

19.1.2023
24
SB
Ct. No.236

CRR 3716 of 2009

In the matter of : Niranjan Ghosh & Ors.

The petitioners are not represented.

Since the matter is pending for more than twelve years, I propose to dispose of the revisional application on merit based on material available with the record.

This petition challenges the propriety and maintainability of charge sheet being no. 41 of 2009 dated 28.4.2009 under Sections 468/471/406/409/420/120B of the Indian Penal Code submitted in connection with Haripal P.S. Case No. 69 dated 15.6.2006 corresponding to G.R. Case No. 347/06.

Fact of the case in short is that petitioners were the members of Board of Directors, Chairman, Vice-Chairman and Secretaries of Balia Harishpur Jigra Samavay Krishi Unnayan Samity Limited (hereinafter referred to as the Samity) on different terms from 1994 to 2004. The said Samity is a co-operative society and paramount function of the society is to provide seeds, pesticides and fertilizers to the members and the non members at a concessional rate. The society was also engaged in granting loans following the norms of the Reserve Bank of India. One Prasanta Das, the manager of the bank siphoned funds and misappropriated the same and thereafter committed suicide. Subsequent thereto, on the allegation of defalcation of exchequer of the said samity, five numbers of F.I.Rs were registered at the

instance of Sk. Akbari Ali being Haripal P.S. 132/04 date 22.12.04, Jagannath Adak being Haripal P.S. Case No. 133 dated 22.12.04, Chayana Bhar being Haripal P.S. Case No. 134 dated 22.12.04, Rabin Bhar being Haripal P.S. Case No. 27 dated 18.02.2005 and Debnath Ghosh being Haripal P.S. Case No. 147/05 dated 23.12.2005. While five criminal cases were registered the opposite party no. 2 Chinmoy Gupta approached the same police station with identical set of information and Haripal P.S. Case No. 69 dated 15.6.2006 was also registered.

I have perused multiple F.I.Rs filed at the police station on the basis of identical information given by five different persons. It is settled principle of law that multiple F.I.Rs cannot be registered over the identical set of facts. The Investigating Officer, as I find from the annexures appended to the petition under consideration submitted charge sheet in Haripal P.S. Case No. 147/2005, on 31.10.2008 while Haripal P.S. Case No. 69/2006 was registered on 15.6.2006.

In this regard Hon'ble Supreme Court in the case of Vijay Kumar Ghai & Ors. reported in (2022) 7 SCC 124 held that ;

“16. The legality of the second FIR was extensively discussed by this Court in T.T. Antony vs. State of Kerala. It was held that there can be no second FIR where the information concerns the same cognizable offence alleged in the first FIR or the same occurrence or incident which gives rise to one or more cognizable offences. It was further held that once an FIR postulated by the provisions of Section 154 of Cr.P.C. has been recorded, any information received after the commencement of

investigation cannot form the basis of a second FIR as doing so would fail to comport with the scheme of the Cr.P.C. The Court further held that barring situations in which a counter-case is filed, a fresh investigation or a second FIR on the basis of the same or connected cognizable offence would constitute an “abuse of the statutory power of investigation” and may be a fit case for the exercise of power either under Section 482 of Cr.P.C. or Articles 226/227 of the Constitution of India.”

In the case of Tarak Das Mukherjee and Others vs. State of U.P. (Criminal Appeal No. 1400 of 2022 arising out of SLP (Criminal) No. 503 of 2020 on 02.03.2008 the Hon’ble Supreme Court held that;

“12. If Multiple First Information Reports by the same person against the same accused are permitted to be registered in respect of the same set of facts and allegations, it will result in the accused getting entangled in multiple criminal proceedings for the same alleged offence. Therefore, the registration of such multiple FIRs is nothing but abuse of the process of law. Moreover, the act of the registration of such successive FIRs on the same set of facts and allegations at the instance of the same informant will not stand the scrutiny of Articles 21 and 22 of the Constitution of India. The settled legal position on this behalf has been completely ignored by the High Court.”

I am of the view that proceeding being G.R. Case No. 347 of 2006 arose out of Haripal P.S. Case No. 69 dated 15.6.2006 should be quashed to avoid the abuse of process of law. However, if necessary, police will be at liberty to conduct further investigation

to bring on record the grievances expressed by the de facto complainant of the aforesaid case.

Learned Trial Court goes without saying has the jurisdiction to invoke the provision of Section 311 of Code of Criminal Procedure to examine Chinmoy Gupta, the de facto complainant of the aforesaid case in any of the proceedings pending over the identical issue as witness and may also take recourse to Section 319 of Cr.P.C. which will be sufficient to protect the interest of the opposite party no. 2.

With this observation, the revisional application is disposed of along with application, if any. Order of stay, if any, stands vacated.

Let a copy of the order sheet be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)