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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1388 OF 2016

1. Kashinath Kutwal
   Age 45 years, Occ : Agriculture

2. Prakash Pandurang Hirve
   Age 42 years, Occ: Service

3. Suresh Sahebrao Bhosale
   Age 55 years, Occ : Agriculture

4. Shobha Bharat Sakat
   Age 50 years, Occ: Labour

5. Vilas Laxman Dhende
   Age 52 years, Occ : Labour

6. Malhari Shambhu Sakat
   Age 65 years, Occ : Labour
   All resident of Supe, Tal : Baramati,
   District : Pune … Applicants
   (Ori. Accused No.1 to 6)

Versus

1. The State of Maharashtra
   (Through P.I., Wadgaon Nimbalkar Police Station

2. Bhalchandra Sarjerao Mahadik
   Age 32 years, Occ : Labour
   R/at : Supe, Tal : Baramati,
   District : Pune … Respondents
   (Respondent no.2 Orig. Complainant)

Mr. Rahul Sopanrao Kate for the Applicants.

Mrs. S.V. Sonawane, APP for the Respondent No.1.

Mr. Ghanasham S. Jadhav for the Respondent No.2.

CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.

DATE ON WHICH SUBMISSIONS WERE HEARD : 7th MARCH, 2017
DATE ON WHICH JUDGMENT IS PRONOUNCED: 17th APRIL, 2017

JUDGMENT (PER A.S. OKA, J.):-

1 The following question arises in this application under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") :

> "Whether in the facts of the case after completion of investigation of a crime and after filing a charge sheet, under an order of the learned Judicial Magistrate First Class under Sub-Section (3) of Section 156 of Cr.P.C passed on the basis of a complaint filed by an accused, one more First Information Report can be registered in relation to the same incident ."

2 With a view to appreciate the controversy involved, it will be necessary to make a brief reference to the facts of the case. A First Information Report (for short "FIR") was registered on 29th November 2015 at the instance of one Vilas Shamrao Bhosle being C.R. No.224 of 2015 with Wadgaon Nimbalkar Police Station, Taluka Baramati, District Pune for the offences punishable under Sections 306, 504, 506 read with Section 34 of the Indian Penal Code. The said FIR alleges that suicide committed by his wife Sangita in the night of 28th November,

2015. In the said FIR, Bhalchandra Sarjerao Mahadik (second respondent), Vaishali alias Shilpa Bhanudas Shinde and Sheetal Ganesh Kale have been named as the accused. On completion of the investigation, charge sheet was filed by the Police against the said three accused in connection with the said FIR on 14th March, 2016 for the offences punishable under Sections 306, 504, 506 read with Section 34 of the Indian Penal Code (IPC). The case was committed to the Court of Sessions and was numbered as Sessions Case No.47 of 2016. The second respondent filed an application for discharge on 6th May 2016 which was rejected by the Order dated 1st October 2016 by the learned Additional Sessions Judge, Baramati. Thereafter, on 26th October 2016, a complaint was filed by the second respondent against the present applicants and seven others alleging that they have committed murder of the said Sangita Vilas Bhosale. The offence punishable under Section 302 read with Section 34 of IPC was alleged. By an Order dated 15th November 2016, the Learned Judicial Magistrate First Class, Baramati exercised the power under Section 156(3) of Cr.P.C and ordered registration of FIR. Accordingly, FIR bearing CR No.375 of 2016 was registered Wadgaon Nimbalkar Police Station for the offence punishable under Section 302 read with Section 34 of IPC against the Present applicants and six other including the said Vilas, the husband of the deceased, who is the first informant in the earlier FIR being CR No. 224

of 2015. By the present application, a prayer is made for quashing FIR being C.R. No.375 of 2016 for the offence punishable under Section 302 read with Section 34 of IPC.

3 The learned counsel appearing for the applicants submitted that the act of filing a complaint seeking action under Sub-Section (3) of Section 156 of the Code of Criminal Procedure is itself an abuse of process of law. He pointed out that the second respondent filed the said complaint after his application for discharge in Sessions Case No.47 of 2016 was rejected. He submitted that the said application was rejected by the learned Sessions Judge by recording a finding that there is sufficient material on record to proceed against the second respondent. He submitted that the said order was not challenged by the second respondent. He pointed out that the fact that charge sheet was filed on the basis of C.R. No.224 of 2015 and the case was committed to the Court of Sessions is mentioned in the complaint filed by the second respondent. He submitted that the effect of the same has not been considered by the learned Magistrate while passing the impugned order dated 15th November, 2016. He submitted that the said order shows complete non application of mind and the registration of the second FIR in respect of the same offence is nothing but an abuse of process of law. The learned counsel appearing for the applicants relied upon a decision

of the Apex Court in the case of *Awadesh Kumar Jha and Anr. Vs. State of Bihar*[1]. He also relied upon another decision of the Apex Court in the case of *T.T. Antony Vs. State of Kerala and Ors.*[2]. He also relied upon a decision of the Apex Court in the case of *Anju Chaudhary Vs. State of Uttar Pradesh and Anr.*[3].

4 The learned counsel appearing for the second respondent relied upon the following decisions of the Apex Court in support of his contention that there is no illegality in the registration of the second FIR on the basis of the same incident. The said decisions are :-

1. Kari Choudhary Vs. Smt. Sita Devi and Others[4]
2. Upkar Singh Vs. Ved Prakash and Others[5]
3. Shivshankar Singh Vs. State of Bihar and Another[6]
4. Surender Kaushik and Ors Vs. State of Uttar Pradesh and others[7].

He submitted that the learned Magistrate has taken into consideration the fact that on the basis of the earlier FIR, charge sheet was filed and the case was committed to the Court of Sessions. He

1 (2016) 3 SCC 8
2 (2001) 6 SCC 181
3 (2013) 6 SCC 384
4 (2002) 1 SCC 130
5 (2004) 13 SCC 292
6 (2012) 1 SCC 130
7 (2013) 5 SCC 148

pointed out that in the complaint filed by the second respondent, even the fact that the second respondent had applied for discharge is disclosed. He submitted that the Police completely misdirected themselves while carrying on investigation on the basis of the first FIR. He submitted that in fact the case was of murder in which the husband of the deceased, who is the first informant in the first FIR, is also involved. He submitted that in view of the law laid down by the Apex Court in the aforesaid cases, there is nothing wrong with the registration of the second FIR. He submitted that the Apex Court has repeatedly held that registration of a counter FIR in respect of the same or connected incident is permissible. He urged that registration of the second FIR containing a different version is permissible. He submitted that no interference is called for in the investigation on the basis of the second FIR . We have also heard the learned APP for the State.

5 We have given careful consideration to the submissions. Few admitted facts borne out from the record need to be noted. C.R. No.78 of 2015 was registered on 29th November, 2015 at 22.13. The first informant is Vilas Shamrao Bhosle who is the husband of the deceased Sangita. The allegation in the FIR is that Sangita committed suicide. The allegation of an offence of abetment of suicide punishable under Section 306 of the Indian Penal Code is made against the second

respondent, Vaishali Shinde and Sheetal G. Kale. After completing investigation, charge sheet was filed on 14th March, 2016 against the second respondent and said two other two accused. Page 80 of the application shows that on 10th March, 2016 the second respondent had received a copy of the charge sheet. Thereafter, the case was committed to the Court of Sessions by the learned Magistrate and on 18th March, 2016, the case (Sessions Case No.47 of 2016) was assigned to the Court of Additional Sessions Judge, Baramati for disposal. An application was made by the second respondent at Exhibit - 26 in the Sessions Case for discharge. In the said application, there is no allegation made that the present applicants and seven others committed murder of deceased Sangita. In paragraph 10 of the order dated 1st October, 2016 by which the application for discharge made by the second respondent was rejected, the learned Additional Sessions Judge, Baramati held that prima facie there is sufficient material on record to proceed against the second respondent. Therefore, the application was rejected by the said judgment and order dated 1st October, 2016. As of today, the said order has attained finality. Thereafter, on 26th October, 2016 the second respondent filed the aforesaid complaint in the Court of Judicial Magistrate, First Class at Baramati. It is true that the said complaint refers to the fact that the second respondent had applied for discharge. However, in paragraph 3 of the complaint, there is a specific averment

that his application for discharge is pending for passing orders. However, it was not disclosed that the said application has been rejected. Though on the complaint, impugned order under Sub-Section (3) of Section 156 was passed on 15th November, 2016, it appears that a copy of the order dated 1st October, 2016 passed by the learned Additional Sessions Judge rejecting the application for discharge filed by the second respondent was never produced before the learned Magistrate. The operative part of the impugned order passed on the said complaint reads thus :

> "Order below Exh.1
>
> Perused the complainant and documents filed along with it. Heard the complainant counsel. It appears from the documents that offence punishable u/s.306 is registered in respect of the present offence, against accused not relate to any accused in this complaint. The letter alleged to be written by the deceased herself to Tahsildar, Baramati prior her death create suspicion as to the cause of her death. The complainant alleged that the accused has committed the offence punishable u/s.302 of IPC. Prima facie the complaint and document disclose the cognizable offence. Police has failed to take action despite intimation u/s. 154 of Cr.P.C. Considering the nature of the offence, the same should be investigated through police machinery. Hence, I think it fit to direct the police officer to register the FIR in respect of the present offence.

ORDER

(1) The officer incharge of police station Vadgaon Nimbalkar is directed under Section 156(3) of Cr.P.C. to register the first information report on the basis of this complaint and to proceed in accordance with law.

(2) Certified copy of the complaint alongwith this order and documents filed by the complainant be sent to the said officer.

(3) The proceeding is disposed off as the manner would come up again before the court in the form of final report under Section 173 of Cr.P.C.

(4) On the receipt of final report, these papers be tagged with that report."

6 Exhibit – A is a photocopy of the certified copy of the complaint. From the said copy and from the aforesaid order, it appears that an affidavit in support of the complaint was not filed by the second respondent. The impugned order shows that the learned Magistrate did not apply his mind to the fact that on the basis of first FIR in respect of the same incident, a charge sheet was already filed and the case was already committed to the Court of Sessions. The learned Magistrate has mechanically observed that prima facie, the complaint and the documents produced disclose commission of a cognizable offence and

that the police have failed to take action. However, there was no assertion in the Complaint that a recourse was taken to Sub-Section (3) of the Section 154 of Cr.P.C. This itself was a sufficient ground not to pass an Order under Sub-Section (3) of Section 156. Even assuming that the allegations in the complaint disclosed commission of a cognizable offence, the learned Magistrate could not have mechanically passed an order under Sub-Section (3) of Section 156. The learned Magistrate ought to have applied his mind to the facts and circumstances of the case. When there was an averment in the complaint that discharge application filed by the second respondent was pending, before passing the order, the learned Magistrate ought to have inquired about the outcome of the discharge application. The second respondent, while filing the complaint, suppressed a material fact that the application for discharge was rejected.

7 Thus, the factual scenario which emerges is that on the basis of the FIR lodged on 29th November, 2015 by the husband of the deceased, investigation has been carried out and charge sheet has been submitted. The case was committed to the Court of Sessions on 18th March, 2016. The second respondent who was shown as an accused, applied for discharge and his application was rejected on 1st October, 2016 by a detailed order. It was held by the Sessions Court that prima facie, there is sufficient material against the second respondent to

proceed. The said order has attained finality. After the said Order was passed, on 26th October 2016, without disclosing the said Order, the aforesaid Complaint was filed on the basis of the same incident. On the basis of the impugned order dated 25th November, 2016 passed under Sub-Section (3) of section 156 of Cr.P.C, the impugned FIR has been registered on 19th November, 2016 alleging commission of an offence punishable under Section 302 read with Section 34 of the Indian Penal Code against the husband of the deceased, the present applicants and five others. According to us, the action of filing the complaint under Sub-Section (3) of Section 156 of Cr.P.C. by the second respondent after filing an application for discharge and after the said application was rejected on merits, is nothing but an abuse of process of law. Whether the registration of second FIR can be made is another issue. Even without going into the said issue, the applicants must succeed.

8 In the case of *Amit Bhai Anilchandra Shaha Vs. Central Bureau of Investigation and Another*[8], the Apex Court discussed the issue of legality and validity of registration of second FIR. Paragraph 37 of the said decision quotes with approval the decision of the Apex Court in the case of *T.T. Antony Vs. State of Kerala and Ors.* Paragraph 37 of the decision in the case of Amit Bhai Shah reads thus :-

8 (2013) 6 SCC 348

"37. **This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T. Antony, this Court has categorically held that registration of second FIR (which is not a cross-case) is violative of Article 21 of the Constitution.** The following conclusion in paras 19, 20 and 27 of that judgment are relevant which read as under : (SCC pp.196-97 & 200)

"19. The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. ON completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. **However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC.**

20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfied the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer

in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.

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 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 exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution."

The above referred declaration of law by this Court has never been diluted in any subsequent judicial pronouncements even while carving out just exceptions."

(emphasis added)

9 In the case of *T.T. Antony Vs. State of Kerala and Others*, the Apex Court considered the same issue. In fact paragraphs 19 and 20 of the said decision have been quoted in the case of Amit Bhai Shah and the Apex Court observed the said law laid down therein has not undergone any change. In paragraph 21 of the decision in the case of T.T.Antony, an argument of the learned Solicitor General of India based on the decision in the case of *Ram Lal Narang v. State (Delhi Admn.)*[4] was considered. The argument was that it is permissible to get second FIR registered in respect of the same case. Paragraphs 21 and 22 of the said decision read thus :-

> "21. The learned Solicitor-General relied on the judgment of this Court in Ram Lal Narang & Ors. Vs. State (Delhi Administration) [(1979) 2 SCC 322] (referred to as "Narang case") to contend that there can be a second FIR in respect of the same subject-matter. In that case the contention urged by the appellant was that the police had committed illegality, acted without jurisdiction in investigating into the second case and the Delhi Court acted illegally in taking cognizance of that (the second) case. A reference to the facts of that case would be interesting. Two precious antique pillars of sandstone were deposited in the court of Ilaqa Magistrate, Karnal, as stolen property. One N.N. Malik filed an application before the Magistrate seeking custody of the pillars to make in detail study on the pretext that he was a research scholar. It appears that the then Chief Judicial Magistrate of Karnal, (H.L. Mehra), was a friend of Malik. At the instance of Mehra the said Ilaqa Magistrate ordered that the custody of the pillars be given to Malik on his executing a bond. About three months thereafter Malik deposited two pillars in the Court of Ilaqa Magistrate, Karnal. After sometime it

4 (1979) 2 SCC 322

came to light that the pillars returned by Malik were not the original genuine pillars but were fake pillars. An FIR was lodged against both Malik and Mehra under Section 120-B read with Sections 406 and 420 of IPC alleging conspiracy to commit criminal breach of trust and cheating. The CBI after necessary investigation filed charge-sheet in the Court of Special Magistrate, Ambala, against both of them. Ultimately on the application of the public prosecutor the case was permitted to be withdrawn and the accused were discharged. Sometime later the original genuine pillars were found in London which led to registering an FIR in Delhi under Section 120-B read with Section 411 of IPC, and Section 25(1) of the Antiquities and Art Treasures Act, 1972 against three persons who were brothers (referred to as "the Narangs"). The gravamen of the charge against them was that they, Malik and Mehra, conspired together to obtain custody of the genuine pillars, got duplicate pillars made by experienced sculptors and had them substituted with a view to smuggle out the original genuine pillars to London. After issuing process for appearance of the Narangs by the Magistrate at Delhi, an application was filed for dropping the proceedings against them on the ground that the entire second investigation was illegal as the case on the same facts was already pending before Ambala Court, therefore, the Delhi Court acted without jurisdiction in taking cognizance of the case on the basis of illegal investigation and the report forwarded by the police. The Magistrate referred the case to the High Court and the Narangs also filed an application under Section 482 of CrPC to quash the proceedings. The High Court declined to quash the proceedings, dismissed the application of the Narangs and thus answered the reference. On appeal to this Court, it was contended that the subject-matter of the two FIRs and two charge-sheets being the same, there was an implied bar on the power of the police to investigate into the subsequent FIR and the Court at Delhi to take cognizance upon the report of such information. This Court indicated that the real question was whether the two conspiracies were in truth and substance the same and held that the conspiracies in the two cases were not identical. It appears to us that the Court did not repel the

> contention of the appellant regarding the illegality of the second FIR and the investigation based thereon being vitiated, but on facts found that the two FIRs in truth and substance were different - the first was a smaller conspiracy and the second was the larger conspiracy as it turned out eventually. It was pointed out that even under the Code of 1898, after filing of final report, there could be further investigation and forwarding of further report. The 1973 CrPC specifically provides for further investigation after forwarding of report under sub-section (2) of Section 173 of CrPC and forwarding of further report or reports to the Magistrate concerned under Section 173(8) of CrPC. It follows that if the gravamen of the charges in the two FIRs - the first and the second - is in truth and substance the same, registering the second FIR and making fresh investigation and forwarding report under Section 173 CrPC will be irregular and the Court can not take cognizance of the same.
>
> 22. On a perusal of the judgment of this Court in M.Krishna vs. State of Karnataka [1999 (3) SCC 247], we do not find anything contra to what is stated above. The case is distinguishable on facts of that case. In the case on hand the second FIR is filed in respect of the same incident and on the same facts after about three years."

10 In the case of Awadesh Kumar Jha which is the latest judgment on the point, in paragraph 21, the Apex Court reiterated the law laid down in the case of Amitbhai Shah and held in the facts of the case, the said decision will not apply. In paragraph 26, after referring to the decisions in the cases of Amitbhai Shah and T.T.Antony, the Apex Court in the facts of the case held thus:

> "**26.** However, this principle of law is not applicable to the fact situation in the instant case as the substance of the allegations in the said two FIRs is different. **The first FIR deals with the offences punishable under**

> **Sections 3, 4, 5, 6 and 7 of the Act, whereas, the second FIR deals with the offences punishable under Sections 419 and 420 IPC which are alleged to have been committed during the course of investigation of the case in the first FIR. This Court is of the view that the alleged offences under the second FIR in substance are distinct from the offences under the first FIR and they cannot, in any case, said to be in the form of the part of same transaction with the alleged offences under the first FIR.** Therefore, no question of further investigation could be made by the investigating agency on the alleged offences arisen as the term "further investigation" occurred under sub-section (8) to Section 173 CrPC connotes the investigation of the case in continuation of the earlier investigation with respect to which the charge-sheet has already been filed."
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> (emphasis added)

11 In facts of the case in hand, the impugned second FIR is based on the same incident of the death of the said Sangita. In a case like the case in hand, further investigation under Section 173(8) of Cr.P.C is possible depending upon the facts of the case on the question whether the the death is suicidal or homicidal. However, further investigation cannot be made without the order of the Court.

12 Now, we turn to the decisions relied upon by the second respondent. The first decision is in the case of *Kari Choudhari Vs. Smt. Sita Devi and Ors.* In Paragraphs 10 and 11, the Apex Court held thus:

> "**10.** The result of the said factual development is this. The complainant Sita Devi in FIR No. 135 is allowed to

> persist with her complaint despite the conclusion reached by the police that the said complaint was false. But that course adopted by the court cannot disable the police to continue to investigate into the offence of murder of Sugnia Devi and to reach the final conclusion regarding the real culprit of her murder. The police completed their investigation only when the charge-sheet was finally laid on 31-3-2000 against the first respondent Sita Devi and others. The said case has to be legally adjudicated for which a trial by the Sessions Court is indispensable.
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> **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."

13 In the decision in the case of Kari Chaudhari, the investigation was carried out in the first FIR. The Police found the complaint to be false. Thereafter, the investigation on the basis of the second FIR proceeded and charge sheet was filed. In the present case, the first FIR was registered on 29th November, 2015. Charge sheet was

filed on 14th March, 2016. The case was committed to the Court of Sessions on 18th March, 2016. Application for discharge made by the second respondent was rejected on 1st October, 2016. On the basis of private complaint filed thereafter on 26th October, 2016, by the order dated 15th November, 2016 the second FIR was registered. As noted earlier, a copy of the charge sheet was served upon the second respondent on 10th March, 2016. after the case was committed to the Sessions Court, in May 2016, he filed an application for discharge, 25 days after the application for discharge was rejected on merits that he filed the complaint invoking Sub-Section (3) of Section 156 Cr. P.C. The Order passed on application for discharge has become final. That is the reason why we have held that in the facts of the case, the action of the second respondent of taking recourse to Sub-Section (3) of Section 156 is nothing but an abuse of process of law.

14 At this stage, we may consider the decision of the Apex Court in the case of *Anju Chaudhary Vs. State of Uttar Pradesh and Ors.*, in which the same issue arose. Paragraph 1 of the said decision reads thus :-

> "1. Leave granted. A cardinal question of public importance and one that is likely to arise more often than not in relation to the lodging of the first information report (FIR) with the aid of Section 156(3) of the Code of Criminal Procedure (for short "the Code") or otherwise independently within the ambit of Section 154 of the Code is as to whether there can be more than one FIR in

> relation to the same incident or different incidents arising from the same occurrence."

15 In paragraph 18, the Apex Court considered the decision in the case of Kari Chaudhari. After considering the decision in the case of Kari Chaudhari, in paragraph 25 the Apex Court held thus :-

> "25. In the instant case, it is seen in regard to the incident which took place on 20-5-1995, the appellant and the first respondent herein have lodged seperate complaints giving different versions but while the complaint of the respondent was registered by the police concerned, the complaint of the appellant was not so registered, hence on his prayer the learned Magistrate was justified in directing the police concerned to register a case and investigate the same and report back. In our opinion, both the learned Additional Sessions Judge and the High Court erred in coming to the conclusion that the same is hit by Section 161 or 162 of the Code which, in our considered opinion, has absolutely no bearing on the question involved. Section 161 or 162 of the Code does not refer to registration of a case, it only speaks of a statement to be recorded by the police in the course of the investigation and its evidentiary value."

16 The Apex Court observed that if both FIRs relate to the same incident and to the same occurrence, the second FIR will be liable to be quashed. However, if they relate to incidents which are in two or more parts of the same transaction or relate completely to a distinct occurrence, the second FIR is permissible. The present case will fall in the first category.

17 Another decision relied upon by the learned counsel

appearing for the second respondent was in the case of Shivshankar Singh Vs. State of Bihar and Another. Paragraph 10 of the said decision reads thus :-

> "10. We do not find any force in the submission made on behalf of the respondents that as in respect of the same incident i.e. decoity and murder of Gopal Singh, the appellant himself along with others is facing criminal trial, proceedings cannot be initiated against Respondent 2 at his behest as registration of two FIRs in respect of the same incident is not permissible in law, for the simple reason that law does not prohibit registration and investigation of two FIRs in respect of the same incident in case the versions are different. The test of sameness has to be applied otherwise there would not be cross-cases and counter-cases. Thus, filing another FIR in respect of the same incident having a different version of events is permissible. [Vide Ram Lal Narang v. State (Delhi Admn.), Sudhir v. State of M.P., T.T. Antony v. State of Kerala, Upkar Singh v. Ved Prakash and Babubhai v. State of Gujarat."

In the facts of this case before the Apex Court, the first FIR was registered on 6th December, 2004 on the basis of an order passed under Sub-Section (3) of Section 156. The second FIR was registered on 29th December, 2004. Paragraph 4 of the said decision shows that when the second FIR was filed, investigation in relation to the first FIR was pending.

18 The learned counsel appearing for the second respondent lastly relied upon decision in the case of *Surender Kaushik and Ors. Vs. State of U.P and Others.* Paragraph 24 of the said decision reads thus :-

> "24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in Upkar Singh, the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible.

19 In the said case, the FIR was registered on 29th May, 2012 and the second one was registered on 21st August, 2012. Thus, in the present case, the order of the learned Magistrate under Sub-Section (3) of Section 156 is completely illegal for more than one reason and consequential registration of the FIR is also illegal. We find that the law laid down in the cases of T.T. Antony and Amitbhai Shah has not undergone any change.

20 We may, however, note here that it is always open for the Police to seek permission to the concerned Court under Sub-Section (8) of Section 173 of the Code of Criminal Procedure, 1973 for carrying out further investigation. None of the observations and findings recorded in

this judgment will affect the power of the Competent Court to grant permission under Sub-Section (8) of Section 173 of the CrPC.

21 Subject to what is observed above, the application must succeed and we pass the following order :-

ORDER

(i) The order dated 15th November, 2016 passed by the learned Judicial Magistrate, First Class, 3rd Court, Baramati is set aside and RCC No.645 of 2014 stands dismissed;

(ii) Consequentially, the First Information Report bearing C.R. No.375 of 2016 registered with Wadgaon Nimbalkar Police Station on 19th November, 2016 is quashed and set aside;

(iii) We make it clear that we have made no adjudication on the merits of the pending case and merits of the allegations made by the second respondent as regards commission of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code;

(iv) Rule is made absolute on above terms with no order as to costs.

(ANUJA PRABHUDESSAI, J) **(A.S. OKA, J)**