

CRR 2603 of 2013
With
IA No. CRAN 2/2017 (Old No. CRAN 4551/2017)

In Re: - An application under Section 482 of the Code of Criminal Procedure, 1973.

And

In the matter of: Diptendu Moitra & Anr.

.... Petitioners

Mr. Satadru Lahiri,
Mr. Ejaz Khan,
Mr. P. K. De

...For the Petitioners

Ms. Anasuya Sinha,
Ms. Jonaki Saha

... For the State.

Let the affidavit-of-service filed by the petitioners be kept with the records.

Despite service, the opposite party no.2 is not represented.

The State appears and seeks time for production of the case diary.

This is an application for quashing C.G.R Case No. 3146 of 2011 under Sections 406/420/468/471/504/506/34 of the Indian Penal Code, 1860 pending before the learned Judicial Magistrate, 6th Court, Alipore, South 24 Parganas.

It is the case of the petitioners that the aforesaid case has been initiated against them on the basis of a subsequent First Information Report dated May 22, 2011, lodged before the Behala Police Station, whereas, over the self-same incident, a prior FIR was lodged before the Chennai Central Crime Branch on December 2, 2010.

Mr. Satadru Lahiri, learned advocate appearing for the petitioners draws the attention of this Court to the contents of the charge sheet filed

in the said two cases and submits that since the aforesaid two cases arise out of the same transaction, the charge sheet following the second FIR lodged before the Behala Police Station is liable to be quashed.

In support of his submission, Mr. Lahiri relies upon the following judgments of the Supreme Court:

1. (2001) 6 SCC 181 (T.T. Antony Vs. State of Kerala)
2. (2010) 12 SCC 254 (Babubhai Vs. State of Gujarat)
3. (2013) 6 SCC 348 (Amitbhai Anil Chandra Shah Vs. Central Bureau of Investigation)
4. (2020) 14 SCC 12 (Arnab Ranjan Goswami Vs. Union of India)

It appears from the charge sheet filed before the Chief Metropolitan Magistrate Court, Chennai III, that the opposite party no. 2 is a limited company, carrying on business of surgical equipment.

It is alleged in the FIR that petitioner no.1 was appointed as a sales executive of the Kolkata Branch of the said company.

At that relevant point of time, the petitioner was the Zonal Manager of the company. His duty as Zonal Manager included liaison with the client, handling the branch, collecting the money receivable and marketing the products of the company. Petitioner no.1 in complete breach of the trust bestowed upon him, connived with his wife and committed various illegal acts.

In the said F.I.R. number of allegations were made against petitioner no.1 in connection with his functioning as Zonal Manager of the said company. One of the major allegations in the F.I.R. was that the company gave incentives to some persons to do liaison work. Petitioner no.1 knowing the same induced the company to make some

payments in favour of one Kajal Biswas, who was the head of a construction company.

The company later realised that there was no liaison work done by said Kajal Biswas, in fact, it was the payment made for the purchase of a flat in the name of petitioner no. 1 and his wife (petitioner no. 2) in the name of incentive.

The company discovered that petitioner no.1 in course of his employment scanned the signature of the Director and issued letters so that the cheques could be issued in favour of accused no. 3 said Kajal Biswas. All information was discovered when petitioner no.1 was summoned and questioned and his laptop was searched in his presence in the office. Petitioner no.1, in order to ensure to implement his plan, even changed the auditors of the company, who had been in the service of the company for a long time and ensured that the periodical and compulsory audit of Kolkata Branch was done without intimating the main office.

Petitioner no.1 colluded with other accused persons to enrich himself and caused wrongful loss to the company.

Petitioner no.1 in course of his employment has misappropriated money from the company and acted in utter breach of the terms of his employment in collusion with petitioner no.2. Therefore, they are liable for offences under Sections 403/409/34 of the Indian Penal Code, 1860.

It has further been alleged that petitioner no. 1 by scanning the signature of the Director of the Company and by making documents knowing it to be false used them as genuine and, therefore, is liable to be prosecuted for the offences under Sections 465/467/468/471 of the Indian Penal Code, 1860.

In the subsequent F.I.R. lodged before the Behala Police Station, the opposite party no. 2 however, brought the following allegations against the petitioners.

It was again alleged that the petitioners entered into an agreement with one Kajal Biswas for purchasing a flat and two parking spaces at premises no. 67, S. N. Chatterjee Road, Kolkata-700 034. At the time of booking the said flat, petitioner no. 2 gave two account payee cheques bearing No. 527832 dated April 29, 2005, and 527833 dated May 16, 2005, drawn at UCO Bank, Tollygunge Branch amounting to Rs. 50,000/- from the company.

Thereafter, petitioner no. 1 handed over three cheques on account of payment for consideration bearing no. 930904 and 930905 dated May 17, 2005, drawn at HDFC Bank each of Rs. 3,77,680/- and 082943 dated July 26, 2005, drawn at Punjab and Sind Bank of Rs. 2,46,375/-.

The aforesaid cheques were issued by the company as an incentive and given in the name of said Kajal Biswas as per the instruction of petitioner no. 1.

The fraudulent activities of petitioner no. 1 came into the light one by one, after going through his laptop on June 21, 2010. The company contacted Mr. Kajal Biswas over the phone and collected a bunch of papers.

It appeared that petitioner no. 1 had forged a letter dated April 30, 2008, in the name of the Director Mr. Vivek Bajaj. Petitioner no.1 also forged a letter dated May 21, 2008, in the name of the Director namely, Mr. Vivek Bajaj, in reply to a letter dated May 14, 2008, issued by Kajal Biswas. The petitioners transferred all amounts

in the account of Kajal Biswas and managed to obtain the registered deed of conveyance on June 25, 2008, in respect of the said flat.

If the aforesaid two complaints are read side by side, it will be apparent that the F.I.R. at Kolkata has been lodged over the self-same incident in respect of which an investigation was already pending before the Central Crime Branch, Chennai.

The charge sheet filed by the investigating agency at Chennai also suggests that not only the nature of the allegations levelled against the petitioners is the same, the cheques mentioned in the two charge sheets alleged to be issued in favour of Kajal Biswas and the description of the flat which have the petitioners allegedly siphoned the money.

There cannot be any doubt that the charge sheet before the Judicial Magistrate, Alipore, South 24 Parganas and the charge sheet filed before the learned C.M.M., Chennai relate to the same incident.

The proposition of law with regard to the maintainability of the second F.I.R. over the self-same incident has been settled by the Hon'ble Supreme Court in a number of decisions.

In the case reported at **(2013) 6 SCC 348 (Amitbhai Anil Chandrashah Vs. Central Bureau of Investigation)**, the proposition of law has been summarized as follows:

“58.1. This Court accepting the plea of CBI in *Narmada Bai* [(2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526] that killing of Tulsiram Prajapati is part of the same series of cognizable offence forming part of the first FIR directed CBI to “take over” the investigation and did not grant the relief prayed for i.e. registration of a fresh FIR. Accordingly, filing of a fresh FIR by CBI is contrary to various decisions of this Court.

58.2. The various provisions of the Code of Criminal Procedure clearly show that an officer-in-charge of a

police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the first information report, on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of the evidence collected, the investigating officer has to form an opinion under Section 169 or 170 of the Code and forward his report to the Magistrate concerned under Section 173(2) of the Code.

58.3. Even after filing of such a report, if he comes into possession of further information or material, there is no need to register a fresh FIR, he is empowered to make further investigation normally with the leave of the court and where during further investigation, he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports which is evident from sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. Thus, there can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.

58.4. Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering FIR in the station house diary, the officer in charge of the police station has to investigate not merely 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 file one or more reports as provided in Section 173 of the Code. Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report(s) to the Magistrate. 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, is liable to be interfered with by the High Court by exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution.

58.5. The first information report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR.

58.6. In the case on hand, as explained in the earlier paragraphs, in our opinion, the second FIR was nothing but a consequence of the event which had taken place on 25-11-2005/26-11-2005. We have already concluded that this Court having reposed faith in CBI accepted their contention that Tulsiram Prajapati encounter is a part of the same chain of events in which Sohrabuddin and Kausarbi were killed and directed CBI to “take up” the investigation.

58.7. For vivid understanding, let us consider a situation in which Mr A having killed B with the aid of C, informs the police that unknown persons killed B. During investigation, it revealed that A was the real culprit and D abetted A to commit the murder. As a result, the police officer files the charge-sheet under Section 173(2) of the Code with the Magistrate. Although, in due course, it was discovered through further investigation that the person who abetted Mr A was C and not D as mentioned in the charge-sheet filed under Section 173 of the Code. In such a scenario, uncovering of the later fact that C is the real abettor will not demand a second FIR rather a supplementary charge-sheet under Section 173(8) of the Code will serve the purpose.”

In the case reported at **(2010) 9 SCC 567 (C. Muniappan v. State of Tamil Nadu)**, the Apex Court explained the “consequent test” i.e. if an offence forming part of the second F.I.R. arises as a consequence of the offence alleged in the first F.I.R. the offences

covered by both the F.I.Rs are same. Accordingly, the second F.I.R. will be impermissible in law. In other words, the offence covered in both the F.I.Rs. shall be treated as part of the first F.I.R.

In the case reported at **(2010) 12 SCC 254 (Babubhai v. State of Gujarat)**, it was held that subsequent to registration of an F.I.R., any further complaint in connection with the same or connected offence, relating to the same incident or incidents which are parts of the same transaction is not permissible but if two F.I.Rs pertain to two different incidents/crimes, the second F.I.R. is permissible in the eye of law.

In that case, the Supreme Court held that a charge sheet is an outcome of an investigation and if the investigation has not been conducted fairly that vitiates the investigation and the vitiated investigation cannot give rise to a valid charge sheet.

In the case reported at **(2001) 6 SCC 181 (T.T. Antony Vs. State of Kerala)**, the Supreme Court held that there cannot be a second F.I.R. and no fresh investigation on receipt of subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. Only information about the commission of a cognizable offence which is first entered in the station house diary by the officer-in-charge of the police station can be regarded as an F.I.R. under Section 154. All such subsequent information will be covered by Section 162 and the officer-in-charge of the police station has to investigate not merely the cognizable offence reported in the F.I.R. but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Code of Criminal Procedure, 1973. Even if, after the conclusion of the investigation pursuant to filing of the F.I.R. and submission of the report under Section 173 (2) of the Code, the officer in charge of the Police Station comes across any further

information pertaining to the same incident, he can make further investigation, normally with the leave of the Court and forward the further evidence, if any collected, with further report or reports under Section 173 (8).

In the said case, the Supreme Court further held that a just balance has to be struck between a citizen's rights under Articles 19 & 21 and the expansive power of police to make an investigation. After registering the F.I.R. and commencing an investigation, registering of the second F.I.R. or the successive F.I.Rs. in respect of the same incident and crime and making of a fresh investigation pursuant thereto would be irregular which calls for interference by the High Court to prevent abuse of statutory power of investigation or otherwise to secure the ends of justice.

In view of the law laid down by the Apex Court as apparent from the aforesaid decision, I am of the view that the F.I.R. dated May 22, 2011, filed before the Behala Police Station and the charge sheet filed by the Investigating Agency following the said F.I.Rs. cannot be sustained in the eye of law.

Accordingly, C.G.R Case No. 3146 of 2011 arising out of Behala Police Station Case No. 220 of 2011 dated May 22, 2011, and the charge sheet submitted against the petitioner under Sections 406/420/468/471/504/506/34 of the Indian Penal Code, 1860 before the learned Judicial Magistrate, 6th Court, Alipore, South 24 Parganas stands quashed.

CRR 2603 of 2013 along with CRAN 2 of 2017 (Old No. CRAN 4551/2017) is disposed of.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J.)