

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

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 286 of 2022

MOLY RAY & ANR.

VS.

THE STATE OF WEST BENGAL & ORS.

For the Petitioner : Mr. Sandip Kumar Bhattacharyya, Adv.
Mr. Aneek Pandit, Adv.
Mr. Ali Rizvi, Adv.

For the Private Respondent : Mr. Kalyan Kumar Bandyopadhyay, Sr. Adv.
Mr. Soubhik Mitter, Adv.
Mr. Niladri Bhattacharjee, Adv.
Mr. Soham Bandyopadhyay, Adv.
Mr. Aditya Chaturvedi, Adv.

For the State : Mr. Aditi Sankar Chakraborty, ld. APP
Mr. Nilay Chakraborty, Adv.
Mr. Biswarup Roy, Adv.

Hearing concluded on : 10th January, 2023

Judgement on : 13th January, 2023

Siddhartha Roy Chowdhury, J.:

1. By filling application under Section 227 of the Constitution of India read with Section 482 of Code of Criminal Procedure, 1973, the petitioner Mrs. Moly Ray is seeking an order of quashment of Malbazar Police Station Case No. 538 of 2022 under Section 379/381/406/408/409/120B of the Indian Penal Code, registered,

pursuant to the order dated 5th July, 2022 passed by the Chief Judicial Magistrate, Jalpaiguri in Misc. Case No. 246 of 2022.

2. Briefly stated, the petitioner is the wife of Raja Ray who being harassed and intimidated by the police authorities filed an application before the West Bengal Human Rights Commission and also took out an application under Article 226 of the Constitution of India which was registered as W.P.A. 280 of 2022. After several adjournments, State was presented in the proceeding and a report was submitted before the Hon'ble Court wherein it was inter alia stated "Since the accused person remains absconding till date, the Investigating Officer of the case Sub-Inspector Asim Malakar on 5th November, 2022 submitted a prayer before the learned Court, Jalpaiguri, for issue of warrant of arrest against the F.I.R. name accused person in the interest of investigation of the case and the prayer is sub-judice in the Court of learned Chief Judicial Magistrate, Jalpaiguri. Therefore, the allegations leveled against the Investigating Officer appears to be incorrect and baseless". The report was taken on record and the writ petition was disposed of with the direction upon the S.P., Jalpaiguri to revisit the matter and to advise the police station under him to strictly follow the letter of law in course of raids and ensure appropriate care and caution specially while dealing with a lady citizen. The investigation into the main offence was, however, proceed in accordance with law.
3. The petitioner in the interregnum period from 27th September, 2022 and 10th November, 2022 had caused enquiry through learned Advocate who had been earlier dealing with the matters of her husband to ascertain the reasons behind such turmoil, the family had been

facing from the previous employers of her husband and came to know that Malbazar Police Station Case No. 538 of 2022 was registered on 30th July, 2022 under Section 379/381/406/408/406/120B of the Indian Penal Code, 1860, originated from the order dated 5th July, 2022 passed by the learned Chief Judicial Magistrate in Misc. Case No. 246 of 2022. According to petitioner the police without conducting any preliminary enquiry as directed by learned Chief Judicial Magistrate while passing the order on 15th July, 2022, registered the cases at Malbazar Police Station.

4. According to the petitioner on 12th August, 2021 a notice under Section 41A of the Code of Criminal Procedure was served upon the petitioner in connection with Hare Street Police Station Case No. 58 of 2021 under Section 120B/403/406/40.8/420 of the Indian Penal Code, wherefrom for the first time the petitioner came to learn about the criminal case initiated by the private respondent against him. The husband of the petitioner, however, complied with the requisition of the notice under Section 41A of the Code of Criminal Procedure in connection with Hare Street Police Station Case No. 58 of 2021 and surrendered to the jurisdiction of learned Chief Metropolitan Magistrate, Calcutta and he was admitted on bail. It is contended further that the subsequent F.I.R. being Malbazar Police Station Case No. 538 of 2022 has been registered on the identical allegation, as was made in Hare Street P.S. Case No. 58 of 2021, subsequently registered as G.R. Case No. 254 of 2021 and pending before the learned Chief Metropolitan Magistrate, Calcutta. According to petitioner the subsequent F.I.R. has been registered against her husband with the

sole object to harass him and his family members, including the petitioner with malafide intention and same should be quashed.

5. Mr. Sandip Kumar Bhattacharyya, learned Counsel for the petitioner submits that it is the settled principle of law that multiple First Information Report over the identical set of facts, against same person at the instance of same informant is not permissible.
6. Learned Chief Judicial Magistrate, Jalpaiguri therefore, while considering the application filed under Section 156 (3) of the Cr.P.C., in no uncertain terms directed the police authority that if any police case had already been started on the basis of F.I.R., lodged by the complainant over the same fact in that even the matter must be reported to the Court and no case shall be started until further order. Learned Chief Judicial Magistrate, Jalpaiguri directed the police authority to submit compliance report on 18th July, 2022. However, having received the order of learned Chief Judicial Magistrate on 15th July, 2022 at 18.10 hours Malbazar P.S. Case No. 538 of 2022 was registered on that day itself under Section 379/381/406/408/409/120B of the Indian Penal Code in utter violation of the direction of learned Chief Judicial Magistrate. Such proactive role of Inspector-in-charge of the Police Station unerringly demonstrates the malafide intention of the police authority to catch hold of the husband of the petitioner by any means, who has been enlarged on bail, by competent Court of law, in a case registered on the basis of identical set of facts. My attention is drawn to the petition filed by Jayanta Ghosh before the learned Chief Judicial Magistrate, Jalpaiguri as the acting C.E.O. and authorized agent of Nepuchapur

Tea Company Limited. Complaint filed by Sri Ghosh on 14th December, 2020, addressed to Officer-in-charge, Hare Street Police Station, which indicates that the petition under Section 156 (3) of Cr.P.C. was filed suppressing the fact that at the behest of Jayanta Ghosh, the C.E.O. of Nepuchapur Tea Company Limited, Hare Street Police Station Case 58 of 2021 was registered. Police after investigation submitted charge sheet against Raja Ray under Section 408/420 of the I.P.C. and has sent him for trial on 17th November, 2021. This suppression of material fact by the de-facto complainant before the learned Chief Judicial Magistrate, Jalpaiguri, is eloquent about not only the malafide intention of the de-facto complainant but also his desperation to curtail the liberty of Raja Ray at any cost. It is further contended by Mr. Bhattacharya that the petitioner being the wife of Raja Ray is competent to file the application under consideration. It is contended that the petitioner, being a member of the society can set the criminal administration of justice into motion. Mr. Bhattacharya further contended that intention of the Parliament is discernable from the words used in Section 482 Cr.P.C. Court can invoke the jurisdiction even suo-motu. To buttress his point Mr. Bhattacharyya relies upon the judgement pronounced by Hon'ble Supreme Court in the case of ***A.R. Antulay vs. Ramdas Srinivas Nayak & Anr.*** reported in **(1984) 2 SCC 500.**

7. Drawing my attention to the Management Audit report which forms a part of communication dated 8th March, 2021 in compliance of notice under Section 91 of the Code of Criminal Procedure, Mr. Bhattacharyya submits that the audit report does not contain any

whisper about the allegation of cutting and selling of valuable trees and mopping up of money, causing wrongful loss to the company by Raja Ray, as alleged in the petition of complaint before the learned Chief Judicial Magistrate, Jalpaiguri. The second F.I.R. is nothing but manifestation of evil design of the de-facto complainant to harass and humiliate the husband of the petitioner.

8. Refuting such contention of Mr. Bhattacharya, Mr. Kalyan Kumar Bandyopadhyay learned Senior Advocate representing the private opposite parties submits that the malafide intention and guilty mind of Raja Ray is explicit and can be perceived from his conduct. He has been arrayed as an accused over certain allegations committed by him within the jurisdiction of Malbazar Police Station. He is free to seek protection from the competent Court of law to prevent of arrest, by invoking the provision of Section 438 of the Cr.P.C.; instead of submitting to the jurisdiction of the Court of law the accused person is playing hide and seek and his wife is approaching the Court albeit having no locus standi to do so. The petitioner approached the Hon'ble Court by filling an application under Article 226 of the Constitution and Hon'ble Single Judge after taking cognizance of the facts and circumstances directed the S.P., Jalpaiguri to look into the matter and also made it clear that investigation into the main offence shall proceed in accordance with law. By filling the application under consideration the petitioner is making an attempt to smother the investigation and thereby paving an avenue for her husband to escape the clutches of law. It is further contended by Mr. Bandyopadhyay, learned Senior

Counsel that Hare Street Police Station cannot take care of the offence, allegedly committed within the jurisdiction of Malbazar Police Station.

9. Drawing my attention to paragraph 39 of the petition filed under Section 156 (3) of the Cr.P.C. Mr. Bandyopadhyay submits that the accused person committed theft of trees and other offences at Nepuchapur Tea Estate within Malbazar Police Station which necessitated filing of second F.I.R. to unearth the truth. Mr. Bandyopadhyay relying upon the decision of Hon'ble Supreme Court pronounced in the case of ***M/S NEEHARIKA, INFRASTRUCTURE PRIVATE LIMITED VS THE STATE OF MAHARASHTRA*** reported in **(2021) SCC Online 315** submits that Hon'ble Supreme Court has been pleased to hold that before invoking the jurisdiction under Section 482 of the Cr.P.C. and/or under Article 226 of the Constitution of India the following points are required to be taken into consideration:-

- i) 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 a cognizable offence;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).*

v) 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;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) 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 and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) 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;

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

xii) 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. 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;

xiii) The power under [Section 482](#) Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) 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 the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under [Section 482](#) Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under [Section 482](#) Cr.P.C. and/or under [Article 226](#) of the Constitution of India. However, an interim order of stay of investigation during the pendency of

the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under [Section 438](#) Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under [Section 173](#) Cr.P.C., while dismissing/disposing of the quashing petition under [Section 482](#) Cr.P.C. and/or under [Article 226](#) of the Constitution of India. xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under [Section 482](#) Cr.P.C. and/or under [Article 226](#) of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

10. To bring home his argument on judicial restraint in invoking the provision of Section 482 of Cr.P.C. Mr. Bandyopadhyay further relies upon the judgement pronounced by Hon'ble Supreme Court in **Vijay Kumar Ghai vs. State of West Bengal & Ors.** reported in **(2022) 7 SCC 124.**
11. By several judicial pronouncement it has now become a settled principle of law that in criminal jurisprudence 'Locus-standi' – the term is alien to criminal jurisprudence. In this regard, we can rely upon the judgement of Hon'ble Apex Court in the case of **A.R. ANTULAY VS. RAMDAS SRINIWAS NAYAK & ANR.** reported in **(1984) 2 SCC 500** wherein Hon'ble Apex Court held:-

“6. It is well recognized principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating to an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision.”

This was reiterated in **Manorhar Lal Sharma vs. Vinesh Anand** reported in **(2001) 5 SCC 507.**

12. Section 482 of the Cr.P.C. speaks of saving of inherent power of High Court which can be invoked and exercised by the Court with an

object to give effect to any order under this act or to prevent abuse of process of any Court or otherwise to secure ends of justice and it goes without saying that such inherent power of the High Court can be exercised even suo-motu, therefore, the question of locus standi of the petitioner really is of no consequence.

13. Mr. Bandyopadhyay argues that since an offence committed within the jurisdiction of Malbazar Police Station, it was absolutely necessary for the de-facto complainant to file a petition under Section 156(3) of the Code of Criminal Procedure to get the allegations against accused Raja Ray investigated by the jurisdictional police authority. Upon perusal of the written information given by the de-facto complaint to Hare Street Police Station which led to registration of the Case No. 58 of 2021 and the petition under Section 156 (3) of the Code of Criminal Procedure filed before the learned Chief Judicial Magistrate, Jalpaiguri, I find that in both the cases the informant is Jayanta Ghosh, the Chief Executive Officer of the Company. Both the documents contained identical set of allegations and averment made in paragraph 39 of the petition under Section 156 (3) of the Cr.P.C. contains an additional allegation pertaining to theft of trees. At the same time the averment made in the said paragraph indicates that consciously the petitioner suppressed the material fact that at his behest Hare Street Police Station Case No. 58 of 2021 was registered.

14. Even the Inspector-in-charge of Malbazar Police Station or the I.O. of the case did not care to comply with the direction of learned Chief Judicial Magistrate to find out whether any F.I.R. was already lodged against the accused person. These factors unerringly speak volume

about the malafide intention of the police. Mr. Bandyopadhyay, learned Senior Counsel relies upon the judgement of Hon'ble Supreme Court pronounced in the case of **Vijay Kumar Ghai & Ors. (supra)** in paragraph 16 of the said judgement of Hon'ble Supreme Court held:-

“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.”

15. This observation of Hon'ble Supreme Court in no uncertain term proclaims the impermissibility to register second F.I.R. and this paragraph also negates the argument of Mr. Bandyopadhyay that the alleged incident since took place within the territorial jurisdiction of Malbazar Police Station, the de-facto complainant was left with no other option to file an application under Section 156(3) of the Cr.P.C. to get the allegation investigated by the jurisdictional police authority.

16. Apart from this provision laid down under Chapter, XIII of Cr.P.C. contains several statutory provisions to take care of such issue regarding offence and jurisdiction of inquiry and trial. That apart the internal audit report of the fact does not support the allegation of the de-facto complainant regarding cutting down and selling of trees.
17. By several judicial pronouncement of Hon'ble Supreme Court it has become settled principle of law that barring situations in which counter cases are filed a fresh investigation or a second F.I.R. on the basis of same or connected cognizable offence would constitute an abuse of statutory power of investigation and may be a fit case for exercise of power either under Section 482 of the Cr.P.C. or Article 226/227 of the Constitution of India.
18. Learned Counsel for the State submits that investigation of the case is going on and the statements recorded under Section 161 of Cr.P.C. by the I.O. speak volume against the accused Raju Ray. Therefore, it may not be proper to smother the investigation by invoking of provision of Section 482 of the Cr.P.C.
19. From the attending facts it is admitted that in a proceeding under Article 226 of the Constitution learned Single Judge of this Hon'ble Court directed that investigation should continue according to law and when it is the mandate of the law that does not permit second F.I.R. over the identical allegation, the petitioner has every right to challenge the propriety and legality of second F.I.R. and to pray for quashment of the same.
20. In **TARAK DAS MUKHERJEE & ORS. VS. STATE OF UTTAR PRADESH** (Criminal Appeal No. 1400 of 2022 arising out of S.L.P.

Criminal Appeal No. 503 of 2020 on 23.08.2022 Hon'ble Apex Court held:-

“9. We have heard the learned counsel appearing for the appellants who submitted that both the first and second FIRS are based on the same set of facts and the same cause of action. Relying upon decisions of this Court in the case of Upkar Singh v. Ved Prakash¹ and T.T. Antony v. State of Kerala², the learned counsel submitted that registration of second FIR is a gross abuse of process of law.

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.”

21. In this regard we can profitably rely upon the judgement of Hon'ble Supreme Court pronounced in the case of State of Haryana vs. Bhajan Lal reported in 1992 Supp (1) SCC wherein it is held:-

“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 extra-ordinary 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.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

22. When registration of second F.I.R. is nothing but manifestation of abuse of process of law, in order to secure justice I consider it appropriate to invoke the provision of Section 482 of the Cr.P.C. to quash the proceeding being Malbazar P.S. case No. 538 of 2022 registered under Section 379/381/406/408/406/120B of the Indian Penal Code.

23. Before concluding I would like to make it clear that the Inspector-in-charge of Malbazar Police Station intentionally violated the direction of the learned Chief Judicial Magistrate, Jalpaiguri and thereby willfully lowered down the majesty and dignity of the Court. Such willful act of a police officer, cannot be overlooked. Since no one should be punished unheard, I consider it expedient to direct the Superintendent of Police, Jalpaiguri to inquire into the misconduct of the then Inspector-in-charge of Malbazar Police Station and take appropriate action against the erring officer. Action taken report shall be forwarded to learned Chief Judicial Magistrate, Jalpaiguri who will

be at liberty to take the issue further, if necessary. Entire process shall be completed within eight weeks from date.

24. Let a copy of this judgement be forwarded to S.P., Jalpaiguri and learned Chief Judicial Magistrate, Jalapaiguri for information and compliance.

25. Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)