

May 1, 2023  
AD – 16  
Ct. 34  
SG

*CRR 2352 of 2021*

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

*Ashok Mistry and others*  
*-versus-*  
*The State of West Bengal and another*

Mr. Dipanjan Chatterjee  
Mr. Kalyan Kumar Bhattacharjee  
Ms. Richa Pramanick  
Ms. Sahina Khatun  
... for the petitioners.

Mr. Binay Panda  
Mr. Subham Bhakat  
... for the State.

Mr. T.K. Mukherjee  
Mr. Balaram Neogi  
... for the opposite party No.2.

In the present revisional application the petitioners have prayed for quashing the charge-sheet as also all the orders passed consequent to filing of the charge-sheet in connection with Falta Police Station Case No.96/14 corresponding to GR Case No.861/14 and SC No.34(3) 17.

On an assessment of the records of the case, it reflects that 3 cases were initiated arising out of the same incident which are as follows:

- (i) Falta Police Station Case No.10/14 dated 08.01.2014.
- (ii) Falta Police Station Case No.29/14 dated 19.01.2014.

(iii) Falta Police Station Case No.96/14 dated 04.03.2014.

It is also seen from the records of the case that Falta Police Station Case No.10/14 dated 08.01.2014 merged with Falta police Station Case No.29/14 dated 19.01.2014 on 21.02.2016.

Falta Police Station Case No.10/14 was initiated at the instance of Sudipta Mistry in respect of an incident of 8<sup>th</sup> January, 2014 and Falta Police Station Case No.96/14 dated 04.03.2014 was initiated by Jija Mistry under Section 156(3) Cr.P.C. which was treated to be the first FIR of the instant case.

In Falta Police Station Case No.10/14 charge-sheet was submitted on or about 08.03.2014 under Sections 341/323/325/354/506/34 IPC against the accused persons viz Ashok Mistry and Dhruba Mistry. It was observed in the said report under Section 173 that as no evidence could be collected against the accused persons Ashok Mistry and Puspendu Mistry, they be discharged from the said case.

In the case diary so produced before this court, it shows that the statements of all the witnesses do point participation of 4 accused persons although there was prayed for discharge and the trial commenced only against 2 accused persons namely Ashok Mistry and Dhruba Mistry before learned magistrate.

In respect of Falta Police Station Case No.96/14 charge-sheet has been submitted under Sections

323/324/325/307/354B/427/ 379/506/34 IPC against Ashok Mistry, Saikat Mistry, Dhruba Mistry and Puspendu Mistry. I have assessed the case diary which contained the statements of the witnesses including that of the 3 injured persons along with their medical documents.

Mr. Chatterjee, learned advocate appearing for the petitioners submitted that Falta Police Station Case No.96/14 being the second FIR should be quashed in view of the settled proposition of law, that a person should not be tried twice for the same offence.

Mr. Mukherjee, learned advocate appearing for the opposite party No.2 submits that the investigating agency from the inception was bent upon to protect 2 of the accused persons and by way of filing naraji petition the complainant with the interference of the court could get a relief. The police authorities as such filed a proper charge-sheet by way of which in Falta Police Station Case No.96/14 proper Sections have been incorporated and the real culprits have been booked.

Learned advocate for the State produced the case diary and submitted that the date before the learned sessions court is fixed for consideration of charges while on the other hand evidence has commenced so far as magistrate triable case is concerned (Falta Police Station Case No.10/14).

I have assessed the case diaries and considered the medical reports of Jija Mistry (complainant of Falta Police Station Case No.96/14) and Sudipta Mistry, another injured

cited as a witness in Falta Police Station Case No.96/14. The medical document reflects injuries on the vital part of the body and the medical document coupled with the statements under Section 161 Cr.P.C. do satisfy at this stage, the claim of the private opposite party regarding the partisan behaviour of the investigating agency for discharging 2 of the accused persons in the magistrate triable case (Falta Police Station Case No.10/14).

Having regard to the facts of Falta Police Station Case No.29/14, the investigation being carried out in a shady manner wherein 2 of the accused persons were left out from the charge-sheet by the investigating agency without any reason, I am of the view that there cannot be any straight jacket formula for quashing the first or second FIR. The settled principal is that the same person should not be tried twice for the same offence.

It has been informed that one of the witness has been examined in Falta Police Station Case No.10/14 in the proceedings before learned magistrate. I have taken into account the subject of dispute or the cause of action in respect of which both the cases were instituted which had its genesis in respect of the incident and attack inflicted on the injured persons on 08.01.14 vis a vis the quality of evidence collected. The continuance of magistrate triable case being Falta Police Station Case No.10/14 dated 08.01.14 calls for interference by this court and same as such is quashed.

So far as the sessions triable offence is concerned in respect of Falta Police Station Case No.96/14 which is corresponding to SC No.34(3) 17, I am of the view that the materials speak for framing of charges against all the 4 accused persons and the medical documents do support the claim of the complainant and the injured person.

Consequently learned additional sessions judge, Fast Track Court-III, Diamond Harbour would proceed with the trial of SC No.34(3) 17. It is further directed that from the next date onwards so far as the present trial case is concerned the trial court would fix schedule once in a month so that the trial of the case can be taken to its logical conclusion within a reasonable period of time.

It is needless to state that in case from the materials contained in the records of Falta Police Station Case No.10/14, the investigating agency requires any material/evidence it would be at liberty to pray for return of the same from learned magistrate's court and produce the same by way of additional evidence before learned sessions court in course of the trial.

The case diary be returned to learned advocate appearing for the State.

With the aforesaid observations, CRR 2352 of 2021 is disposed of.

Pending application, if any, is consequently disposed of.

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

**( Tirthankar Ghosh, J. )**