

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT
AT JABALPUR**

Case No.	W.P. No.7496/2021
Parties Name	Dr. Pawan Tamrakar and another vs. M.P. Special Police Establishment & others
Date of Order	08/06/2021
Bench Constituted	<u>Division Bench:</u> Justice Prakash Shrivastava Justice Virender Singh
Judgment delivered by	Justice Prakash Shrivastava
Whether approved for reporting	Yes
Name of counsels for parties	Shri Anil Khare, Senior Advocate with Shri Abhinav Shrivastava, learned counsel for the petitioners. Shri Abhijeet Awasthi, learned counsel for the respondents
Law laid down	1. Law relating to clubbing of FIRs - There can be no straightjacket formula for consolidating or clubbing the FIR and Courts are required to examine the facts of each case. A second FIR in respect of same offence or different offences committed in the course of same transaction is not permissible. The second FIR on the basis of receipt of information in respect of same cognizable offence or the same occurrence or incident giving rise one or more cognizable offences is not permissible. It is also settled that the Courts are required to draw a balance between the fundamental rights of the citizens under Article 19 & 21 of the Constitution and expansive power of the police to investigate a cognizable offence. In a given case, second or successive FIR for same or connected

	<p>cognizable offence alleged to have been committed in the course of the same transaction in respect of which earlier FIR is already registered, may furnish a ground for interference by the Court but where the FIRs are based upon the separate incident or similar or different offences or the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the earlier FIR then the second FIR can be registered. Where two incidents took place at different point of time or involve different person or there is no commonality and the purpose thereof is different and the circumstances are also different then there can be more than one FIR. The Court is required to see the circumstances of a given case indicating proximity of time, unity or proximity of case, continuity of action, commonality of purpose of the crime to ascertain if more than one FIR can be allowed to stand.</p> <p>2. Subsequent FIRs for different offences committed in the course of same transaction or offences arising as a consequence of prior offence is not permissible but the second complaint in regard to the same incident filed as a counter complaint as also the second FIR for the same nature of offence against same accused persons lodged by different person or containing the different allegation is permissible.</p>
Significant paragraph numbers	7, 18

O R D E R
08.06.2021

Per: Prakash Shrivastava, J.

By this petition under Article 226 of the Constitution, the petitioners have prayed for quashing the FIR in Crime Nos.99/2015, 100/2015, 101/2015, 148/2015, 149/2015, 150/2015, 151/2015, 152/2015, 195/2015, 196/2015, 197/2015 and 198/15 and have made a further prayer for consolidating the above FIRs and clubbing them with Crime No.98/15.

2. FIR in Crime No.98/2015 dated 31.03.2015 has been registered in Special Police Establishment Bhopal for commission of offence under Section 120-B, 409, 420, 467, 468 of the IPC and Section 13 (1)(d) and 13(2) of the Prevention of Corruption Act, 1988. The allegation against the petitioners is that while working in different capacities in Genius Paramedical Institute, Pagara Road, Sagar, the petitioners had submitted the forged list of the students and had claimed scholarship amount. The impugned FIRs have been registered containing similar allegations in respect of different courses run by the Institute.

3. Shri Anil Khare, learned Senior Advocate appearing for the petitioners submits that all the FIRs are based upon the same preliminary enquiry; they relate to the same academic year and based upon the same cause of action, therefore all the impugned FIRs should be consolidated and clubbed with the FIR No.98/2015. He further submits that no student has filed the complaint but it is the Lokayukta which has filed the FIR. He has also submitted that in respect of the similar incident by the other institutes only one single FIR has been lodged. In support of his submission, he has placed reliance upon the judgment of

the Supreme Court in the matter of **Dr. Jerryl Banait vs. Union of India and another** reported in (2020) SCC Online SC 460, **Arnab Ranjan Goswami vs. Union of India and others** reported in (2020) 14 SCC 12, **Amitbhai Anilchandra Shah vs. Central Bureau of Investigation and another** reported in (2013) 6 SCC 348 and **T.T. Antony Vs. State of Kerala and others** reported in (2001) 6 SCC 181.

4. Learned counsel for the State has opposed the writ petition submitting that the petition is liable to be dismissed on the ground of delay itself as the FIRs were registered more than five years back and the investigation is complete and challan will be filed in a shortwhile. In support of his submission, he has placed reliance upon the judgment of the Supreme Court in the matter of **State of M.P. & others vs. Nandlal Jaiswal & others** reported in (1986) 4 SCC 566, **Shankara Cooperative Housing Society Limited vs. M. Prabhakar and others** reported in (2011) 5 SCC 607 and **Maharashtra State Road Transport Corporation vs. Balwant Regular Motor Service, Amaravati and others** reported in AIR 1969 SC 329. He further submits that the separate FIRs have been registered for different courses run by the institute and for different reserved category of students, on the basis of caste and course of students. He has also submitted that the witnesses in each case are different. In support of his submission, he has placed reliance upon the judgment of the Supreme Court reported in (2017) 8 SCC 1 (**State of Jharkhand vs. Lalu Prasad Yadav**) and also the judgment of High Court of Judicature at Hyderabad dated 11.12.2018 passed in WP. No.21487/2018.

5. We have heard the learned counsel for the parties and perused the record.

6. Before entering into the facts of this case, we deem it proper to examine the law relating to the clubbing or consolidation of the FIRs. Section 154 of the Cr.P.C. provides for registration of the FIR on the basis of the information relating to the commission of cognizable offences. Section 155 of Cr.P.C. provides for recording of such information in respect of non-cognizable offences. Section 169 and 170 of the Cr.P.C. provide for the course of action on completion of investigation i.e. to release the accused when evidence is deficient or to send the case to Magistrate when evidence is sufficient. Section 173 of the Cr.P.C. requires the police officer to submit the final report before the Magistrate on completion of investigation containing the requisite details. Sub-section (8) of Section 173 permits further investigation after submission of report to the Magistrate. Section 220 of the Cr.P.C. deals with trial for more than one offences and provides that if in one series of act so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence. Similarly, Section 219 of the Cr.P.C. provides that three offences of the same crime within one year may be charged together.

7. Considering the above statutory provisions by various judicial pronouncements, it is settled that there can be no straightjacket formula for consolidating or clubbing the FIR and Courts are required to examine the facts of each case. A second FIR in respect of same offence or different offences committed in the course of same transaction is not permissible. The second FIR on the basis of receipt of information in respect of same cognizable offence or the same occurrence or incident giving rise one or more cognizable offences is not permissible. It is

also settled that the Courts are required to draw a balance between the fundamental rights of the citizens under Article 19 & 21 of the Constitution and expansive power of the police to investigate a cognizable offence. In a given case, second or successive FIR for same or connected cognizable offence alleged to have been committed in the course of the same transaction in respect of which earlier FIR is already registered, may furnish a ground for interference by the Court but where the FIRs are based upon the separate incident or similar or different offences or the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the earlier FIR then the second FIR can be registered. Where two incidents took place at different point of time or involve different person or there is no commonality and the purpose thereof is different and the circumstances are also different then there can be more than one FIR. The Court is required to see the circumstances of a given case indicating proximity of time, unity or proximity of case, continuity of action, commonality of purpose of the crime to ascertain if more than one FIR can be allowed to stand.

8. The Supreme Court in the matter of **T.T. Antony** (supra) after taking note of the provisions of Section 154 to 157, 162, 169, 170 and 173 of the Cr.P.C. and considering the issue of striking a balance between citizen's right under Article 19 and 21 of the Constitution and expansive power of police to make investigation, has held that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. It has further been held that after registration of the FIR under Section 154 of the Cr.P.C. in respect of commission of the cognizable offence, all such subsequent information is covered by Section 162 of the

Cr.P.C. and that Officer Incharge 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 provided in Section 173 of Cr.P.C.

9. The Supreme Court in the matter of **Upkar Singh vs. Ved Prakash & Others (2004) 13 SCC 292** has clarified and explained the judgments in the case of **T.T. Antony** (supra) and has held that the second complaint in regard to the same incident filed as a counter complaint is not prohibited under the Cr.P.C. It has been held that in **T.T. Antony's** case (supra) the legal right of an aggrieved person to file counter complaint has not been considered.

10. In the matter of **Rameshchandra Nandlal Parikh vs. State of Gujarat & Another (2006) 1 SCC 732**, it has been held that if subsequent complaints were not in relation to same offence or occurrence or did not pertain to same party as alleged in the first report then on that ground the subsequent complaint need not be quashed.

11. In the matter of **Nirmal Singh Kahlon vs. State of Punjab & others (2009) 1 SCC 441** where the C.B.I. registered the second FIR considering the nature and extent of crime, the Hon'ble Supreme Court held that the C.B.I. detecting larger conspiracy not detected by local police is not precluded from lodging the second FIR.

12. In the matter of **Babubhai vs. State of Gujarat & others (2010) 12 SCC 254** the Supreme Court has further clarified it that if two FIRs pertains to two different incidents/crimes,

second FIR is permissible. Applying the test of sameness, it has been held that subsequent to registration of an FIR any further complaint in connection with the same or connected offence relating to the incident or incidents which are part of the same transaction is not permissible. Taking note of the earlier pronouncements on the issue, it has been held that:

“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 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 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.”

13. In the matter of **Amitbhai Anilchandra Shah** (supra), Hon'ble Supreme Court has considered the applicability of 'consequence test' as laid down in the case of **C. Muniappan & others vs. State of Tamil Nadu (2010) 9 SCC 567** and has held that 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 offence. It has further been held that the second FIR is permissible in the case of cross cases and it is also permissible if the offence disclosed does not form part of the first FIR or it cannot be said to be part of the same transaction as covered by the first FIR or cannot be said to be arising as a consequence of the offence covered by the first FIR.

14. In the matter of **Awadesh Kumar Jha @ Akhilesh Kumar Jha vs. State of Bihar (2016) 3 SCC 8**, it has been held that if the substance of allegation in the second FIR is different from the first FIR and the second FIR relates to different transaction then the second FIR can be maintained.

15. In the matter of **Chirag M. Pathak & others vs. Dollyben Kantilal Patel & others (2018) 1 SCC 330** in a case where six FIRs were registered in different police stations and the ground was raised that all the FIRs are based on identical facts, the Hon'ble Supreme Court held that the six cooperative societies were different, their members were different, their area of operation was different, the lands which were sold/transferred were also different in different area, the party to whom the land was sold was different. The totality of factual allegations constitutes commission of several offences in relation to every cooperative society, hence, the FIRs were not overlapping and no case for quashing the FIR was made out.

16. In the matter of **Lalu Prasad Yadav (supra)**, the defalcations were from different treasury for different financial year, amount involved was different, fake vouchers/allotment letters/supply orders were prepared with the help of different sets of accused persons, the Supreme Court has held that the separate trials are required to be conducted. It has further been

clarified that 'same offence' is different from 'same kind of offence' and has held that if 'same kind of offence' was committed multiple times then each time it constitutes a separate offence and therefore accused can be tried in different trials. It has also been clarified that even if the modus operandi was same that would not make it a single offence when offences were different. The Supreme Court in the said case has held as under:

“42. We are unable to accept the submissions raised by learned senior counsel. Though there was one general charge of conspiracy, which was allied in nature, the charge was qualified with the substantive charge of defalcation of a particular sum from a particular treasury in particular time period. The charge has to be taken in substance for the purpose of defalcation from a particular treasury in a particular financial year exceeding the allocation made for the purpose of animal husbandry on the basis of fake vouchers, fake supply orders etc. The sanctions made in Budget were separate for each and every year. This Court has already dealt with this matter when the prayers for amalgamation and joint trial had been made and in view of the position of law and various provisions discussed above, we are of the opinion that separate trials which are being made are in accordance with provisions of law otherwise it would have prejudiced the accused persons considering the different defalcations from different treasuries at different times with different documents. Whatever could be combined has already been done. Each defalcation would constitute an independent offence. Thus, by no stretch, it can be held to be in violation of [Article 20\(2\)](#) of the Constitution or [Section 300 Cr.P.C.](#) Separate trials in such cases is the very intendment of law. There is no room to raise such a grievance. Though evidence of general conspiracy has been adduced in cases which have been concluded, it may be common to all the cases but at the same time offences are different at different places, by different accused persons. As and when a separate offence is committed, it becomes punishable and the substantive charge which has to be taken is that of the offence under the [P.C. Act](#) etc. There was conspiracy hatched which was continuing one and has resulted into various offences. It was joined from time to time by different accused persons, so whenever an offence is committed in continuation of the conspiracy, it would be punishable separately for different periods as envisaged in [section 212\(2\)](#), obviously, there have to be separate trials. Thus it cannot be said to be a case of double jeopardy at all. It cannot be said that for the same offence the accused persons are being tried again.

50. The modus operandi being the same would not make it a single offence when the offences are separate. Commission of of-

fence pursuant to a conspiracy has to be punished. If conspiracy is furthered into several distinct offences there have to be separate trials. There may be a situation where in furtherance of general conspiracy, offences take place in various parts of India and several persons are killed at different times. Each trial has to be separately held and the accused to be punished separately for the offence committed in furtherance of conspiracy. In case there is only one trial for such conspiracy for separate offences, it would enable the accused person to go scotfree and commit number of offences which is not the intendment of law. The concept is of 'same offence' under Article 20(2) and section 300 Cr.PC. In case distinct offences are being committed there has to be independent trial for each of such offence based on such conspiracy and in the case of misappropriation as statutorily mandated, there should not be joinder of charges in one trial for more than one year except as provided in section 219. One general conspiracy from 1988 to 1996 has led to various offences as such there have to be different trials for each of such offence based upon conspiracy in which different persons have participated at different times at different places for completion of the offence. Whatever could be combined has already been done. Thus we find no merit in the submissions made by learned senior counsel appearing on behalf of accused persons."

17. The High Court of Judicature at Hyderabad in WP. No.21487/18 (supra) in this regard has held that:

"27. The ruling of the Supreme Court in State of Jharkhand vs. Lalu Prasad Yadav (supra) wherein a distinction has been made of the "same offence" with that of "same kind of offence" and has given in categorical finding that if "same kind of offence" was committed multiple times, each time constitutes a separate offence. In the instant case, the petitioner and its promoters alleged to have committed "same kind of offence" involving different banks with same kind of modus operandi and hence the acts of the petitioner and its promoters constitute a different and distinct offence and consequently multiple FIRs are maintainable based on the written complaints of the consortium of banks. Though the transaction was through consortium of banks and appraisal of the project may be common, it would be only for procedural convenience of the lending banks, but each of the aggrieved bank of the consortium lodged a written complaint in respect of fraud played on them insofar as the amounts advanced by it and; in such a situation the principle of double jeopardy, as envisaged in Article 20 (2) of the Constitution is in-applicable to the case of the petitioner. It is settled proposition of law that the scope of civil and criminal proceedings and the standard of proof required in both the matters is different and distinct. Whereas in civil proceedings matter can be decided on the basis of probabilities, the criminal case has to be decided by adopting the standard of proof of "beyond reasonable doubt." In a given case, civil proceedings and criminal proceedings can proceed simultaneously maintained. (see Devendra vs. State of Uttar Pradesh & P. Swaroopra Rani vs. M.

Hari Narayana. The case on hand is not an exception and mere pendency of the proceedings in OA filed by the consortium of banks will not absolve the petitioner and its promoters of the penal provisions. The CrI.P.No.6473 of 2017 and batch filed by the petitioner and its promoters to quash FIR No.05/2017 (2nd FIR) was dismissed by this Court, relevant portion thereof, reads as under:-

“As discussed above, the accused in F.I.R.No.05 of 2017 of Central Bureau of Investigation, Bank Securities and Frauds Cell, Bangalore are different from the F.I.R.No.02 of 2015. In both the complaints, there is only two common accused. All the more, in F.I.R.No.02 of 2015, the transaction covered by the present complaint was not investigated into though made an allegation against the accused therein about the commission of fraud against the respondent No.2 herein. Therefore, on the principle of sameness, the Court cannot quash the proceedings by exercising power under Section 482 of Cr.P.C. Even as per the principles rendered in various prospective pronouncements of Apex Court referred supra, 2nd F.I.R. is maintainable in certain circumstances, which I stated above. Consequently, the contention of the counsel for the petitioners cannot be sustained, which is based on “Babubhai v. State of Gujarat ” “Awadesh Kumar Jha Alias Akhilesh Kumar Jha v. State of Bihar” “T.T.Antony v. State of Kerala” (referred supra) and the judgment of this Court rendered in “Akbaruddin Owaisi v. Government of A.P.” (referred supra) as the principle laid down in “ T.T.Antony vs. State of Kerala ” was distinguished by the Full Bench of Apex Court in “Upkar Singh vs. Ved Prakash” (referred supra). Therefore, on the ground of “sameness” I am unable to quash the proceedings in F.I.R.No.05 of 2017 on the file of Central Bureau of Investigation, Bank Securities and Frauds Cell, Bangalore.”

Counsel for the petitioners has placed heavy reliance upon the judgment of the Supreme Court in the case of **(2020) 14 SCC 12 (Arnab Ranjan Goswami vs. Union of India and others)** but that was a case where multiple FIRs were registered arising out of the same cause of action in different States. Hence, it was held that filing of such multiple FIR causes intervention into petitioner's right as a citizen to fair treatment under Article 14 and freedom to conduct independent portrayal of views under Article 19 (1)(a), but that is not so in the present case because in

the present case defalcation of amount in respect of each course and category of person has given separate cause of action. It is also worth noting that had the separate FIRs been registered in respect of each students of same course and category then it could be said to be a case of multiple FIRs for same offence but that is not so in the present case as the different FIRs are for different category of students and for different courses and there is no repeat FIR for same category of student with same course.

18. Thus, it is settled that subsequent FIRs for different offences committed in the course of same transaction or offences arising as a consequence of prior offence is not permissible but the second complaint in regard to the same incident filed as a counter complaint as also the second FIR for the same nature of offence against same accused persons lodged by different person or containing the different allegation is permissible.

19. In the present case, it is noticed that the petitioners had allegedly submitted forged list of students of SC, ST and OBC category in respect of the different courses i.e. Health Inspector, X-Ray, Homeopathy Compounder, Ayurvedic Compounder, Medical Lab Technology (CMNT). The chart below reflects that each FIR is for different set of students and separate course and different defalcation.

S. No.	Crime No.	Caste and Course of Victims
1	98/2015	Scheduled Caste (SC) – Health Inspector
2	99/2015	SC- X-Ray
3	100/2015	SC- Homeopathy Compounder
4	101/2015	SC- Ayurvedic Compounder
5	148/2015	OBC- Ayurvedic Compounder
6	149/015	OBC- Homeopathy Compounder
7	150/2015	OBC- Certificate in Medical Lab Technology (CMLT)

8	151/2015	OBC- Health Inspector
9	152/2015	OBC- X-Ray
10	195/2015	ST- Homeopathy Compounder
11	196/2015	ST- Health Inspector
12	197/2015	ST- Ayurvedic Compounder
13	198/2015	ST- CMLT

The details of the students in each of the category and course are different. The amount involved in respect of each of the category and course is also different. Nothing has been pointed out to refute the submission of counsel for the State that even the witnesses in each of the case are different. Though the different FIRs reveal that the same kind of offence has been registered against the petitioners for different courses and categories of students but they are not the same offence or the offence in the same transaction. The subsequent FIRs do not arise as a consequence of allegations made in the first FIR. Hence, the test of 'sameness' and the test of 'consequence' is not satisfied in the present case.

20. That apart, it is also noticed that the impugned FIR as well as the first FIR in Crime No.98/2015 was registered against the petitioners in the year 2015, thereafter the investigation had continued but at no point of time the petitioners had raised any objection or had taken any action for clubbing of these FIRs. Now the investigation is complete and it is pointed out by the counsel for the State that the challan is ready and the same will be filed in the shortwhile. The petitioners have approached at a belated stage by filing the present petition on 26.03.2021, therefore at this stage no such relief can be granted. Now the petitioners will have remedy to make a prayer before the Trial Court for common trial under Section 220 of the Cr.P.C., if case for the same is made out.

21. Thus, in view of the judgments in the case of **Nandlal Jaiswal** (supra) and **Shankara Cooperative Housing Society Ltd.** (supra) as also **Maharashtra State Road Transport Corporation** (supra), the petitioners are not entitled for any relief in this writ petition on account of the unexplained delay and laches in approaching this Court. With the delay now circumstances have changed.

22. Hence, the writ petition is dismissed.

(PRAKASH SHRIVASTAVA)
JUDGE

(VIRENDER SINGH)
JUDGE