

**HIGH COURT OF TRIPURA**  
**AGARTALA**

WP(C) No.407/2020

Smt. Lipika Choudhury,  
D/o Late Usha Ranjon Choudhury,  
resident of Joynagar Lane No.7, Agartala,  
P.O. Agartala, West Tripura.

..... *Petitioner(s)*.

Vs.

1. State of Tripura,  
represented by the Secretary to the Govt. of Tripura  
in the Home Department. Government of Tripura.  
Having its office at New Capital Complex, P.O. Kunjaban,  
Agartala and District – West Tripura.
2. Director General of Police, Government of Tripura.  
Having its office at Akhuara Road, Agartala, P.O. Agartala,  
District – West Tripura.
3. Superintendent of Police, West Tripura District, Agartala.  
Having its office at Akhuara Road, Agartala, P.O. Agartala,  
District – West Tripura.
4. Officer-in-Charge, West Agartala Police Station,  
Government of Tripura.  
Having its office at Post Office Choumohani,  
Agartala, West Tripura, Pin – 799 001.

..... *Respondent(s)*.

**B E F O R E**

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**

For Petitioner(s) : Mr. T D Majumder, Advocate.

For Respondent(s) : Mr. A K Bhowmik, Advocate General,  
Mr. Debalaya Bhattacharjee, Govt. Advocate.

Date of hearing & Judgment : 20<sup>th</sup> August, 2020.

**JUDGMENT (O R A L)**

Heard learned counsel for the parties for final disposal of the petition.

[2] Petitioner appears to be a member of a political organization. By her own account she had participated in a demonstration organized by one Ganatantrik Nari Samiti, a wing of a political organization on 1<sup>st</sup> June, 2020 at H. G. Basak road near Melarmath Kalibari. According to her, when she was part of a group of other persons participating in demonstration, at around 10.30 in the morning the police party arrived at the street which consisted of 2(two) police women both carrying common name of Mina Debbarma but of different ranks besides other police personnel. According to the petitioner, she was assaulted and treated roughly without any reason or provocation by the said police personnel. The petitioner and other workers were arrested. For the said incident the petitioner lodged a complaint before the West Agartala Police Station on 1<sup>st</sup> June 2020, translated version of which reads as under :

“ Sub : Ejahar.

Sir,

Humble submission is that today as on 1.6.2020 at about 10.30 AM while myself, a member of Ganatantrik Nari Samitee has been standing at Melarmath Kalibari with a view join a peaceful protest programme organized by Ganatantrik Nari

Samitee against continuous persecution of women maintaining social distancing and abiding by other rules and regulation of lock down, the O.C. West Agartala Women Police Station, Smt. Mina Debbarma and Smt. Mina Debbarma, Superior Police Officer suddenly appeared near me and dashed me into road without any provocation. When I rise in any way they came and pulled me into Police Bus and caused life endangering attack on me. At that time my leaders and workers saved me from them, otherwise they would have murdered me. Due to sudden attack I suffered bodily pain all over body and injury on left hand. During treatment at IGM Hospital it was detected fracture on left hand and swelling. I am under treatment and being busy with my treatment a little delay in reporting the incident to you.

There are photographs of assault of those police officers and prosecution with me. If necessary those will be shown.

I pray to book those police official for showing unlawful force on me and causing assault on me.

Yours faithfully,

-Sd-

( Lipika Chudhury )”

[3] On the following day i.e. on 2<sup>nd</sup> June 2020, the petitioner made a similar complaint to the Superintendent of Police, West Tripura which reads as under :

“Subject : Prayer for accepting FIR and taking necessary action.

Sir,

This is to draw your kind attention to the following for taking necessary action that I came to take part in a peaceful demonstration called by the All India Democratic Women Association at Melarmath, Agartala on June 1, 2020 against atrocities on women. But without any sort of provocation the OC of west Agartala Women P.S. Smti Mena Debbarma and another women police officer (SDPO) Mina Debbarma have hit and felled me down on the road. After a while when I stood up those police officers again came forward and launched attack to kill me. Other woman's leaders not rescued me; I could have been killed there. I got seriously injured and treated in hospital.

After that attack I went to the police station to file on FIR but despite making me sit there for long time the police station authority denied to receive my FIR. Under this circumstance, I do request you to accept my FIR attached here with this prayer.

Therefore, I hope you would take appropriate action against this sort of inhuman attack on me by the responsible police personnel.

Yours sincerely

Date – 2 June, 2020.

-Sd-

( Lipika Choudhury )”

[4] Despite such written complaints, the police authorities did not register an FIR on the basis of allegations made by the petitioner in the said complaints. The petitioner, therefore, filed this petition in which she has prayed for a direction to the respondents No.3 and 4 i.e. Superintendent of

Police, West Tripura and Officer-in-Charge, West Agartala Police Station for registering her complaint dated 1<sup>st</sup> June, 2020 (*a copy of which is produced at Annexure – 1*) as an FIR and to start investigation into the allegations made therein.

[5] The respondents have appeared. An affidavit-in-reply has been filed by one Sri Arup Deb, Deputy Secretary to the Government of Tripura, Home Department dated 16<sup>th</sup> July, 2020 in which the stand taken with respect to the incident in question and the petitioner's complaint is as under :

“6. That, with respect to paragraph – 3, I say that on 01/06/2020 at around 1031 hrs an information was received at West Agartala PS that there has been a gathering of women in front of CPIM party office (Bhanu Ghosh Smriti Bhavan), at Melarmath with placards and festoons on the issue of crime against women. There was no prior permission for any such gathering from the competent authority. Accordingly WSI Mina Debbarma, OC West Agartala Women PS, Mina Kumari Debbarma, Dy. SP(West) and other women police staff reached at the spot. Executive Magistrates Smti Rinku Malsoy Reang and Smti Binki Saha also went there on the basis of above noted information.

At around 1100 hrs, a gathering of about 40/45 women agitators came out on the road from CPIM party office in an aggressive mood with placards and festoons. It may be mentioned that the gathering was made in violation of social distancing as notified by the Central and State Government

time to time in connection with COVID 19. On being asked, they failed to show any permission letter from conducting such gathering. As such, the OC West Agartala PS and women staff tried to disperse the gathering in lawful manner but the gathering turned violent and started shouting slogans and blocked the public road. On seeing this, the Executive Magistrate tried to pursue them to disperse but they did not comply with the lawful orders given by police in presence of the Executive Magistrate.

Copy of letter dated 30.05.2020 issued by the Ministry of Home Affairs along with the guideline is annexed herewith and marked as Annexure –R/1.

Moreover, they attacked and physically assaulted the police personnel on duty. The following persons were identified among the agitators 1) Smt. Lipika Chowdhury, 2) Smt. Jharna Das Baidya, 3) Smt. Krishna Rakshit, 4) Smt. Jhalak Mukharjee and 5) Smt. Chaya Bal. They attacked upon police personnel with blows of fist & placards due to which OC West Agartala Women PS and Dy.SP West Mina Kumari Debbarma suffered injuries to their person and had to attend medical care and attention from IGM Hospital. Subsequently, in this connection, the O/C West Agartala Women PS, WSI Mina Debbarma submitted an FIR in the West Agartala PS on 01-06-2020 and accordingly an FIR was registered vide West Agartala PS Case No.2020WAG085, dated 01-06-2020, U/s 353/270/332/34 IPC.

7. That, with respect to paragraphs – 4, 5, 8 & 9, it is not fact that police is not looking into the complaint of the petitioner. As stated in para No.6, a case vide

No.2020WAG085, dated 01-06-2020, U/s 353/270/332/34 IPC was registered in connection with the same incident on the same day i.e. on 01/06/2020 on the complaint of O/C West Agartala Women PS, WSI Mina Debbarma. Therefore, the complaint of Smt. Lipika Choudhury has been tagged with the above mentioned FIR for investigation. Investigation of the case is in progress.”

[6] Appearing for the petitioner, learned counsel Mr. T D Majumder submitted that the petitioner had filed a complaint disclosing commission of cognizable offences. It was, therefore, incumbent upon the respondent No.4 to register the same as an FIR in terms of Section 154 of the Criminal Procedure Code and to carry out the investigation. In this context he relied on a decision of the Supreme Court in case of *Lalita Kumari Vs. Govt. of Uttar Pradesh and Ors.* reported in (2014) 2 SCC 1. He submitted that at this stage the correctness or otherwise of the allegations made in the complaint cannot be gone into. The only duty of the Officer-in-Charge of the concerned Police Station is to register an FIR and to start the investigation. He submitted that the stand taken by the respondents in the affidavit-in-reply is not in consonance with the correct legal position. The fact that an FIR has been lodged against the petitioner and other co-demonstrators would not be a ground for not independently registering the complaint of the petitioner as an FIR. Firstly, the petitioner's complaint was first in point of time. Secondly,

the formal FIR against the petitioner, which is referred to by the respondents in the affidavit-in-reply, is in a nature of counter-complaint. This would not permit the authorities to refuse to register the petitioner's FIR.

[7] On the other hand, learned Advocate General opposed the petition contending that the petitioner and other members of the organization had assembled and carried out demonstrations without permission from the competent authority and in defiance of the guidelines of the Government of India to control Corona virus spread. The police authorities, therefore, had to intervene to stop such illegal activities. This was done in presence of Executive Magistrates. In fact, for such illegal acts, the respondents have already registered an FIR against the petitioner and others for offences punishable under Sections 353, 270, 332 read with Section 34 of IPC on 1<sup>st</sup> June, 2020 itself. He did not admit that the complaint made by the petitioner was first in point of time.

[8] Learned Advocate General submitted that having registered the FIR against the petitioner it is not necessary to entertain the petitioner's complaint separately. The allegations of the petitioner would be inquired into when the police authorities investigate the FIR already registered before the West Tripura Police Station.



[9] Learned Advocate General vehemently contended that the complaint of the petitioner (Annexure - 1) did not disclose commission of a cognizable offence. It was, therefore, not necessary to register it as an FIR in terms of Section 154 of Cr.P.C and as elaborated by the Supreme Court in case of *Lalita Kumari*(*supra*). In this context my attention was drawn to paragraph 120 of the said judgment in which certain principles for registering an FIR have been laid down.

[10] At the outset I may make it clear that it is neither possible nor necessary for me to go into correctness or otherwise of the allegations and the counter-allegations. As noted, according to the authorities, the petitioner and other members of a political organisation had assembled unlawfully, without permission from the competent authority. They were carrying out demonstrations defying the guidelines of the Home Department of Government of India issued in order to control the spread of Corona virus. For such acts an FIR has already been registered against the petitioner and other co-accused before the West Tripura Police Station on 1<sup>st</sup> June, 2020 in which allegations are of having committed offences punishable under Sections 353, 270, 332 read with Section 34 IPC. On the other hand, the case of the petitioner is that she and other co-workers were carrying out peaceful demonstration when without any reason or provocation the police authorities

arrived and assaulted the petitioner causing fracture injury. A complaint to that effect was made to the concerned police station on 1<sup>st</sup> June, 2020 itself.

[11] The respondents in their affidavit as well as during the course of arguments through their advocate have raised three grounds for refusing to register the said FIR. In the reply, two of these grounds are projected which are:

(i) That it is the petitioner herself is facing allegations for which an FIR is registered and in which investigation is going on. Thus, the petitioner is the accused and the police authorities merely acted within the legal authority and duty. Thus, according to the respondents, this is not a case where the petitioner's allegations should be investigated.

(ii) That investigation in connection with the FIR dated 1<sup>st</sup> June, 2020 lodged against the petitioner and others is already undertaken. The complaint of the petitioner (Annexure – 1) is tagged along with her FIR for investigation.

[12] The third objection raised by the respondents was through oral submissions of the learned Advocate General. Though no such ground is taken in the reply statement, it was vehemently argued by the learned Advocate General that the complaint of the petitioner does not disclose commission of a cognizable offence at all.

[13] I may deal with all these objections one by one. Insofar as the factual assertions of the respondents are concerned, it cannot be a matter of inquiry before this Court at this stage, nor can be a valid ground for refusing to register an FIR if other legal requirements are satisfied. The respondents cannot pre-judge the issue by contending that the petitioner being the accused and an offender, cannot maintain an FIR and whatever the allegations made by the petitioner, would not require investigation after registering an FIR. This would amount to *putting the cart before the horse* and certainly is not a valid ground for refusing to grant the prayer of the petitioner.

[14] The contention that an FIR containing allegations of commission of offences by the petitioner and other co-accused is already registered and that therefore, tagging the complaint of the petitioner along with the said investigation is sufficient, also does not appeal to me. It is not the case of the respondents that the complaint of the petitioner relates to the same incident and that therefore, as per settled law, second FIR is not maintainable. The case of the respondents is that since arising out of the same incident one FIR is already registered, even if the case of the petitioner is in the nature of a counter-complaint, it would be sufficient if such a complaint is tagged with the registered FIR. To my understanding, there is no such procedure under the Criminal Procedure Code where a complaint in the nature of a counter-

case can be tagged along with a pending FIR. When the petitioner has made a set of independent allegations against some of the police authorities, if such complaint *prima facie* discloses commission of a cognizable offence, as held by the Supreme Court in case of **Lalita Kumari** (*supra*), the same must be registered as an FIR and investigated into. In case of **Lalita Kumari** (*supra*), in this context, it has been observed and held as under :

“ \* \* \*

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.”

[15] The law on registering a counter-complaint arising out of the same incident is sufficiently clear through series of judgments of the Supreme Court, a reference to only some of them would be sufficient.

[16] In case of *Upkar Singh Vs. Ved Prakash and Ors.* reported in (2004) 13 SCC 292 it was held and observed as under :

“23. Be that as it may, if the law laid down by this Court in T.T. Antony's case<sup>1</sup> is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.

24. We have already noticed that in the T.T. Antony's case this Court did not consider the legal right of an aggrieved

person to file counterclaim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter-complaint is permissible.”

[17] Likewise in case of *P. Sreekumar Vs. State of Kerala and Ors.*, reported in (2018) 4 SCC 579 it was held and observed as under :

“24. The question, which fell for consideration before the High Court, was that if two FIRs are filed in relation to the same offence and against the same accused, whether the subsequent FIR was liable to be quashed or not.

25. The Single Judge placed reliance on three decisions of this Court in *State of Haryana & Ors. Vs. Bhajanlal*, (1992) Supp.(1) SCC 335, *Madhu Limaye Vs. State of Maharashtra*, 1977 (4) SCC 551 and *R.P. Kapur Vs. State of Punjab*, AIR 1960 SC 866 and quashed the second FIR/charge-sheet under Section 482 of the Code.

26. In our view, the High Court had committed jurisdictional error in quashing the subsequent FIR/charge-sheet, which was filed at the instance of the appellant against Respondent No.3 without adverting to the law on the subject.

27. In our opinion, the law on the subject which governs the controversy involved in the appeal is no more res integra and settled by the decision of this Court (three-Judge Bench) in *Upkar Singh Vs. Ved Prakash* and also by the subsequent decisions”

Thereafter, the Supreme Court referred to the judgment in case of *Upkar Singh*(*supra*) and further observed as under :

“29. The aforesaid principle was reiterated by this Court (two-Judge Bench) in *Surender Kaushik Vs. State of U.P. & Ors.*, (2013) 5 SCC 148 in the following words:

“24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in *Upkar Singh*, the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible.”

30. Keeping the aforesaid principle of law in mind when we examine the facts of the case at hand, we find that the second FIR filed by the appellant against Respondent No.3 though

related to the same incident for which the first FIR was filed by Respondent 2 against the appellant-respondent 3 and three Bank officials, yet the second FIR being in the nature of a counter-complaint against Respondent 3 was legally maintainable and could be entertained for being tried on its merits.”

[18] This leads the third and the last objection of the respondents argued by the learned Advocate General, that the complaint filed by the petitioner does not *prima facie* disclose commission of a cognizable offence. This objection also cannot be accepted. According to the petitioner, during the incident she was assaulted and she suffered fracture injury. This would bring the case within the fold of causing grievous hurt which is a cognizable offence.

[19] Under the circumstances, the reluctance of the respondents to register the complaint of the petitioner Annexure – 1 as an FIR is not in consonance with the correct legal position. The respondent No.4 shall register the same as an FIR and carry out investigation into the allegations made therein. It is reiterated that I have expressed no opinion about the correctness or otherwise of the allegations and counter-allegations.



Petition is disposed of accordingly. Pending application(s), if any, also stands disposed of.

**(AKIL KURESHI), CJ**

HIGH COURT OF TRIPURA



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