

**CRR 2439 of 2017
with
CRAN 8 of 2021
(Via video conference)**

In re : An application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 filed in connection with Khejuri Police Station Case No. 210 of 2013 dated August 19, 2013 under Section 420/468/470/471/34 of the Indian Penal Code, 1860.

In the matter of : Bidyadhar Mondal & ors.

..... Petitioners

Mr. Chittapriya Ghosh
Mr. Goutam Acharya
Mr. Kamal Singh for the Petitioners

Mr. Madhusudan Sur, Ld. APP
Mr. Monaranjan Mahato for the State

In this revisional application, the petitioners have prayed for quashing of Khejuri Police Station Case No. 210 of 2013 dated August 19, 2013, corresponding to G.R. Case No. 979 of 2013 under Sections 420/468/470/471/34 of the Indian Penal Code, 1860, pending before the learned Judicial Magistrate, 1st Court, Contai.

It is submitted by the learned advocate for the petitioners that on an earlier occasion, on identical allegations, Khejuri P.S. Case No. 3 of 1988 under Sections 468/471/120B of the Indian Penal Code, 1860 was registered against the petitioner no.1 and some other accused persons.

Following the investigation, a charge-sheet was submitted by the investigating agency and petitioner no.1 along with other

accused persons was acquitted in trial. The said order of acquittal was confirmed by this Court on January 3, 2012, in CRR 725 of 2009.

He further submits that the present proceedings have been initiated on the basis of same allegations and the charge-sheet was filed by the investigating agency under Sections 420/468/470/471/34 of the Indian Penal Code, 1860, ignoring the fact that the proceedings initiated on the same allegation had ultimately resulted in the acquittal of petitioner no.1 and the other accused persons. He prays for quashing of the present proceedings.

It appears that one Bhaggyadhar Mondal filed an application under Section 156 (3) of the Code of Criminal Procedure, 1973 before the learned Sub-divisional Judicial Magistrate, Contai alleging, *inter alia*, that petitioner no.1 obtained a forged certificate purporting to certify him as Class-X student of Lakhi Avinaba Vidyalaya with the help of Rabindra Nath Bera, since deceased, who had been the Headmaster of the school and after retirement, became the Secretary of the school. On the basis of the said forged certificate, petitioner no.1 in connivance with Rabindra Nath Bera was appointed as a peon of the said Lakhi Avinaba Vidyalaya. Petitioner no.1 served in the said school from March 01, 1980 to September 30, 1988, and as his salary he misappropriated a sum of Rs.62,335/- (Rupees Sixty Two Thousand Three Hundred Thirty Five Only) from public exchequer.

Following the order passed by the learned Magistrate in Khejuri P.S. Case No. 3 of 1988 dated December 8, 1988, was registered under Sections 468/471/120B of the Indian Penal Code, 1860, and the investigating agency on completion of investigation filed a charge-sheet against petitioner no.1 and other eight accused persons under Sections 468/471/120B of the Indian Penal Code, 1860.

The charge was framed by the learned Magistrate under Sections 465/468/471/120B of the Indian Penal Code, 1860.

In course of the trial, learned Judicial Magistrate, 3rd Court, Contai found that attendance of witnesses could not be procured for quite a long time and on September 30, 2000, he closed the prosecution case in view of the decision in Raj Deo Sharma Vs. State of Bihar, reported at 1999 C. Cr. LR (SC) 398 and fixed dates for examination of the accused persons under Section 313 of the Code of Criminal Procedure. The learned Magistrate disposed of the entire case on the basis of only one witness recorded so far by it in course of the trial. The learned Magistrate observed that the prosecution failed to produce any documentary evidence by which it could be substantiated that the certificate obtained by petitioner no.1 was a forged one. It was also his finding that the prosecution failed to produce the seized alamats and seizure was not made in accordance with law. The learned Judge acquitted petitioner no.1 along with other accused persons under Section 248(1) of the Code of Criminal Procedure, 1973.

The said order of acquittal dated March 24, 2008, was challenged before this Court by Bhaggyadhar Mondal/de-facto complainant by filing a revisional application being CRR 725 of 2009, which was disposed of by a Co-ordinate Bench of this Court by an order dated January 3, 2012, without interfering with the order of the trial Court.

The present proceedings have been initiated on the basis of subsequent FIR dated August 19, 2013, lodged by one Sekhar Manna. It has been again alleged in the said FIR that petitioner no.1 secured his appointment as Group-D peon of Lakhi Avinaba Vidyalaya, Purba Medinipore by forging a Class-IX pass certificate with the help of the members of the managing committee of the said school. The Headmaster of the school and the members of the managing committee paid Rs.30 (thirty) lakh to petitioner no.1 as his salary for the period of March 01, 1980, to August 19, 2013. This time petitioner no.1 was implicated along with petitioner no.2 and petitioner no.3, who were the Headmaster and the Secretary of the school, respectively, at the time of lodging of the FIR.

The investigating agency again after completion of the investigation filed a charge-sheet under Sections 420/468/470/471/34 of the Indian Penal Code, 1860 against the petitioners.

It is settled law that if two FIRs are registered in respect of the same transaction, the subsequent registration of FIR in connection with the same or connected offence relating to the same incidents which are part of the same transaction is not

maintainable in the eye of law. In my view, the subsequent FIR dated August 19, 2013 filed by Sekhar Manna did not disclose any information different from the information disclosed in the earlier FIR dated December 8, 1988 filed by Bhaggyadhar Mondal. In fact the said two FIRs have been registered in respect of the same transaction. Therefore, the registration of the present FIR being the subsequent one was not sustainable in the eye of law.

The investigation in this present case also appears to be flawed inasmuch as the charge-sheet filed in this case is conspicuously silent about the fact that petitioner no.1 along with the other accused persons had been acquitted by the competent criminal Court on the same allegations.

The allegations against petitioner nos.2 and 3 in the charge-sheet are inherently absurd and do not disclose any commission of cognizable offence against them. The charge-sheet or FIR does not attribute any role whatsoever against petitioner no.2 and 3 in the alleged forgery of the school certificate of petitioner no.1. The mere allegation of payment of salary in their official capacity to petitioner no.1 for the service rendered as a peon of the school does not form any of the ingredients of the alleged offences.

Petitioner no.1 has been tried by a Court of competent jurisdiction and acquitted of such offence. Such acquittal order is still in force. Therefore, petitioner no.1 in the given facts cannot be liable to be tried again following the present charge-sheet filed by the investigating agency. The trial against

petitioner no.1 is barred under Section 300(1) of the Code of Criminal Procedure, 1973.

In that view of the above, the revisional application succeeds. The Khejuri Police Station Case No. 210 of 2013 dated August 19, 2013, under Sections 420/468/470/471/34 of the Indian Penal Code, 1860, corresponding to GR Case No. 979 of 2013, pending before the learned Judicial Magistrate, 1st Court, Contai, is quashed.

CRR No. 2439 of 2017 along with CRAN No. 8 of 2021 is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all the formalities.

(Kausik Chanda, J.)