

31.01. 2022
item No.10
n.b.
ct. no. 34

(via video conference)
CRR 1446 of 2020

Pankaj Adhikary & Anr.
Vs.
The State of West Bengal & Anr.

Mr. Jayanta Samenta,
.....for the Petitioners

Mr. Sudip Ghosh,
Mr. Bitasok Banerjee,
Mr. Apurba Kumar Datta,
.....for the State.

Learned advocate appearing for the petitioners submits that the present case is on the similar set of facts as the earlier FIR, which was registered being English Bazar Police Station Case No.309 of 2011 under Sections 406/420/468/471/24 of the Indian Penal Code.

Learned advocate further submits that the charge-sheet in the instant case has already been submitted and at the time of discharge the learned Magistrate failed to take into account the relevant considerations ignoring the fact that the signature of the present petitioner was never compared with proper documents, the documents on the basis of which the second FIR was registered was never seized by the Investigating Agency.

Mr. Ghosh, learned advocate appearing for the State submits that the first FIR relating to English Bazar Police State case No. 309 of 2011 related to sanction plan and the false

signature therein. So far the present case being English Bazar Police Station case no.1074 of 2013 dated 20.12.2013 is concerned, the same relates to a signature of the defacto complainant being forged on unauthorized declaration, which was submitted before the West Bengal Pollution Authorities for obtaining licence.

According to the learned advocate for the State, these are two separate cause of action and the principles of “test of sameness” do not apply to the present case. Learned advocate for the State further submits that the investigating agency has, for the purpose of proving its case compared the signature on the said unauthorized affidavit with that of the defacto complainant and sent to the examiner in questioned documents for proper opinion. The said materials are before the Court and the learned Trial Court after considering the materials did not interfere with the application under Section 239 of the Code of Criminal Procedure, which was filed at the instance of the present petitioners. It is further submitted that the present petitioners are beneficiaries. Be that as it may, I have taken into account the Case Diary of both cases arising out of English Bazar Police Station and I am of the opinion that the present case do not fall within the ambit of second FIR and the same is not hit by the principles of “test of sameness” as has been decided by the Hon’ble Supreme Court in the case of *Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation & Anr.* reported in (2013) 6 SCC 348.

The learned Trial Court is directed to proceed with the trial of the case. However, if the issue relating to the signatures are agitated at the appropriate stage of the trial at the instance of the

petitioners, the Learned Trial Court would deal with the same in accordance with the settled proposition of law. No interference is called for.

Accordingly, CRR 1446 of 2020 is dispose of.

All pending connected applications, if any, are consequently dispose of.

Interim order, if any, is hereby vacated.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)