

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

Before:

THE HON'BLE MR. JUSTICE JAY SENGUPTA

W.P.A. 20349 OF 2023

Samrat Samanta & Anr.

VS.

The State of West Bengal & Ors.

For the Petitioners :

Mr. Rajdeep Mazumder
Mr. Moyukh Mukherjee
Mr. Pritam Roy
Mr. Soewel Bhattacharjee
Ms. Sagnika Banerjee

For the State :

Mr. Somnath Ganguli, Ld. AGP
Ms. Priyanvada Singh

Heard on: 12.10.2023

Judgment on: 12.10.2023

JAY SENGUPTA, J:

This is an application under Article 226 of the Constitution of India praying for quashing of the FIRs filed against the petitioners.

However, at the outset, learned counsel for the petitioners decided not to press the prayer for quashing at this stage and prayed only for

clubbing of the relevant cases in terms of the ratio laid down by the Hon'ble Supreme Court in *Babubhai Vs. State of Gujarat & Ors.* reported at (2010) 12 SCC 254.

A chart of cases with comparison, as filed on behalf of the State, is taken on record. Copy of the same is handed over to learned counsel appearing for the petitioners.

Learned counsel appearing for the State also produces the relevant Case Diaries for perusal.

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioners are praying that certain FIRs lodged on the self-same grounds and incidents may be clubbed together. In the instant case, Moyna Police Station Case Nos. 10/2023, 11/2023 and 12/2023 all dated 09.01.2023 were registered over the same incident. Similarly, Moyna Police Station Case Nos. 79/2023 dated 26.03.2023 and 84/2023 dated 29.03.2023 were started in respect of the same incident. So are the cases of Moyna Police Station Case Nos. 93/2023 and 94/2023 both dated 10.04.2023 and 96/2023 dated 11.04.2023. In this regard reliance is placed on the ratio laid down in *Babubhai* (supra).

Learned counsel appearing on behalf of the State relies on the Reports and the Case Diaries and submits as follows. The groups of cases referred to above cannot be said to have been started over the same incident. So far as the first batch of cases is concerned, namely Moyna Police Station Case Nos. 10/2023, 11/2023 and 12/2023 all dated

09.01.2023, the place of occurrence was quite away from each other. The second one was 1.2 k.m. away from the first place of occurrence and the third one was 700 meters away from the first place of occurrence. The times of occurrence were 15.00 hrs., 16.30 hrs. and 16.00 hrs., respectively. However, there were number of common accused in the aforesaid cases. Similar is the situation in respect of the other batches of cases for which clubbing has been sought for. In some of the cases charge-sheets have already been submitted.

I have heard the learned counsels appearing on behalf of the parties and have perused the writ petition, the Reports filed by the State, the exception filed on behalf of the petitioners and the respective Case Diaries.

It appears that for each of the batches of the cases the date of occurrence was the same. One incident is alleged to have been happened on a place few hundred meters away from the other. Some other incidents are alleged to have been happened about half an hour later than the other. Similar is the case of the third incident. A number of accused are there common in these cases.

These are ideally offences which can be termed to have taken place in the same transaction.

When the alleged offences are committed in the same transaction and different complains are made and/or FIRs are registered over the same, those FIRs need to be clubbed together. In such event, a case

started on the basis of the first FIR would continue and the subsequent FIRs would be treated as further statements made in course of such investigation. None of the materials collected in all such cases would get lost. They all become part of the first case.

So far as these batches of cases are concerned, each batch of the cases should be clubbed into one FIR in view of the decision of the Hon'ble Supreme Court in *Babubhai* (supra). The relevant portion of the said decision may be quoted as follows.

“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.”

In this regard a reference may also be made to the decision of the Hon'ble Apex Court in Amit Bhai Anilchandra Shah versus CBI & Anr. (2013) 6 SCC 348. Relevant portions of the decision are quoted as under –

“58.1. This Court accepting the plea of CBI in Narmada Bai' that killing of Tulsiram Prajapati is part of the same series of cognizable offence forming part of the first FIR directed CBI to "take over" the investigation and did not grant the relief prayed for i.e, registration of a fresh FIR. Accordingly, filing of a fresh FIR by CBI is contrary to various decisions of this Court.

58.2. The various provisions of the Code of Criminal Procedure clearly show that an officer-in-charge of a police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the first information report, on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of the evidence collected, the investigating officer has to form an opinion under Section 169 or 170 of the Code and forward his report to the Magistrate concerned under Section 173(2) of the Code.

58.3. Even after filing of such a report, if he comes into possession of further information or material, there is no need to register a fresh FIR, he is empowered to make further investigation normally with the leave of the court and where during further investigation, he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports which is evident from sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies

the requirements of Section 154 of the Code. 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.

58.4. Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering FIR in the station house diary, the officer in charge of the 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 of the Code. Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report(s) to the a Magistrate. 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 underway or final report under Section 173(2) has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution.

58.5. The first information report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR.”

Each of the present batches of FIRs satisfy the above criteria and therefore, ought to be clubbed together.

In view of the above discussions, I direct as follows :-

- (a) Moyna Police Station Case Nos. 10/2023, 11/2023 and 12/2023 all dated 09.01.2023 shall be clubbed into one case.
- (b) Moyna Police Station Case Nos. 79/2023 dated 26.03.2023 and 84/2023 both dated 29.03.2023 shall be clubbed into one case.
- (c) Moyna Police Station Case Nos. 93/2023, 94/2023 both dated 10.04.2023 and 96/2023 all dated 11.04.2023 shall be clubbed into one case.

The petitioners shall be at liberty to initiate appropriate proceeding to protect their liberty in respect of the clubbed cases.

The writ petition is disposed of with the above observations.

Urgent photostat certified copy of this order if applied for be given to the parties on usual undertakings.

(JAY SENGUPTA, J.)

SM