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## Prabir Mukherjee & Ors Vs State

### Criminal Revision (CRR) No. 2118 Of 2018

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**Court:** Calcutta High Court

**Date of Decision:** Aug. 2, 2019

**Acts Referred:**

Code Of Criminal Procedure, 1973 " Section 154, 156(3), 210, 401, 482#Indian Penal Code, 1860 " Section 34, 302, 406, 420, 498A

**Hon'ble Judges:** Subhasis Dasgupta, J

**Bench:** Single Bench

**Advocate:** Abdur Rakib, Jisan Ahamed, Binoy Kumar Panda, Subham Kanti Bhakat

**Final Decision:** Disposed Of

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### Judgement

The affidavit-of-service filed in Court be kept on record.

This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure seeking an order of amalgamation of the

proceedings registered in connection with Khardah Police Station Case No.117 of 2018 dated 09.02.2018 under Sections 420/34 of the Indian Penal

Code, corresponding to G.R. Case No.759 of 2018 with the proceedings arising out of Khardah Police Station Case No.768 of 2017 dated 18th

October, 2017 under Section 406 of the Indian Penal Code corresponding to G.R. Case No.6951 of 2017, both pending before the court of Learned

Additional Chief Judicial Magistrate, 24 Parganas (North).

It is submitted by the learned advocate for the petitioners that de-facto complainant/opposite party no.2 filed F.I.R. under Section 154 of the Cr.P.C.

on 18th Day of October, 2017 at Khardah Police Station alleging commission of the offence under Section 406 I.P.C. and which was registered as

Khardah Police Station Case No.768 of 2017 dated 18th October, 2017 under Section 406 I.P.C. and over the selfsame incident the selfsame de-facto

complainant also filed an application under Section 156(3) Cr.P.C. dated 1st November, 2017 seeking police investigation alleging commission of

offence under Sections 420/34 I.P.C., which on being ordered by the Learned Magistrate, police registered Khardah Police Station Case No.117 of

2018 dated 9.2.2018 under Sections 420/34 of the Indian Penal Code.

It is further submitted by the learned advocate for the petitioners that the allegation made out in both the cases are same lodged by the selfsame de-

facto complainant against the selfsame accused persons, wherein the de-facto complainant sought to recover Rs.2,47,000/- from the

petitioners/accused persons alleging same to have been cheated.

Learned advocate for the petitioners further submits that over the selfsame incident against the selfsame parties, registration of the case twice is not

permissible and as such an order may be necessary to otherwise secure the ends of justice, requiring intervention of this Court in the given set of

facts.

Learned advocate representing the State submits that since police had no sufficient information about the previous registration of the case over the

selfsame incident, the investigating officer was duty bound to register the case under Section 156(3) Cr.P.C. after being ordered by the Learned

Magistrate under Section 156(3) Cr.P.C.

The only point to be considered is whether the prayer for clubbing together of both the cases is permissible in the given set of facts or not.

Admittedly, de-facto complainant lent money to petitioners/accused persons in the interest of pursuing higher education of the son of the petitioner

no.1. Some of the money given as loan has been paid back, but the most of the money could not be given back to de-facto complainant causing him to

suffer extreme prejudice and in connection therewith he proceeded to file first case under Section 154 Cr.P.C. before the Khardah Police Station

which was registered on 18th October, 2017 under Section 406 I.P.C.

Since no favourable position as per desire of the de-facto complainant could be reached, a separate case under Section 156(3) Cr.P.C. was again filed

by the de-facto complainant praying for recovery of Rs. 2,47,000/- which he alleges to have been cheated by the petitioners.

The facts and circumstances and the averments contained in both the cases are same leaving no ambiguity therein, and it is basically for recovery of

the money alleging the same to have been cheated. The second case under Section 156(3) Cr.P.C. over the selfsame incident was filed on 1st

November, 2017, which was registered by Khardah Police Station on 9th February, 2018. The investigating officer of Khardah Police Station Case

No.117 of 2018 dated 9.2.2018 ought to have brought to the notice of the Learned Magistrate about the previous registration of the case by the

selfsame de-facto complainant over the selfsame incident, but this is not the position in the instant case. However, there is a provision under Section

210 Cr.P.C. to take care of clubbing together of both the cases instituted one of police report and otherwise than of police report. But there is no such

conspicuous provision to take care of instant situation. However, the principle underlying Section 210 Cr.P.C. may be borrowed in the given set of

facts, in order to secure the ends of justice. The plenary jurisdiction given under Section 482 Cr.P.C. can be made applicable when the tests

mentioned in the section itself is justified. Since selfsame contention is involved in both the police cases registered at selfsame Police Station, at the

instance of selfsame complaint reference of which is mentioned hereinabove, the Court is of the view that it is extremely necessary to pass order

directing both the police cases being No.768 of 2017 and 117 of 2018, both of Khardah Police Station Case be investigated clubbing both the cases

together in accordance with the provisions of the law.

The revisional application thus succeeds being with merits. With this observation/direction, this revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary

formalities.