IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 2705 of 2019
Ashok Ghosh
Vs.
The State of West Bengal & anr.

For the petitioners	:	Mr. Sabir Ahmed Mr. Sayak Ranjan Ganguly Ms. Srijani Ghosh Ms. Indrarni Majumder
For the State	:	Mr. Debasish Roy, Ld. PP Ms. Anasuya Sinha, Ld. APP Mr. Dattatreya Dutt
Heard on	:	19.05.2025
Judgment on	:	17.06.2025

Dr. Ajoy Kumar Mukherjee, J.

1. The only point raised for determination in the present application is whether the instant criminal proceeding being English Bazar Police station case no. 981 of 2018 dated September 14th, 2018 under sections 406/420/34 of the Indian Penal code is liable to be quashed in view of an earlier criminal proceeding initiated by the present petitioner being English Bazar police station case No. 99 of 2018 dated February 5th, 2018 under sections 420/406 of the IPC (said two proceedings are hereinafter called as subsequent FIR and former FIR respectively).

2. Petitioners contention in a nutshell is that the petitioner was the branch manager of L&T Finance Company Malda, and under his official capacity he has lodged the abovementioned former FIR being English Bazar P.S. case no. 99 of 2018 against one Basant kumar Podder under section 420/406 of IPC. In the said complaint, Tapasi Das (who is the complainant of the subsequent FIR), Bijay Sahani and Ram Kumar Chowdhury have put their signature and joined under the status of complainant. Petitioner further contended that during the course of investigation said witness Tapasi Das was examined under section 161 of the Cr.P.C. along with other witnesses and after completion of investigation police have submitted charge sheet in the said proceeding. About seven month after lodging the former FIR, said witness Tapasi Das preferred an application under section 156 (3) of the Code before the Court below implicating present petitioner along with said Basant with almost similar nature of allegation and learned Magistrate directed O/C English Bazar police to cause investigation treating the petitioner of complaint filed by Tapasi Das as an FIR, which has given birth to the instant proceeding under subsequent FIR being English Bazar police station case no. 981 of 2018.

3. Being aggrieved by the aforesaid subsequent FIR, Mr. Sabir Ahmed learned Counsel appearing on behalf of the petitioner submits that the present petitioner when lodged the former FIR being case no. 99 of 2018, has specifically stated that Basant Kumar Podder was working as a field officer since 2015 and while working, he used to collect money from different persons viz., Tapasi Das and others and he was entrusted to collect money on behalf of the company and was supposed to submit the money with the company. Thereafter it transpired that despite collecting a sum of Rs. 14,27,521/- from Tapasi Das and others, said accused Basant did not deposit the said amount of money with the company. He also submitted that said accused Basant after mis appropriation of aforesaid money collected from various persons has fled away. The company has also issued notice to said Basant and thereafter terminated him from the service.

4. During the course of argument Mr. Ahmed specifically alleged that the company was not made aware about the misappropriation of the money collected by Basant and only when it was detected it could be learnt that both Tapasi and Basant were in collusion with each other to mis appropriate the money and since the petitioner has lodged the complaint against Basant for taking appropriate legal action and as Tapasi is also involved in mis appropriation of the money, she in order to save herself has come up with the subsequent FIR with the allegation that the present petitioner and Basant both are responsible for mis appropriation of the money collected through her.

5. He strenuously argued that it is apparent that the subject matter of mis appropriation of money is to the tune of Rs. 14,27,521/- and after examining the available witnesses including said Tapasi Das and based on documents available with the petitioners company it was found by the investigation agency in connection with the former FIR that Basant Kumar podder is responsible for committing criminal breach of trust and cheating with the petitioner through L&T Finance company and for which charge sheet have been submitted in connection with the former FIR against said Basant Kumar Podder only. In this context he further submits that the amount involved in the second FIR lodged by Tapasi Das is also to the tune of Rs. 14,27,521/- where Tapasi is the complainant and the sections put in the said proceeding is Section 406/420/34 of the IPC with the self-same police station, where the petitioner has been named as an accused and alleged to have acted beyond his official capacity in collecting the money, though investigation agency has already arrived at a conclusion while submitting charge sheet in connection with the former FIR that Basant Kumar Podder is the person who has collected the said amount of money and mis appropriated the same. Accordingly Mr. Ahmed submits that Tapasi while lodged the subsequent FIR has suppressed the earlier FIR and prayed for investigation for committing mis appropriation of the money of the same amount to the tune of Rs. 14,24,521/- though, she joined with the petitioner herein in the former FIR as complaint against Basant and she was well aware about the same while she lodged the subsequent FIR. In fact the subsequent FIR being no. 981 of 2018 is an outcome of wreak vengeance by the complainant Tapasi Das who is in collusion with Basant Kumar Podder.

6. Mr. Ahmed further argued that since the former FIR and subsequent FIR are based on the self-same set of fact including the quantum of money, the subsequent complaint is not maintainable in the eye of law. His further contention is that the petitioner was working in the company as a territorial manager and has no direct role in the field transaction and it is accused Basant, who was the person responsible for collecting money and depositing the same with the company and entrustment was with Basant and as such criminal breach of trust has been alleged against Basant. In fact in the subsequent FIR Tapasi has not made any specific allegation attributing, wrongful loss by Tapasi and wrongful gain by the present petitioner. The facts and circumstances of the case clearly reveals that petitioner in discharge of his official duty and with *bonafide* intention had blown the whistle and invited the investigation on the funds misappropriated by Basant and as such the subsequent FIR with the allegation of mis appropriation with the self-same amount of money does not call for any further investigation and if it is allowed to continue it would amount to abuse of process of court and as such the same is liable to be quashed. The said subsequent proceeding initiated by Tapasi implicating present petitioner with said Basant is a malicious proceeding and even if the contents of subsequent FIR is taken in its entirety as true, it does not disclose any offence against the petitioner.

7. Opposite party/FIR maker of the subsequent FIR is not represented.

8. Mrs. Anasuya Sinha learned Counsel appearing on behalf of the state submits that in the subsequent FIR, the real set of facts has been brought forward by the opposite party no. 2 namely Tapasi Das since she as well as 29 other victims realized that they were being played by the petitioner and the fog created by the petitioner herein has been finally removed. She further submits that there are 64 victims who were cheated in the same manner by the petitioner herein and said Basant and as investigation progressed, the name of the other victims are coming forward. She further submits that during investigation of the subsequent FIR, police recorded the statement of some of the victims under section 164 Cr.P.C. wherefrom it is clear that Basant as well as the petitioner went to the individual houses of the victims to explain the scheme of things and thus by manipulating them, collected money. It also surfaced that petitioner himself was given money in hand by many of the victims which clearly indicates present petitioner's involvement in the entire process of cheating.

9. Mrs. Sinha strenuously argued that the statement of co accused Basant was recorded during investigation in connection with the subsequent FIR and it transpired from such statement that he along with the petitioner had opened the L & T Financial Office at Subhash Pally in order to lure the illiterate, innocent, rustic villagers to provide loans to them and in turn misappropriate the entire amount of money. Relying upon the Apex Court judgment in ***State of Rajasthan Vs. Surendra Singh Rathore,*** reported in ***2025 SCC Online SC 358,*** she submitted that the subsequent FIR is very much maintainable if it pertains to larger issues of corruption affecting larger interest of the society, which is the case of prosecution in the instant proceeding. Accordingly quashing of the proceeding initiated by Tapasi at this stage would cause great injustice to the victim and would affect the investigation with regard to seizure of loan documents, recording of statements etc. Moreover, there are statements of co accused who have confessed to have committed the crime along with the petitioner which cannot be ignored at this stage. There are sufficient materials against the petitioner to proceed against him and if at this stage investigation has been thwarted it would cause injustice to the large number of victims who are prey to this crime and who belong to the poor downtrodden section to the society and have lost their hard earned money in the scheme of the petitioner as well as Basant and accordingly State has prayed for dismissal of the instant revisional application.

Decision

10. On bare perusal of the two FIR, it appears that the allegation in the former FIR lodged by the present petitioner citing Tapasi along with other persons as co-complainant, pertains to the entire allegation against one Basant Kumar Podder who was allegedly entrusted to collect money on behalf of the company from various persons and to deposit the same to the company and it transpired that said Basant collected money to the tune of Rs. 14,27,521/- from Tapasi Das but he did not deposit the same to the company and had fled away without reporting anything to the branch and had remained absent from attending the branch on and from 13.12.2016. It has been further alleged in the said former FIR that present petitioner on behalf of the company had called him several times to respond but he failed to answer properly and for which there are sufficient reasons to believe that said Basant has fled away with the said amount of money which he has used for his personal gain and thereby cheated said Tapasi Das and the company at the same time. In the subsequent complaint lodged in the form of an application under section 156 (3) of Cr.P.C., and which was subsequently treated as subsequent FIR, it is alleged by said Tapasi that on 05.08.2016 and on different dates the complainant Tapasi had collected Rs. 14,27,521/- and in the presence of both the accused persons i.e. the petitioner (who is accused no. 1) and Basant (who is accused no.2) she had handed over said amount of money of Rs. 14,27,521/- to accused Basant, who accepted the same. It is further alleged that both the said accused persons have mis appropriated the said amount of Rs. 14,27,521/- but the present petitioner in order to save himself, had lodged the former FIR against Basant Kumar Podder only.

11. Accordingly it is clear that the allegation levelled in both the FIRs are the same and the alleged mis appropriated amount is also the same but in the subsequent FIR the only information added is that said Basant in collusion with the present petitioner has mis appropriated the said amount. However, the result of investigation in connection with the former FIR culminated into a charge sheet against Basant Kumar Podder only and it also appears from the case diary that during investigation of the former FIR, Tapasi made statement before police under section 161 Cr.P.C. which also corroborates her statement with the subsequent FIR lodged by her that she handed over Rs. 14,27,521/- to Basant Podder in 2016 and in the said statement made under section 161 Cr.P.C. she had not implicated the present petitioner anywhere. However, it appears that during investigation of subsequent FIR lodged by Tapasi she has made a statement during hearing of instant proceeding before Magistrate on 03.01.2025 i.e. 7 years after her aforesaid statement that she had handed over 14,27,521/- to present petitioner Basant Kumar Podder in presence of petitioner and one Sandip Pandey, who conducted a meeting at her house and brought her to Kingsway with the assurance of the payment of money and also asked her to put signature on blank paper.

12. Be that as it may let us come back to the question as to whether in view of aforesaid facts and circumstances of the case the subsequent FIR lodged by aforesaid Tapasi Das is sustainable in the eye of law or not. Such issue has been elaborately discussed by the Apex Court ***T.T. Antony Vs.***

State of Kearla and others , reported in **2001 SCC (cri) 1048** wherein the court held in paragraph 20 as follows:-

> ***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.*

13. In the instant case the allegations in both FIR is about defalcation of money amounting to Rs. 14,27,521/-. In the subsequent FIR only an additional information in respect of the same cognizable offence has been supplied that the principle accused Basant defalcated said amount of money in collusion with present petitioner and therefore, such subsequent information in respect of same offence over self-same occurrence/incident, fresh investigation on receipt of such subsequent information is barred. In the former case the investigating agency has already concluded investigation over self-same occurrence/self-same offence which culminated into charge sheet against Basant Kr. Podder.

14. In ***Bijay Kr. Ghai and others Vs. State of West Bengal and others*** reported in **(2022) 7 SCC 124** the Apex Court made it clear that barring situations in which a counter case is filed a fresh investigation or a second FIR on the basis of same or connected cognizable offence would constitute an abuse of the statutory power of investigation and may be a fit case for quashing the subsequent proceeding. Paragraph 16 of the said judgment laid down the ratio which is as follows:-

> *The legality of the second FIR was extensively discussed by this Court in T.T. Antony v. State of Kerala [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] . 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 154CrPC 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 CrPC. 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 482CrPC or Articles 226/227 of the Constitution of India.*

15. There is no dispute over the proposition of law as cited by the State that second FIR is permissible if it pertains to larger issue of corruption affecting larger interest of the society but here said ratio has got no application in view of the fact that issue of corruption affecting larger interest of society was also involved in the former FIR lodged by the present petitioner. What has been sought to be incorporated as added information in the second FIR is that over the issue of corruption affecting larger interest of the society, not only accused Basant had played the role but also petitioner herein was involved with the alleged crime with Basant. Infact in paragraph 9 of ***Surendra Singh Rathore Case (supra)*** the supreme Court laid down the principle where the second FIR is permissible, which is as follows:-

> ***9.*** *From the above conspectus of judgments, inter alia, the following principles emerge regarding the permissibility of the registration of a second FIR:*
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> ***9.1*** *When the second FIR is counter-complaint or presents a rival version of a set of facts, in reference to which an earlier FIR already stands registered.*
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> ***9.2*** *When the ambit of the two FIRs is different even though they may arise from the same set of circumstances.*
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> ***9.3*** *When investigation and/or other avenues reveal the earlier FIR or set of facts to be part of a larger conspiracy.*
>
> ***9.4*** *When investigation and/or persons related to the incident bring to the light hitherto unknown facts or circumstances.*
>
> ***9.5*** *Where the incident is separate; offences are similar or different.*

16. From the case in hand it is palpably clear that the subsequent FIR lodged by Tapasi is neither a counter complaint nor a rival version of set of fact in reference to which the former FIR has already been registered and has already been culminated into a charge sheet. It is also crystal clear from the subsequent FIR that ambit of the two FIRs, is also not different in as much as scope of both FIR is to make investigation about syphoning of money amounting to Rs. 14,27,521/-. Moreover the second FIR does not disclose any new set of facts to be part of larger conspiracy as defalcated amount and the alleged cheated persons are the same in both FIR and second FIR does not bring any unknown fact or circumstances save and except the information, which complainant Tapasi sought to incorporate in the second FIR that Basant and the present petitioner are in collusion with each other have defalcated the above mentioned amount.

17. In fact the statement of Tapasi made in the FIR after closure of investigation in respect of former FIR is nothing but a statement falling under 162 Cr.P.C. In fact the allegations about defalcation of the money is the same. In ***Babubhai Vs. State of Gujarat***, reported in **(2010) 12 SCC 254** the Apex Court has dealt with the issue of judging 'sameness' of two FIR and has held in paragraph 21 as follows:-

> ***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.*

18. Here both the FIR relates to the same incident in respect of same occurrence and admittedly the subsequent FIR is not on the basis of any different incident or on different crime and as such second FIR is not permissible. There is a difference “same incident in respect of the same offence” and the “same kind of offence”. In cases where the second FIR is filed in connection with commission of the same offence, the second FIR is liable to be quashed through the taste of ‘sameness’. Whereas the taste of sameness is not applicable where similar kind of offences are committed. It is because the offence is in itself can be different though they may be of similar nature.

19. In view of aforesaid discussion I am convinced to conclude that the subsequent FIR lodged by Tapasi over the self-same crime involving self-same allegation of defalcation of an amount of money to the tune of Rs.14,27,521/- is liable to be quashed.

20. **CRR 2705 of 2019** thus stands allowed.

21. In view of above the criminal proceeding being English Bazar Police station case no. 981 of 2018 dated September 14th, 2018 under sections 406/420/34 of the Indian Penal code is hereby quashed. However this order of quashment will not preclude the investigating agency of the former FIR from seeking leave of the court in connection with English Bazar Police station case no. 99 of 2018 dated 05.02.2018, for making prayer for further investigation and for filling a further report under section 173(8) of Cr.P.C. before the competent court in the said case.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)