a situation to require the petitioner to approach the respective High Courts having jurisdiction for quashing would result into a multiplicity of proceedings and unnecessary harassment to the petitioner, who is a journalist. (Para 33)

The issue concerning the registration of numerous FIRs and complaints covering different states is however, as we will explain, distinct from the investigation which arises from FIR 164 of 2020 at NM Joshi Marg Police Station in Mumbai. The petitioner, in the exercise of his right under Article 19(1)(a), is not immune from an investigation into the FIR which has been transferred from Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai. This balance has to be drawn between the exercise of a fundamental right under Article 19(1)(a) and the investigation for an offence under the CrPC. All other FIRs in respect of the same incident constitute a clear abuse of process and must be quashed. (Para 34)

Constitution of India, 1950

Article 32 - Criminal Procedure Code, 1973, Section 482 - Quashing of FIR - Whether main FIR against petitioner can be quashed in exercise of power under Article 32. Held, no. Whether allegations in FIR make out any offence or not so as to quash an FIR cannot be decided in exercise of jurisdiction under Article 32. Despite liberty being granted to petitioner vide interim order dt. 24.4.2020 passed by Supreme Court, he did not pursue available legal remedies. He had an equally efficacious remedy available before High Court under Section 482. There was no exceptional reason to by-pass that procedure. But he chose to invoke jurisdiction of Supreme Court by filing petition under Article 32. Therefore, Court declined to entertain his petition for relief of quashing the main FIR. He is relegated to avail remedies available under CrPC before competent court including High Court. Protection granted to him under interim order dt. 24.4.2020 against coercive steps to continue for three weeks, in view of Covid 19 outbreak. (Para 49)

Ed.: Court held that although petition under Article 32 was maintainable it could not be entertained.

Constitution of India, 1950

Article 32 - Criminal Procedure Code, 1973, Section 482 - Quashing of FIR lodged at Pydhonie Police Station (FIR 137 of 2020 dated 2.5.2020) - Secretary of Raza Educational Welfare Society had filed said FIR stating that petitioner made certain statements in a programme broadcasted on R Bharat that people belonging to Muslim religion were responsible for the spread of Covid-19. Held, FIR cannot be quashed as there is no basis for exercise of jurisdiction under Article 32.  Petitioner is at liberty to pursue his available legal remedies. (Para 52)

TRANSFER OF INVESTIGATION TO CBI

Transfer of investigation to CBI - Governing principles. Held, power to transfer investigation to CBI is an “extraordinary power” to be used “sparingly” and in rare and exceptional circumstances. Mere allegations against police will not constitute sufficient basis for transfer of investigation. Court must consider whether such transfer is imperative to retain public confidence in the impartial working of the State agencies. Accused “does not have a say in the matter of appointment of investigating agency. Routine transfers would belie public confidence in the normal course of law. State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal [JT 2010 (2) SC 352], K V Rajendran's case [JT 2013 (12) SC 37] and Romila Thapar's case [JT 2018 (10) SC 442] referred. (Paras 36-38, 44)

Transfer of investigation to CBI, sought on the ground of length of investigation and nature of questions addressed to petitioner and Chief Financial Officer [CFO] during the interrogation. Held, submission cannot be accepted. Accused has no say in matter of investigation.  The line of interrogation either of petitioner or CFO cannot be controlled or dictated by the persons under investigation/interrogation. It is the investigating agency which is entitled to determine the nature of questions and period of questioning.

HELD
This Court [in P Chidambaram's case] held that so long as the investigation does not violate any provision of law, the investigation agency is vested with the discretion in directing the course of investigation, which includes determining the nature of the questions and the manner of interrogation. In adopting this view, this Court relied upon its earlier decisions in State of Bihar v. P P Sharma [JT 1991 (2) SC 147] and Dukhishyam Benupani, Asst. Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria [JT 1997 (9) SC 379] in which it was held that the investigating agency is entitled to decide “the venue, the timings and the questions and the manner of putting such questions” during the course of the investigation. (Para 39.1)

The contention of the petitioner that the length of the investigation or the nature of the questions addressed to him and the CFO during the interrogation must weigh in transferring the investigation cannot be accepted. The investigating agency is entitled to determine the nature of the questions and the period of questioning. The Petitioner was summoned for investigation on one day. (Para 41)

Transfer of investigation to CBI, sought - Ground of conflict of interest - Various FIRs registered against petitioner for telecast of a programme on 21.4.2020 in which he criticized the investigation by State Government in Palghar incident - Whether his criticism of the State government would cause a conflict of interest and hence matter should be transferred from Maharashtra police to CBI. Held, no. Firstly, investigation of Palghar incident is beyond the territorial jurisdiction of Mumbai police. Secondly, it was on the consent and request of petitioner that FIR was transferred from the Police Station in Nagpur City to Police Station in Mumbai.

HELD
Furthermore, the allegation of the Petitioner that there is a conflict of interest arising out of the criticism by him of the alleged failure of the State government to adequately probe the incident at Palghar is not valid. The investigation of the Palghar incident is beyond the territorial jurisdiction of the Mumbai police. (Para 41)

The petitioner requested for and consented to the transfer of the investigation of the FIR from the Police Station Sadar, District Nagpur City to the NM Joshi Marg Police Station in Mumbai. He did so because an earlier FIR lodged by him at that police station was under investigation. The petitioner now seeks to preempt an investigation by the Mumbai police. The basis on which the petitioner seeks to achieve this is untenable. (Para 39)

Transfer of investigation from Mumbai police to CBI, sought - Ground of allegations leveled by petitioner against Commissioner of Police, Mumbai in course of a television programme. Relying upon ratio in CPDR, West Bengal's case, held, that no transfer of investigation can be ordered merely because a party has levelled some allegations against the local police. Hence, the ground taken is not sufficient for transferring investigation to CBI. Reliance was also placed on an interview given by complainant [Cabinet Minister in the Maharashtra government] to a representative of R Bharat targeting petitioner for airing his views. This also does not furnish a valid basis in law for an inference that the investigation was tainted and needs to be transferred to CBI. On the other hand investigating agency has placed material on record to show attempt by petitioner to discredit the investigation by taking recourse to social media and by utilizing the news channels which he operates. To accept the tweets by petitioner and interview by the complainant as a justification to displace a lawfully constituted investigation agency of its jurisdiction and duty to investigate would have far-reaching consequences for the federal structure. (Paras 42-43)

Criminal Procedure Code, 1973 Section 199(6) - Criminal defamation - Whether an FIR can be filed for the offence. Held, no. Neither can an FIR be filed nor any direction can be issued under Section 156(3) CrPC [Subramanian Swamy's case [JT 2016 (6) SC 41] referred]. It is only a complaint which can be instituted by the aggrieved person. In this case, counsel for State of Maharashtra has fairly stated that the main FIR under investigation against petitioner does not and cannot cover any alleged act of criminal defamation.

HELD
In view of the clear legal position, Mr. Kapil Sibal, learned Senior Counsel appearing on behalf of the State of Maharashtra has fairly stated that the FIR which is under investigation at the NM Joshi Marg Police Station in Mumbai does not and cannot cover any alleged act of criminal defamation. We will clarify this in our final directions. (Para 47)

(iv) In view of the law laid down by this Court in Subramanian Swamy, we clarify that the above FIR does not cover the offence of criminal defamation under Section 499 of the IPC which offence will not form the subject matter of the investigation. Hence, it is not necessary to address the prayer for dealing with the constitutional challenge to the validity of the said provision in these proceedings; (Para 53(iv))

Arnab Ranjan Goswami

v.
Union of India & Ors.

Dr Dhananjaya Y Chandrachud, M R Shah JJ.