HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
(SB: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

MCRC No.18921/2017,
MCRC No.19005/2017, &
MCRC No.19016/2017

Taranjeet Singh Hora & Anr. …. Petitioners

Vs.

State of M.P. through
P.S. Betma, Indore. …. Respondent

Shri A. Khare, learned senior counsel with Shri H. Chhabra, learned counsel for the petitioners.

Ms. Archana Kher, learned counsel for the respondent/State.

Shri Amit Dubey, learned counsel for the complainant/objector.

Whether approved for reporting :

O R D E R

(Passed on 11/10/2018)

1/ This order will govern the disposal of MCRC Nos. 18921/17, 19005/17 & 19016/17 since it is submitted by counsel for the parties that all these MCRCs involve the same issue on the identical fact situation.

2/ These MCRCs have been filed by the petitioners Taranjeet Singh Hora and Harmans Singh Hora for quashing the FIRs registered against them. In M.Cr.C. No.18921/2017 the prayer is for quashing of FIR No.449 dated 5.11.2016, in M.Cr.C. No.19005/17 the prayer is for quashing of FIR No.448 and in M.Cr.C. No.19016/17 the prayer is for quashing of FIR No.447. All these FIRs have been registered on the same date alleging commission of offence by the petitioners under Section 420, 467, 468, 120B and 34 of the IPC.

3/ Learned counsel appearing for the petitioners submits that the three FIRs relate to the same transaction and they are registered in the same police station within a short interval, therefore, only one FIR ought to have been registered and the subsequent complaints should have been added in the first FIR. He further submits that no offence on merit is made out against the petitioners who are the directors of TDS Infra Estate Developers Pvt. Ltd. and partners of Bhaiji Developers and being owners of the land, they had entered into the agreement dated 9.1.2010 and 31.3.2010 with the Phoenix Infra Estate International Limited for developing the residential colony and selling the plots to the prospective buyers and the said agreement contains the clause that every agreement with the prospective buyers will be signed by the petitioner's Company Phoenix Infra Estate and the prospective buyer, therefore, if Phoenix Infra has taken any amount from the prospective purchaser without executing tripartite agreement having the signature of the petitioners, then the petitioners cannot be roped in the alleged offence. He further submits that the dispute is of civil nature and, therefore, FIR is required to be quashed.

4/ Learned counsel for the State opposing the prayer submits that since the FIRs relate to different projects and incidents, therefore, they have been separately registered and that the defence of the petitioners cannot be looked into at this stage and the investigation is in progress and sufficient material has been collected.

5/ Learned counsel for the objector has also referred

to various documents and has submitted that the agreement dated 9.1.2010 and 31.3.2010 on which the petitioners are relying upon are prima facie fabricated documents and that in the MOU dated 13.9.2012 entered into between TDS Infra and Phoenix Infra relating to Natural Valley Colony, there was no clause relating to the tripartite agreement. He submits that different rates have been mentioned on different agreement between two companies and that the sales have been made to different parties for consideration less than what has been mentioned in the MOU between TDS Infra and Phoenix Infra which itself reveals that the agreement between TDS and Phoenix have been fabricated.

6/ I have heard the learned counsel for the parties and perused the record.

7/ The petitioners are praying for quashing of the FIR broadly on the following grounds:-

i. That, for the same incident three FIRs should not have been registered, therefore, the subsequent two complaints should be investigated with the first FIR without registering separate second and third FIR.

ii. That, on the basis of the allegation and the material available, no offence is made out.

iii. That, the dispute is of civil nature, therefore, the FIR should be quashed.

8/ So far as the first ground relating to registering the 3 FIRs is concerned, the record reflects that all the three FIRs have been registered at Police Station Betma. The FIR No.447 was registered on 5.11.2016 at 20.25 P.M., FIR No.448 on the

same day at 21.10 P.M. and FIR No.449 also on the same day at 22.05'O Clock. All the three FIRs contain allegation relating to the alleged offence in respect of the colonies Vidya Vihar, Sai Bagh and Natural Valley. The FIRs are almost identical in nature but the complainants are different and the place of occurrence is also different.

9/ The submission of counsel for the petitioners is that considering the sameness of the offence only one FIR ought to have been registered. Counsel for the petitioners has placed reliance upon the judgment of the Supreme Court in the matter of **Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and another Reported in 2013(6) SCC 348** wherein it has been held that when different offences are committed in same transaction or offence arising as a consequence of prior offence, then second FIR is not warranted. In that case it has been held that after registering the first FIR if the investigating officer comes into possession of further information or material, then there is no need to register the fresh FIR and to determine whether different offences ought to be treated as part of the same transaction, the consequence test as laid down in the case of **C. Muniappan and others Vs. State of Tamil Nadu reported in 2010(9) SCC 567** may be taken aid of. The said consequence test is that if an offence forming part of the second FIR arises as a consequence of offence alleged in the FIR, then offences covered by both the FIRs are the same and accordingly the second FIR will be impermissible in law and the offences covered in both the FIRs will have to be treated as part of the first FIR but it has been clarified in that judgment itself that if the two FIRs pertain to two different incidents/crimes, second FIR is permissible. The

Supreme Court in the case of **Amit Bhai (supra)** in this regard has held as under:-

> "36. Now, let us consider the legal aspects raised by the petitioner-Amit Shah as well as the CBI. The factual details which we have discussed in the earlier paragraphs show that right from the inception of entrustment of investigation to the CBI by order dated 12.01.2010 till filing of the charge sheet dated 04.09.2012, this Court has also treated the alleged fake encounter of Tulsiram Prajapati to be an outcome of one single conspiracy alleged to have been hatched in November, 2005 which ultimately culminated in 2006. In such circumstances, the filing of the second FIR and a fresh charge sheet for the same is contrary to the provisions of the Code suggesting that the petitioner was not being investigated, prosecuted and tried "in accordance with law".
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> 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. Anthony, 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 paragraph Nos. 19, 20 and 27 of that judgment are relevant which read as under:
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>> "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 satisfies 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 Section

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

60. In view of the above discussion and conclusion, the second FIR dated 29.04.2011 being RC No. 3(S)/2011/Mumbai filed by the CBI is contrary to the directions issued in judgment and order dated 08.04.2011 by this Court in Narmada Bai V. State of Gujarat and accordingly the same is quashed. As a consequence, the charge sheet filed on 04.09.2012, in pursuance of the second FIR, be treated as a supplementary charge sheet in the first FIR. It is made clear that we have not gone into the merits of the claim of both the parties and it is for the trial Court to decide the same in accordance with law. Consequently, Writ Petition (Criminal) No. 149 of 2012 is allowed. Since the said relief is applicable to all the persons arrayed as accused in the second FIR, no further direction is required in Writ Petition (Criminal) No. 5 of 2013."

10/ Counsel for the petitioner has also placed reliance upon the judgment of Division Bench of the Madras High Court dated 2.8.2018 in WP (MD) No.15421 and 15660 of 2018 in the matter of A. John Vincent Vs. Govt. of Tamilnadu and others, wherein the same issue has been considered in a case where multiple FIRs were registered for an incident in which 13

persons had lost their lives owing to police shooting. The Madras High Court taking note of the earlier judgment of the Supreme Court relevant to the issue has held as under:-

> "9. In Anju Chaudhary v. State of U.P. [(2013) 6 SCC 384], the Hon'ble Supreme Court informed considering of 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'. It held:-
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> > "14. On the plain construction of the language and scheme of Section 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognizable offence shall be reduced to writing by the officer in-charge of a Police Station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. <u>However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered</u>. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of Section 154 of the Code. These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police. Therefore, second FIR for the same incident cannot be registered. Of course, the Investigating Agency has no

determinative right. It is only a right to investigate in accordance with the provisions of the Code. The filing of report upon completion of investigation, either for cancellation or alleging commission of an offence, is a matter which once filed before the court of competent jurisdiction attains a kind of finality as far as police is concerned, may be in a given case, subject to the right of further investigation but wherever the investigation has been completed and a person is found to be prima facie guilty of committing an offence or otherwise, reexamination by the investigating agency on its own should not be permitted merely by registering another FIR with regard to the same offence. If such protection is not given to a suspect, then possibility of abuse of investigating powers by the Police cannot be ruled out. It is with this intention in mind that such interpretation should be given to Section 154 of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, re-investigation or de novo investigation is beyond the competence of not only the investigating agency but even that of the learned Magistrate. The courts have taken this view primarily for the reason that it would be opposed to the scheme of the Code and more particularly Section 167(2) of the Code. [Ref. Rita Nag v. State of West Bengal [(2009) 9 SCC 129] and Vinay Tyagi v. Irshad Ali @ Deepak & Ors. (SLP (Crl) No.9185-9186 of 2009 of the same date).

15. It has to be examined on the merits of each case whether a subsequently registered FIR is a second FIR about the same incident or offence or is based upon distinct and different facts and whether its scope of inquiry is entirely different or not. It will not be appropriate for the Court to lay down one straightjacket formula uniformly applicable to all cases. This will always be a mixed question of law and facts depending upon the merits of a given case.

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43. It is true that law recognizes common trial or a common FIR being registered for one series of acts so connected together as

to form the same transaction as contemplated under Section 220 of the Code. There cannot be any straight jacket formula, but this question has to be answered on the facts of each case. This Court in the case of Mohan Baitha v. State of Bihar [(2001) 4 SCC 350], held that the expression 'same transaction' from its very nature is incapable of exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense in the ordinary use of language must decide whether or not in the very facts of a case, it can be held to be one transaction.

44. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the Court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.

45. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction"

(ii) In Amitbhai Anilchandra Shah v. CBI [(2013) 6 SCC 348], the Hon'ble Supreme Court stated:

"51. In the case of Nirmal Singh Kahlon [(2009) 1 SCC 441] (supra), this Court has carved out an exception for filing a second FIR.

> As per the exception carved out in the said case, the second FIR lies in a case where the first FIR does not contain any allegations of criminal conspiracy. On the other hand, in the case on hand, the first FIR itself discloses an offence of alleged criminal conspiracy and it was this conspiracy which the CBI was directed to unearth in the judgment dated 12.01.2010 based on which the CBI filed its first FIR, hence, the CBI cannot place reliance on this judgment to justify the filing of the second FIR and a fresh charge sheet."

Referring to Ramlal Narang v. State (Delhi Admn.) [(1979) 2 SCC 322], it was stated that in such decision it had been held that a second F.I.R. would lie in an event when pursuant to the investigation in the first F.I.R. a larger conspiracy is disclosed, which was not part of the first F.I.R. It was found that the decision in Kari Choudhary v. Sita Devi [(2002) 1 SCC 714] is to the effect that when there are two 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 investigation agency. We consider it useful to reproduce paragraph 58.4 to 58.6 of the said judgment:

> "58.4 Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering FIR in the Station House Diary, the officer-in-charge of the 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 of the Code. Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report(s) to the Magistrate. 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 underway or final report under Section 173(2) has been forwarded to the Magistrate, is liable to

be interfered with by the High Court by exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution.

58.5 The First Information Report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR.

58.6 In the case on hand, as explained in the earlier paras, in our opinion, the second FIR was nothing but a consequence of the event which had taken place on 25.11.2005/26.11.2005. We have already concluded that this Court having reposed faith in the CBI accepted their contention that Tulsiram Prajapati encounter is a part of the same chain of events in which Sohrabuddin and Kausarbi were killed and directed the CBI to "take up" the investigation."

In Mitbhai Anil Chandra Shah's case it was also stated that the only exception to the law declared in T.T. Antony v. State of Kerala [(2001) 6 SCC 181, which is carved out in Upkar Singh v. Ved Prakash [(2004) 13 SCC 292] is to the effect that when the second F.I.R. consists of alleged offences which are in the nature of the cross-case/cross-complaint or a counter complaint, such cross-complaint would be permissible as a second F.I.R."

10. We have reproduced the above since learned Additional Advocates General for respondents sought to distinguish on facts T.T. Antony's case, which has held the field for almost two decades now. In T.T. Antony's case it is held as follows:

"18. An information given under sub-section (1) of Section 154 of Cr.P.C. is commonly known as First Information Report (F.I.R.) though this term is not used in the Code. It is a very important document. And as its nick name suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law into motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 of Cr.P.C., as the case may be, and forwarding of a police report under Section 173 of Cr.P.C. It is quite

possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 of Cr.P.C. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the First Information Report - F.I.R. postulated by Section 154 of Cr.P.C. All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the First Information Report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 of Cr.P.C. No such information/statement can properly be treated as an F.I.R. and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of the Cr.P.C. Take a case where an FIR mentions cognizable offence under Section 307 or 326 IPC and the investigating agency learns during the investigation or receives a fresh information that the victim died, no fresh FIR under Section 302 I.P.C. need be registered which will be irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H - the real offender-who can be arraigned in the report under Section 173(2) or 173(8) of Cr.P.C., as the case may be. It is of course permissible for the investigating officer to send up a report to the concerned Magistrate even earlier that investigation is being directed against the person suspected to be the accused.

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> 11. A bare reading of the FIR above reproduced makes abundantly clear that the same related to all incidents that took place in and around Thoothukudi on 22.05.2018, the common underpinning being the protest against Sterlite Industries. The very action of the investigating agency in such case in preparing seizure mahazars and effecting recoveries of properties, for the most part, vehicles, in different areas would show that such was also the understanding of the investigating agency. Whileso, receipt of complaints from individual owners of vehicles and other properties which had been damaged and registering individual cases, and in sum total 243 cases can only be seen as abuse of statutory power, touched upon in T.T. Antony's case. We are of the view that the test informed in Anju Chaudhary's case viz., 'for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction'', does stand truly met."

11/ In the aforesaid case the Madras High Court placing reliance upon **T.T. Antony's case (supra)** and applying the test of Anju Choudhary's case held that the offence was committed in the course of same transaction and accordingly directed that the complaints in other FIRs be treated as 161(3) Cr.P.C. statement in the Crime No.191/18. In the **judgment of the Jharkhand High Court dated 4.2.2015 in Criminal Miscellaneous Petition No.2854/2014 in the case of Mohd. Alamgir and another Vs. State of Jharkhand** relied upon by counsel for the petitioner, the police had rescued 456 minor children who were found to be travelling without ticket in the Patna Arnakullam Express and the offence was initially registered in Mahagama Police State and the same was questioned on the ground that in respect of same allegations

FIR was already instituted in Railway Police Station Palakkad, therefore, an issue was raised that subsequent FIR could not have been registered. The Jharkhand High Court applying the test of “sameness” and “consequence” and considering the judgment in the case of **T.T. Antony (supra)**, **Babu Bhai Vs. State of Gujarat (supra)** and **Amit Bhai (supra)** held that the incident which led to filing of the FIRs was one and the same, therefore, second FIR was impermissible. In this regard the Jharkhand High Court had held that:-

> “12. In context of the judgments rendered by the Hon'ble Supreme Court referred to above, it has to be seen by applying the test of 'sameness' as to whether the offences alleged in both the FIRs are from the same transaction or arose out of two different incidents. As has been discussed earlier, the case lodged at Palakkad in the State of Kerala was with respect to the illegal trafficking of children from the State of Bihar and Jharkhand and in course of checking 456 children were rescued who were travelling without any valid ticket and most of the said children did not even have any identity card with them. Accordingly, the FIR was instituted in which the name of the petitioners figure as accused. This FIR instituted on 25.05.2014 was followed by another FIR in Mahagama Police Station which was instituted on 15.06.2014. The allegations levelled in the FIR is in direct proximity with the incident which had taken place in Palakkad and the case registered as Mahagama P. S. Case No. 80 of 2014 includes a report of the Deputy Superintendent of Police, Crime Investigation Department which is on the basis of cursory investigation into the incident of illegal trafficking. The FIR instituted at Kerala is with respect to rescuing 456 children travelling by Patna Arnakullam Express without any valid tickets, but the second FIR is on the basis of a report which alleges as to how the accused persons on allurement of giving good education admitted them in the orphanages in Kerala which gets substantial aids from various institutions. The second FIR is on

a wider canvas, although the basis of instituting both the FIRs are the same. Therefore, in such circumstances it would be appropriate to not only apply the test of 'sameness', but also the test of 'consequence' as has been laid down by the Hon'ble Supreme Court in the case of "C. Muniappan and others Vs State of Tamil Nadu" reported in (2010) 9 SCC 567 and which has been discussed in the case of "Amit Bhai Anil Chandra Shah" (supra) and which lays down that if the offence being part of the second FIR arises as a 'consequence' alleged in the first FIR then offences covered by both the FIRs are the same and accordingly the second FIR will be impermissible in law.

13. Accordingly, on application of the test of 'sameness' and the test of 'consequence' in the facts of the present case it appears that the incident which led to the filing of the FIRs are one and the same whereas, in the second FIR that is, Mahagama P. S. Case No. 80 of 2014 further allegations have been levelled which is a consequence of the first FIR lodged in Kerala and therefore, the second FIR instituted against the petitioners is impermissible in the eye of law and the same is liable to be quashed."

12/ The Supreme Court in the matter of **Chirag M. Pathak and others Vs. Dollyben Kantilal Patel and others reported in 2018(1) SCC 330** has considered a similar case where 6 FIRs were registered in different police stations against different housing societies for commission of various offencs under Section 406, 409, 420, 465, 467, 468, 471, 120-B, 477-A IPC, wherein the allegation was illegal activities committed by the accused persons in the affairs of the Societies and, particularly, those committed in relation to sale of the lands belonging to the Societies, siphoning off the funds of Societies, falsification of accounts of the Societies etc., wherein the High Court had quashed the subsequently registered five FIRs by accepting the contention that registration of five FIRs after

registration of the first one was nothing but repetition of the first FIR. It has been held by the Supreme Court that the cooperative societies are different, the area of operation is different, the subject land is situated in different areas and it was sold to different parties on different dates for different sums, the accounting books are different, hence it cannot be held that all the FIRs are overlapping and the first FIR alone will be sufficient to take care of the remaining five FIRs and even if there are some overlapping allegations in the FIR, that alone is not sufficient and the High Court in exercise of its power under Section 482 of the Code cannot undertake a detailed examination of the facts contained in the FIRs by acting as an Appellate Court and draw its own conclusion, specially when the investigation is not yet complete.

13/ Learned counsel for the complainant in this regard has placed reliance upon the judgment of the Supreme Court in the matter of **Upkar Singh Vs. Ved Prakash and others reported in 2004(13) SCC 292** wherein the law laid down in the T.T. Antony's case has not been approved on the ground that in the earlier judgment the legal right of an aggrieved person to file counter complaint was not considered and therefore, it has been held that the second complaint in regard to the same incident filed as a counter complaint is not prohibited under Cr.P.C.

14/ Learned counsel for the State has relied upon the judgment of the Supreme Court in the matter of **P. Sreekumar Vs. State of Kerala and others reported in 2018(4) SCC 579**, wherein the Supreme Court in a case where the allegation was regarding conspiracy to defraud a public charitable trust by siphoning of amount of Rs.42 Lakhs of Trust from its Bank

account by manipulating and forged account books and several books of the Trust, has held that the second FIR for the same incident was permissible because it was by a different person and was filed as a counter complaint containing different allegations. In this regard it has been held that:-

> "30. Keeping the aforesaid principle of law in mind when we examine the facts of the case at hand, we find that the second FIR filed by the appellant against respondent No.3 though related to the same incident for which the first FIR was filed by respondent No.2 against the appellant, respondent No.3 and three Bank officials, yet the second FIR being in the nature of a counter-complaint against respondent No.3 was legally maintainable and could be entertained for being tried on its merits.
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> 31. In other words, there is no prohibition in law to file the second FIR and once it is filed, such FIR is capable of being taken note of and tried on merits in accordance with law.
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> 32. It is for the reasons that firstly, the second FIR was not filed by the same person, who had filed the first FIR. Had it been so, then the situation would have been somewhat different. Such was not the case here; Second, it was filed by the appellant as a counter-complaint against respondent No.3; Third, the first FIR was against five persons based on one set of allegations whereas the second FIR was based on the allegations different from the allegations made in the first FIR; and Lastly, the High Court while quashing the second FIR/charge-sheet did not examine the issue arising in the case in the light of law laid down by this Court in two aforementioned decisions of this Court in the cases of Upkar Singh (supra) and Surender Kaushik (supra) and simply referred three decisions of this Court mentioned above wherein this Court has laid down general principle of law relating to exercise of inherent powers under Section 482 of the Code.
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> 33. In the light of the foregoing discussion and the four reasons mentioned above, we are unable

> to agree with the reasoning and the conclusion of the High Court and are, therefore, inclined to set aside the impugned order."

15/ The position of law which emerges from the aforesaid judgments is that subsequent FIR for different offences committed in the same transaction or offence arising as a consequence of prior offence is not permissible but the second complaint in regard to same incident filed as a counter complaint is permitted under the Cr.P.C. and the second FIR for the same nature of offence against same accused person lodged by a different person or containing the different allegations is maintainable.

16/ Examining the present case in the light of the aforesaid judgment, it is found that though all the three FIRs contain the same allegation against same accused persons but they have been lodged at the instance of the different persons and these three FIRs relate to the different transaction in respect of 3 different colonies. Therefore, test of "sameness" and "consequence" is not satisfied in the present case and no error is found in registering the three different FIRs.

17/ The next issue is about quashing of the FIR on the ground that the alleged offence is not made out.

18/ The scope in this regard is limited. The Supreme Court in the matter of **State of Haryana and others Vs. Bhajanlal and others reported in 1992 (Supp. 1) SCC 335** has laid down the following guidelines:-

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the

inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act,

providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

19/ In the matter of **State of Karnataka Vs. M. Devendrappa and another reported in 2002(3) SCC 89** it has been held that the power under Section 482 for quashing the criminal proceedings should be exercised *ex debito justitiae* to prevent abuse of process of court but it should not be exercised to stifle legitimate prosecution and High Court should not assume the role of the trial Court and embark upon an enquiry as to the reliability of the evidence and sustainability of the prosecution on a reasonable appreciation of such evidence. In the matter of **State of Telangana Vs. Habib Abdullah Jeelani and others reported in 2017(2) SCC 779** it has been held that the powers under Section 482 of the Cr.P.C. are very wide but conferment of wide power requires the court to be more cautious. In the matter of **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others Vs. State of Gujarat and another Reported in AIR 2017 SC 4843** the broad principles of exercise of power in such cases have been reiterated as under:-

"15. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only

recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an

overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

20/ It is also worth noting that the investigation on the basis of the FIRs is in progress and the assessment of the material at this stage in exercise of the inherent power under Section 482 of the Cr.P.C. would not be proper. In the matter of **State of Tamil Nadu Vs. S. Martin and others reported in (2018) 5 SCC 718** wherein the High Court had quashed the FIR at the investigation stage, the Hon'ble Supreme Court while setting aside the order of the High court took the view that the assessment made by the High Court at a stage when the investigation was yet to be completed, was completely incorrect and uncalled for and the investigation ought not to have been

set at naught but it ought to have been permitted to its logical conclusion. Similarly in the matter of **Munshiram Vs. State of Rajasthan and another reported in (2018) 5 SCC 678** in a case wherein the High Court had quashed the FIR on the ground that the alleged offence of abetment of suicide was not made out, the Supreme Court while setting aside the order of the High Court held as under:-

> "10. Having heard the learned counsel for both the parties and perusing the material available on record we are of the opinion that the High Court has prematurely quashed the FIR without proper investigation being conducted by the Police. Further, it is no more res integra that Section 482 of CrPC has to be utilized cautiously while quashing the FIR. This court in a catena of cases has quashed FIR only after it comes to a conclusion that continuing investigation in such cases would only amount to abuse of the process. In this case at hand, the court abridged the investigation which needed to ascertain certain factual assertions made in the FIR concerning the existence or non-existence of any prior mental condition of the deceased prior to the commission of suicide."

21/ In the matter of **Dineshbhai Chandubhai Patel Vs. State of Gujarat and others reported in (2018) 3 SCC 104** it has been held that the condition precedent to commence investigation under Section 157 of the Cr.P.C. is that the FIR must disclose prima facie that a cognizable offence was committed and if that condition is satisfied, the investigation must go on and court has no power to stop investigation since that would amount to trench upon the lawful power of the police to investigate into cognizable offences. In this regard it has been held that:-

> “29. The High Court, in our view, failed to see the extent of its jurisdiction, which it possess to exercise while examining the legality of any FIR complaining commission of several cognizable offences by accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate Court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.
>
> 30. At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the complainants and vice versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the Court to examine the questions once the charge sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.
>
> 31. In our considered opinion, once the Court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code.”

22/ Examining the present case in the aforesaid backdrop, it is noticed that in the FIR it has been alleged that the petitioners are the owners of TDS Infra Company and they had sold plots of the colony Vidya Vihar, Sai Bagh and Natural Valley through the marketing company Phoenix Infra Estate International appointed by them and it was a joint venture of both the companies and even after making full payment the sale deeds were not registered by TDS Infra Company and its marketing company Phoenix Infra and these companies were

trying to sale the plots of the complainant to others and that petitioners have not developed the plots. It is further alleged that subsequently Phoenix Infra has been acquired by Pushkar Real Estate Company and the owners of Pushkar Real Estate are not executing the registered sale deed on the ground that the petitioners are demanding additional sum of Rs.25 Crores and that the dispute between the two companies is not real and both the companies have colluded and are trying to deprive the complainant of their lawful right.

23/ The stand of the petitioners is that they are the owners of the land and they had earlier formed partnership firm by the name of AH Estate Developers and thereafter converted into a private limited company namely TDS Infra Estate Developers Pvt. Ltd. and that they are the owners of the land and the agreement dated 9.1.2010 was entered into with Phoenix Infra Estate International Limited (for short "Phoenix Infra") for developing the residential colony and the petitioners had agreed to sale the entire developed area to Phoenix Infra by authorizing it to sale the said plot to the prospective purchasers and the agreement dated 9.1.2010 contain Clause No.11 providing that the agreement with the prospective purchaser will be signed by both TDS Infra and Phoenix Infra and if any agreement is signed by Phoenix alone with the prospective purchaser, then such an agreement will not be binding on TDS Infra. Further case of the petitioners is that they are honouring all the tripartite agreement and that the petitioners themselves have been cheated by Phoenix Infra because the cheques given to the petitioners by that company have been dishonoured and criminal cases under Section 138 of the Negotiable Instruments Act have been filed and the directors of the Phoenix Infra are habitual offenders, against

whom other FIRs in respect of other projects have also been registered. It is the further case of the petitioners that the petitioners have not executed the agreement with the complainants and have not received any amount from the complainant, therefore, there is no privity of contract between petitioners and the complainant and therefore, since the petitioners have not committed any offence, hence FIR is required to be quashed.

24/ During the course of argument counsel for the petitioners has also made a statement at the Bar that if any of the prospective purchaser comes forward with the tripartite agreement of purchase, then the petitioners are ready to execute the sale deed in his favour and that the petitioners themselves had filed the complaint to the Police Station, Vijay Nagar on 13.9.2014 informing that the directors of Phoenix Infra are illegally selling the plots projecting themselves to be the owner thereof and that in the earlier FIR dated 17.10.2014 registered in the Police Station, Vijay Nagar in respect of the same allegation, the petitioners were not added as accused and the FIR was only against Ahmed Jivani, Vinay Kumar, Jitesh Nasine, Yogesh Nasine, Mahesh Nasine, Pradeep Rathore and Chandrashekhar of Phoenix Infra and in that FIR the investigation has been done and Challan has also been filed against those persons. He has also raised an issue that the offence under Section 467and 468 IPC is not made out because there is no allegation of committing forgery against the petitioners and that the offence under Section 420 IPC is also not made out against the petitioners because they have not done any cheating and that no inducement has been done by the petitioners and no payment has been received by them as no document has been executed by the petitioners with the

complainant-prospective buyers and the offence under Section 120B IPC is also not made out because there is no question of any conspiracy with Phoenix Infra as the petitioners themselves have lodged a complaint dated 13.9.2014 against Phoenix.

25/ The argument of the petitioners based upon the tripartite agreement dated 9.1.2010 or 31.3.2010 cannot be considered at this stage as the same can be subject matter of defence during trial in case of need. No such agreements have been mentioned in the FIR. The FIR contains an allegation that the Phoenix Infra was appointed as marketing company by the petitioners and it was the joint venture of both the companies and inspite of payment of the amount, the sale deeds have not been executed and plots have not been developed. Hence FIRs contain prima facie allegation of commission of offence under Section 420 IPC.

26/ In the present case though no agreement executed by the petitioners with any prospective purchaser has been pointed out nor any document has been produced showing receipt of any consideration of amount directly by the petitioners from any aggrieved party but the investigation is in progress, therefore, at this stage no positive inference can be drawn and filing of the Challan against the petitioners will depend upon the material collected during the course of investigation.

27/ Counsel for the State has referred to the statement of Deepak Kale S/o Sharad Kale, Vishnu S/o Dadaji recorded under Section 161 of the Cr.P.C. which contains the allegation against the petitioners. Counsel for the objector has also referred to the agreement dated 13.9.2012 in respect of Natural Valley and has raised a submission that there is no tripartite

clause in this agreement and had also submitted that since the sale agreement at different rates have been executed different from the price mentioned in the alleged agreement dated 9.1.2010 between the petitioners and Phoenix Infra, therefore, the agreement dated 9.1.2010 itself is suspicious and fabricated. All these issues are also subject matter of investigation which is in progress. Hence, at this stage no final conclusion can be drawn.

28/ It would not be out of place to mention here that the petitioners had filed IA No.241/2018 before this court for calling the report alleging that the enquiry was done by the SDOP, Depalpur but its report was not supplied. The said report has been produced by counsel for the State in the sealed cover and on the opening of the sealed cover, it is found that in respect of Crime No.448/2016, 449/2016 and 447/2016 registered at Police Station Betma, an enquiry was conducted by the SDOP, Depalpur and he has submitted three separate reports even dated 5.6.2017 to the Dy. Inspector General of Police, Indore. In the enquiry he had found that the petitioners Taranjeet Singh Hora and Harmans Singh Hora had not committed any offence and Phoenix Infra had entered into an agreement with the prospective purchasers and received the amount, but the amount was kept with themselves and no amount was paid to AR Town Developers, therefore, Phoenix Infra had not only cheated the complainants but had also cheated AR Town Developers, therefore, the names of Taranjeet Singh Hora and Harmans Singh Hora should be deleted from the list of accused. The report was submitted on the basis of the communication sent by the Dy. Inspector General of Police to the SDOP which find reference in the report. Even if this enquiry is not in terms of the provisions of the Cr.P.C. but during

the course of investigation it is required to be considered by the enquiry officer since it has come on record as a document.

29/ That apart, though this court is refraining to interfere in the matter on the ground that the investigation is in progress but during the course of investigation if it is found that the complainants had no privity of contract with the petitioners and no material is found in respect of receipt of any amount by the petitioners from the prospective purchasers or dishonouring of any agreement signed by the petitioners and the prospective purchaser, then before filing the Challan against the petitioners this aspect will be duly taken into account.

30/ Counsel for the petitioners has also raised a submission that the dispute is of civil nature but having regard to the nature of allegation in the FIR as also the judgment of the Supreme Court in the case of **Parbatbhai Aahir (supra)** such a plea cannot be accepted.

31/ For the reasons assigned above, no ground is made out to quash the FIR and investigation at this stage. The MCRCs are accordingly dismissed. Signed order be kept in the file of M.Cr.C. No.18921/2017 and a copy thereof be placed in the file of connected M.Cr.C. No.19005/17 & 19016/17.

(PRAKASH SHRIVASTAVA)
J u d g e

Trilok.

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

1	**Case No.**	MCRC Nos.18921/17, 19005/17 & 19016/17
2	**Parties Name**	Taranjeet Singh Hora & Anr. Vs. State of Madhya Pradesh
3	**Date of Judgment**	11/10/2018
4	**Bench constituted of**	Hon'ble Shri Justice Prakash Shrivastava
5	**Judgment delivered by**	Hon'ble Shri Justice Prakash Shrivastava
6	**Whether approved for reporting**	**Yes**
7	**Name of counsels for parties.**	Shri A. Khare, learned senior counsel with Shri H. Chhabra, learned counsel for the petitioners. Ms. Archana Kher, learned counsel for the respondent/State. Shri Amit Dubey, learned counsel for the complainant/objector.
8	**Law laid down**	[1] After registration of the first FIR the subsequent FIR for offence committed in the course of same transaction or offence arising as a consequence of prior offence, is not permissible and the subsequent complaint in such cases applying the test of "sameness" and "consequence" can be treated as statement under Section 161(3) of the Cr.P.C. in the FIR already registered but if the subsequent complaint is in regard to same incident but filed as a counter complaint or it is for the same nature of offence against same accused persons lodged by different persons or containing the different allegations, then it is to be registered as separate FIR.
	Significant paragraph numbers	**8 to 16**
		[2] The scope of quashing the FIR at the stage of investigation is limited and if prima facie commission of offence is disclosed in the FIR, then investigation should be allowed to continue.
	Significant paragraph numbers	**17 to 21**

(PRAKASH SHRIVASTAVA)
J u d g e

Trilok.