

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.R. 138 of 2023

Bablu Rahaman
versus
The State of West Bengal & Anr.

For the Petitioner : Mr. Arjun Chowdhury
Mr. Bikash Singha
Ms. Pratusha Dutta Chowdhury
Ms. Riya Agarwal.

For the State : Mr. Aditi Shankar Charkraborty
Mr. Aniruddha Biswas.

For the Opposite Party No.2. : Mr. Anirban Banerjee
Mr. Debasish Mukhopadhyay
Mr. Thaneshwar Kumai.

Heard On : 03.10.2023 & 29.09.2023.

Judgement On : 04.10.2023

Tirthankar Ghosh, J. :

The present revisional application has been preferred challenging the proceedings arising out of Banarhat Police Station Case No.104 of 2023 dated 30th April, 2023 under Sections 328/376(2)(n) of the Indian Penal Code read with Sections 3(1)(xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The case is presently pending before the learned Additional District and Sessions Judge, 1st Court, Jalpaiguri and the special court under the provisions of the Special Act.

Learned advocate appearing for the petitioner submits that prior to initiation of the instant case, the father of the victim girl lodged a complaint with the police authorities on 11th April, 2023 pursuant to which Banarhat Police Station Case No.84 of 2023 was registered for investigation under Sections 363/365 of the Indian Penal Code.

It has been submitted that after about three weeks the victim/opposite party no.2 lodged a complaint with the same police authorities pursuant to which Banarhat Police Station Case No.104 of 2023 dated 30th April, 2023 was registered under Sections 328/376(2)(n) of the Indian Penal Code read with Sections 3(1)(xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The main thrust of contentions of the petitioner is that Banarhat Police Station Case No.104 of 2023 being a second FIR, the same should be quashed. There are additional issues which would be considered later.

Learned advocate appearing for the petitioner in order to substantiate his arguments relied upon a series of judgments where the Hon'ble Supreme Court was pleased to quash the proceedings on the ground that the second FIR under the law has no sanctity and, as such, the same should be quashed.

Learned advocate firstly relied upon the judgment of T.T. Antony Vs. State of Kerala reported in (2001) 6 SCC 181 and referred to some paragraphs which are set out hereinbelow:

“15. *On these contentions, four points arise for determination:*

(i) whether registration of a fresh case, Crime No. 268 of 1997, Kuthuparamba Police Station on the basis of the letter of the DGP dated 2-7-1997 which is in the nature of the second FIR under Section 154 CrPC, is valid and it can form the basis of a fresh investigation;

(ii) whether the appellants in Appeals Nos. 689 and 4066 of 2001 [arising out of SLPs (Crl.) Nos. 1522 and 8840 of 2000] and the respondent in Appeals Nos. 690-91 of 2001 [arising out of SLPs (Crl.) Nos. 2724-25 of 2000] have otherwise made out a case for quashing of proceedings in Crime No. 268 of 1997, Kuthuparamba Police Station;

.....

20. *From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. 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. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a 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 CrPC.*

.....

26. *In State of Haryana v. Bhajan Lal* [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] after exhaustive consideration of the decisions of this Court in *State of W.B. v. Swapan Kumar Guha* [(1982) 1 SCC 561 : 1982 SCC (Cri) 283], *S.N. Sharma v. Bipen Kumar Tiwari* [(1970) 1 SCC 653 : 1970 SCC (Cri) 258], *R.P. Kapur v. State of Punjab* [AIR 1960 SC 866 : (1960) 3 SCR 388 : 1960 Cri LJ 1239], *Nandini Satpathy v. P.L. Dani* [(1978) 2 SCC 424 : 1978 SCC (Cri) 236] and *Prabhu Dayal Deorah v. District Magistrate, Kamrup* [(1974) 1 SCC 103 : 1974 SCC (Cri) 18], approving the judgment of the Privy Council in *Khwaja Nazir Ahmad* case [AIR 1945 PC 18 : 46 Cri LJ 413] it was concluded in para 102 as follows : (SCC pp. 378-79)

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.....

.....

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy

that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view 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 under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution.

28.In our view, in sending information in regard to the same incident, duly enclosing a copy of the report of the Commission of Inquiry to the Inspector General of Police for appropriate action, the Additional Chief Secretary adopted the right course of action. Perhaps the endorsement of the Inspector General of Police for registration of a case misled the subordinate police officers and the said letter with regard to the incident of 25-11-1994 at Kuthuparamba was registered again under Section 154 CrPC which would be the second FIR and, in our opinion, on the facts of this case, was irregular and a fresh

investigation by the investigating agency was unwarranted and illegal. On that date the investigations in the earlier cases (Crimes Nos. 353 and 354 of 1994) were pending. The correct course of action should have been to take note of the findings and the contents of the report, streamline the investigation to ascertain the true and correct facts, collect the evidence in support thereof, form an opinion under Sections 169 and 170 CrPC, as the case may be, and forward the report/reports under Section 173(2) or Section 173(8) CrPC to the Magistrate concerned. The course adopted in this case, namely, the registration of the information as the second FIR in regard to the same incident and making a fresh investigation is not permissible under the scheme of the provisions of CrPC as pointed out above, therefore, the investigation undertaken and the report thereof cannot but be invalid. We have, therefore, no option except to quash the same leaving it open to the investigating agency to seek permission in Crime No. 353 or 354 of 1994 of the Magistrate to make further investigation, forward further report or reports and thus proceed in accordance with law.”

Reference was also made to Babubhai Vs. State of Gujarat reported in (2010) 12 SCC 254 wherein the Hon’ble Supreme Court after relying upon the judgements of Ramlal Narang Vs. State (Delhi Admn.), Rameshchandra Nandlal Parikh and Nirmal Singh Kahlon Vs. State of Punjab arrived at a finding in paragraphs 20 and 21 which are set out as follows :

“20. *Thus, in view of the above, the law on the subject emerges to the effect that an FIR under Section 154 CrPC 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 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. 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 CrPC.

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 in the 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 counterclaim, investigation on both the FIRs has to be conducted.”*

Drawing the attention of the Court to the case of Upkar Singh Vs. Ved Prakash reported in (2004) 13 SCC 292, it was emphasized that the Hon’ble Supreme Court has held in T. T. Antony (supra) which is the foundational basis on which the Court would act upon in cases where on

the selfsame set of facts another FIR has been lodged. Reference was made to paragraph 17 which is set out as follows:

“17. It is clear from the words emphasised hereinabove in the above quotation, this Court in the case of T.T. Antony v. State of Kerala [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] has not excluded the registration of a complaint in the nature of a counter-case from the purview of the Code. In our opinion, this Court in that case only held that any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited under Section 162 of the Code. This prohibition noticed by this Court, in our opinion, does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident.”

Reliance was also made on Amitbhai Anilchandra Shah Vs. CBI reported in (2013) 6 SCC 348. Learned advocate for the petitioner in the said judgement drew the attention of the Court to the different authorities on which the Hon’ble Supreme Court relied upon and in the facts of the said case stressed on the issue relating to the principles of Article 21 of the Constitution and the ratio laid down in the case of T. T. Antony (supra).

Lastly, reference was made to the findings of the Hon’ble Supreme Court in the cited judgement which is as follows:

“58.9. *Administering criminal justice is a two-end process, where guarding the ensured rights of the accused under the Constitution is as imperative as ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the court of law to protect and shield the rights of both. Thus, a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. Accordingly, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences. As a consequence, in our view this is a fit case for quashing the second FIR to meet the ends of justice.”*

Learned advocate for the petitioner emphasized on Tarak Dash Mukherjee & Ors. Vs. State of Uttar Pradesh & Ors. reported in 2022 LiveLaw (SC) 731 and drew the attention of the Court to paragraph 9 of the said judgement wherein the Hon’ble Supreme Court relied upon the earlier judgements of Upkar Singh (supra), T. T. Antony (supra) and arrived at finding at paragraph 12 which is set out as follows :

“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.”

Learned advocate for the petitioner also relied upon the judgement of Krishna Lal Chawla & Ors. Vs. State of U.P. reported in (2021) 5 SCC 435 wherein the Hon'ble Supreme Court elaborated on the issue of Article 21 of the Constitution, right of the accused and even if there is non-cognizable offence and cognizable offence, the issue relating to second FIR can be taken into consideration for quashing of the proceedings. Additionally it has been submitted before this Court that so far as Banarhat Police Station Case No. 84 of 2023 is concerned in the said case, police has already filed a final report. However, the learned Magistrate is yet to take any cognizance of the same. So far as the present case is concerned i.e. Banarhat Police Station Case No. 104 of 2023, the police authorities have started investigation and is continuing with the investigation, although the foundational facts of both the cases are based on same set of transactions. It has been emphasized that the present case with which the investigating agency is continuing with the proceedings, is purposely for curtailing the rights of the present petitioner who happens to be a Reporter and in violation of law, the investigation is being continued, although the petitioner was exonerated from the first case being Banarhat Police Station Case No. 84 of 2023. Learned advocate prays for quashing the proceedings of Banarhat Police Station Case No. 104 of 2023 as the continuation of the same is against the settled proposition of law.

Mr. Anirban Banerjee, learned advocate appearing for the opposite party no.2 submits that the facts of the two cases i.e. Banarhat Police Station Case No. 84 of 2023 and Banarhat Police Station Case No. 104 of 2023 are completely different and as such, the materials which have been collected in both the cases cannot be one and the same. Learned advocate submits that if the factual foundation of the cases are different, in such circumstance the case which is presently being investigated cannot be termed as a second FIR and as such, the principles or the authorities on which the petitioner has prayed for quashing of the proceedings do not apply to the facts of the present case. Learned advocate prays for dismissing the present revisional application.

Mr. Biswas, learned advocate appearing for the State has placed both the Case Diaries of Banarhat P.S. Case No. 84 of 2023 and Banarhat P.S. Case No. 104 of 2023.

Ld. Advocate for the State has taken through the materials which has been collected in the later/present case and draws the attention of the Court to the statement of the victim under Section 164 of the Cr.P.C; the medical document which have been collected by the investigating agency reflecting the foetus (which was terminated) and the statement of the witnesses.

The learned Advocate submits that the materials which have been collected in the present case are such that the investigation cannot be stifled at this stage.

Learned Advocate for the State has relied upon a judgment in State - vs- M. Maridoss & Anr. reported in (2023) 4 SCC 338.

Ld. Advocate has stressed on paragraph 7 of the said judgment, wherein the Hon'ble Supreme Court has been pleased to direct the High Court and reminded the scope and ambit of Section 482 of the Cr.P.C. Paragraph 7 of the said judgment which has been relied upon, is set out below:

7. From the impugned judgment and order [M. Maridoss v. State, 2021 SCC OnLine Mad 13703] passed by the High Court and the reasoning given by the High Court, it appears that the High Court has quashed the criminal proceedings as if the High Court was conducting the mini trial. The scope and ambiguity of powers to be exercised under Section 482CrPC has been elaborately dealt with and considered by this Court in Neeharika Infrastructure [Neeharika Infrastructure (P) Ltd. v. State of Maharashtra, (2021) 19 SCC 401 : 2021 SCC OnLine SC 315] . In SCC para 13, it is observed and held as under : (Neeharika Infrastructure case [Neeharika Infrastructure (P) Ltd. v. State of Maharashtra, (2021) 19 SCC 401 : 2021 SCC OnLine SC 315])

“13. From the aforesaid decisions of this Court, right from the decision of the Privy Council in Khawaja Nazir Ahmad [King Emperor v. Khawaja Nazir Ahmad, 1944 SCC OnLine PC 29 : (1943-44) 71 IA 203] , the following principles of law emerge:

13.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences.

13.2. Courts would not thwart any investigation into the cognizable offences.

13.3. However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on.

13.4. The power of quashing should be exercised sparingly with circumspection, in the “rarest of rare cases”. (The rarest of rare cases standard in its application for quashing under Section 482CrPC is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court).

13.5. While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

13.6. Criminal proceedings ought not to be scuttled at the initial stage.

13.7. Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule.

13.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482CrPC.

13.9. The functions of the judiciary and the police are complementary, not overlapping.

13.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

13.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

13.12. *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.*

13.13. *The power under Section 482CrPC is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court.*

13.14. *However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint; and*

13.15. *When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482CrPC, only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”*

I have considered the submissions of learned advocates appearing for the parties and on an assessment of the submissions, as advanced from the Bar, the first question which arises is whether Banarhat P.S. Case No. 84 of 2023 and Banarhat P.S. Case No. 104 of 2023 are one and identical.

In respect of Banarhat P.S. Case No. 84 of 2023, the father of the o.p. no.2 lodged a complaint with the Inspector-in-charge of Banarhat P.S. to the effect that his daughter was missing and he lodged a missing diary and after searching for about two days, he came to know that a newspaper reporter, namely, Bablu Rahaman/petitioner, who resides in the same locality, took his daughter on that day on the promise of providing her with a job relating to journalism. Some of the neighbors have witnessed the same and when the petitioner/Bablu Rahaman was confronted, he denied the same completely. The complainant alleged that the petitioner was involved in spiteful activities under the covering of journalism and he believes that the petitioner had a definite role behind the disappearance of his daughter. Certain messages from mobile phone were retrieved, which reflects the same to be of the petitioner. A request was advanced to the concerned police officer to investigate the matter.

So far as the allegations of Banarhat P.S. Case No. 104 of 2023 are concerned (which was lodged by the victim herself), particularly, the complaint, which was the starting point of investigation, which reflects that the victim is 20-year-old and is a Schedule Tribe lady/student. On 9.4.2023, the petitioner/Bablu Rahaman allured her on the garb of

providing her a job and took her to Birpara and at that place the petitioner offered her a soft drink and after consuming the same, she became senseless. She apprehends that she was treated with some medicines, which intoxicated her and, finally, she became senseless. She was thereafter taken to a lonely place and was detained in a room, where the petitioner raped her on three occasions. She thereafter requested the police authorities to take action against the accused/petitioner.

The genesis of Banarhat P.S. Case No. 84 of 2023 and Banarhat P.S. 104 of 2023 are completely different.

The first FIR being for searching a lady which her father initiated when she was missing. The second FIR is related to ravishing the lady/victim which the victim herself narrated as to what happened to her.

In Anju Choudhury -vs- State of U.P. reported in (2013) 6 SCC 384, the issue regarding the second FIR cropped up and the Hon'ble Supreme Court while assessing the question what is a second FIR, particularly, stressed on the larger factual background of the case to involving wider range of facts, resulting investigation and an existing FIR on a particular issue, then, in that case, the subsequent complaint on which the second investigation is continuing, cannot be turned to be a second FIR. In fact, the original view which is based on the said principle was expressed by the Hon'ble Supreme Court in M. Krishna vs. State of Karnataka reported in

(1999) 3 SCC 247. Paragraphs 43 to 45 of Anju Choudhury (supra) is relevant for the present case which is set out as follows:

“43. *It is true that law recognises common trial or a common FIR being registered for one series of acts so connected together as to form the same transaction as contemplated under Section 220 of the Code. There cannot be any straitjacket formula, but this question has to be answered on the facts of each case. This Court in Mohan Baitha v. State of Bihar [(2001) 4 SCC 350 : 2001 SCC (Cri) 710] (SCC pp. 354-55, para 4) held that the expression “same transaction” from its very nature is incapable of exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense in the ordinary use of language must decide whether or not in the very facts of a case, it can be held to be one transaction.*

44. *It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.*

45. *Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one*

continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction"."

In *Manoj Kumar Vs. State of Uttarkhand* reported in (2019) 5 SCC 667 reference has been made to Larger Bench of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court after dealing with the judgments of *T.T. Antony (supra)*, *Ram Lal Narang Vs. State (UT of Delhi)* reported in (1979) 2 SCC 322; *Kari Choudhary vs. Sita Devi* reported in (2002) 1 SCC 714; *Amitbhai Anilchandra Shah Vs. CBI* reported in (2013) 6 SCC 348; *Upkar Singh Vs. Ved Prakash* reported in (2004) 13 SCC 292 arrived at its finding that what is the purpose of the criminal justice system. It was categorically observed the principle in criminal jurisprudence requires a fair and truthful investigation. The issue which was canvassed over there was relating to abuse of the process of law, i.e. whether the second FIR is an abuse of the process of law and whether there is an illegality committed by the Investigating Agency by treating the further material to be a second FIR. If such a situation arises what would be the duty of the court and whether the only remedy is to straightaway quash the second FIR? While answering such contention, it has been observed the technicality so involved in quashing the second FIR may involve circumstances that where an accused who has committed an offence can go scot-free simply on a technical nomenclature of second FIR. Accordingly, on an analysis, the Hon'ble Supreme Court was pleased to observe that a further scrutiny

during trial would be permissible to show the issues relating to prejudice of the accused and truthfulness of the evidence collected on the basis of the second FIR which should be a fundamental question for consideration before a court of law.

Having regard to the factual circumstances of the present case, I find that the investigating in the first case, i.e. Banarhat Police Station Case No.84 of 2023 was only restricted for finding out or recovery of the missing girl while the second FIR included a larger conspectus of facts relating to the offence both regarding ravishing the lady under the Indian Penal Code and under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The provisions of the Indian Penal Code and the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 have a different purpose for which the legislature subsequently thought it fit and proper to give protection to persons belonging to the said community and, as such, the anvil on which the present investigation is progressing are under the provisions of Section 376(2)(n) of the Indian Penal Code read with Sections 3(1)(xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Needless to state that in case of provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Section 8 provides for presumption as to offences when a prosecution is commenced. The same is not there when a prosecution is launched ordinarily under the provisions of the Indian Penal Code.

Having regard to the totality of the facts and circumstances of the present case particularly the detailed narration of facts as to how a girl/lady of the Scheduled Tribe community was intoxicated and raped, I am of the opinion that this is not a fit case for interference and neither Banarhat Police Station Case No.104 of 2023 falls within the ambit of the definition of second FIR. Consequently, no interference is made.

Accordingly, CRR 138 of 2023 is hereby dismissed.

Pending application, if any, is consequently dismissed.

Interim order, if any, is hereby vacated.

Mr. Arjun Chowdhury, learned advocate appearing on behalf of the petitioner prays for stay of the order/judgment as the petitioner Bablu Rahaman intends to approach the Hon'ble Supreme Court.

Such prayer for stay on behalf of the petitioner is refused and rejected.

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

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)