

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble **Justice Kausik Chanda**

C.R.R. NO. 1352 OF 2021

SUVENDU ADHIKARI AND ANOTHER

-VERSUS-

THE STATE OF WEST BENGAL AND ANOTHER

For the petitioner no. 1	: Mr. P.S. Patwalia, Sr. Adv., Mr. Sourav Chatterjee, Adv., Mr. Billwadal Bhattacharjee, Adv., Ms. Bansari Swaraj, Adv., Mr. Siddhesh Rotwal, Adv., Ms. Manya Harija, Adv., Ms. Harshika Verma, Adv., Ms. Ana Upadhyay, Adv., Mr. Aditya Tiwari, Adv.
For the petitioner no. 2	: Mr. Sekhar Kumar Basu, Sr. Adv., Ms. Arushi Rathore, Adv.
For the State	: Mr. Kishore Datta, Ld. Advocate General, Mr. S.G. Mukherjee, Ld. P.P., Mr. Rudradipta Nandy, Adv.
For the opposite party no. 2:	Mr. Sabyasachi Banerjee, Adv., Ms. Abhia Jena, Adv.
Hearing concluded on	: 23.08.2021
Judgment on	: 04.10.2021

Kausik Chanda, J.:-

This is an application for quashing of the proceeding being G.R. Case no. 990 of 2021 pending before the learned Additional Chief Judicial Magistrate, Contai, Purba Medinipur arising out of Contai Police Station Case No. 193 of 2021 dated 01.06.2021 under Sections 448/379/409/120B of the Indian Penal Code, 1860, and under Sections 51/53 of the Disaster Management Act, 2005.

(2) I have had the advantage of hearing the detailed arguments advanced by the learned counsel appearing for the parties. The parties have filed their respective written notes of argument.

(3) Mr. P.S. Patwalia, learned senior advocate appearing for the petitioner no. 1 submitted that the petitioners had been implicated in this case since they had changed their political affiliation from the ruling political party to the political party in opposition.

(4) He pointed out that on May 29, 2021, the Chairman of the Board of Administrators of the Contai Municipality lodged a general diary before the Contai Police Station where it had been alleged that there was an attempt to commit theft of tarpaulin sheets and the attempt to commit was thwarted by the members of the public who were present at the spot.

(5) It was further alleged that in the said general diary that on receipt of such information, the said Chairman immediately rushed to the spot and put a padlock.

(6) Two days after the said general diary was lodged with a mala fide intention and malice the present FIR had been lodged, giving a contradictory version by one of the members of the Board of Administrators of the said Municipality.

(7) The aforesaid fact of two conflicting version about the selfsame alleged incident of May 29, 2021, speaks volume of the maliciousness behind the present criminal case.

(8) It has been pointed out that the statement recorded by the police under Section 161 of the Code of Criminal Procedure, 1973, suggests that the petitioners conspired for committing the alleged offences. It is absurd that a chance witness can have any knowledge with regard to the conspiracy. A public witness cannot have any information about the persons involved behind the scene of the alleged offence, namely the conspirators. It, therefore, shows that the said witnesses had been tutored by the investigating agency. It has been further submitted that there has been no ingredients of Section 409 of the Indian Penal Code, 1860, and there is no scope of entrustment in this case since the petitioner no. 1 was in no way connected or associated with the Contai Municipality. The

petitioner no. 2 is an erstwhile Chairman of the Board of Administrators of the Contai Municipality and on the date of the alleged incident, he was in no way connected with the said Municipality.

(9) Mr. Patwalia submits that the petitioner cannot be implicated on the basis of the statements of the co-accused since the same is hit by Section 25 of the Evidence Act.

(10) Mr. Patwalia relies upon the judgments reported at **AIR 1960 SC 866 (*R. P. Kapur v. State of Punjab*)** and **2021 SCC OnLine 315 (*Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*)** to contend that when the prosecution has been lodged with a malice and the complaint does not show ingredients of a cognizable offence against the petitioners, the First Information Report may be quashed by the High Court in exercise of its power under Section 482 of the Code of Criminal Procedure, 1973.

(11) Mr. Patwalia contends that the petitioner has been implicated in at least five criminal cases within a short span immediately after his change of political affiliation. Such consecutive criminal cases lodged against the petitioner by the State shows mala fide and malice of the State against the petitioner. By relying upon a judgment reported at **(2018) 3 Cal LT 482 (*Mukul Roy v. State of West Bengal*)** Mr. Patwalia submits that the present case against the petitioner should also be quashed.

(12) Mr. Patwalia, at the time of giving his reply, has relied upon the some unreported cases where this Court has stayed the investigation launched against some associates of the petitioner no. 1 who also shifted their political allegiance from the ruling party to the opposition.

(13) Mr. Sekhar Basu learned senior advocate appearing on behalf of the petitioner no. 2 has submitted that since in this case a general diary was made on May 29, 2021, the police should have treated the same as an FIR and the subsequent FIR lodged on June 1, 2021, is not sustainable. It has been submitted by Mr. Basu that the said general diary dated May 29, 2021, and the FIR dated June 1, 2021, relate to the same incident and therefore the FIR dated June 1, 2021 is liable to be quashed. Mr. Basu in support of his submission relied upon the paragraphs 20 and 21 of the judgment reported at **(2010) 12 SCC 254 (Babubhai v. State of Gujarat)**. Mr. Basu further relied upon a judgment reported at **(2007) 4 CHN 809 (Ramesh Sha v. State)** to suggest that the First Information Report is that information which has been given to the police first in point of time on the basis of which the investigation commences and not that which the police may select and record as First Information Report. The law has not permitted the police officer to have any choice over the matter to decide which of the information shall be treated as First Information Report. By relying upon a judgment reported at **(2001) 6 SCC 181 (T.T. Antony v. State of Kerala)** Mr. Basu argued that only the earliest or the first

information in regard to commission of offence satisfies the requirement of the Section 154 of the Code of Criminal Procedure, 1973. There can be no fresh investigation on a receipt of every subsequent information in respect of the same cognizable offence.

(14) Mr. Kishore Datta learned senior advocate on the other hand submitted that since the plain reading of the complaint dated June 1, 2021, discloses cognizable offences it is mandatory upon the police to lodge an FIR in view of the judgment reported at **(2014) 2 SCC 1 (*Lalita Kumari v. Government of Uttar Pradesh*)**.

(15) On June 14, 2021, a coordinate Bench refused to pass interim order without going to the case diary following the law laid down in case of ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*** reported at **(2021) SCC OnLine SC 315**.

(16) The case diary reveals that the statement recorded under Sections 161 and 164 of the Code of Criminal Procedure, 1973, implicate the petitioner no. 1. There has been recovery of total 41 numbers of stolen tarpaulins; the presence of the members of the central forces at the time of occurrence has also been revealed from the statements recorded under Section 164 of the Code of Criminal Procedure, 1973.

(17) By referring to Section 44 of the Police Act 1861, and Section 377 of the Police Regulation of Bengal, 1943. It has been argued that the general

diary entry is not an FIR. It has further been submitted that Form 65 of Police Regulation of Bengal, 1943 mentions how a general diary entry is to be made, whereas Form 27, 33, and 35 relate to First Information Report under Section 154 of the Code of Criminal procedure, 1973.

(18) It is submitted that there was no prior registration of FIR alleging theft of relief materials and the information given on June 1, 2021, was the first information disclosing theft and as such the said FIR is not hit by Section 162 of the Code of Criminal Procedure, 1973. Mr. Datta, in this regard, has placed reliance upon paragraph 23 of the judgment reported at **(2003) 6 SCC 175 (CBI v. Tapan Kumar Singh)**.

(19) Mr. Datta relied upon the judgment reported at **(2019) 9 SCC 24 (P. Chidambaram v. Directorate of Enforcement)** to contend that no ground of mala fide being made out against the investigating officer, the FIR cannot be quashed.

(20) Mr. Datta argues that **R. P. Kapur (supra)** as relied upon by Mr. Patwalia is of no help to the petitioner as paragraphs 6, 7 and 10 of the said judgment categorically mandates that if the complaint taken at its face value and accepted in its entirety constitutes the alleged offence the question of further appreciating evidence at the stage of the investigation does not arise. The materials collected in the evidence can only be looked at by the Court at the time of filing the charge sheet/report in final form.

(21) It is further submitted that on May 15, 2021, the State security was withdrawn from the petitioner no. 1 and he was given protection of central force. Several witnesses stated that at the time of the alleged occurrence of theft of the relief materials, the central security persons were present on the spot. The case is at the investigation stage and during investigation, the several statements recorded under Section 164 of the Code of Criminal Procedure, 1973 clearly indicate that there has been theft of relief materials at the behest of the persons who acted as per the instruction of the petitioners.

(22) ***Neeharika Infrastructure (supra)*** has also been relied upon by the State to contend that powers of the investigating agency are unfettered as long as the investigating officer exercises his powers within the provisions of the law and legal bound. And the High Court cannot pass a blanket order of not to arrest till the investigation is completed. The accused persons have an alternative remedy under Section 438 of the Code of Criminal Procedure, 1973, and only in very extraordinary situation such order can be passed, but before passing the same, the materials collected upon investigation have to be looked into to come to a finding that an FIR does not, *prima facie*, disclose the commission of a cognizable offence. Mr. Datta has relied upon the paragraphs 33, 36 and 57 of the said report.

(23) By placing reliance on the judgment reported at **(2009) 13 SCC 443** (***State of Andhra Pradesh v. Aravapally Venkanna***) it has, further, been

contended that allegations of mala fide against the informant are inconsequential.

(24) Mr. Datta further submits that High Court cannot act like an investigating agency or exercise the power like an appellate Court in order to examine whether the FIR discloses any cognizable offence or not. The High Court cannot appreciate evidence nor could draw its own interference on the contents of the FIR and, *prima facie*, materials if any requiring no proof. In this regard reliance has been placed upon the judgment reported at **(2018) 3 SCC 104 (Dineshbhai Chandubhai Patel v. State of Gujarat)**.

(25) Mr. Datta sought to distinguish the judgment reported at **(2018) 3 Cal LT 482 (Mukul Roy v. State of West Bengal)** by contending that in that case the Court held that delay of six years in lodging the complaint was not properly explained and the complaint was lodged without following the dictum of the Apex Court in **Priyanka Srivastava** case reported at **(2015) 6 SCC 287**. The facts and circumstances of the present case are totally different.

(26) With regard to the unreported judgments relied upon Mr. Patwalia, it has been submitted that those are interim orders having no binding effect, and some orders have already been challenged before the appeal Court.

(27) Mr. Sabyasachi Banerjee, learned advocate appearing for the de-facto complainant/opposite party no. 2 has submitted that the statements made by a co-accused may be considered or treated as a clue or a piece of information to initiate and conduct enquiry or investigation. He relied upon a judgment reported at **2013 Cri LJ 1779 (Dolatram Tekchand Harjani v. State of Gujarat)**. Mr. Banerjee also refers to a judgment reported at **(1999) 3 SCC 259 (Rajesh Bajaj v. State NCT of Delhi)** and submits that High Court cannot quash a proceeding when the facts of the case are hazy and it is not necessary that the complaint should verbatim reproduce all the ingredients of the alleged offence. It has further been contended that the High Court should normally refrain from giving a, *prima facie*, decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal are of wide magnitude and cannot be seen in their true perspective without sufficient materials. In this regard he relied upon a judgment reported at **(2012) 10 SCC 155 (State of Madhya Pradesh v. Surendra Kori)**.

(28) I have heard the arguments advanced by the respective parties at length. I have no quarrel to the propositions of law as advanced by the appearing parties before me, and as such I need not separately deal with the judgments relied upon by the parties. In my view the question of granting interim order in this case should be decided in the factual

backdrop of the case and in the light of the judgment reported at **2021 SCC OnLine SC 315 (*Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*)** relied upon by all the appearing parties.

(29) The specific questions as to whether the High Court would be justified in granting stay of further investigation pending the proceedings under Section 482 of the Code of the Criminal Procedure 1973, before it and in what circumstances the High Court would be justified to do so were answered in paragraph 63 of the said report as follows :-

“**63.** As observed hereinabove, there may be some cases where the initiation of criminal proceedings may be an abuse of process of law. In such cases, and only in exceptional cases and where it is found that non interference would result into miscarriage of justice, the High Court, in exercise of its inherent powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India, may quash the FIR/complaint/criminal proceedings and even may stay the further investigation. However, the High Court should be slow in interfering the criminal proceedings at the initial stage, i.e., quashing petition filed immediately after lodging the FIR/complaint and no sufficient time is given to the police to investigate into the allegations of the FIR/complaint, which is the statutory right/duty of the police under the provisions of the Code of Criminal Procedure. There is no denial of the fact that power under Section 482 Cr.P.C. is very wide, but as observed by this Court in catena of decisions, referred to hereinabove, conferment of wide power requires the court to be more cautious and it casts an onerous and more diligent duty on the court. Therefore, in exceptional cases, when the High Court deems it fit, regard being had to the parameters of quashing and the self-restraint imposed by law, may pass appropriate interim orders, as thought apposite in law, however, the High Court has to

give brief reasons which will reflect the application of mind by the court to the relevant facts.”

(30) Regard being had to the aforesaid guidelines of the Supreme Court, the factual aspect involved in the case is needed to be considered.

(31) The relevant FIR was registered on June 01, 2021.

(32) The attending circumstances in which the relevant FIR was registered are quite unusual and give rise to a suspicion. It appears that on May 29, 2021, the Chairman of the concerned municipality himself lodged a complaint before the police that there was an attempt to “loot” some tarpaulins to a vehicle bearing registration no. WB 319680 by some delinquents who were the associates of petitioner no. 1. Upon receiving such information, he rushed to the spot and locked the godown. No FIR was registered on the basis of the said complaint, and only a general diary entry was made vide GDE no. 1207 dated May 29, 2021.

(33) The translated version of the said general diary entry as made over by the State to this Court is reproduced below:-

“By this time received a written information from Sidhartha Maity, Chairperson of Contai Municipality to the effect that today (29.05.21) at about 12:30p.m. some wrong doers (Duskriti) of MLA Suvendu Adhikari in presence of central force and their assistance tried to loot some polithin to a small vehicle bearing no. WB 31-9680 from a godown situated in front of dormitory under water tank. Receiving such information, he went to the PO. Central force used abusive languages upon him. He somehow locked the godown. Said vehicle fled away from there. I diarized the matter and directed SI Gaurab Mitra to enquire into and submit report early.”

(34) Two days after the said general diary, a member of the Board of Administrators of the said municipality comes up with a different version before the police and lodges the relevant FIR. He alleges, inter alia, as follows:-

“On 29.5.2021 at about 12:30 pm in the afternoon upon the instructions of Suvendu Adhikari (accused no. 1) and Soumendu Adhikari (accused no. 2 and former Chairman of the Board of Administrators of Contai Municipality) in a pre-planned manner and pursuant to a conspiracy and with the help of office bearers of Contai Municipality namely, Himangshu Manna and Pratap Dey (accused nos. 3 and 4) about 4/5 armed personnel of the Central Force came with a mini truck bearing registration no. WB 31 9680 in the office godown of Contai Municipality (in front of the dormitory, beneath the water tank) and illegally/forcibly entered into the said godown. The accused no. 4 Pratap Dey helped them to open the padlock and the said Central Forces personnel loaded the government supplied tarpaulin sheets in the said mini truck and fled away. Upon coming to know from reliable sources, I went there and physically examined the said place and found that the accused persons acting through some unknown miscreants and upon exaltation of armed Central Forces personnel, tarpaulin sheets worth more than a lakh of rupees have been looted from the said godown. When myself as well as another member of the Board of Administrators of Contai Municipality namely, Habibur Rahaman questioned Himangshu Manna and Pratap Dey (accused nos. 3 and 4) about the incident, they reluctantly said that such illegal act was committed by them under the instructions of Suvendu Adhikari and Soumendu Adhikari.

Under such circumstances please take necessary action against the below named persons and do justice.”

(35) It is difficult to accept the modified version of the said FIR by one of the members of the Board of Administrators registered after two days of the alleged incident, when the Chairman of the municipality himself claimed to have visited the place of occurrence immediately after the alleged incident, and informed the police that there had been an attempt to take away the tarpaulin sheets. In the said complaint the Chairman did not name the petitioner no. 2 and attributed no specific role to the petitioner no.1.

(36) The different provisions of Police Regulation of Bengal, 1943, the police Act 1861 and the Code of Criminal Procedure, 1973, as placed by the learned Advocate General only suggest that all the daily events including the reporting of commission of cognizable offence reported at the police station are to be diarised as general diary entry and the reports relating to commission of an cognizable offence needs to be registered as FIR also.

(37) In view of the judgment reported at **(2010) 12 SCC 254 (Babubhai v. State of Gujarat)**, *prima facie*, I am of the opinion that the investigating agency ought not to have registered the relevant FIR when the complaint of the Chairman dated May 29, 2021, relating to the same incident disclosing cognizable offences was already diarised before them. An FIR should have been registered on the basis of the said complaint.

(38) The relevant part of the said judgment is quoted below:-

“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.”

(39) When this application for quashing was moved on June 14, 2021, a coordinate Bench of this Court observed as follows:

“Having regard to the fact of the case which relates to relief materials and the dictum of the Hon’ble Apex Court in the case of M/s. Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors. reported in 2021 SCC Online SC 315, I am not inclined to pass any interim order at this stage without perusal of the case diary and the materials collected by the investigating agency.

The interim order prayed for is refused at this stage. However, the petitioners will be at liberty to renew their prayer for interim order on the next date fixed for hearing.

Learned Public Prosecutor who is present in court is directed to produce the case diary on the next date.”

(40) Thereafter this application was taken up for hearing on a number of occasions, but no interim order whatsoever was passed. Investigation was allowed to be carried out and the progress of investigation was reported to this Court time to time and the judgment was reserved on August 23, 2021, upon conclusion of hearing on the point of granting interim order.

(41) Therefore, it is not the initial stage of the investigation when the Court is considering the prayer for passing the interim order. The facts are no more hazy. The case diary produced before this Court suggests that during the course of the investigation many statements were recorded under Section 161 and under Section 164 of the Code of Criminal Procedure, 1973. Search and seizure also took place and some of the accused persons were also arrested. The case diary, however, does not disclose any legal evidence collected against the petitioners. It appears that the statements of some chance witnesses or public witnesses were recorded

under Section 164 of the Code of Criminal Procedure, 1973, who were allegedly present at the place of occurrence at the relevant point of time by chance. The said witnesses gave statements that they heard other accused persons saying that they had acted under the instruction of the petitioner no. 1. The statements recorded under Section 161 also suggest that the said witnesses heard that the other accused persons saying that they had acted under the instruction of the petitioner no. 1 and 2. Needless to mention that those statements are hearsay in nature without any evidentiary value. Apart from these statements, during the course of investigation nothing has been collected to implicate the petitioners in this case.

(42) The political overtones of this present criminal case cannot be brushed aside. Petitioner no. 1 is a member of West Bengal Legislative Assembly and he is the current leader of the opposition. The petitioner no. 1 was the Transport Minister of the State cabinet while he was a member of the political party presently in power in this State. He became a renegade and joined the rival political party of the State in the month of December 2020. Petitioner no. 2 is the brother of the petitioner no. 1. Petitioner no. 2 is the erstwhile Chairman of the concerned municipality. He also left the ruling political party of the State and joined the political party in opposition.

(43) I am also inclined to take judicial note of a judgment dated September 6, 2021, of a coordinate Bench of this Court whereby the said Court interfered with five other criminal cases launched against the petitioner no. 1 observing, inter alia, as follows:-

“This Court finds substantial force in the petitioner’s argument. Prima facie there appears to be an attempt at implicating and victimizing him in criminal cases and mala fides, malice and collateral purpose in registering the FIRs against the petitioner and his associates. A scheme and or conspiracy and or pattern and or stratagem appear to have been devised to entrap the petitioner and his associates to ensure their incarceration and custody inter alia to embarrass them.”

.....

“In the instant case there is prima facie evidence before this Court of abuse and or misuse of State and police machinery in registering cases for investigation based on half-truths, fiction, concoctions and non-events.”

(44) The present criminal proceeding is one of the contemporaneous criminal cases launched against the petitioner no. 1 soon after the change of his political affiliation.

(45) In view of the aforesaid, *prima facie*, findings I am of the opinion that an exceptional case has been made out to pass an interim order in this case. Accordingly, there shall be stay of all further proceedings being G.R. Case no. 990 of 2021 pending before the learned Additional Chief Judicial Magistrate, Contai, Purba Medinipur arising out of Contai Police Station Case no. 193 of 2021 dated 01.06.2021 under Sections 448/379/409/120B of the Indian Penal Code, 1860, and under Sections

51/53 of the Disaster Management Act, 2005, as against the petitioners, till six weeks after the ensuing Puja vacation. The opposite parties may file their affidavits-in-opposition within two weeks after the Puja vacation; reply thereto, if any, may be filed within one week thereafter. List this application four weeks after Puja vacation under the heading “Contested Application.”

(46) Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Kausik Chanda, J.)