

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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**CRM-M-32211-2015
Date of Decision: 04.05.2022**

TEJBIR RATHI & ANR

... Petitioners

Versus

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. J.S. Dahiya, Advocate
for the petitioners.

Mr. Ashish Yadav, Addl. A.G., Haryana.

Mr. Vikram Singh, Advocate and
Mr. Ashish Jhamb, Advocate
for the complainant.

VINOD S. BHARDWAJ, J. (ORAL)

Instant petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') for seeking quashing of FIR No.444 dated 09.09.2015 under Sections 406, 420, 467, 468 and 471 of the of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC.') registered at Police Station Panipat Sadar, District Panipat and all consequential proceedings arising therefrom.

Learned counsel appearing on behalf of the petitioners has argued that a case bearing FIR No.769 dated 15.06.2014 has been registered against the petitioner No.1 for the commission of offences punishable under Sections 420, 467, 468 and 471 of IPC on the complaint of one Tek Ram Dahiya. He has made a reference to the allegations levelled in the said FIR to contend that the same pertains to forgery of a certificate belonging to Scheduled Caste and the petitioner having secured admission in DIET,

Biswan Meel, District Sonipat in the year 1994 against Roll No.33 and thereafter got employed in the Department of Education on the strength of the said forged Scheduled Caste Certificate. It is also alleged that as per the Book Cash No.3, the petitioner no.1 also availed cash stipend which was meant for SC candidates, despite the petitioner belonging to Jat community, which is not a Scheduled Caste.

He further argued that after the registration of the said FIR, an application qua the investigation not being conducted properly was submitted by the complainant to the I.G. Rohtak Range, whereupon inquiry was marked to the DSP, Samalkha. He alleges that the FIR in question i.e. FIR No.444 dated 09.09.2015 was registered at Police Station Sadar Panipat for the commission of offences punishable under Sections 406, 420, 467, 468 and 471 of the IPC for the same offence and allegations.

He also argued that the initiation of the complaint by the complainant Tek Rak Dahiya is malicious inasmuch as Suraj Bhan (brother of the petitioner Tejbir Rathi) had instituted proceedings under Section 138 of the Negotiable Instruments Act, 1881 against the complainant. He has thus argued that the proceedings are malafide and are an abuse of the process of law.

Per contra, Mr. Ashish Yadav, Addl. A.G., Haryana has submitted that the FIRs are based on separate and distinct offences committed by the petitioners at separate points of time. It is thus not on the same set of allegations that the second FIR No.444 dated 09.09.2015 has been registered. He has stated that while the first FIR relates to the act committed by the petitioner No.1 in preparing a false and forged certificate

belonging to Scheduled Caste and securing admission in OT course with the DIET and thereafter, using such forged certificate for availing various financial benefits, the second FIR is rather for an independent action whereby the petitioners forged their own appointment letters and worked in the Department of Education and thereafter forged posting orders for Govt. Senior Secondary School, Village Chhajpur and Khotpura. The petitioner No.2 Poonam Rani (Emp. ID 028200) wife of petitioner No.1 Tejbir Rathi joined herself as C&V Teacher and had been working as such in Government Girls School, Khotpura since 2013. Similarly, the petitioner No.1 Tejbir Rathi also forged his appointment orders and joined as C&V Sanskrit Teacher at Government Senior Secondary School, Chhajpur. Upon scrutiny of the record, it was noticed that their names were not in the selection list and an investigation in this regard was done by the Director, SCERT, Gurgaon. It is thus contended that the forgery of the letter of appointment and the withdrawal of the consequent benefits is an independent act of forging of documents and conspiracy and is based upon separate set of allegations and distinct witnesses than the allegations that were levelled with respect to forgery of certificate belonging to Scheduled Caste and seeking financial and other pecuniary benefits apart from securing admission for himself. Reference in this regard is made to the following para of the preliminary submissions of the reply filed by the State:

“That the petition under reply has been filed by the petitioners by concealment of true and material facts. As a matter of fact both the petitioners have been indulging in fraudulent activities and forged the documents when the activities of the petitioners came in the notice of the

complainant, To the effect that Shri Tejbir Rath (Petitioner no.1 had taken admission in diet Biswan Meel District Sonapat in the year 1994 vide Roll No.33 by showing him of Balmiki Caste, whereas he belongs to Jat Caste which falls within the General Category. He also claimed Stipend illegally from SC Kota during that period as per the record book case no.3 on page 90 and expenditure had been shown on page no.9 of Cash book. Besides this, in collusion with his school staff he got sent the false information in the RTI sought by complainant which revealed that he had passed his O.T. in the year 1999, whereas he had joined the Education Department on 29.7.1998. Apart from this he had also furnished a false affidavit for getting electric connection on the acquired land of HUDA, even after a FIR being lodged by Estate Officer on the basis of un-authorized occupation. The complainant moved the complaint to the Superintendent of Police, Panipat for enquiry and criminal action against the culprit. result of that complaint, FIR No. 769 dated 15.6.2014 U/S 420/467/468/471 IPC was registered at Police Station City Panipat and during the investigation prima-facie all the allegations found correct. Subsequently the complainant came to know that both Tejbir Rath and his wife Poonam got the appointment as a Sanskrit C&V teacher and Poonam his wife working C&V teacher in GGS Khotpura and Chhajpur respectively were never selected as teacher by Director, Secondary Education department, Haryana and they got prepared their false appointment letters, joining letters and joined the Education Department fraudulently on the basis of forged documents in collusion with the official of Education Department, so in order to get enquired these forgeries committed by both the accused, of FIR No. 444 dt. 9.9.2015 another application was moved by the complainant to I.G. Rohtak Range, Rohtak and matter

was got enquired by him through Deputy Superintendent of Police Samalkha who summoned both the accused i.e. Tejbir Rathi and his wife Poonam and found the contents of the complaint prima facie correct, hence other FIR No. 444 dated 9.9.2015 U/S 406/420/467/468 IPC at Police Station Sadar Panipat has been registered and investigation of the same invited and during the investigation, the petitioners have moved the present petition U/S 482 of Cr.P.C. before this Hon'ble court by concealment of true and material facts. In fact, both the above said FIRS are on quite different facts and different crime committed by the accused at different span of times. Hence the petition deserves dismissal.”

It is also pointed out by the learned counsel for the respondent-State that insofar as the first FIR is concerned, the proceedings are already at the fag end and that the case is fixed for today for final arguments.

Learned counsel for the petitioners controverts that it was open to the prosecution to have sought permission from the Trial Court under Section 173(8) of the Cr.P.C. for further investigation as and when the aforesaid fact came to their notice instead of registering of the fresh FIR into the same incident. He has made a reference to the judgment of **Amit Bhai Anil Chander Shah Vs. The Central Bureau of Investigation** passed by the Hon'ble Supreme Court in India in Writ Petition (Criminal) bearing No.149 of 2012 dated 08.04.2013 to contend that where the crime committed as a part of single conspiracy is committed over a span of time, a subsequent FIR into the said incident cannot be registered.

I have considered the arguments of the learned counsel appearing on behalf of the respective parties. However, I do not find myself in agreement with the learned counsel for the petitioners.

The entire case of the petitioners is that they are being prosecuted twice for the same offence. However, the attracting the legal defence that no petitioner can be vexed twice for the same offence, it must be established that both the offences and allegations are same.

To seek the said benefit, 'sameness' has to be shown in relation to the crime committed. The place of crime, the parties involved in the crime, the time of crime etc. all must be the same.

Commission of similar offences or in the same manner at different parts in time and at different places between different persons cannot be held to be same.

It is evident that the first FIR pertained to a false/forged SC certificate to secure admission in OT course at DIET and availing of various financial benefits and also securing job on the basis of the qualification acquired fraudulently.

The second FIR is rather to look into the offence that the petitioners forged letters of appointment and joined the school on the basis of forged appointment letters and have drawn salary. Reference to be facts of the earlier FIR is more in the nature of narration and not the cause for registration of the second FIR.

Besides, the other distinctive features are chart tabulated as under:

Particulars	FIR No.769 dated 15.06.2014	FIR No.444 dated 09.09.2015
Occurrence of offence	15.06.2014 to 15.06.2014	09.09.2015 to 09.09.2015
Information reached at Police Station	15.06.2014	09/09/15

Particulars	FIR No.769 dated 15.06.2014	FIR No.444 dated 09.09.2015
Name of accused	Tejbir Rathee (One in number)	Tejbir Rathi & Poonam (Two in number)
Allegations	Secured Admission in OT Course with DIET and availing financial benefits on the basis of forged SC certificate.	Forging of bogus appointment letters, posting orders and drawing salary.
Place of occurrence.	Court Complex P.S. City Panipat	Chhajpur and Khotpura

The judgment in question referred to by the petitioners is not applicable to the facts of the instant case. The said judgment is applicable when different transactions are carried out over a period of time as a part of the same conspiracy, the second FIR would not be maintainable and has to be tried as one case. However, it is not the case of prosecution that both the acts committed after different time were part of the one and same conspiracy. Rather, the acts are committed as independent offences. There is no charge under Section 120-B of the IPC in the case and as such there is no allegation of the petitioners being in conspiracy. Rather, while investigating the FIR No.769 dated 15.06.2014, there was a presumption that the petitioner No.1 had entered into a valid job and only his qualification was based on forged SC certificate, whereas during verification, it transpired that he was never appointed or selected by the Department.

The Hon'ble Supreme Court in its judgment passed in the matter of **Varshaben Kantilal Purani Vs. State of Gujarat and others** reported as **(2019) 11 Supreme Court Cases 774** has discussed the point that as to when the quashing of second or subsequent FIR by the High Court

by applying the principle of sameness is not justified. The relevant extract of the said judgment is reproduced herein below:

“4. Having heard learned counsel for the parties and in the facts and circumstances of the case as also the law laid down by this Court, we are of the opinion that the High Court ought not to have exercised its inherent powers to quash the proceedings arising out of the second FIR as the investigation is at nascent stage and it will hamper the investigation in the case. Learned counsel for the appellant has rightly placed reliance on the judgments of this Court in Ram Lal Narang v. State (Delhi Administration), reported in (1979) 2 SCC 322, and Nirmal Singh Kahlon vs. State of Punjab, reported in (2009) 1 SCC 441, wherein this Court has observed that IInd FIR/subsequent FIR is permissible where the conspiracy discovered later is found to cover a much larger canvas with broader ramifications and it cannot be equated with the earlier conspiracy which covered a smaller field of narrower dimensions.”

The above view also finds support from another judgment of the Hon'ble Supreme Court passed in the matter of **Babubhai Vs. State of Gujarat and others** reported as **(2010) 12 Supreme Court Cases 254** and the relevant extract of the same is reproduced herein below:

“20. Thus, in view of the above, the law on the subject emerges to the effect that an FIR under Section 154 Cr.P.C. is a very important document. It is the first information of a cognizable offence recorded by the Officer In-Charge of the Police Station. It sets the machinery of criminal law in motion and marks the commencement of the investigation which ends with the formation of an opinion under Section 169 or 170 Cr.P.C., as the case may be, and forwarding of a

police report under Section 173 Cr.P.C. Thus, it is quite possible that more than one piece of information be given to the Police Officer In- charge of the Police Station in respect of the same incident involving one or more than one cognizable offences. In such a case, he need not enter each piece of information in the Diary. All other information given orally or in writing after the commencement of the investigation into the facts mentioned in the First Information Report will be statements falling under Section 162 Cr.P.C.

21. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the accused in the first FIR comes forward with a different version or counter claim, investigation on both the FIRs has to be conducted.

It is not the case set up by the petitioners that the different acts of forgery of documents as also the forgery of the letter of appointment in subsequent joining at different schools was part of a single conspiracy hatched by the petitioners. There happened to be two different offences committed at separate points of time and on the strength of separate forged documents. There is no sameness in the allegations or continuity of the

offence being part of one single transaction.

In this view of the matter, I am of the opinion that the judgment of Amit Bhai Anil Chander Shah (supra) relied upon by the counsel for the petitioner is not applicable to the facts of the instant case. There is no 'sameness' in the two FIRs and they are only similar in nature. The registration of the subsequent FIR is thus neither an abuse of process of law nor would it amount to vexing the petitioners twice for the same offence.

The present petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

04.05.2022
rajender

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No