

**IN THE HIGH COURT AT CALCUTTA**  
**(Criminal Revisional Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 1362 of 2020**

**With**

**CRAN 1 of 2020**

**Tathagata Roy**

**Tathagata Roy @ Raju Roy**

**Vs**

**The State of West Bengal & Anr.**

**For the Petitioner** : Mr. Anand Keshari.

**For the State** : Mr. Rana Mukherjee,  
Mr. Arijit Ganguly,  
Mr. Sanjib Kumar Dan.

**For the Opposite Party No. 2** : Mr. Satadru Lahiri,  
Mrs. Amrin Khatoon.

**Hearing concluded on** : 08.02.2024

**Judgment on** : 11.03.2024

**Shampa Dutt (Paul), J.:**

1. The present revisional application has been preferred praying for quashing of the proceedings being A.C.G.R. Case No. 2608 of 2020 arising out of **Nadial P.S. Case No. 81/2020** dated 30.05.2020 under Sections 325/326/307/34 of the Indian Penal Code now pending before the Learned Additional Chief Judicial Magistrate, Alipore.

**FACTS:-**

2. The petitioner states that the allegations in the said FIR started on the basis of a written complaint by the opposite no. 2 is to the effect that:-

*The received an information that on 26.05.2020 at about 5.30 pm, his father who is an elected M.L.A. of Metiabruz Constituency has been assaulted by some persons of Balartala who belonged to B.J.P Party on the issue of electric restoration, cut down due to the AMPHAAN cyclone. Due to the injuries received his father was shifted to C.M.R.I. Hospital for better treatment. He also came to learn that his father's jaw and elbow has been fractured and his tooth was also broken due to the assault. He met his father on 29.05.2020 when his father told him that there was road blockade and when he got the information he went to the spot and on reaching there he was mercilessly assaulted by the FIR named accused persons due to which he received the injuries.*

3. The petitioner states that he is totally innocent and has nothing to do with the incident. In fact the petitioner is completely in dark as to why the petitioner has been falsely implicated in connection with this case. In fact the petitioner is only aware that there was some commotion and the local residents had blocked the roads on 26.05.2020 due to non-restoration of electric supply even after 5 days after the cyclone and in

that blockade there was some scuffles and taking advantage of that situation, the petitioner has been entangled in this criminal case. In fact on 30.05.2020 the same police station had registered a FIR being **Nadial P.S. Case no. 78 of 2020** dated 26.05.2020 under Sections 143/147/148/149/353/188/427/307 of the Indian Penal Code started against accused persons including the petitioner. In the instant FIR started suo-moto by the police, the incident of MLA Mr. Abdul Khaliq Molla was also noted that he was attacked by a mob of agitated residents.

4. It is further stated by the petitioner that a second FIR has been initiated on the self same incident after 4 days, only to harass the petitioner out of political vendetta.
5. It is also submitted that the impugned proceeding does not disclose any ingredients of the offences so alleged against the petitioner in any manner.
6. Hence the revision.
7. **From the materials on record it appears that:-**
  - i) Initially Nadial P.S. Case No. 78 of 2020 dated 26.05.2020 under Sections 143/147/148/149/353/188/427/307 IPC was started in respect of the alleged incident on 26.05.2020.
  - ii) The case in the present proceeding being Nadial P.S. Case No. 81/2020 was registered on 30.05.2020, relating to the same incident.

- iii) The allegations in both the FIR's are the similar.
- iv) Sections 325/326 of IPC have been added in the Second FIR.
- v) The General Diary no. 1443 dated 27.05.2020 with reference to G.D.E. No. 1416 dated 26.05.2020 (page 20 & 21 of the revisional application) notes the details of the incident. In page 2 of the said G.D. it is noted as follows:-

*“Those unruly mob who attacked Police personnel and Hon’ble MLA were identified as 1) Brij Bahadur Singh, S/o Ram Chandra Singh, 2) Guddu Pandey, S/o of Kushal Pandey, 3) J. Chandra Singh, S/o Nag Narayan Singh, 4) Suraj Singh, 5) Kartick Mondal, 6) Siraj, 7) **Tathagata Roy @ Raju Roy**, 8) Badal Gayen, 9) Zulfiquer Ali Bhutto, 10) Jahir, 11) Munna, 12) Satyabrata Mondal, 13) Chottu Pal, 14) Rajib Das and Others.”*

- vi) The petitioner has been named as an accused in both the cases.
  - vii) **An eye witness, Atanu Dhali has named Suraj, Rajiu, Satya, Saddam, Rafique & more for the attack on the Local MLA.**
8. This also corroborates the G.D. entries (page 20 and 21 of the revisional application).
  9. **The injured MLA’s son has named the petitioner among others. And there is specific allegations against the petitioner in respect of the offences alleged (attacking the victim).**
  10. **The persons named in the general diary for the attack on the local MLA includes the name of the petitioner.**
  11. The incident arose out of an agitation by a mob over interruption of supply of electricity for five days due to Cyclone ‘Amphan’.

**12. The petitioner has relied upon the following rulings:-**

**i) In *T.T. Antony vs State of Kerala and Ors., (2001) 6 SCC***

**181, decided on July 12, 2001,** the Supreme Court held:-

*“18. An information given under sub-section (1) of Section 154 CrPC is commonly known as first information report (FIR) though this term is not used in the Code. It is a very important document. And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 CrPC. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the first information report — FIR postulated by Section 154 CrPC. All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 CrPC. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of CrPC. Take a case where an FIR mentions cognizable offence under Section 307 or 326 IPC and the investigating agency learns during the investigation or receives fresh information that the victim died, no fresh FIR under Section 302 IPC need be registered which will be irregular; in such a case alteration of the provision of law*

*in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H — the real offender — who can be arraigned in the report under Section 173(2) or 173(8) CrPC, as the case may be. It is of course permissible for the investigating officer to send up a report to the Magistrate concerned even earlier that investigation is being directed against the person suspected to be the accused.*

**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.*

**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.”*

**13. The Opposite Party has relied upon the following judgment:-**

**i) In *Jagdish Yadav vs Ram Nandan Yadav and Ors.*, 1990**

**SCC (Cri) 648, decided on February 11, 1988,** the Supreme

Court held:-

*“2. We are of the view that the High Court should not have interfered with the investigation made by the Criminal Investigation Department into the second FIR registered by Naya-Gaon P.S. Case No. 33 of 1986. In view of the fact that the two cases (being P.S. Cases Nos. 32 and 33 of 1986) related to the same incident it was open to the Magistrate after the two reports came to be placed before him to consider what action according to law is called for. Accordingly we set aside the order of the High Court but we leave it open to the trial court that if in course of trial, evidence appears against any specific person, the court would be free to deal with the situation according to the requirements of the Code of Criminal Procedure. The appeal is accordingly disposed of.”*

14. The facts and circumstances in the present case are totally different as in that case, the other case had been investigated by a different agency (CID).
15. In ***Tarak Dash Mukherjee & Ors. vs State of Uttar Pradesh & Ors., in Criminal Appeal No. 1400 of 2022 (arising out of SLP (Criminal) No. 503 of 2020), on August 23, 2022***, the Supreme Court held:-

*“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.”*

16. The complainant in the two cases are two government officials, and the facts are also similar, and as such the subsequent FIR is liable to be quashed.
17. As such the **subsequent proceedings** (FIR) being A.C.G.R. Case No. 2608 of 2020 arising out of Nadial P.S. Case No. 81/2020 dated 30.05.2020 under Sections 325/326/307/34 of the Indian Penal Code now pending before the Learned Additional Chief Judicial Magistrate,

Alipore, is hereby quashed in respect of the petitioner namely Tathagata Roy @ Raju Roy.

- 18. The petitioner Tathagata Roy @ Raju Roy shall face trial in accordance with law in the prior case being Nadial P.S. Case No. 78 of 2020, there being a clear prima facie case against him for the offences alleged.**
- 19.** The trial court shall frame charge under relevant sections considering the materials on record against the petitioner and the other accused persons.
- 20. CRR 1362 of 2020 is accordingly disposed of.**
- 21.** All connected applications, if any, stand disposed of.
- 22.** Interim order, if any, stands vacated.
- 23.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 24.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

**(Shampa Dutt (Paul), J.)**