IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA

CRR/22/2026

SHRI SANJIT MADHU ... *PETITIONER*

VS.

THE STATE ... *RESPONDENT*

For the petitioner	: Mr. Gopala Binnu Kumar, Ms. Vinita Devi
For the respondents	: Mr. Sumit Kumar Karmakar
Heard on	: April 20, 2026
Judgment on	: April 22, 2026

SABYASACHI BHATTACHARYYA, J.

1. The present application has been filed for quashing FIR No. 582 of 2015 dated August 29, 2015 filed against the petitioner at Police Station Aberdeen under Section 32 of Regulation-III of 1876 as well as the supplementary charge sheet bearing no. 132 of 2021 filed in G.R. Case No. 1614 of 2015 pending before the Court of the Chief Judicial Magistrate at Port Blair against the petitioner under Section 32 of the Regulation-III of 1876, read with Section 201 of the Indian Penal Code, 1860.

2. The brief facts of the case are that the petitioner was appointed as a Police Constable under the Andaman and Nicobar Police in the year 1999 and was posted as Head Constable under the Police Motor Transport at Port Blair in the month of August, 2015.

3. On August 29, 2015, the petitioner was directed to visit the Aberdeen Police Station, wherein his statement was recorded and an FIR No. 582 of 2015 was initiated under Section 32 of the Regulation-III, 1876 against one Sanjoy Chakraborty at PS Aberdeen, allegedly for being in possession of more than the permissible quantity of liquor.

4. Subsequently, on August 31, 2015, the petitioner was suspended on the allegation that he had facilitated the above crime of the said Sanjoy Chakraborty.

5. Subsequently a memo was issued to the petitioner on October 19, 2015 initiating disciplinary proceeding against the petitioner *inter alia* on the charge of facilitation of an election candidate of Manpur village namely Sanjoy Chakraborty on August 28, 2015 for arranging 115 number of 750 ml of IMFL (Indian Made Foreign Liquor) bottles from Hotel Raj Prakash, Lamba Line at Port Blair for the purpose of canvassing during the Municipal and Panchayat Elections- 2015 when the Model Code of Conduct had come into force.

6. Subsequently, vide Order Book No.4 dated January 02, 2017, the Disciplinary Authority imposed punishment on the petitioner by

withholding his future increments for a period of two years with cumulative effect, further holding that the suspension period of the petitioner shall be treated as 'not spent on duty' for all intended purposes.

7. The petitioner challenged the said order before the Appellate Authority, being the Director General of Police (DGP), who dismissed the appeal vide order dated January 30, 2018, primarily on the ground of delay. The petitioner preferred a challenge against such order before the Central Administrative Tribunal, Kolkata Bench (Circuit at Port Blair) in OA/351/01491/2019. By an order dated December 22, 2020, the learned Tribunal disposed of the Original Application by condoning the delay in preferring the appeal and directing the Appellate Authority to consider the appeal afresh on merits and to pass a reasoned and speaking order within three months from the date of receipt of the said order.

8. According to learned counsel for the petitioner, the DGP, being the Appellate Authority, was ruffled by the said challenge to his order and the consequential remand order and instigated the Station House Officer (SHO) to reopen the investigation upon obtaining permission from the Chief Judicial Magistrate at Port Blair vide order No.18 dated March 04, 2021.

9. Moreover, a show cause notice was issued afresh on the appellant on April 10, 2021 to the petitioner calling for an explanation from the petitioner as to why the punishment imposed by the Disciplinary Authority against the petitioner, being not in consonance with the grave misconduct committed by him, should not be enhanced. The petitioner submitted his reply on April 17, 2021, after perusal of which and upon giving him a personal hearing, the Appellate Authority (DGP), vide Order No. 1579 dated April 29, 2021, imposed the penalty of reversion from the rank of Head Constable to Police Constable (Executive) for a period of five years and postponed his future increment of pay during the penalty period.

10. Being thus aggrieved, the petitioner preferred Original Application No.351/00806/2021 before the Tribunal which, vide judgment dated February 02, 2022, quashed the penalty order and the consequential appellate order and remanded the matter to the Disciplinary Authority to apply its mind correctly on the evidence, the defence, the conclusion and correctness of the conclusion and to pass an appropriate order.

11. The respondent-authorities challenged the said judgment of the Tribunal in WP.CT/5/2022, which was dismissed on contest by a Division Bench of this Court.

12. Pursuant to such dismissal, the Superintendent of Police, South Andaman District, being the Disciplinary Authority, took up the matter

afresh and, vide Order Book No.2626 dated September 29, 2022, restored the petitioner to the rank of Head Constable with all consequential benefits. However, taking note of the fact that the petitioner was made a co-accused in a criminal case vide FIR No.582/15 dated August 29, 2015 of PS Aberdeen and that a supplementary charges sheet had been filed vide Case No.132/2021 dated July 14, 2021 against him, the Disciplinary Authority kept in abeyance the final decision in the departmental enquiry against the petitioner till the disposal of the criminal case.

13. Learned counsel for the petitioner argues that the subsequent enhancement of punishment, reopening of investigation and filing of supplementary charge sheet against the petitioner was motivated by malice on the part of the then DGP due to the petitioner having the courage to stand up to the dictat of the DGP and having preferred a challenge against his order before the Tribunal.

14. It is contended that the very fact that the investigation was reopened almost contemporaneously with the remand order of the Tribunal, coupled with the fresh show case notice seeking to enhancement the punishment of the petitioner after about six years from the date of alleged offence, is sufficient evidence of such malice.

15. Secondly, it is argued that cognizance could not be taken of the offence against the petitioner due to the bar of limitation under Section

468 of the Code of Criminal Procedure, 1973. It is argued that the learned Magistrate, while granting permission to reopen the investigation, recorded no satisfaction as to the facts and circumstances of the case indicating that the delay had been properly explained and that it was necessary so to do in the interest of justice.

16. Thirdly, it is argued by the petitioner that since the punishment meted out to the petitioner on the self-same allegation and on the same set of evidence in the disciplinary proceeding was quashed by the Tribunal, which was affirmed by this Court, the filing of the supplementary charge sheet was not maintainable. It is submitted by learned counsel appearing for the petitioner that although the scope of a disciplinary proceeding is different from that of a criminal trial and the former is adjudicated on the yardstick of preponderance of probability, as opposed to the parameter of "beyond reasonable doubt" in a criminal trial, since the prosecution case against the petitioner on the self-same count has already been turned down up to this Court on the less stringent yardstick of preponderance of probability, further continuance of the criminal trial against the petitioner on the stricter yardstick of "beyond reasonable doubt" would be an exercise in futility.

17. During arguments, on the query of Court, learned counsel for the petitioner also raises the issue as to the absence of authority on the part of the Appellate Authority to issue a show cause notice by itself.

18. Moreover, it is argued that such issuance of a further show notice and enhancement of punishment after the prolonged delay of almost six years was beyond the scope of the remand order of the Tribunal.

19. Learned counsel cites *Mukesh and others vs. The State of Uttar Pradesh and others (Special Leave Petition (Crl.) No.12354/2024)* in support of the proposition that the scope of filing an application for discharge at the time of framing the charge is completely different from the scope of a petition for quashing the criminal proceedings. In the latter, a wider challenge is available, including on the ground of abuse of process of law, and the accused can rely upon documents which are not a part of the charge sheet, as opposed to discharge. Thus, it is argued that the present application for quashing the FIR as well as the consequential charge sheet and the ensuing criminal trial is very much maintainable.

20. Learned counsel for the petitioner next cites *Shailesh Kumar Singh Alias Shailesh R. Singh vs. State of Uttar Pradesh and others (Criminal Appeal No.2963/2025)* in support of the proposition that if an FIR is registered in respect of a non-cognizable offence, the proceeding can be quashed either under Article 226 of the Constitution or in an application under Section 482 of the Code of Criminal Procedure.

21. Learned counsel appearing for the respondent-authorities argues that the scope and parameters of a disciplinary proceeding and a

criminal trial are completely different. Hence, setting aside of the penalty imposed against the petitioner in the disciplinary proceeding cannot, in any manner, affect the criminal trial. It is argued that even if a semblance of a case is made out against the accused person, the Courts ordinarily do not quash a criminal proceeding and it is always open to the prosecution to prove its case in trial. Precluding the criminal trial at an inchoate stage, it is argued, would not be appropriate, since a plausible case has been made out in the supplementary charge sheet filed against the petitioner.

22. Learned counsel seeks to take the Court through the contents of the supplementary chargesheet to impress upon the Court that a strong case has been made out against the petitioner in so far as the involvement in the offence is concerned.

23. Learned counsel appearing for the respondents further contends that a criminal proceeding is maintainable even if a *prima facie* ground has been made out in the FIR.

24. Insofar as the applicability of Section 468 of Code of Criminal Procedure is concerned, learned counsel submits that Section 473 of the Code confers power on the Court to take cognizance of an offence even after the expiry of the period of limitation if it is satisfied on the facts and circumstances of the case that the delay has been properly explained or that it is necessary so to so in the interest of justice. In

view of no challenge having been preferred by the petitioner against the orders of the learned Magistrate permitting reopening of the investigation and/or taking cognizance of the offence, the petitioner cannot now come before this Court for quashing the consequential criminal proceeding or the charge sheet.

25. Learned counsel argues that the petitioner's contention to the effect that no cognizable offence has been made out and that Section 468 of the Code is applicable are erroneous. It is pointed out that even apart from Section 32 of Regulation III, Section 201 of the Indian Penal Code has been clubbed in the supplementary charge sheet against the petitioner. Thus, it is submitted that the present application be dismissed.

26. Upon hearing learned counsel for the parties, certain important aspects of the matter crop up, which are dealt with as follows:

Malice

27. The timing of the relevant events is of essence in the present case. It is rather surprising that despite the initial FIR being initiated against one Sanjoy Chakraborty as long back as on August 29, 2015, *inter alia* on the basis of the statement taken from the petitioner, no complaint was lodged or FIR was registered against the petitioner contemporaneously. The seizure list dated August 29, 2015 would indicate that the stock register, sale register and other relevant

documents were seized by the Investigating Officer at about 12.30 hours on August 29, 2015 itself. However, more than five years thereafter on March 04, 2021, the Station House Officer, PS Aberdeen filed an application all on a sudden, requiring reinvestigation into the matter and seeking permission to file a supplementary charge sheet. The order dated March 04, 2021 passed by the learned Chief Judicial Magistrate, Port Blair on such application merely recorded that such application was submitted on account of "certain new facts and development in the case" without disclosing any further justification. Conspicuously, such order was sought within four months from the remand order being passed by the Tribunal on December 22, 2020 on the challenge preferred by the petitioner against the order of the Appellate Authority, being the then DGP.

28. Close on the heels of the reinvestigation application, a fresh show cause notice was issued by the Appellate Authority/DGP himself on April 10, 2021, directing the petitioner to show cause as to why the punishment meted out to him earlier should not be enhanced.

29. There appears to be no rhyme or reason whatsoever in the sudden stir on the part of the police authorities after the long slumber of over five years, throughout which period all relevant materials pertaining to the offence were lying with the police authorities themselves.

30. On the date of the registration of FIR against one Sanjoy Chakraborty, the statement of the petitioner was taken but no FIR was registered against him.

31. Although it cannot be denied that the petitioner was suspended on August 31, 2015 on the ground of facilitation of the crime of Sanjoy Chakraborty, the same culminated in a remand order being passed by the learned Tribunal, soon after which the fresh efforts to embroil the petitioner in a criminal case and enhance his punishment were undertaken.

32. It is conspicuous that the architect of the entire initiative to incriminate the petitioner was the DGP/Appellate Authority himself. Surprisingly, although the initial show cause notice was issued by the Appointing Authority, the then DGP went out of his way to issue a second show cause notice on April 10, 2021 in respect of enhancement of the petitioner's punishment. Thus, the Appellate Authority acted as judge, jury and executioner by adjudicating on the reply to the said show cause notice, which was issued by the Appellate Authority himself. In any event, it was the Appointing Authority who could still have issued such show cause notice, and not the Appellate Authority. Hence, the subsequent show cause notice by the latter (for enhancement of punishment) was *de hors* his authority as well as beyond the remand order, which merely directed him to reconsider the

original case against the petitioner in the light of the Tribunal's observations.

33. No disclosure was made before the criminal court as to why the investigation was reopened and permission sought to file a supplementary charge sheet.

34. Even from the supplementary charge sheet, no explanation can be elicited as to the reasons for making such prayer to file a supplementary charge sheet. The alleged collection of materials to incriminate the petitioner, as per the narrative in the supplementary charge sheet, begins from after the permission to reinvestigate the matter was granted. However, there is precious nothing in the supplementary charge sheet as regards what prompted the SHO to seek permission for reinvestigation and to file supplementary charge sheet.

35. Such course of action sufficient indicator that it is the concerned DGP/Appellate Authority who abused his powers in an all-out effort to incriminate the petitioner.

Maintainability of the impugned FIR and consequential supplementary charge sheet

36. Section 468 of the Code of Criminal Procedure stipulates that no Court shall take cognizance of an offence of the categories specified in sub-section (2) thereof after the expiry of the period of limitation, unless elsewhere provided in the Code. The period of limitation shall, as per

sub-section (2)(b), be one year if the offence is punishable with imprisonment for a term not exceeding one year.

37. The primary charging Section against the petitioner was Section 32 of the Regulation III of 1876. The relevant provisions are Clauses (c) and (d) thereof, the offences under which are punishable with imprisonment of either description for a term not exceeding six months or with fine not exceeding Rs. 1,000/- or with both, which comes squarely under Section 468(2)(b) of the Code, for which the limitation period is one year.

38. The reliance of the respondents on Section 201 of the Indian Penal Code, 1860 does not improve the situation for the respondents either. As per the said provision, whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment or with that intention gives any information respecting the offence which he knows or believes to be false, if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both. Thus, Section 201 of the Indian Penal Code contemplates even less punishment than Section 32 of the

Regulation III of 1876, hence also coming within the ambit of Section 468(2)(b) of the Criminal Procedure Code.

39. Section 473 of the Code of Criminal Procedure mitigates the rigour of limitation stipulated under Section 468 provided the Court records satisfaction, on the facts and in the circumstances of the case, that the delay has been properly explained or that it is necessary to take cognizance in the interest of justice.

40. The respondents have not produced any document to show that any such satisfaction was recorded at the time of taking cognizance of the offence. Thus, Section 468 of the Code clearly bars taking cognizance of the offence alleged against the petitioner after one year from its commission. In the present case, the delay is of more than five years, thus precluding the Courts from taking such cognizance.

41. It is well-settled that an FIR is required to be registered only when the offence disclosed is cognizable. In the present case, even as per the supplementary charge sheet, the offence against the petitioner is not cognizable at all. Hence, the alleged offence of the petitioner did not call for registration of an FIR and/or the consequential investigation and criminal trial is not maintainable in law at all. Thus, as rightly argued by the petitioner, the continuance of a criminal proceeding against the petitioner would be an exercise in futility and the Court, in terms of

Shalesh Kumar Singh Alias Shailesh R. Singh (supra)[1] would be justified in quashing the proceeding in view of no cognizable offence having been disclosed.

<u>Whether the application for quashing is maintainable, in view of the petitioner having not availed of the remedy of having a discharge at the time of framing of charges</u>

42. *Mukesh and others (supra)*[2] is an authority on the issue. Paragraph 8 thereof is quoted hereinbelow:-

> *"8. It is true that the appellants can apply for discharge. However, the scope of application for discharge is completely different from the scope of a petition for quashing the criminal proceedings. While arguing a case for discharge, the appellants will not be in a position to rely upon any document which is not the part of charge sheet. The ground of abuse of process of law will not be available while arguing discharge application. However, in a petition for quashing either under Section 482 of the Code of Criminal Procedure, 1973 or under Article 226 of the Constitution of India, a wider challenge is available including a challenge on the ground of abuse of process of law. In such proceedings, the accused can rely upon documents which are not the part of the charge-sheet. Therefore, we reject the submission made by learned counsel appearing for the State. Though the submissions made on behalf of the State have no basis, we have dealt with the same elaborately to ensure that the same are not urged in a similar case."*

43. In the present case, the petitioner seeks to prefer a wider challenge than in an application for discharge at the time of taking cognizance, on the ground of gross abuse of the process of law. That apart, the petitioner seeks to rely on several documents, none of which are part of the supplementary charge sheet. Hence, the ratio laid down

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[1] *Criminal Appeal No.2963/2025*
[2] *Special Leave Petition (Crl.) No.12354/2024*

in *Mukesh and others (supra)*[3] is squarely applicable and the application for quashing is very much maintainable before this Court.

Effect of discharge in the disciplinary proceeding

44. It has been held by the Hon'ble Supreme Court time and again that the scopes of a disciplinary proceeding and a criminal trial are different. However, it has also been held in *Ram Lal vs. State of Rajasthan and others* reported at *(2024) 1 SCC 175,* which was referred to by the Court during arguments of the parties, that if the charges, evidence, witnesses and materials before the court are same in a disciplinary proceeding and a criminal trial and the criminal court comes to a definite finding upon an appreciation of evidence that the charge against the accused person has been disproved, it is open to this court to quash a disciplinary proceeding.

45. The converse principle (that if an accused is discharged in a disciplinary proceeding on the same set of charges, evidence and witnesses, he is entitled to acquittal in the criminal case) is all the more true because of the very nature of the standards of proof in the two types of proceedings.

46. The parameter of assessment of evidence in a departmental proceeding is 'preponderance of probabilities', which is a much easier

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[3] *Special Leave Petition (Crl.) No.12354/2024*

hurdle to cross for the prosecution than 'beyond reasonable doubt' as in a criminal trial.

47. From a perusal of the materials on record, I find that the charge-sheeted witnesses in the criminal proceeding and the witnesses in the disciplinary proceeding against the petitioner are substantially the same. Thus, in view of the disciplinary proceeding against the petitioner having been quashed up to this Court upon elaborate discussion of all facets of the charges and evidence, further continuance of the criminal proceeding on the self-same charges and identical set of witnesses would be an exercise in futility.

48. Hence, this issue is decided in favour of the petitioner.

Conclusion

49. In view of the above findings, this Court is of the clear opinion that the FIR against the petitioner as well as the consequential supplementary charge sheet, being a result of malice and not being maintainable in law (more so since no cognizable offence is even *prima facie* disclosed), as well as cognizance of the offences disclosed therein being barred by limitation as prescribed under Section 468 of the Code of Criminal Procedure, the impugned FIR as well as the consequential supplementary charge sheet cannot be sustained in law. Thus, compelling the petitioner to submit himself to the travails and ignominy

of participation in a long-drawn criminal trial is completely unnecessary as well as violative of the fundamental right to liberty of the petitioner.

50. In such view of the matter, CRR/22/2026 is allowed on contest, thereby quashing the impugned FIR No. 582 of 2015 dated August 29, 2015 under Section 32 of the Regulation-III of 1876 at Police Station Aberdeen, insofar as the present petitioner is concerned, as well as quashing the supplementary charge sheet bearing no. 132 of 2021 filed in G.R. Case No. 1614 of 2015 pending before the Court of the Chief Judicial Magistrate, at Port Blair against the petitioner.

51. Consequentially, the petitioner shall be expunged from G.R. Case No. 1614 of 2015 and the same shall not proceed further, only insofar as the present petitioner is concerned.

52. The petitioner shall be entitled to approach the Superintendent of Police, South Andaman District (Disciplinary Authority) to drop the disciplinary proceeding, which was kept in abeyance vide Order Book no. 2626 dated September 29, 2022 solely on the ground of the petitioner being made a co-accused in the impugned FIR and the filing of the supplementary charge sheet, both of which have been set aside by the present order. If so approached, the Disciplinary Authority shall take appropriate steps in consonance with the present judgment at the earliest, preferably within one month from such approach being made.

53. There will be no order as to costs.

54. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Sabyasachi Bhattacharyya, J.)