

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 5205/2023

1. Umesh Chand Son Of Shri Parmal Singh, Aged About 40 Years, Resident Of Village Gurira, Post Dandera, Tehsil Kaman, District Bharatpur (Raj).
2. Rajendra Yadav Son Of Bhanwar Singh Yadav, Aged About 40 Years, Resident Of Village Nagli Tarf Toda, Panchayat Samiti Jhadla, Tehsil Kathumar, District Alwar (Raj).

----Petitioners

Versus

1. State Of Rajasthan, Through P.p.
2. Sunil Kumar Son Of Nahanya, Presently Bdo At Kathumar, District Alwar (Raj). Permanent Address- Kaleshan, Rajgarh, Alwar (Raj).

----Respondents

For Petitioner(s) : Mr. R.K. Gouttam with
Mr. G.S.Gouttam,
Ms. Sakshi Meena and
Ms. Aarti Bai Meena

For Respondent(s) : Mr. Narendra Singh Dhakar, PP

JUSTICE ANOOP KUMAR DHAND

Order

07/05/2026

1. By way of filing the instant criminal misc. petition, a challenge has been led to the impugned FIR No.83/2022 registered with Police Station Bahtu Kalan (Devi Dholagarh), District Alwar for the offence punishable under Section 409 IPC.
2. Learned counsel for the petitioner submits that an ex-parte inquiry was initiated against the petitioners with regard to some financial irregularities and on the basis of the aforesaid inquiry, recovery proceedings were also initiated by way of issuing

recovery letter dated 06.04.2022 against them. Thereafter, S.B. Civil Writ Petition No.7146/2022 was filed by the petitioner No.2 challenging the recovery letter dated 06.04.2022, wherein a Co-ordinate Bench of this Court, vide order dated 16.05.2022, stayed the demand raised against the petitioner No.2. Counsel further submits that subsequently, the earlier recovery order dated 06.04.2022 was withdrawn and a fresh order was passed against the petitioners on 31.07.2023, that too without granting any opportunity of hearing to the petitioners. Counsel submits that for the same cause, the petitioners cannot penalize twice. Once demand has been raised against the petitioner No.2 and the issue of recovery is subjudice before this Court, the FIR cannot be lodged against both the petitioners. Such an action on the part of the respondents violates the provisions contained under Article 21 of the Constitution of India. Hence, interference of this Court is warranted.

3. *Per contra*, learned Public Prosecutor opposes the prayer and submits that the impugned FIR has been registered against the petitioners with regard to certain financial irregularities committed in the office of the petitioners. The matter has been investigated and *prima facie* role of the petitioners has been found to be proved and the matter is still pending for further investigation. Hence, under these circumstances, interference of this Court is not warranted.

4. Heard and considered the submissions made at Bar and perused the material available on record.

5. Perusal of the contents of the impugned FIR and the allegations levelled therein reveals commission of cognizable

offence. The correctness of the allegations cannot be examined or adjudged by this Court by conducting a fishing and roving inquiry to find out the truth behind the allegations levelled against the petitioners. Certainly, this task has been assigned to the Investigating Officer.

6. This Court is not convinced by the arguments raised by counsel for the petitioners that the FIR cannot be registered against the petitioners on the basis of an ex-parte inquiry which was also withdrawn at a later stage. The inquiry was not withdrawn, rather the ex-parte recovery order was withdrawn and thereafter, second order for recovery of the amount was issued. Initiation of the recovery proceedings with regard to financial irregularities, if any, committed, can be issued, but registration of the FIR cannot be stopped, if there are allegations of commission of any cognizable offence.

7. In view of the discussions made hereinabove, this Court deems it just and proper to dispose of the instant petition granting liberty to the petitioners to submit a representation along with relevant documents in support of their contentions before the Investigating Officer, who shall consider the same in accordance with law and thereafter, he would submit the conclusion report under Section 173 Cr.P.C. before the concerned Court.

8. With the aforesaid observations, the instant criminal misc. petition stands disposed of. Stay application as well as all pending applications, if any, stand disposed of.

(ANOOP KUMAR DHAND),J