

**REPORTABLE****HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 4366/2022

Surendra Singh Rathore S/o Shri Indra Singh Rathore, Aged About 56 Years, R/o 32, Tara Nagar-A, Jhotwara, Jaipur Presently, CEO, Grameen Vikaas And Panchayati Raj Vibhag, Biofuel Authority, Jaipur. (Petitioner Presently Confined In Central Jail, Jaipur).

-----Petitioner

Versus

State Of Rajasthan, Through Its Public Prosecutor.

-----Respondent

For Petitioner(s) : Mr. V.R. Bajwa Senior counsel with
Mr. Snehdeep Khayalia
Mr. Manish Parmar

For Respondent(s) : Dr. Vibhuti Bhushan Sharma, AAG
assisted by Mr. Prakhar Gupta
Mr. Tushar Pareek
Ms. Charvi Patni
Mr. Avinash Choudahry
Mr. Prashant Sharma, Mr. Arvind
Kumar, PP

**HON'BLE MR. JUSTICE BIRENDRA KUMAR
Order****Judgment reserved on : 01/09/2022****Date of Pronouncement : 09/09/2022**

1. The petitioner is an accused in FIR No. 131/2022 dated 14.04.2022 registered with Pradhan Arakshi Kendra, Anti Corruption Bureau, Jaipur District Bikaner for offences under Sections 7, 7A, 8 and 12 of Prevention of Corruption Act, 2018 (in short "P.C. Act") as well as under Section 120-B of IPC. The petitioner has sought for quashment of aforesaid FIR on the ground that FIR No. 123/2022 registered for offences under Sections 7 and 7A of the P.C. Act as well as under Section 120-B



of IPC on 08.04.2022 relates to identical allegations of same transactions hence, the impugned FIR is second FIR for the same cause which is not permissible. The second ground of challenge is that admittedly the petitioner is a public servant and the offences alleged to have been committed are relatable to suspected recommendations made or decision taken by the petitioner in discharge of his official functions and duties and therefore under Section 17A of P.C. Act previous approval of the competent authority is necessary to conduct any inquiry or investigation into any offence alleged to have been committed by the petitioner. Since the approval of the authority competent to remove the petitioner from his office has not been taken in this case, the FIR cannot be investigated as such, the FIR is not sustainable qua the petitioner.

2. According to contents of the first FIR (123/2022) one Vipin Parihar, Chief Marketing Officer of Fem Bio Fuel Private Limited, accompanied with his business partner Deven Shah as well as alongwith Satya Narayan Saini S.D. of Kusum Petro Chemicals came to the office of Anti Corruption Bureau and submitted a written complaint on 06.04.2022. The complaint states that the petitioner who is Chief Executive Officer cum Project Director in Bio Fuel Authority under the Department of Rural Development, Government of Rajasthan, demanded bribe @ of Rs. 2 per litre for sale of bio diesel. On the date of complaint, the aforesaid demand was fixed at Rs. 15 Lakh per month. Further complaint is that the petitioner demanded Rs. 5 Lakh for renewal of the licence and extension of business at Baroda. The complainant stated that on 04.04.2022 he had met the petitioner in his office for renewal of





his licence as well as permission for extension of his business and the petitioner put the demand for such an approval rather the petitioner put pressure that if the monthly amount fixed is not paid to the petitioner, the licence would be cancelled. The complainant stated that since he does not want to bribe the public servant, hence the complaint. Accordingly the authorities of Anti Corruption Bureau after necessary approval and preparation put a trap on 07.04.2022. The complainant reached the office of petitioner. The petitioner asked him to pay the money to one Devesh Sharma who was waiting outside the office. Devesh Sharma asked to put the money in his bag and closed the bag. As per the direction of the petitioner Devesh Sharma was to carry the bag directly to the house of the petitioner. Thereafter, other formalities of arrest and seizure were completed. It also surfaced that Devesh Sharma was in fact a taught of the petitioner and not a contractual employee in the Authority. Mobile phone of the petitioner and Devesh were also seized on the spot. It was specifically stated in the FIR that on forensic examination of the mobile phone of the petitioner and Devesh Sharma further details of bribery may surface.

3. The impugned FIR was registered on 14.04.2022 for incident which allegedly took place between 30.09.2021 to 12.04.2022. The information of impugned FIR was allegedly received on 30.09.2021 wherein Mr. Shyam Prakash a constable in the Anti Corruption Bureau informed to the DSP Mr. Paras Mal of the Bureau that in the State of Rajasthan there is huge and deep rooted corruption in the field of bio diesel. It is stated that the petitioner takes bribe for granting licence to run bio fuel pump as





well as extorts money from the pump owners and the bio fuel suppliers to allow them run the business illegally. Mr. Nimba Ram, proprietor of Gunjan bio fuel pump and his helper Ashish work as middlemen between the petitioner and the needy persons. Thereafter mobile phones of Nimba Ram and Ashish Kumar were seized by the Bureau and after taking permission from the competent authority, the same were put on surveillance. Their call details and talks were heard and noted down which are mentioned in the FIR from item no. 1 to 14. This court has carefully gone through the call details in item no. 1 to 14, name of the petitioner has not surfaced in all the item nor those call details reveal that call details were for or on behalf of the petitioner or petitioner's involvement.

4. In item No. 6 of the FIR it is mentioned that Mr. Ashish informed to the petitioner that Mr. Gaurang, the proprietor of Courtiyark industries has changed the Board of Directors without information to bio fuel authority. In the circumstances, petitioner stated that a notice be issued to Mr. Gaurang for change in the constitution of the Board without permission. Nothing else is there to even infer that anything was demanded to avoid the notice. Another matter which directly relates to the petitioner contained in item No. 10, this was call details dated 26.01.2022 wherein the petitioner was allegedly found talking with Nimba Ram and was saying that file of Shekhawatji has been placed. Though Shekhawatji only paid four instead of five as promised. Subsequently, the petitioner agreed on terms suggested by Nimba Ram, which relates to the payment of bribe for doing work of Shekhawatji.



5. Learned Senior counsel appearing for the petitioner, Mr. V.R. Bajwa, contends that this one is a classic case of misuse of power by the Investigating Agency (Anti Corruption Bureau). The first FIR relates to offence dated 8.4.2022 when one Devesh was caught accepting bribe and it is stated that the bribe was accepted for the petitioner. The second FIR which is challenged herein was registered on 14.4.2022 wherein allegation against the petitioner is that on 26.1.2022 his telephonic conversation revealed that bribe was accepted for doing some favour to Shekhawatji. These two identical offences are alleged to have been committed within a span of six months and Section 219 Cr.P.C. permits trial of three identical offences committed within the span of twelve months by the same person though against different persons in a single trial. Therefore, prejudice would be caused to the accused petitioner if thrown to face investigation/ trial twice. Learned Senior counsel contends that if one trial of the alleged two incidents are permissible, there is no reason that one investigation would not serve the purpose of justice nor the Investigating Agency has stated any prejudice to the prosecution in the event of single investigation. Learned Senior counsel next contends that Section 17A of the P.C. Act prohibits investigation against the petitioner who is a public servant for the offences under the Act which is relatable to any recommendation made or decision taken by the public servant in discharge of his official functions or duties. Learned Senior counsel has placed reliance on the case of **T.T. Antony Vs. State of Kerala, (2001) 6 SCC 181; Babubhai & ors. Vs. State of Gujarat, (2010) 12 SCC 254; Amitbhai Anilchandra Shah Vs. CBI & ors., (2013) 6 SCC 348 and**

**Prem Chand Singh Vs. State of U.P & Anr., in JT 2020 (2) SC**

195 in support of his submission that in the facts and circumstances of the case second FIR is not sustainable in law.

Learned Senior counsel has also relied on the case of **Yashwant Sinha & ors. Vs. CBI, (2020) 2 SCC 338** to contend that investigation of the case without prior approval as required under Section 17A of the P.C. Act is not permissible.

6. Dr. V.B. Sharma, learned Additional Advocate-General for the respondents opposed the prayer of the petitioner and asserts that the impugned FIR relates to altogether different incidents said to be committed against different persons. Moreover, impugned FIR encompasses more offences and more offenders within its sweep. Therefore, the impugned FIR cannot be treated as second FIR for the same incident or occurrence. Learned Additional Advocate General contends that permission for investigation of the FIR as required under Section 17A of the P.C. Act is curable defect and not a ground for quashing the FIR. Reliance has been placed on the case of **Anju Choudhary Vs. State of U.P., (2013) 6 SCC 384** wherein the Hon'ble Supreme Court stated "the Court in order to examine the impact of one or more FIRs has to rationalise the facts and circumstances of each case and then apply the test of "**sameness**" to find out whether both FIR relates to the same incident and to the same occurrence, are in regard to incidents which are two or more parts of the same transaction or relate completely to two distinct occurrences. If the answer falls in the first category, the second FIR may be liable to be quashed. However in case the contrary is proved, whether the version of the



second FIR is different and they are in respect of different incident/crimes, the second FIR is permissible.”

7. Learned Additional Advocate-General has placed reliance on the judgment in **Nirmal Singh Kahlon Vs. State of Punjab & ors., (2009) 1 SCC 441** in support of his contention that if “canvass of the two FIRs are absolutely different, the number of accused in both the FIRs are also different, the second FIR would be permissible”. He has also placed reliance on a judgement of this Court in **Sourabh Garg Vs. State of Rajasthan, S.B. Cr. Misc. Petition No. 6337/2021 decided on 21.1.2022**. Learned counsel has placed reliance on the judgment in *Neeharika Infrastructure Private Limited Vs. State of Maharashtra & ors., (2021) SCC Online 315* for his submission that ordinarily the Court should not usurp the jurisdiction of the police to investigate the case. The power under Section 482 Cr.P.C is very wide but requires the Court to be cautious. It casts onerous and more diligent duty on the court to apply the settled parameters which are required to be considered while quashing the FIR.

8. In *T.T. Antony (supra)*, the Hon’ble Supreme Court said that before interference with the statutory right of police to make investigation into cognizable offence pursuant to lodging of FIR, a just balance has to be struck between citizens right under Article 19 and 21 of the Constitution and expansive power of police to make investigation. After registering the FIR and commencement of investigation, registration of second FIR or successive FIRs in respect of the same incident and crime and making of fresh investigation pursuant thereto would be irregular which call for interference by the High Court under Article 226/227 or Section





482 Cr.P.C and interference by the Supreme Court under Article 136 to prevent abuse of the statutory power of investigation or otherwise to secure the ends of justice.

9. In the case on hand, investigation of the first FIR was going on then it surfaced that the petitioner had demanded/accepted bribe from some Shekhawatji also for showing some undue favour to Shekhawatji.

10. In Babu Bhai (supra), the Hon'ble Supreme Court observed as under:

20. Thus, in view of the above, the law on the subject emerges to the effect that an FIR under Section 154 Cr.P.C. 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 Cr.P.C., as the case may be, and forwarding of a police report under Section 173 Cr.P.C. Thus, it is quite possible that more than one piece of information be given to the Police Officer Incharge 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 Cr.P.C.

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 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 counter claim, investigation on both the FIRs has to be conducted.

11. In Amitbhai case (supra), the first FIR was lodged for encounter killing of two persons and second FIR was for the third encounter killing. Both the incidents were carried out under single conspiracy, the respondent CBI was not able to show as to how the prosecution would be prejudiced if second FIR was quashed.

12. In the case on hand, there is allegation of conspiracy for receiving bribe for undue favour. The first FIR was also registered for offence under Section 120B IPC, in the second FIR offences under Section 8 and 12 of the P.C. Act were added. Under Section 8 of P.C. Act a person who attempts or bribe a public servant is punishable. Under Section 12 which relates to abatement of the offence under the Act which is also punishable. These two offences are not attracted against the petitioner.

13. In Prem Chand Singh (supra), the first FIR was filed challenging general power of attorney of respondent and selling his land. The second FIR was filed with same substratum with the only difference that this time, Section 467, 468 and 471, 113 were also added, the Hon'ble Supreme Court held that since substratum of the two FIRs are same, second FIR was not justified merely because of additions of Section 467, 468 and 471 IPC.

14. In Anju Chodhary (supra), the Hon'ble Supreme Court stated as under:

"15. It has to be examined on the merits of each case whether a subsequently registered FIR is a second FIR about the same incident or offence or is based upon distinct and different facts and whether its scope of inquiry is entirely different or not. It will not be appropriate for the Court to lay down one straightjacket formula uniformly applicable to all





cases. This will always be a mixed question of law and facts depending upon the merits of a given case.”

15. In the case on hand, the prosecution case is that the petitioner was trapped while accepting bribe through his agent on 7.4.2022 for showing some favour to Mr. Vipin Parihar in discharge of his official duties, the second FIR relates to an incident dated 21.1.1022 wherein the petitioner allegedly accepted bribe from some Shekhawatji for showing him favour in official capacity. Both the offences are identical in nature and committed within a very short span of time. The second incident which was earlier to the subject matter of the first FIR could have been investigated in the first FIR itself as one trial of the two charges was permissible under the law. Section 219 Cr.P.C. reads as follows:

219. Three offences of same kind within year may be charged together.

(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law: Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

16. On bare reading of the aforesaid provision, it is evident that joint trial of the alleged offence in the second FIR is permissible





according to law along with the offence alleged in the first FIR. For this reason also, the second FIR against the petitioner is abuse of process of law. If the matter is examined from the angle of conspiracy, in both the FIRs allegation of conspiracy for commission of same set of offences is there against the petitioner, therefore, this case is covered by the judgment in Amit Bhai case (supra). The respondents have not shown any prejudice which would be caused in the event of quashing of the second FIR. The court is of the opinion that abuse of power by the Investigating Agency would certainly cause prejudice to the petitioner, therefore, the impugned FIR stands hereby quashed qua the petitioner only.

17. Section 17A of the P.C. Act reads as follows:

"17A. (1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed: Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person: Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month. "





18. It is not in dispute that second FIR is not a case wherein the petitioner was arrested while accepting bribe. Therefore, prior to approval by the competent authority to investigate the case was must and without prior approval, the impugned FIR cannot be investigated. This view finds support from the judgement in Yashwant Singh (supra), relevant portion is reproduced below:

"117. In terms of Section 17A, no Police Officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, inter alia, of the authority competent to remove the public servant from his Office at the time when the offence was alleged to have been committed. In respect of the public servant, who is involved in this case, it is Clause (c), which is applicable. Unless, therefore, there is previous approval, there could be neither inquiry or enquiry or investigation. It is in this context apposite to notice that the complaint, which has been filed by the Petitioners in Writ Petition (Criminal) No. 298 of 2018, moved before the first Respondent-CBI, is done after Section 17A was inserted. The complaint is dated 04.10.2018. Paragraph 5 sets out the relief which is sought in the complaint which is to register an FIR under various provisions. Paragraphs 6 and 7 of the complaint are relevant in the context of Section 17A, which reads as follows:

6. We are also aware that recently, Section 17(A) of the act has been brought in by way of an amendment to introduce the requirement of prior permission of the government for investigation or inquiry under the Prevention of Corruption Act.

7. We are also aware that this will place you in the peculiar situation, of having to ask the Accused himself, for permission to investigate a case against him. We realise that your hands are tied in this matter, but we request you to at least take the first step, of seeking permission of the government Under Section 17(A) of the Prevention of Corruption Act for investigating this offence and under which, "the concerned authority shall convey its decision under this Section within a period of three months, which





may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

118. Therefore, Petitioners have filed the complaint fully knowing that Section 17A constituted a bar to any inquiry or enquiry or investigation unless there was previous approval. In fact, a request is made to at least take the first step of seeking permission Under Section 17A of the 2018 Act. Writ Petition (Criminal) No. 298 of 2018 was filed on 24.10.2018 and the complaint is based on non-registration of the FIR. There is no challenge to Section 17A. Under the law, as it stood, both on the date of filing the petition and even as of today, Section 17A continues to be on the Statute Book and it constitutes a bar to any inquiry or enquiry or investigation. The Petitioners themselves, in the complaint, request to seek approval in terms of Section 17A but when it comes to the relief sought in the Writ Petition, there was no relief claimed in this behalf."

19. The cases relied upon by the learned counsel for the respondents are not applicable in the peculiar facts and circumstances of the case as discussed above.

In Anju Choudhary (supra), the first FIR 145/2007 was registered on 3.2.2007 for an incident of arson committed in the shops on 27.1.2007. On the same day, a condolence meeting was held for murder of a Hindu boy which was attended by the accused persons of second FIR. In the condolence meeting, hate speech, communal and provoking speeches were made by some of the participants which created disharmony between two communities and another act of burning of shops, houses, godowns and vehicles were committed. In the background of the facts, aforesaid, the second FIR was found maintainable because the second FIR originated from quite a different incident and different persons were involved as well as question of larger conspiracy was also there.





In Nirmal Singh Kehlon (supra), the first FIR did not make any allegation as against existence of a conspiracy. The second FIR did. The canvass of the two FIRs were absolutely different. In the aforesaid backdrop, it was held that second FIR was maintainable.

In the case on hand, in both the FIRs, there is mention of Section 120B IPC which relates to conspiracy, therefore, conspiracy for commission of same set of offence as stated in the second FIR could have been investigated and ought to have been investigated in the first FIR.

In the case of Saurabh Garg (supra), before a co-ordinate Bench of this Court, the facts were almost identical however provisions of Section 219 Cr.P.C. referred to above was not under consideration before the Hon'ble Bench. In Amit Bhai (supra), the judgments in Anju Choudhary, Nirmal Kehlon and Babu Bhai (supra) were considered and distinguished.

20. In the result, the impugned FIR stands hereby quashed qua the petitioner and this petition is allowed.

(BIRENDRA KUMAR),J

/BRIJ MOHAN GANDHI /77/72