**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM No. M-24460 of 2017 (O&M)
Date of Decision: 17.01.2018**

Gurdeep Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Vikas Bahl, Senior Advocate with
Mr. Manbir Singh Batth, Advocate,
for the petitioner.

Ms. Jaspreet Kaur, AAG, Punjab.

TEJINDER SINGH DHINDSA, J.

Petitioner has filed instant petition under Section 482 Cr.P.C. seeking quashing of FIR No.56 dated 22.06.2012, under Sections 420, 465, 467, 471, 120-B of the Indian Penal Code (subsequently Sections 13 (1) (d) and 13 (2) of the Prevention of Corruption Act, 1988 and Sections 409 and 468 IPC having been added), registered at Police Station S.B.S. Nagar as also all subsequent proceedings emanating therefrom including the order dated 08.05.2014 (Annexure P-11) whereby charges have been framed.

It stands uncontroverted that the Senior Superintendent of Police, S.B.S. Nagar vide order dated 20.09.2011 appointed Satish Kumar Malhotra the then Deputy Superintendent of Police, Nawanshahr Sub Division, District S.B.S. Nagar as Inquiry Officer to make an inquiry as regards certain police officials of the Accounts

Branch of the Office of the Senior Superintendent of Police, S.B.S. Nagar to be in connivance with the officials of the District Treasury Officers, S.B.S.Nagar and having committed embezzlement of General Provident Fund of the police officials in crores during the period 2006-08.

Findings of the Inquiry Officer were furnished and as per which the present petitioner, namely, Gurdeep Singh Head Constable along with Head Constable Satwinder Kumar, Tirath Singh, Lal Chand (Cashier) and Head Constable Bahadur Singh were stated to have connived with the officials of the Treasury Officers, S.B.S. Nagar and prepared forged and fabricated bills by forging the signatures of the police officials in conspiracy with Narinder Kumar Babbar an official of the Treasury Office, S.B.S. Nagar (since deceased) and made illegal withdrawals from the G.P.Fund of various police officials from the G.P.Fund Account. SI Garib Dass, Head Constable Charanjit Ram and Kamal Kumar were also stated to have been involved and an embezzlement to the tune of Rs.1,40,74,350/-(Rs. One crore forty lacs seventy four thousand three hundred and fifty) was stated to have been done. On the basis of such inquiry findings FIR No.31 dated 07.05.2012, under Sections 409, 420, 465, 467, 468, 471, 120-B of the Indian Penal Code and Sections 13 (1) (d) and 13 (2) of the Prevention of Corruption Act, 1988 was registered against the present petitioner and other co-accused in Police Station City Nawanshahr.

It so transpires that subsequently upon receipt of communication dated 20.06.2012 from the Office of the Director

General of Police, Punjab and as per inquiry conducted by a Committee constituted under the supervision of Mr. G.S.Cheema, Assistant Controller and Finance & Accounts, Office of Police Commissionerate, Jalandhar an embezzlement to the tune of Rs.9,75,00,000/- (Rs. Nine Crore and Seventy Five lacs) was detected from the General Provident Fund of the police officials of District S.B.S. Nagar during the period 2005 to 2010 and even an inquiry was conducted by one Bakshish Singh the then Deputy Superintendent of Police (Detective), S.B.S. Nagar and who submitted a report and which has led to the registration of the impugned FIR i.e. FIR No.56 dated 22.06.2012 and in which the present petitioner is also one of the accused. After registration of the FIR and completion of investigation, challan was presented and even charges stand framed vide impugned order dated 08.05.2014 (Annexure P-11).

Learned State counsel would justify the registration of the second FIR on the basis that it was for a different check period i.e. from the year 2005 to 2010, the amount alleged to be embezzled being much in excess to the one mentioned in the first FIR and even the number of officials nominated as accused having increased from 09 to 16.

Having heard counsel for the parties, this Court is of the considered view that the subsequent FIR i.e. FIR No.56 dated 22.06.2012 cannot sustain.

The initial FIR i.e. FIR No.31 dated 07.05.2012 had been registered under Sections 409, 420, 465, 467, 468, 471, 120 IPC and under Section 13 (1) (d) and 13 (2) of the Prevention of Corruption Act, 1988 against the backdrop of allegations of certain police officials including the petitioner having acted in connivance with the officials of the Treasury Office and having made embezzlement from the G.P. Fund of police officials for the period 2006-2008.

Copy of FIR No.31 dated 07.05.2012 has been placed on record and appended as Annexure P-1. Perusal of the same would reveal that it was specifically recited therein that even though there is an embezzlement detected of Rs. 1,40,74,350/-(Rs. One crore forty lacs seventy four thousand three hundred and fifty) but the cheques vide which such amount was withdrawn from the Treasury Office have not been recovered nor the documents (files of G.P.Fund cases) have been recovered and upon receipt of such documents in case any evidence is found against any other officers or officials, appropriate action would be initiated.

The subsequent FIR i.e. FIR No.56 dated 22.06.2012 that is the one impugned in the instant petition is against the backdrop of the same very allegations/accusations even though the check period therein stands enlarged i.e. from 2005 to 2010. Perusal of the impugned order dated 08.05.2014 passed by the Special Judge, Nawanshahr (Annexure P-11) framing charges would reveal that an embezzlement of more than Rs.9,75,00,000/- (Rs. Nine Crores and Seventy Five lacs) is mentioned but in relation to the period of 2006-2008.

The Hon'ble Supreme Court of India in ***T.T.Antony Vs. State of Kerala, 2001 (3) R.C.R. Criminal 436*** had observed as

Under:

> "***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 Criminal Procedure Code 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 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) Criminal Procedure Code. It would clearly be beyond the purview of Sections 154 and 156 Criminal Procedure Code nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of a 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 pursuance 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 Criminal Procedure Code or under Articles 226/227 of the Constitution."***

A coordinate Bench of this Court in CRM No.19090-M of 2003 decided on 10.02.2004 had also dealt with a similar situation. One FIR therein had been registered in February, 1999 with regard to shortage of certain bags. A second FIR was lodged in July, 2002 on the basis of second verification conducted in August, 1995. This Court took notice that before the registration of the first FIR the physical verification was already conducted and as such by reliance upon the judgment of the Apex Court in ***T.T.Antony's case (supra)*** observed that both the cases are based on identical verification that there was no justification for lodging another FIR when the first FIR had already been registered. Accordingly, the second FIR registered in July, 2002 was quashed and prosecution was granted liberty to file supplementary challan in the first FIR already pending.

Adverting back to the facts of the present case, the backdrop of allegations in the subsequent FIR i.e. FIR No.56 dated 22.06.2012 the one impugned in the instant petition are the same which has led to the registration of the earlier FIR i.e. FIR No.31 dated 07.05.2012. Even the impugned order dated 08.05.2014 (Annexure P-11) would show alleged embezzlement from G.P.Fund Accounts of police officials by the accused including the petitioner and connivance with each other for the period 2006-2008. Such allegations/accusations would be very much within the realm of the first FIR i.e. FIR No.31 dated 07.05.2012.

Under such circumstances, impugned FIR cannot sustain as it is settled law that the second FIR cannot be lodged for the same very set of allegations/transactions.

Following the dictum laid down by the Apex Court in ***T.T.Antony's case (supra)***, the instant petition is allowed.

FIR No.56 dated 22.06.2012 and all subsequent proceedings arising therefrom including the order dated 08.05.2014 (Annexure P-11) framing the charges are quashed.

Liberty, however, is granted to the prosecution to file any supplementary challan as also nominate additional accused in relation to the first FIR i.e. FIR No.31 dated 07.05.2012 under Sections 420, 465, 467, 468, 471, 120-B IPC (subsequently added Section 409 IPC and Section 13(1) (d) and 13 (2) of the Prevention of Corruption Act), registered at Police Station City S.B.S. Nagar, District S.B.S. Nagar on the basis of material which has been collected during the course of further investigation and which formed the basis of registration of the impugned FIR.

Petition is allowed in the aforesaid terms.

17.01.2018 **(TEJINDER SINGH DHINDSA)**
vandana **JUDGE**

Whether speaking/reasoned Yes

Whether Reportable No