

Atir vs State Of Nct Delhi on 1 September, 2021

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Date of decision: 01st September, 2021

IN THE MATTER OF:
+ CRL.M.C. 1197/2021 & CRL.M.A. 6104/2021
ATIR Petitioner
Through: Ms. Tara Narula, Ms. Nupur and
Ms. Aparajita Sinha, Advocates.
versus
STATE OF NCT DELHI Respondents
Through: Mr. Anuj Handa, SPP with Mr.
Sarang Shekhar, Advocate.

+ CRL.M.C. 1198/2021 & CRL.M.A. 6106/2021
ATIR Petitioner
Through: Ms. Tara Narula, Ms. Nupur and
Ms. Aparajita Sinha, Advocates.
versus
STATE OF NCT DELHI & ANR. Respondents
Through Mr. Anuj Handa, SPP with Mr.
Sarang Shekhar, Advocate.

+ CRL.M.C. 1230/2021 & CRL.M.A. 6231/2021
ATIR Petitioner
Through: Ms. Tara Narula, Ms. Nupur and
Ms. Aparajita Sinha, Advocates.
versus
STATE OF NCT DELHI Respondents
Through: Mr. Anuj Handa, SPP with Mr.
Sarang Shekhar, Advocate.

+ CRL.M.C. 1233/2021 & CRL.M.A. 6242/2021
ATIR Petitioner

CRL.M.C. 1197/2021 & ORS. Page 1 of 12
Through: Ms. Tara Narula, Ms. Nupur and
Ms. Aparajita Sinha, Advocates.
versus
STATE OF NCT DELHI Respondent
Through: Mr. Anuj Handa, SPP with Mr.
Sarang Shekhar, Advocate.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. CRL.M.C. 1197/2021 has been filed for quashing FIR No. 112/2020, dated 02.03.2020, registered at Police Station Jaffrabad for offences under [Sections 147, 148, 149, 436](#) and [34](#) IPC and [Sections 3/4](#) of the Prevention of Damage to Public Property Act, 1984 (hereinafter referred to as 'the PDPP Act') and subsequent charge-sheet dated 07.05.2020 registered as CR Case No. 2039/2020 and committed as SC No.71/2021 and summoning orders dated 08.05.2020, 28.10.2020, 10.11.2020, 19.11.2020, 03.12.2020, 18.12.2020, 12.01.2020 in CR Case No. 2039/2020 and orders dated 10.02.2020, 10.03.2021 passed in SC No.71/2021.

2. CRL.M.C. 1198/2021 has been filed for quashing FIR No. 132/2020, dated 05.03.2020, registered at Police Station Jaffrabad for offences under [Sections 147, 148, 149, 436, 480](#) and [34](#) IPC and subsequent charge-sheet registered at CR. Cases No.1664/2020 and summoning order dated 29.01.2021.

3. CRL.M.C. 1230/2021 has been filed for quashing FIR No. 107/2020, dated 01.03.2020, registered at Police Station Jaffrabad for offences under [Sections 147, 148, 149, 436](#) and [34](#) IPC and subsequent charge-sheet dated 07.05.2020 and supplementary Charge-sheet dated 02.12.2020 registered as CR. Cases No.2949/2020 and committed as SC No.102/2021 and summoning orders dated 08.05.2020, 05.10.2020, 05.11.2020, 18.11.2020, 01.12.2020, 14.12.2020, 24.12.2020, 06.01.2021, 19.01.2021, 02.02.2021, 16.02.2021 in CR Cases No. 2949/2020 and orders dated 02.03.2021 and 16.03.2021 passed in SC No.102/2021.

4. CRL.M.C. 1233/2021 has been filed for quashing FIR No. 113/2020, dated 02.03.2020, registered at Police Station Jaffrabad for offences under [Sections 147, 148, 149, 436](#) and [34](#) IPC and Sections 3/4 of the Prevention of PDPP Act and subsequent charge-sheet dated 07.05.2020 registered as CR. Cases No.2043/2020 and committed as SC No.49/2021 and summoning orders dated 08.05.2020, 22.05.2020, 15.10.2020, 18.11.2020, 28.11.2020, 14.12.2020, 24.12.2020, 06.01.2021, 19.01.2020 in CR Cases No. 2043/2020 and orders dated 02.02.2021, 11.02.2021, 24.02.2021 and 10.03.2021 passed in SC No.49/2021.

5. The main facts as mentioned in FIR No. 106/2020 is that a complaint of arson in house No. T-209B, main road Maujpur Area, near Victor Public School, Maujpur, Delhi. It was stated by the complainant that he reached his house in the evening from work and saw his house was set on fire. It stated that a Fire Brigade bearing number '926225' was called to the site and the fire was doused, it states the articles in the house valued at Rs.7-10 lakhs rupees was charred in the fire. It stated further that the accused were not known to the complainant.

6. The facts stated in FIR No.107/2020 are that the complainant reached his home, T-209B, main road Maujpur Area, near Victor Public School, Maujpur, Delhi, on the evening of 24.02.2020 and saw that his house was set ablaze it was stated that damage of worth Rs.7-10 Lakhs was caused in the fire. It was mentioned that a fire brigade truck bearing No. 926225 was called to douse the fire. It is further stated that the complainant did not know the culprits who were responsible for the arson.

7. FIR No.112/2020 was filed on 02.03.2020 at 2:36 PM, at Police Station Jaffarabad. The complainant therein, resident of T-210, Main Road, Maujpur, Near Victor Public School, stated that on the morning of 25.02.2020 at 10:00 AM he reached his home and saw his house burning in the fire. The complainant estimated the damage caused as between Rs.8-12 Lakhs. It was also mentioned that the complainant did not know who the mischief makers were who started the fire.

8. FIR No.113/2020 was filed on 02.03.2020 at 2:45 PM at Police Station Jaffarabad. The complainant herein stated that on 25.02.2020, at 10 AM he reached his residence - T-209, Main Road, Maujpur, Near Victor Public School, and saw that his house had largely been burnt down and was still burning. He states that fire brigade truck bearing No. 926225 was dousing the fire. It is stated that an estimated loss of Rs.8-12 Lakhs has been caused and he did not know and could not specifically identify the accused who were responsible for the arson.

9. FIR No.132/2020 was filed on 05.03.2020 at 4:20 PM at Police Station Jaffarabad. The complainant who is a fruit seller at Gali No.7, B Block, Kardampuri, Vistar Delhi, North East Delhi, he is also a tenant at T- 209, Main Road Maujpur, near Victor Public School, he states that on 25.02.2020 a mob entered his godown and pilfered the stock of fruits amounting to Rs.2 Lakhs along with four batteries and handcarts. It is further stated that the premises was burnt down by the rioting mob.

10. Ms. Tara Narula, learned counsel appearing for the petitioner, contends that all the five FIRs are in respect of one unit i.e. T-209B, Main Road, Maujpur, Near Victor Public School. It was argued by her that FIR Nos.106/2020, 107/2020, 112/2020, 113/2020 have been filed by different members of the same family, she submits that the fire brigade which extinguished the inferno was by the same truck bearing unique No. 926225. She further contends that the consecutive FIRs could not have been filed in respect of the same offence and it directly comes in the teeth of the principles laid down in the case of [TT Antony V. State of Kerala](#), 2001 6 SCC 181, which states that more than one FIR cannot be registered for one offence.

11. Per Contra, Mr. Anuj Handa, learned SPP appearing for the State, submits at the very outset that this petition is ill-conceived and deserves a summary dismissal. He further submits that all the five FIRs- 106/2020, 107/2020, 112/2020, 113/2020 and 132/2020 have been filed in respect of distinct properties and the subject matter of each of the FIRs is different from the others. In support of this contention the learned APP has relied on a site map which, according to him, demonstrates that each incident of arson in respective FIRs is in respect of distinct properties and the damages borne has been incurred by residents of the burnt premises have been individually suffered. It is further submitted by the learned SPP that the complainant in FIR No.132/2020 is a costermonger and was not residing at T-209-B Maujpur Area, near Victor Public School, but had a warehouse in the same premises and his goods had been stolen by rioters and the premises was burnt.

12. Heard Ms. Tara Narula, learned counsel for the petitioner, and Mr. Anuj Handa, learned SPP appearing for the State and perused the material on record.

13. All the aforementioned FIRs are registered with respect to a incident of fire that was stoked in single dwelling i.e. T-209-B Maujpur Area, near Victor Public School. All the above FIR's are identical in their content and more or less a facsimile of one another and pertain to the same occurrence. They all pertain to one house where fire was started mischievously and spread to immediate neighboring premises as well as floors of the same house. All the FIR's state that the incident took place a single date i.e. 24.2.2020. All the FIR's state that monetary loss was caused to each of the complainants residing in parts of the buildings in the same compound and in the immediate neighborhood as their belongings and other valuables had been burnt down. Lalit Kumar, the complainant in FIR No.113/2020, has stated that the premises was his ancestral property and had been divided into four portions pursuant to a family arrangement.

14. The abovementioned FIR's state that the arson was extinguished by the same Fire Brigade bearing unique number- 926225. Furthermore the charge-sheet containing the site plan shows that all the properties are part of the same premises or they are in very close proximity with one another.

15. A careful perusal of the site map of the incident, reproduced hereinabove, shows that on 24.02.2020, a mob entered the compound where the properties are situated, ransacked it and set it ablaze. It may be so that the properties are different or distinct from one another but are located in one compound. It is also to be noted that most of the houses in the said compound belong to the same family and were owned by different members of the family after being divided by their forefathers.

16. In [T.T. Antony v. State of Kerala](#), 2001 6 SCC 181, the Supreme Court has held -

"27.A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court. There cannot be any controversy that sub-section (8) of [Section 173](#) Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narangs' case (supra) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under [Section 173\(2\)](#) Cr.P.C. It would clearly be beyond the purview of [Sections 154](#) and [156](#) Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. 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 offence 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 underway 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.P.C. or under [Article 226/227](#) of the Constitution." (emphasis supplied)

17. In [Babubhai V. State of Gujarat](#), (2010) 12 SCC 254, the Supreme Court held as under:

" 14. The investigating agency has to proceed only on the information about the commission of a cognizable offence which is first entered in the police station diary by the officer in charge under [Section 158](#) of the Code of Criminal Procedure, 1973 and all other subsequent information would be covered by [Section 162](#) would be covered by [Section 162](#) CrPC for the reason that it is the duty of the investigating officer is not merely to investigate 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 the investigating officer has to file one or more reports under [Section 173](#) CrPC. Even after submission the report under [Section 173\(2\)](#) CrPC, if the investigating officer comes across any further information pertaining to the same incident, he can make further investigation but it is desirable that he must take leave of the court and forward further evidence, if any, with further report or reports under [Section 173\(8\)](#) CrPC. In case the officer receives more than one piece of information in respect of the same incident involving one or more than one cognizable offences such

information cannot properly be treated as an FIR as it would in effect, be a second FIR and the same is not in conformity with the scheme of the CrPC."

(emphasis supplied)

18. In *Anju Chaudhary V. State of U.P.*, (2013) 6 SCC 384, the Supreme Court held as under:

"14. On a plain construction of the language and scheme of Sections 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognizable offence shall be reduced into writing by the officer-in-charge of a police station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. It will thus be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are different, or even where subsequent crime is of the magnitude that it does not fall within the ambit and scope of the FIR first recorded, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of Section 154 of the Code. These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by investigating authority of the Police. Therefore, second FIR for the same incident cannot be registered. Ofcourse, the investigating agency has no determinative right. It is only a right to investigate in accordance with the provisions of the code. The filing of report upon completion of investigation, either for cancellation or alleging commission of an offence, is a matter which once filed before the court of competent jurisdiction attains a kind of finality as far as the police is concerned, maybe in a given case, subject to the right of further investigation, but wherever the investigation has been completed and a person is found to be prima facie guilty of committing the offence or otherwise, re-examination by the investigation agency on its own should not be permitted merely by registering another FIR with regard to the same offence. If such protection is not given to a suspect, then possibility of abuse of investigating powers by the police cannot be ruled out. It is with this intention in mind that such interpretation should be given to Section 154 of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, re-investigation or de novo investigation is beyond the competence of only the investigating agency but even that of the learned Magistrate. The Courts have taken this view primarily for the reason that it would be opposed to the scheme of the Code and more particularly Section 167(2) of the Code.

45. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same

transaction. Such things are to be gathered from the circumstances of a given case indicating unity or proximity of time, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge out of different circumstances, it would not be possible for the court to take a view that they form a part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be a common trial." (emphasis supplied)

19. The law on the subject has been settled keeping in line with the principles enunciated by the Supreme Court of India. There can be no second FIR and no fresh investigation in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences.

20. As stated above, the places which have been set on fire, looted are all in the same compound and are all enclosed in one boundary wall. There might be discrepancy regarding the width of the passage within the same compound or the exact place where the fire was set but both sides agree that it is within one compound. The complainant in FIR No.113/2020 himself has stated that the property is an ancestral property which has been sub- divided pursuant to a family arrangement. The entire incident has occurred when the mob entered the compound and set fire at different places within the same compound. Same truck bearing unique No.926225 came to the spot to douse the fire. It, therefore, cannot be said that there are five separate incidents and, therefore, five separate FIRs cannot be registered for the very same incident as it is contrary to the laws laid down by the Supreme Court. It cannot be said that the incidents were separate or the offences are different. As stated earlier, a perusal of the charge-sheets filed in the respective FIRs show that they are more or less identical and the accused are also same. However, if there is any material that has been found against the accused the same can be placed on record in FIR No.106/2020.

21. In view of the said principles and precedents, save FIR No. 106/2020 registered on 01.03.2020 at Police Station Jaffrabad, FIR No. 107/2020, FIR No.112/2020, FIR No. 113/2020 and FIR No.132/2020 all registered at Police Station Jaffrabad and all proceedings emanating therefrom are hereby quashed and set aside.

22. Accordingly, the petitions are disposed of along with the pending application(s).

SUBRAMONIUM PRASAD, J.

SEPTEMBER 01, 2021 Rahul