ISSN: 2582-6433

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

 ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

Joinder Of Charges Through The Lens Of Financial Crimes

The necessity of enacting additional provisions based on the unique character of financial crimes

Authored By-Aditya Biswas & Esha Rajan
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In recent years, the number of cases where a second First Information Report has been filed have been increasing. Even though from landmark cases and popular judgements, it can be established that the scope of second F.I.R is very limited under CrPC, however, it can be said the law governing second F.I.Rs is still in its infancy and is now being studied in a limited way through judicial pronouncements. This leads to the question, whether under certain circumstances, the courts may consider it in the interest of the administration to club the charges mentioned in the multiple F.I.Rs. This particular practice with respect to specific cases acts as an exception to the procedure established in CrPC and is covered under the Sections 219-223 of CrPC, but essentially the discretion stays with the Court whether or not to try each charge as being clubbed into one. On the other hand, with the emerging commercial sector in India, financial opportunities are developing at a rapid speed. But with this comes the problem of financial crimes as along with the rapid advancements in financial frameworks and law-making, the Nation has also witnessed non-completion, defrauding, and cheating of investors/depositors. Economic crimes, often known as financial crimes, includes deception and are frequently motivated by monetary gain. It frequently entails the unauthorised transfer of property ownership for personal use. The abuse of a position of trust distinguishes them from ordinary theft or robbery. Financial crimes can be committed by an institution through acts of tax evasion, money laundering, market manipulation, insurance scams etc., and also by individuals through acts of embezzlement, bribery, identity theft, forgery, etc. Economic crimes are regarded as a more sophisticated and separate criminal phenomenon for a reason. The Supreme Court has drawn a clear line between economic offences and other types of crimes, wherein it stated that “In cases of economic offences the remedy of anticipatory bail should be exercised exceedingly sparingly as they affect the economic fabric of the society”. (*P.*

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Chidambaram vs Directorate Of Enforcement, 2019) The Court reasoned economic crimes frequently drain funds required to improve the country's public services and needs to be dealt with more severely. The rise of economic crimes threatens the very wellbeing of the poor and disenfranchised in India, where social welfare is essential in every element of administration. India is unfortunately known for its corruption, and we have had our share of major economic scandals since independence. Despite the fact that many laws have been enacted to protect the rights of investors and depositors, the exponential rise in the number of criminal cases filed by victims of financial crimes has led us to question the legality of criminal actions in terms of whether the crimes committed are distinct or similar enough to be considered in criminal proceedings. Therefore, despite the fact that joinder of charges is an exception to the general rule, in this paper we will argue that provisions should be established for the clubbing together of charges recorded in multiple F.I.Rs, for financial crimes based on their specific nature.

With regards to joinder of charges relating to financial statements, one of the determinative factors is the distinction between same offences. The test of sameness though established in the T.T. Antony v. State of Kerala, was moulded in the State of Jharkhand v Lalu Prasad judgement with a shift in perspective. Clarity was drawn on the fact that the test of sameness cannot be applied on the 'same kind of offence'. A distinction was observed between same offence and same kind of offence, holding for both the types of offences to not mean the same thing. In the case of financial crimes, offences such as cheating of a large number of investors threw open a number of questions, with there being ambiguity in the interpretation of clubbing all complaints into one. Which would mean deeming all but one investor as witnesses, while one being the complainant against the accused in a single F.I.R (*Tripathi*, 2019). The court had to take a stance as to whether each instalment of payment constitutes for a separate transaction, and how many such transactions could be unified into the same F.I.R. Secondly, as to whether deposits of multiple victims of the same fraud can be amalgamated as a pool of witnesses, headed by one complainant would be with the consonance of law (*Tripathi*, 2019). Ultimately leading to the primary question of what exactly constitutes to comprise of 'same transaction' when different cases are filed against the accused in cases of cheating multiple people under section 218 and 220 of CRPC (*Khaitan*, 2021). The interpretation of the meaning of 'same transaction' was understood through the judgement of Shapurji Sorabji and Anr v. Emperor, wherein 'continuity' of the transaction was given a deeper meaning. "Holding it to be a new

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transaction, if on following up of some initial act through all its consequences and incidents until the series of acts or group of connected acts comes to an end, either by attainment of the object or by being put an end to or abandoned" (*Shapurji Sorabji and Anr. v. Emperor*, 1935). This would be the case irrespective of the continuance of the general purpose of the series of transactions. Ruling that numerous fraudulent transactions through the course of a period of time could only be tried on one account in the same trial, as long as all the transactions are part of the same conspiracy. However, in cases of financial scams involving multiple investors, wherein the deposits are different, modes and dates of payments are different, and various other particulars vary and distinct to each depositor, then each and every complaint registered by the investors constitutes to be an offence by itself (*Manoj Reddy v. Commissioner of Police*, 2008). This position of law was arrived at in the ruling of Manoj Reddy v Commissioner of Police. Finally in the case of State v. Khimji Bhai Jadeja, the courts explicated on the interpretation of same transactions. It was held that Investigating Agency/ Police cannot amalgamate the separate offences investigated under separate F.I.Rs, into one charge sheet (*State v. Khimji Bhai Jadeja*, 2019). Needing a separate final report is required to be drafted with respect to each F.I.R. Therefore, taking up each transaction as a separate F.I.R would not be optimal as "although the modus operandi may have been the same, the several instances of cheating were not part of the same transaction in the present case; the instances of cheating were in pursuance of the conspiracy and were therefore only parts of the transaction" (*Swamirathnam v. State of Madras,* 1957).

Talking about the joinder of charges with respect to the nature of the financial offences committed, the second aspect which comes into play is the application of one of the most fundamental tests i.e., the 'test of consequence'. It essentially checks if the offence registered under subsequent F.I.R's are directly the consequence of the offence alleged to have occurred under the F.I.Rst F.I.R. To determine if the offence registered under second F.I.R is a consequence of the one in the F.I.Rst F.I.R, the proximity of time, place, motive, and action of the multiple offences committed must be taken into consideration, which would further answer the question that whether the facts of the case in question amount to the commission of a 'single conspiracy'. In a particular case of the appellants were put to trail for specific offences of cheating in furtherance of a conspiracy and for the offence of cheating the members of public. The Supreme Court held that "Where there was a single conspiracy that spanned several years with the goal of defrauding members of the public, those instances of cheating that were a part of the conspiracy form the same transaction and those that were carried out in the course of the

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conspiracy are thus parts of the same transaction, leaving several other instances of cheating to be treated as separate transactions under the same conspiracy. The fact that multiple incidences of cheating occurred in the course of carrying out the conspiracy meant that the various acts of cheating were all part of the same transaction. As the modus operandi may have been the same, it was suggested that the instances of cheating were in pursuance of the conspiracy and were therefore parts of the same transaction." (*Swamirathnam v State of Madras,* 1957) Secondly, in another case, the accused took large sums of money from various treasuries between 1990 and 1996 by submitting forged allotment letters and withdrawing money from various locations. The Supreme Court rejected the plea of considering multiple offences in furtherance of a single conspiracy and held that "due to the lack of continuity of action, and lack of proximity of time, place, money etc. in the cases in question, it's probable that the accused's method of taking money from government treasuries under false allocation letters was the same, but the withdrawals were performed at different locations and times. The same purpose does not indicate that such plots are linked to larger ones and therefore the petition of the accused to consider multiple offences as a single conspiracy was rejected." (*State of Andhra Pradesh v Cheemalapati Ganeswara Rao,* 1850) Lastly in another case where the accused allegedly withdrew money from the Bihar's State treasury on the basis of forged and fabricated allotment letters for making payment to non-existing suppliers, the High Court established the criteria for clubbing multiple offences into a single conspiracy by stating that "The fact that the accused persons in both cases are not the same is irrelevant, because even in single-transaction cases, distinct sets of accused persons commit different offences. The trial court had to decide whether a series of acts committed by the accused persons, forming different offences at different times and in different places, were with the intent to fulfil one common purpose and if there was a continuity of criminal intent to form a single transaction, or whether different offences were committed independently with the intent to fulfil different purposes or objects, despite similarities between the purpose in the cases." (*Lalu Prasad v State of Bihar,* 2007) All these cases indicate the Court's reasoning towards financial offences and establishes that multiple offences registered under subsequent F.I.R's relating to the same conspiracy needs to conform with the principle of *Res Gestae,* wherein the facts form a part of the same transaction automatically or naturally. When multiple F.I.R's are to be filed, the particulars defined in them have to be self-evident with respect to the previous F.I.R, and the facts of the same become significant only when their relation is established with respect to their connection to the main transaction. Looking closely at

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the judgements of the cases mentioned above the Courts have clearly established the necessity of proximity when taking into consideration multiple transactions, as continuity of sub-actions with relation to the main motive establishes the link between the individual events. Furthermore, using this reasoning we can determine the importance of proximity and continuity for separate events when determining the validity and permissibility of multiple F.I.R's as decided by the Courts based on different facts and circumstances. This brings us back to the application of 'consequence test' while determining the validity of multiple F.I.R's. The applicability of the consequence test is mainly established by proximity and continuity in the accused's acts, as these two components are the fundamental considerations in establishing whether the offence filed under subsequent F.I.R's is a consequence of the prior one. Therefore, if the consequence test checks out with respect to multiple interconnected F.I.Rs considering the facts of the case, it subsequently establishes the need for joinder of charges. Furthermore, when it's established that a group of facts particular to multiple F.I.Rs are so intrinsically linked together so as to involve certain ideas namely, continuity, unity, and connection, then the only logical avenue is to club them together under joinder of charges. (*Azam Shah v State,* 1990) Hence, joinder of charges for multiple F.I.Rs where the consequence test has been established, is the most reasonable thing to do because the proximity and continuity of the transaction has been established, indicating that they should be grouped together due to their interdependent nature.

The question concept of permissibility of second F.I.R and joinder of charges can also be analysed through the lens of the doctrine of double jeopardy. The system of jurisprudence of law involves ensuring penalising the wrongdoer just to the extent of the wrong done by him. A corollary to which, would mean, the legal system in place does not propose to unduly punish one excessively or repeatedly for a given offence. Protection against double jeopardy is laid down in section 300 of CrPc which can be read along with article 20(2) of the constitution of India. The rule of law established is such that says, "no person shall be prosecuted and fined for a constant offence over once" (*The Constitution of India*). While the protection under the constitution is promising enough, it must be noted that the protection provided under article 300(1) is of a much wider scope as laid down in Kolla Veera Raghav Rao v. Gorantla Venkateswara Rao and Ors (*Kolla Veera Raghav Rao v. Gorantla Venkateswara Rao and Ors*, 2011). Thereby "forbidding a second trial, not merely a second conviction, for the same offense in an effort to prevent criminal trials from becoming an instrument for unnecessarily badgering individuals" (John English Jr., 1971). The principle behind this is to ensure the state optimally utilises all its resources and

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agency, not allowing duplicate charges to be levelled against the same individual to the convict him for the same offence. If the courts were to adopt the same transaction criteria as part of the double jeopardy clause in relation to the collateral estoppel theory, then joinder of charges would be a required compulsion rather than discretionary (John English Jr., 1971). Granting the joinder of charges application would befit both the prosecution and the accused in a criminal trial. Further prosecutions against the accused would only be allowed in circumstances wherein "the interests of justice" demanded that joinder not be used in the F.I.Rst trial, this would safeguard the defendant from excessive persecution and harassment (John English Jr., 1971). And is beneficial for the prosecution, the rulings of the multiple joined charged need not be consistent with each other as each specific count in a joint charge trial is tried independently from the other counts. Although it must be noted that joinder of charges must not be permitting in certain instances where; if the crimes are so convoluted that they would further complicate the issues, if the offences are entirely unrelated to one another with little overlap with each other, and if clubbing of the charges would create a bias towards the prosecution (John English Jr., 1971). Thus, weighing the arguments, permitting the clubbing of charges clearly prove beneficial to both parties, and most importantly inhibits the process of initiating a second trial from becoming a mechanism of causeless badgering to the accused.

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Conclusion

Joinder of charges with respect to multiple F.I.Rs in case of financial crimes remains an underdeveloped area of research which intertwines criminal procedure code along with the application of judicial powers. Considering the arguments presented in the paper, it can be contended that there is a dire need of creation of specific provisions in the Code of Criminal Procedure for the joinder of charges recorded in multiple F.I.Rs, in case of financial offences where the continuity of each offence has been determined as a part of a single conspiracy. Creation of new provisions relating to the same would also reduce the Courts workload as instead of trying multiple cases relating to the same conspiracy, these provisions would create a statutory arrangement wherein all of them are clubbed together and tried as a single case. Historically the workload and constant inflow of cases in Courts has been a major problem. Statistics show that pendency in all courts increased by 2.8 percent every year between 2010 and 2020. Also, there are 4.70 crore cases pending in various courts in the country, out of which 3.9 crore are related to district and subordinate courts. (PRS, 2021) Thus, establishing provisions for the joinder of cases in financial crimes would serve a dual purpose: it would reduce the Courts' workload as mentioned above, and uphold the true essence of a well-functioning justice system by effectively and efficiently delivering justice in cases involving a single conspiracy. Furthermore, it would uphold the principle dictating double jeopardy by ensuring a speedy trial rather than having a long-drawn-out process spread across multiple courts, which inherently hinders judicial effectiveness.

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