

# The State Of Rajasthan vs Surendra Singh Rathore on 19 February, 2025

**Author: Sanjay Karol**

**Bench: Prashant Kumar Mishra, Sanjay Karol**

2025 INSC 248

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. \_\_\_\_\_ OF 2025  
(Arising out of SLP(Crl.) No.16358 of 2024)

STATE OF RAJASTHAN

... APPELLANT(S)

VERSUS

SURENDRA SINGH RATHORE

... RESPONDENT(S)

JUDGMENT

SANJAY KAROL, J.

Leave granted.

2. This appeal arises out of final judgment and order dated 9th September, 2022 passed by the High Court of Judicature for Rajasthan Bench at Jaipur in S.B.Criminal Miscellaneous (Petition) No.4366 of 2022, whereby the respondent's prayer for quashing of FIR No.131 of 2022 dated 14th April 2022 registered Date: 2025.02.19 17:51:57 IST Reason:

1 | SLP(Crl.) 16358/2024 at District Bikaner with Police Station Pradhan Arakshi Kendra, Anti-Corruption Bureau, Jaipur, for the offences punishable under Sections 7, 7A, 8 and 12 of the Prevention of Corruption (Amendment) Act, 2018<sup>1</sup> and Section 120-B of the Indian Penal Code, 1860<sup>2</sup>, was allowed. The State, aggrieved by the quashing of FIR, is before us.

3. The brief facts giving rise to the present lis are as under: -

3.1 Three persons, namely, Vipin Parihar, Chief Marketing Officer, Fern Bio-fuel Private Limited, his business partner Deven Shah and Satya Narayan Saini S.D. of Kusum Petro Chemicals, lodged a complaint with the Anti-Corruption Bureau to the effect that the respondent, who is employed as Chief Executive Officer-cum-Project Director, Bio-fuel Authority, Government of Rajasthan, allegedly demanded a bribe @ Rs.2/- per litre for the sale of bio-diesel, i.e., Rs.15 lakhs per month with a further Rs.5 lakhs for renewal of the license of the complainant. This FIR is numbered as 123 of 2022 under Sections 7 and 7A of the P.C. Act. This demand took place on 4th April 2022.

3.2 A second FIR was lodged on 14th April 2022 for the incidents which took place between 30th September 2021 to P.C. Act 'IPC' for short 2 | SLP(Crl.) 16358/2024 12th April 2022 when one Mr. Shyam Prakash, Constable with the Anti-Corruption Bureau, brought information to the notice of Mr. Parsamal, DSP, that amongst other persons the respondent is indulging in taking bribes to grant licenses to run bio-fuel pumps. One Nimba Ram and Ashish were the middlemen, who were put on surveillance after due permission from the competent authority.

3.3 This FIR running into nearly 30 pages, details the alleged conspiracy of which the respondent was a part and records in considerable detail the calls received and made by the various persons involved in furtherance of the object of the conspiracy.

4. The respondent aggrieved by the registration of the second FIR, preferred a petition under Section 482 Criminal Procedure Code 19733. Grounds for seeking quashing inter alia are as follows :-

(a) No fresh incident is disclosed by the second FIR. If fresh information comes to light, it is submitted even after the final report under Section 173 Cr.P.C. has been submitted, the course to be adopted is not a fresh FIR but Cr.P.C for short 3 | SLP(Crl.) 16358/2024 further investigation after due permission and then the filing of a supplementary report.

(b) The filing of a second FIR in respect of the allegations that are connected to previous allegations, for which an FIR already stands registered, would be irregular and deserves to be quashed. Reliance is placed on Babu Bhai v. State of Gujarat<sup>4</sup>. In this judgment, it is submitted that if there are two FIRs in respect of the same transaction, they would have to pass the "test of sameness". Further reference is made to T.T. Antony v. State of Kerala<sup>5</sup>, which records that a second FIR in a case which is not a cross-case, violates Article 21 of the Constitution of India.

(c) The allegations of the second FIR, it was submitted are an attempt to blow up the allegations of the first FIR.

(d) No sanction stands taken under the Prevention of Corruption Act for proceeding against the respondent.

(e) The FIR and the consequent investigation, are both against the edict of the Legislature and deserve to be quashed.

(2010) 12 SCC 254 (2001) 6 SCC 181 4 | SLP(Crl.) 16358/2024

5. The arguments of the respondent found favour with the High Court. In the impugned judgment, the High Court recorded as under :

“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 21.1.2022 wherein the petitioner allegedly accepted bribe from some Shekhawatji for showing him some favour in official capacity. Both are 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 two charges was permissible under the law.” Having recorded thus, it was held that the second FIR was an abuse of the process of law. On the aspect of prior permission being required to proceed against the respondent, it was found that prior permission was a must and without the same, the impugned FIR could not have been investigated. It was with this understanding that the High Court quashed the second FIR in the exercise of powers under Section 482 Cr.P.C.

6. We have heard learned counsel of the parties and perused the written submissions filed. The sole question for our consideration is whether the registration of the subsequent FIR is 5 | SLP(Crl.) 16358/2024 legally permissible and whether the High Court was correct in exercising its inherent powers in quashing the same.

7. We find that a judgment of this court titled T.T. Antony (supra) records the position that a second FIR is not maintainable. The relevant extract is as under :

“27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the

final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view 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 under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for 6 | SLP(Crl.) 16358/2024 exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution.” (Emphasis supplied)

8. This Rule, however, over the years through judicial pronouncements, has lent some flexibility. Reference may be made to:

8.1 In *Anju Chaudhary v. State of U.P.*<sup>6</sup>, this Court dealt with the concept of a second FIR at length. We may reproduce with profit certain observations as under :

“14. On the plain construction of the language and scheme of Sections 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognizable offence shall be reduced into writing by the officer- in-charge of a police station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided (2013) 6 SCC 384 7 | SLP(Crl.) 16358/2024 by the legislature in the very language of Section 154 of the Code. These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police.

Therefore, second FIR for the same incident cannot be registered. Of course, the investigating agency has no determinative right. It is only a right to investigate in accordance with the provisions of the Code. The filing of report upon completion of investigation, either for cancellation or alleging commission of an offence, is a matter which once filed before the court of competent jurisdiction attains a kind of finality as far as police is concerned, may be in a given case, subject to the right of further investigation but wherever the investigation has been completed and a person is found to be prima facie guilty of committing an offence or otherwise, re-examination by the investigating agency on its own should not be permitted merely by registering another FIR with regard to the same

offence. If such protection is not given to a suspect, then possibility of abuse of investigating powers by the police cannot be ruled out. It is with this intention in mind that such interpretation should be given to Section 154 of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, reinvestigation or de novo investigation is beyond the competence of not only the investigating agency but even that of the learned Magistrate. The courts have taken this view primarily for the reason that it would be opposed to the scheme of the Code and more particularly Section 167(2) of the Code. (Ref. Reeta Nag v. State of W.B. [(2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] and Vinay Tyagi v. Irshad Ali [(2013) 5 SCC 762] of the same date.)” (Emphasis supplied) 8 | SLP(Crl.) 16358/2024 8.2 In Kari Choudhary v. Sita Devi<sup>7</sup> this Court held :

“11. Learned counsel adopted an alternative contention that once the proceedings initiated under FIR No. 135 ended in a final report the police had no authority to register a second FIR and number it as FIR No. 208. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency. Even that apart, the report submitted to the court styling it as FIR No. 208 of 1998 need be considered as an information submitted to the court regarding the new discovery made by the police during investigation that persons not named in FIR No. 135 are the real culprits. To quash the said proceedings merely on the ground that final report had been laid in FIR No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it.” (Emphasis supplied) 8.3 The position regarding the second FIR has been clarified by a Three-Judge Bench of this Court in Upkar Singh v. Ved Prakash<sup>8</sup>. The relevant discussion made in the judgment is extracted herein below for ready reference :

“21. From the above it is clear that even in regard to a complaint arising out of a complaint on further (2002) 1 SCC 714 (2004) 13 SCC 292

9 | SLP(Crl.) 16358/2024 investigation if it was found that there was a larger conspiracy than the one referred to in the previous complaint then a further investigation under the court culminating in another complaint is permissible.

22. A perusal of the judgment of this Court in Ram Lal Narang v. State (Delhi Admn.) [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] also shows that even in cases where a prior complaint is already registered, a counter-complaint is permissible but it goes further and holds that even in cases where a first complaint is registered and investigation initiated, it is possible to file a further complaint by the same complainant based on the material gathered during the course of investigation. Of course, this larger proposition of law laid down in Ram Lal Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] is not necessary to be relied on by us in the present case. Suffice it to say that the discussion in Ram Lal Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] is in the same line as found in the

judgments in Kari Choudhary [(2002) 1 SCC 714 : 2002 SCC (Cri) 269] and State of Bihar v. J.A.C. Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272 : AIR 1980 SC 326] . However, it must be noticed that in T.T. Antony case [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] , Ram Lal Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] was noticed but the Court did not express any opinion either way.

23. Be that as it may, if the law laid down by this Court in T.T. Antony case [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be 10 | SLP(Crl.) 16358/2024 precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.

24. We have already noticed that in T.T. Antony case [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] this Court did not consider the legal right of an aggrieved person to file counterclaim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter-complaint is permissible.” (Emphasis supplied) 8.4 In Babubhai (supra), it was observed that :

“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.” (Emphasis supplied) 11 | SLP(Crl.) 16358/2024 8.5 In Nirmal Singh Kahlon v. State of Punjab<sup>9</sup> this Court held, in the following terms that when a new discovery is made, the second FIR would be maintainable. It was said as follows :

“67. The second FIR, in our opinion, would be maintainable not only because there were different versions but when new discovery is made on factual foundations. Discoveries may be made by the police authorities at a subsequent stage. Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature. If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, in our opinion, as and when the same surfaced, it was open to the State and/or the High Court to direct investigation in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged.” (Emphasis supplied) 8.6 Apart from these judgments, reference can also be made to Ram Lal Narang v. State (Delhi Admn.)<sup>10</sup>;

Surender Kaushik v. State of U.P.<sup>11</sup>; and P. Sreekumar v. State of Kerala<sup>12</sup>.

(2009) 1 SCC 441 (1979) 2 SCC 322 (2013) 5 SCC 148 (2018) 4 SCC 579 12 | SLP(Crl.) 16358/2024

9. From the above conspectus of judgments, inter alia, the following principles emerge regarding the permissibility of the registration of a second FIR:

9.1 When the second FIR is counter-complaint or presents a rival version of a set of facts, in reference to which an earlier FIR already stands registered.

9.2 When the ambit of the two FIRs is different even though they may arise from the same set of circumstances.

9.3 When investigation and/or other avenues reveal the earlier FIR or set of facts to be part of a larger conspiracy.

9.4 When investigation and/or persons related to the incident bring to the light hitherto unknown facts or circumstances.

9.5 Where the incident is separate; offences are similar or different.

10. As recorded supra, the High Court found that the two FIRs were indeed in regard to the same offence and, therefore, not maintainable, however, in our view the scope of the two FIRs, as already referred to in para 3 supra, are distinct. The FIR prior in point of time refers to a particular <sup>13</sup> | SLP(Crl.) 16358/2024 incident and the action taken therein is limited. The second FIR pertains to the larger issue of widespread corruption in the concerned department and, therefore, is much larger in its scope than the previous FIR.

11. Quashing of the FIR would nip the investigation into such corruption, in the bud. The same would be against the interest of society.

12. In the attending facts and circumstances, the judgment referred to in para 1, impugned herein is set aside and FIR No.131 of 2022 stands restored on the file of the Anti-

Corruption Bureau, Jaipur. We direct the completion of the investigation at the earliest. Director General of Police, Rajasthan, to ensure compliance with the directions.

13. Appeal is allowed and the pending applications, if any, are disposed of.

.....J. (SANJAY KAROL) .....J. PRASHANT KUMAR  
MISHRA Date: 19th February 2025;

Place: New Delhi.

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