

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Criminal Revisional Jurisdiction
Appellate Side**

Present:
The Hon'ble Justice Rai Chattopadhyay

CRR 310 of 2023

**Soukat Khandokar @ Saikat Khandakar & Ors.
Vs.
The State of West Bengal & Anr.**

For the Petitioners	:	Mr. Subhasish Misra,
	:	Mr. Satyajit Paul.
For the State	:	Mr. Nilay Chakraborty,
	:	Ld. APP. Mr. Sagnik Sankar Sikdar.
For the O.P. 2	:	Mr. Sourav Ganguly,
	:	Mr. Bibek Tarafder,
	:	Mr. Gopal Roy,
	:	Ms. Rishita Chakraborty.

Heard on : 04/09/2024
Judgment on: 11/09/2024

Rai Chattopadhyay, J.

1. In spite of a direction being given to the State opposite party to submit case diary of Dinhata P.S. Case No. 334 of 2023 dated July 2, 2023, the same has not be submitted in Court.
2. Noted.
3. The present revision is filed by the seven petitioners who have challenged the proceedings in Dinhata P.S. Case No. 489 of 2023 dated

August 25, 2023, under Sections 448, 341, 324, 325, 326, 307, 427, 435, 506 and 34 of the IPC read with Sections 25 and 27 of the Arms Act.

4. Mr. Misra, learned Advocate appearing for the petitioners submits that with respect of the self-same offence the police earlier has lodged a *suo moto* Case No. Dinhata P.S. Case No. 334 of 2023 on July 2, 2023, under Sections 143, 186, 353, 332, 333, 324, 325, 326 IPC read with Sections 25 and 27 of Arms Act. The investigation in the same is in progress pursuant to the lodging of FIR. During pendency of such investigation, it is stated that one Majiya Bibi wife of late Bayjar Rahaman has filed another FIR on the self-same incident, that is, Dinhata P.S. Case No. 489 of 2023 dated August 25, 2023, as mentioned above. According to Mr. Misra, the second FIR with respect to the self-same offence would be an illegality in so far as the same is not maintainable as per the provisions of the statute. Mr. Misra, learned Advocate for the petitioner would seek that an appropriate order be passed in this revision directing quashing of the proceeding in the subsequent police case that is being No. 489 of 2023.
5. A judgment of the Hon'ble Supreme Court of ***T. T. Antony vs. State of Kerala & Ors.*** reported in ***(2001) 6 SCC 181***, has been referred to in support of the contention of the petitioners that the Court prohibits filing of a second complaint arising from the same incident.

6. Mr. Ganguly has represented the opposite party/de facto complainant in Dinhata Police Case No. 489 of 2023. He would rather put forth a larger perspective of the matter through his arguments. He would say that a post poll violence has taken place on July 1, 2023 involving the parties. He would refer to the FIR No. Dinhata P.S. Case No. 334 of 2023 to show that the violence took place at the house of the opposite party No. 2, involving his son. He would say further that the FIR concerning the violence which broke out on June 1, 2023, filed by the police *suo moto* on the subsequent date of the incident, that is, Dinhata P.S. Case No. 334 of 2023 dated July 2, 2023, did not incorporate the names of the present petitioners. He would say that to be a motivated leaving out of the petitioners, in connection with the said deadly clash. Allegedly, at the instance of the petitioners, the son of the opposite party No. 2 was injured due to bomb attack, during the clash as mentioned above.
7. Mr. Ganguly has further submitted that due to the reason that the police has in their FIR intentionally left out of the names of the present petitioner, though they have been involved in the alleged offence directly and actively, the opposite party No. 2 had to come up with her grievance against the accused persons in the complaint, before the Court of Additional Chief Judicial Magistrate I, Dinhata, which was later on,

pursuant to the direction of the Court, registered as Dinhata P.S. Case No. 489 of 2023.

8. He would further indicate that the endeavour of the opposite party No. 2 to lodge her report before the police as well as the Superintendent of Police, Dinhata, went in vain. Hence, after unsuccessfully knocking doors of police for filing FIR, sending a copy of the same to the Superintendent of Police, Dinhata, without any follow up action there upon, the opposite party No. 2 was compelled to file the complaint before the trial Court and seek an order under Section 156 (3) of Cr.P.C. He would say that the complaint was lodged on August 25, 2023 and not immediately after commission of offence as alleged, because of the reason that her FIR has been declined to be accepted by police and thereafter she took time to comply with the statutory provision by sending copy of FIR to the Superintendant of Police for him to take action. But that was also a futile exercise and after a reasonable period of time, the opposite party No. 2 filed the complaint as above in the trial Court. Mr. Ganguly would raise objection as to the arguments made on behalf of the petitioners that the second FIR as above is with respect to the same offence and in continuation of the first FIR and thus to be set aside, by saying that the two FIR's as above though having been alleging the self-same incident but is not between the same parties. He would further say that the said persons, that is the petitioners though involved

directly in the clash had been left out to be arrayed as the accused persons in the Dinhata P.S. Case No. 334 of 2023, intentionally by police and made other persons accused therein including the opposite party No. 2 and his son. He says that though the fact remains otherwise that at the instance of the petitioner, the son of the opposite party No. 2 was severely injured due of exploration of bomb hurled by the petitioners. Therefore, he would suggest that there would not be any illegality for the opposite party No. 2 to lodge an FIR seeking proper investigation with respect to the offence as alleged therein and arraying the present petitioner as the party therein.

9. Mr. Ganguly has relied on a three Judges Bench decision of the Supreme Court, that is, reported in **(2004) 13 SCC 292 (Upkar Singh vs. Ved Prakash & Ors.)**, in support of his submission that an aggrieved person cannot be precluded from filing a counter case in connection with the self-same offence.
10. The issue involved is if the Dinhata P.S. Case No. 489 of 2023, which alleges about the incident of clash between the two groups of persons in a post poll condition, would be maintainable *vis-à-vis* the other FIR filed earlier with respect to the same incident on the basis of which the investigation has been proceeding.
11. The paragraph may be quoted from the decision of **Upkar Singh (supra)**, which is as follows:-

“23. Be that as it may, if the law laid down by this Court in T.T. Antony case [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.”

12. The Court therein has held that the proposition of a second complaint being a total bar is a dangerous proposition leading to serious consequence. The Court has held that in case the jurisdictional police files an FIR allowing shield to the real culprits and thus motivatedly, precluding the actual sufferer absolutely from filing an FIR, would result of deprivation of his legitimate right.
13. The object for which the entire criminal justice system operates is to uphold the rule of law in the society. For an incident involving an offence provided in the statute, specific provisions have been made as to how to proceed to pin down the culprits and take them to task. The police are the enforcing authority who has to accept the FIR and investigate upon the same to unearth the truth.
14. In this case a clash happens involving a mob. The same is violence subsequent to the polls and hence political rivalry being involved in the same, is obvious. There has been use of fire arms and bombs.

Apparently from record it appears that the son of the opposite party No. 2 has been severely injured due to bomb attack.

15. The police has lodged Dinhata P.S. Case No. 334 of 2023 on the very subsequent day of the incident, against as many as 49 accused persons. The present petitioners have not been arrayed therein.
16. The opposite party No. 2 subsequently comes up with her complaint in the Court of Chief Judicial Magistrate, though alleging the self-same incident, but against the present petitioners who have not been arrayed as the accused persons in the FIR lodged by police.
17. In view of the finding of the Hon'ble Supreme Court as quoted above in the case of **Upkar Singh (supra)**, which is found squarely applicable in this case, this Court of the opinion that the complaint lodged by the opposite party No. 2, though in respect of the self-same incident as narrated in Dinhata P.S. Case No. 334 of 2023, specifies allegations against the present petitioners who have not been arrayed as accused persons in the former FIR. In such view of the facts and circumstances the subsequent FIR by the opposite party No. 2 being Dinhata P.S. Case No. 489 of 2023 cannot be termed as a continuation of the previous FIR being Dinhata P.S. Case No. 334 of 2023, in so far as, the entire nature of allegation *vis-à-vis* the accused persons, takes a different shape in the following complaint lodged by the opposite party No. 2. In terms of the law settled by the Supreme Court in **Upkar Singh's case (supra)** the

opposite party No. 2 cannot be precluded from exercising her legitimate right to express grievance as against the petitioners having committed offence against her son. To that extent, the Court has no hesitation to accept submissions made by Mr. Ganguly, that the Dinhata P.S. Case No. 489 of 2023 can be termed as a counter case of Dinhata P.S. Case No. 334 of 2023.

18. It is also worth noting that in the FIR No. Dinhata P.S. Case No. 334 of 2023 the police has alleged about a violence being broke out between the two groups of persons and resulting into injuries to them and unauthorised usage of explosives. The second FIR No. Dinhata P.S. Case No.489 of 2023 on the other hand is the allegation against the accused persons therein regarding committing grievous hurt and attempt to murder of the victim. Therefore as a matter of fact the subject matter of the two cases cannot be said to be same though arising from the self-same incident.
19. On the discussion as above this Court is of firm view that the Dinhata P.S. Case No. 489 of 2023 should be considered as a counter case of Dinhata P.S. Case No. 334 of 2023 and should be held to be maintainable not being covered by the principle set down in **T.T. Antony's case (supra)**.
20. On the premises as above this case is liable to be dismissed.

21. CRR No. 310 of 2023 is dismissed. Let the investigation with respect to the two police cases as mentioned above be preceded with adequate promptitude and fairness, as expeditiously as possible.
22. CRR 310 of 2023 is disposed of.
23. CD of Dinhata P.S. Case No. 489 of 2023 be returned immediately.
24. The urgent Photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

RAI
CHATTOPADHYAY
DHYAY

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(Rai Chattopadhyay, J.)