

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Writs No. 35 / 2017

Bhanwar Lal Son of Shri Chanan Ram Soni, Aged About 58 Years,
By Caste Soni, Resident of House No.- 31, Sector-12,
Hanumangarh Junction, District- Hanumangarh.

----Petitioner

Versus

State of Rajasthan Through the Public Prosecutor.

----Respondent



For Petitioner(s) : Mr. Rajesh Joshi, Senior Advocate assisted
by Mr. C.V.S. Shekhawat

For Respondent(s) : Mr. M.S. Panwar, PP

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Order

18/08/2017

1. The petitioner has preferred this criminal writ petition under Article 226 of the Constitution of India aggrieved by the order dated 12.05.2017 passed by Additional Superintendent of Police, Anti Corruption Bureau, Jaipur whereby he has refused to consolidate FIR No.84/2012, 85/2012, 86/2012 alongwith FIR No.87/2012 lodged at Anti Corruption Bureau, Jaipur Chowki, A.C.B. Hanumangarh for the offences under Sections 13(1)(d), 13(2) P.C. Act, 1988 read with Sections 420, 467, 468, 471, 477A, 201 & 120-B of IPC.

2. Learned counsel for the petitioner states that the present case is squarely covered by the decision rendered by a coordinate Bench of this Court in ***S.B. Criminal Misc. Petition No.1630/2013; Sanjay Harsh & Anr. Vs. State of Rajasthan***

& Anr. (alongwith two connected matters) decided on 04.07.2016.

3. The coordinate Bench of this Court on 04.07.2016 has passed the following order in **Sanjay Harsh (supra)**:-

"These three miscellaneous petitions have been preferred by the petitioners herein for assailing the legality and validity of the FIR No.201/2013 registered by the Anti Corruption Bureau, Outpost Jaisalmer for the offences under Sections 13 (1)(d) & 13(2) of the Prevention of Corruption Act and Section 120-B IPC.

The FIR has been challenged principally on the ground that the same is nothing but a second FIR on the same facts. The FIR under challenge was lodged by the respondent No.2 Bahadur Khan son of Aamad Khan, resident of Gafoor Bhatta, Jaisalmer. In order to seek quashing of the FIR, the petitioners have placed on record, copy of another FIR No.351/2011 registered at the Police Station Jaisalmer for the offences under Sections 420, 467, 468, 471, 120B, 34, 217 and 218 IPC at the instance of the respondent No.2 Bahadur Khan himself.

Sarva Shri Manish Shishodia, Vikas Balia and Mahesh Thanvi, learned counsel representing the respective accused petitioners, relied upon the following judgments in support of their contentions and urged that as the allegations levelled in the impugned FIR and those levelled in the FIR No.351/2011 are exactly identical, it virtually amounts to registration of a second FIR on the same facts and such an action is impressible in law as held by the Hon'ble Supreme Court:-

- (i) T.T. Antony vs. State of Kerala & Ors., (2001)6 SCC 181;
- (ii) Mohan Baitha & Ors. vs. State of Bihar & Anr., (2001)4 SCC 350;
- (iii) Upkar Singh vs. Ved Prakash & Ors., (2004)13 SCC 292;
- (iv) Nirmal singh Kahlon vs. State of Punjab & Ors., (2009)1 SCC 441;
- (v) Babubhai vs. State of Gujarat & Ors., (2010)12 SCC 254;



- (vi) *Anju Chaudhary vs. State of U.P. & Anr.*, (2013)6 SCC 384; (vii) *Surender Kaushik & Ors. vs. State of Uttar Pradesh & Ors.*, (2013)5 SCC 148; (viii) *Shiv Shankar Singh vs. State of Bihar & Anr.*, (2012)1 SCC 130; (ix) *Amitbhai Anilchandra Shah vs. CBI & Anr.*, (2013)6 SCC 348; (x) *Awadesh Kumar Jha & Ors. vs. The State of Bihar*, (2016)3 SCC 8.

They thus urged that while accepting the miscellaneous petitions, the impugned FIR should be quashed.



Per contra, learned Public Prosecutor Shri A.S. Rathore assisted by Shri Jitendra Singh, the Circle Inspector, ACB and Shri Pradeep Shah, learned counsel representing the complainant-respondent, vehemently opposed the arguments of the petitioners' counsel and urged that the allegations as set out in the FIR registered by the Anti Corruption Bureau are significantly different from the ones investigated by the investigating officer of the Police Station Jaisalmer in FIR No. 351/2011. Thus, they urged that the judgments relied upon by the petitioners' counsel have no application whatsoever and the impugned FIR is not liable to be interfered at this stage.

I have considered the arguments advanced by the learned counsel representing the parties and have gone through the material available on record.

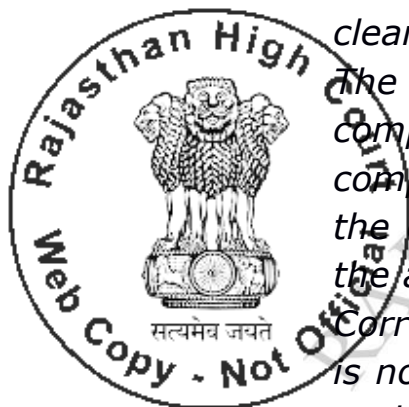
The earlier FIR No.351/2011 which was registered at the Police Station Jaisalmer at the instance of the complainant Bahadur Khan, was based on the allegation that valuable lands belonging to the Municipality were got fraudulently allotted in the name of ineligible persons. The accused arraigned in the said FIR with the exception of Narayan Lal and Basanti Mathur are common in both the FIRs. The impugned FIR, too contains almost the identical allegations which formed the basis of the FIR No.351/2011 referred to above. The Hon'ble Supreme Court in the above referred judgments has, in no unequivocal terms, laid down that normally, no second FIR should be registered when another FIR has already been registered for the same allegations. It would be desirable that the investigation of a fresh FIR for similar allegations should be consolidated with the FIR registered

earlier rather than, registering a second report.

On going through the material available on record, it is evident that the earlier FIR No.351/2011 was investigated by the local police which, after investigation gave a negative final report in the matter. The negative final report too has been placed on record of the miscellaneous petitions. I have carefully gone through the two FIRs and the negative final report and am satisfied that the reasons enumerated in the final report for giving a clean chit to the accused are far from satisfactory. The final report is pending consideration of the competent court on the protest petition of the complainant. The fresh FIR, which was registered by the officials of the Anti Corruption Bureau, includes the allegation of the offence under the Prevention of Corruption Act. Needless to say that the local police is not competent to investigate the matter involving such offence. Thus, the ends of justice require that while consolidating the two FIRs, further investigation of the earlier FIR should be directed to be conducted by the Anti Corruption Bureau so that, the veracity of allegations involving criminal misconduct by the public servants can also be thoroughly investigated. Thus, while exercising the inherent powers of this Court under Section 482 Cr.P.C., this Court is of the firm opinion that the ends of justice require that further investigation of the earlier FIR No.351/2011, which is presently pending at the stage of consideration of the final report, should be conducted by the Anti Corruption Bureau.

Consequently, the miscellaneous petitions are disposed of in the following terms:

The Chief Judicial Magistrate, Jaisalmer is directed to forward the entire file of Final Report No.136/2011 arising from FIR No.351/2011, Police Station Jaisalmer to the Anti Corruption Bureau, Jaisalmer for further investigation. The officials of the Anti Corruption Bureau, shall consolidate both the FIRs and conduct further investigation in matter and file the result thereof in the concerned court within a period of one year from the date of receiving the copy of this order. Stay applications are also disposed of. The petitioners shall be at liberty to furnish their representation to the



investigating officer for ventilating their grievances and for proving their innocence. The investigating officer shall give due consideration to such representations before filing result of investigation in the concerned court.

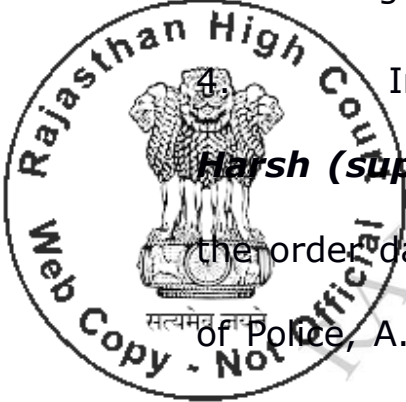
A copy of this order be placed in each file."

3. At the outset, learned Public Prosecutor submits that the investigation is complete.

In view of aforequoted judgment passed in **Sanjay Harsh (supra)**, the present criminal writ petition is allowed and the order dated 12.05.2017 passed by Additional Superintendent of Police, A.C.B., Jaipur is hereby quashed and set aside and the FIR Nos. 84/2012, 85/2012 & 86/2012 registered at Anti Corruption Bureau, Jaipur Chowk, A.C.B., Hanumangarh are consolidated with FIR No.87/2012 registered at Anti Corruption Bureau, Jaipur Chowki, A.C.B. Hanumangarh.

(DR. PUSHPENDRA SINGH BHATI)J.

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