REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDCTION

CRIMINAL APPEAL NO. 2039 OF 2012
(Arising out of SLP (Crl) No.9475 of 2008)

Anju Chaudhary ... Appellant

Versus

State of U.P. & Anr. ...
Respondents

J U D G M E N T

Swatanter Kumar, J.

1. Leave granted.

2. 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.

3. The above question arises from the factual matrix which, shorn of the unnecessary details, can be stated as follows:

4. On 16th November, 2007, one Parvez Parwaz, Respondent No.2, claiming himself to be a social activist filed an application under Section 156(3) in the Court of the Chief Judicial Magistrate, Gorakhpur. According to this complaint, one Mahant Aditya Nath Yogi, Member of Parliament and leader of an unregistered organization called the Hindu Yuva Vahini had been spreading hatred amongst Hindus and Muslims for a number of years and has also been causing fear amongst the Muslim community and harming them, demolishing the properties of Muslims and carrying out other acts of harassment. On 27th January, 2007 when the complainant, Respondent No.2 herein, was returning home from the Railway Station, Gorakhpur at about 8.00 p.m., Yogi Aditya Nath, Member of Parliament, Dr. Radha Mohan Dass Aggarwal, Member of the Legislative Assembly, Dr. Y. D. Singh, Member of the Legislative Council and Anju Chowdhary, Mayor of Gorakhpur, the Minister of State and BJP Leader Shiv Pratap

Shukla, other office bearers and thousands of activists of Hindu Yuva Vahini, BJP and Vyapar Mandal, Gorakhpur, as well as various other persons whom the petitioner does not know by name but can recognise, were holding a meeting as "Warning Meeting". The meeting which was addressed by Yogi Aditya Nath who was saying that if blood of one Hindu be shed then they will not register any FIR with the administration against the bloodshed of one Hindu in the times to come, instead they will get ten persons (Muslims) killed. If damage is done to the shops and properties of Hindus, they would indulge in similar activities towards the Muslims. Anything can be done to save the glory of Hindus and all should prepare for a fight. Amongst others, it was also stated in the complaint as under:

> "He stated that we will not allow lifting of Tazia anywhere in the Gorakhpur City and the Gorakhpur District and we will also celebrate our Holi with these Tazias. He stated that we will have to take harsh steps for the welfare of Hindus and we do not want that the generations to come remember us with bad names. He stated that I do not understand that we will be ready to take up those names, therefore, be ready to fight your final battle. Member of Parliament Yogi Aditya Nath stated that once you stand up then you see that Gorakhpur will remain peaceful for many

years. If the administration does not take revenge of the murder of the Trader's son, then we will take ourselves, we will ourselves take revenge of that murder. Member of Parliament Yogi Aditya Nath, in his speech, termed the administration as worthless and eunuch and the incidents as Government sponsored terrorism and challenging the democratic Government he stated that they will destroy the law and order and will take law in their own hands. He also called for bandh of Gorakhpur and Basti Divisions and directed the activists to inform about this to every place through every media. Thereafter, Member of Parliament Yogi Aditya Nath led a torch procession and hundreds of activists along with abovenamed persons participated and raised slogans in support of Yogi Aditya Nath. In this procession, the slogan related to spreading of hatred against Muslims and sentiments of killing and harming them was being raised with primary importance, which was pronounced as "Katuye Kaate Jayenge, Ram – Ram Chillanyenge". The petitioner got afraid very much by the above incident and keeping in view the danger to his life, went to the house of a relative. The petitioner saw at many places in the way that these elements raising exciting slogans behaved improperly by passing humiliating comments on Burqa – clad women and beared Muslim passers by and beat them and fired several rounds in the air. All these incidents including the public meeting and torch procession was

witnessed by a number of people apart from me, who I know by name and address, but I do not deem it proper to reveal their names in the present situation due to reason of insecurity.

5. That after the night of 26th January, 2007, due to highly sensitive condition prevailing in the town Gorakhpur, curfew was imposed on three Police Station areas of the Gorakhpur town and Section 144 was in force in entire Gorakhpur city area including the places of public meeting and the torch procession. Despite this, the aforesaid unconstitutional meeting and torch procession was organized and conducted openly violating the Section 144 in presence Police Officers and the public was provoked and directed to perform criminal acts by the activists present there and the activists of other places were provoked through them. Aditya Nath Yogi provoked Hindus to kill Muslims and rob and set afire their houses and shops and to destruct their religious places and Tazias for the reason of the murder of Raj Kumar Agrahari (incident of 26/27th January, 2007 Gorakhpur Town) and the alleged incidents happending since 24th January, 2007 and also provoked Muslims to not to celebrate Muharram which was a conspiracy hatched by him on the basis of his maligned thought and to fulfil which, he was looking for an appropriate situation. Under this very conspiracy, criminal incidents were carried out in the Gorakhpur and Basti Divisions, which caused disruption of Law and Order.

6. That as a result of the speech given by Yogi Aditya Nath in the public meeting on 27th January, 2007, torch procession and conspiracy hatched by abovenamed persons present with him, the shops, houses, godowns and vehicles of Muslims were robbed and set afire in Gorakhpur Police Station Areas in Gorakhpur Town by the Yogi supported Hindu Yuva Vahini, activists of BJP, Vyapar Mandal, which created an atmosphere of fear and terror. Gorakhnath temple became main centre of communal miscreant activities of the followers of this Yogi Aditya Nath and their refuge and these miscreants attacked the houses of Muslims residing in the area adjoining the temple premises, their shops and godowns and the vehicles of Muslims standing there (Trucks, Rickshaw, Scooters, Cars, etc.) and set them afire which caused which loss. Under the criminal conspiracy and instigation of Member of Parliament Yogi and the abovenamed persons, the followers of Yogi Aditya Nath killed Rashid R/O Sahabgunj S/O Rasheed R/O Rahmat Nagar, P.S. Rajghat in the Rajghat Police Station area and such followers also tried to kill by setting afire by pouring petrol on Peshimam Tufail Ahmad S/O Munnavar Hussain R/O Singharia in Cantt. Police Station area and such followers also caused huge loss by destructing Mosque situated at Menhadia village under Police Station Gagaha and such followers also set afire the religious epic Kuran in the Mosque of Village Etkhauli and caused loss by

destructing the Mosque under the Police Station Gagaha and such followers also set afire the madarsa situated in village Vasudiha under Police Station Gagaha and also set afire Tazias and such followers also set afire the shops of Abdulla S/O of Sharfuddin, Shahur, Riyaz all Muslims at Bhaluan Chouraha under Police Station Gagaha and the shops of Muslims named Fakharuddin and Islam were also set afire apart from Irshad Tent House at Jaitpur Couraha under Sahajnawan Police Station and such followers also destructed and destroyed the Eidgaah situated in village Rudlapur P.S. Khorabar and Eidgaah situated in village Dumri (Niwas) P.S. Sahajanawan, and Eidgaah situated in village Mustafabad @ Mallaur P.S. Sahjanawan and the Mosque situated in village Bhhopgarh P.S. Gola District Gorakhpur. Tazias were not allowed to be lifted at many places in Gorakhpur district and at many places where the Tazia procession were carried out, they were destructed and set afire there by doing miscreant acts there. The shops of Salim S/O Shaukat in village Jaddupatti, Ashiq Band, Anwar barber, Hafizullah and Jabbar in village Menhdeva under Police Station Sikrigunj were also set afire under the same conspiracy. These miscreants also robbed and set afire the shop of Tajammul Hussain in village Dhabra of Police Station Sikrigunj. In the same way, the shops of Nadir, Ashiq Mukhtar were robbed and set afire in Belghat and such miscreants also attacked the mosque situated in village

Bhainsa P.S. Bansgaon and destroyed it's gate and also destructed shops of two Muslims in the market.

7. That the followers of Aditya Nath Yogi and activists – miscreants of the abovenamed organization robbed and set afire the buses of the roadways by blocking the roads and the government and private other vehicles were also robbed and set afir4e. The conduction of roadways buses in Gorakhpur and Basti Division remained effected during the period from 29.01.2007 to 5th February, 2007 and other adjoining Division also remained effected. During the period from 9th January to 31st January, 2007, the followers and activists of Yogi Aditya Nath destroyed more than 22 buses of the roadways on different places under this conspiracy and also caused loss by setting them afire, in which 14 roadways buses belonged to Gorakhpur areas and 8 buses belonged to outer areas. On date 31st January, 2007 road buses in the Nichnaul depot in Maharajgunj district were also destructed and set afire by the followers of Yogi Aditya Nath.

8. That Railways was disrupted by the followers of Yogi Aditya Nath Hindu Yuva Vahini, BJP and Vyapar Mandal and about more than 14 trains were set afire causing loss and the Yogi supported miscreants of these organizations pelted stones and destructed the office of the SDM situated in Bansgaon and office of the DM at Gorakhpur under the criminal conspiracy and flamboyant speech against the

government and instigation for criminal acts by the persons abovenamed and in the same way the miscreants of these organizations robbed and set afire the shops of Muslims in other Kasbas Khajani, Kauriram, Bansgaon, etc. of the Gorakhpur district. In Kasba Khajani, these miscreants entered the mosque and and Madarsa Arabia Ahal-e-Sunnat and robbed and destroyed the same and also robbed and set afire the shops of 15 Muslims, whose details have been mentioned in the petition dated 5th July, 2007 written by Mohammad Asad Hayat to the Senior Superintendent of Police, Gorakhpur and the vehicles of Muslims plying on the road were also made targets. In Kasba Gola, the shops of Akhtar Hussain S/O Muhhamad Umar, Gulab Hussain S/O Ismail, Abrar S/O Sarfaraz, Aftab S/O Noor Alam, Feroz and Tahir were also robbed and set afire. In Kasba Kauriram, the shops of Nabi Muhammad, Nizamuddin, Majnu and Yusuf were also set afire. In Kasba Bansgaon, the shops of Tazammul Hussain and Dr. Siraz Ansari were also robbed and burnt. The Muslims aggrieved by these incidents were not heard by the Police. Apart from this, the shops, houses and Tazias of Muslims were robbed and burnt in many rural areas of Gorakhpur district. All these incidents have been published in Newspapers from 29th January, 2007 to 15th February, 2007. All these criminal acts were done by the follower activists of Yogi Aditya Nath connected to Hindu Yuva Vahini, BJP and Vyapar Mandal

on instigation by aforesaid enraging speech by Yogi Aditya Nath and under the conspiracy hatched by Yogi Aditya Nath and other abovenamed persons.

9. That Yogi Aditya Nath delivered a enraging speech addressing “Hindu Chetna Rally” in Kasba Kasaya District Padrauna on 28th January, 2007 and asked the Hindus that they shed fear of death from their hearts. It is necessary to mention here that in Purvanchal, Hindu Yuva Vahini under the leadership of Yogi Aditya Nath was hatching a conspiracy to disrupt communal harmony, to annoy Muslims and to harm them since earlier times and was looking for an appropriate situation for the same and it’s activists were active for the same. This appropriate situation met them in the background of murder of Rajkumar Agrahari in Gorakhpur town in the night of 26/27th January, 2007. The activists of Hindu Yuva Vahini and BJP were jointly holding public meetings at the different places since first week of January 2007 itself in Kotwali Padrauna area of Kushinagar district and were raising slogans that if you have to live in Purvanchal, then you must have to chant name of Yogi and whoever chants the name of Ali, he will be beaten in every street. The office bearers and activists of Hindu Yuva Vahini were delivering communal speeches and were canvassing that Muslims must be taught a lesson and they have to be harmed to such an extent that they do not dare raise their heads and any of their religious ceremony has not to

be allowed to be completed. In this respect, all such information are recorded in the G.D. of Kotwali Padrauna town on different dates in the month of January, 2007.

10. That all the preparations to carry out such wrongful acts and spread the same in Gorakhpur Division and Basti Division had been completed by Hindu Yuva Vahini, BJP and Vyapar Mandal under the leadership of Yogi Aditya Nath and the speech delivered by Yogi Aditya Nath in the aforesaid "Warning" meeting and the torch procession conducted on Gorakhpur Railway Station in the night of dated 27th January, Gorakhpur Railway Station in the night of date 27th January, 2007 and the "Hindu Chetna Rally" conducted in Kasaya of district Kushinagar on 28th January, 2007 further provoked and directed their activists and thereafter Yogi Aditya Nath got himself arrested at the border of Gorakhpur district on 28th January, 2007 while returning from Kasaya under conspiracy and it was canvassed by the activists of Hindu Yuva Vahini, BJP and Vyapar Mandal under conspiracy only that the administration has arrested the prophet of Hindu Welfare, hence got the brawl spread in relation to this arrest the background background of the public provocation on account of aforesaid speech. And robbed, burnt and destroyed and properties of Muslims, their religious places, epics, emblems, Tazias and government vehicles and buildings, offices buses of roadways and railways and in this

> sequence, condemnable crimes killings of Muslims and attempt to kill Muslims were carried out."

5. Another very vital fact, that requires to be noticed at this stage itself, is that on 26th January, 2007, Rajkumar Agrahari, a Hindu boy was murdered in Gorakhpur, which resulted in breaking out of communal violence in the city and imposition of curfew under Section 144 of the Code. On 27th January, 2007 a condolence meeting for the murder of Raj Kumar was organised which was attended by many persons including Anju Chaudhary, the Mayor of Gorakhpur and Yogi Aditya Nath, Member of Parliament from that constituency. It appears from the record that the High Court had also passed some orders in regard to the investigation of the case and finally the police had registered a case under Section 302 of the Indian Penal Code, 1860 (for short 'IPC'), and had even filed a charge sheet under Section 173 of the Code before the Court of competent jurisdiction against six unknown accused persons.

6. Apart from this incident and before the public meeting attended by above-stated Anju Chaudhary, another incident took place at the shop of one Hazrat S/o Bismilla under Police

Station Cantt. In this incident, the shop of Hazarat was set on fire at about 6 p.m. on 27th January, 2007 causing heavy damage to the same. In fact, as per the report lodged by him, he was working in that shop and owner of the shop was one Md. Isa Ansari. According to him, some unknown persons, claiming to be from Hindu Yuva Vahini, had set the shop on fire. He neither knew their names nor their addresses. This report was sent by post and was, thus, received by the Police Station and registered as FIR No.145 of 2007 on 3rd February, 2007. The police had registered a case against unknown persons under Sections 147, 427, 436 and 506 IPC read with Section 23 of the U.P. Gangsters and Activists Prevention Act and Section 7 of the Criminal Law Amendment Act.

7. The complaint application under Section 156 IPC was filed by Parvaz on 16th November, 2007, nearly 10 months after the date of occurrence. This application, which was heard by the learned Chief Judicial Magistrate, was rejected vide order dated 29th July, 2008. The learned Magistrate expressed the opinion that since Crime Case No.145 of 2007 had already been registered, as noticed above, there was no propriety to register an FIR again. The intention of the legislature was to provide

speedy criminal law and justice to all. Thus, there was no need to conduct fresh investigation by another person merely by lodging a fresh FIR. The Court held that to pass such an order was not justifiable and rejected the application. The thrust of the order of the learned Magistrate was primarily on this aspect of the case.

8. Aggrieved from the order dated 29th July, 2008, Parvaz filed a revision petition before the High Court. The High Court vide its judgment dated 26th September, 2008 set aside the order of the learned Magistrate under revision and directed the Magistrate to pass a fresh order on the application of respondent No.2. While passing this order, the Court held as under :

> "11. In addition to the aforesaid averments, various other allegations have also been made in the application under Section 156(3) Cr.P.C. From all these allegations, prima facie cognizable offences of very serious nature requiring police investigation are disclosed. Hence, the learned CJM Gorakhpur ought to have passed the order in present case for registration of FIR against the persons named in the application under Section 156(3) Cr.P.C. and its investigation by the police, but it is very unfortunate that due to lack of adequate legal knowledge, without going into the allegations made in that

application, the learned CJM has rejected the application merely on the ground that in view of the FIR registered at case Crime No.145 of 2007 at P.S. Cantt., there is no justification to get the second FIR registered. This view of the learned CJM is wholly erroneous. Annexure (iv) is the copy of the FIR, which was registered at Case Crime No.145 of 2007 at P.S. Cantt Gorakhpur on the basis of the application of Hazarat S/o Vismilla. On perusal of this FIR, it is revealed that the said FIR relates to the incident, which had occurred on 27.01.2007 at about 6.00 p.m., in which damage was caused to the shop of the complainant Hazarat by some named persons of Hindu Yuwa Wahini. That FIR was lodged regarding one incident only, whereas in the application under Section 156(3) Cr.P.C. a number of incidents have been mentioned, which occurred on different places affecting different persons. Therefore, it cannot be said that the FIR registered at Case Crime No.145 of 2007 covers all the incidents mentioned in the application under Section 156(3) Cr.P.C. As such, there was no legal bar in this case to get the First Information Report registered on the basis of the application moved by the applicant revisionist under Section 156(3) Cr.P.C. and its investigation by the police, because all the allegations made in the said application and in the FIR registered at Case Crime No.145 of 2007 are not the same.

12. Although, in view of law laid down by a Division Bench of this Court in the case of Sukhwasi Vs. State of U.P. 2007 (59) ACC 739 in which Full Bench decision of the case of Ram Babu Guta & Ors. Vs. State of U.P. 2001 (43) ACC 50 has been relied upon, application under Section 156(3) Cr.P.C. can be treated as complaint, but on the

basis of the allegations made in the application under Section 156(3) Cr.P.C. in the present case prima facie cognizable offences of very serious nature requiring police investigation are disclosed. Hence, treating the application under Section 156(3) Cr.P.C. as complaint in present case would not be legal and justified. While passing order for treating the application under Section 156(3) Cr.P.C. as complaint, the following observations made by the Full Bench of this Court in the case of Ram Babu Gupta (supra) must be kept in mind by the Magistrate/Judges:-

> "However, it is always to be kept in mind that it is the primary duty of the police to investigate in case involving cognizable offences and aggrieved person cannot be forced to proceed in the manner provided by Chapter XV and to produce his witnesses at his cost of bring home the charge to the accused. It is the duty of the state to provide safeguards to the life and property of a citizen. If any intrusion is made by an offender, it is for the State to set the law into motion and come to the aid of the person aggrieved."

13. Therefore,, having regard to the afore cited observations made by the Full Bench, the Magistrates/Judges should not shirk their legal responsibility to pass an order for registration of the FIR and its investigation by the police on the applications under Section 156(3) Cr.P.C. in the cases where on the basis of the averments made therein and the material, if any, brought on record in support thereof, prima facie cognizable offence of serious nature requiring police

> investigation is made out and in such cases the aggrieved person should not be compelled to collect and produce the evidence at his cost to bring home the charges to the accused by passing an order to treat the application under Section 156(3) Cr.P.C. as complaint thereby forcing the aggrieved person to proceed in the manner provided by Chapter XV Cr.P.C.
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> 19. Consequently, the revision is allowed. The impugned order is hereby set aside the Chief Judicial Magistrate Gorakhpur is directed to pass fresh order on the application dated 16.11.2007 moved by the applicant-revisionist Parvaz Parwaz, under Section 156(3) Cr.P.C. and it must be ensured that after registration of the FIR on the basis of that application, proper investigation is carried out."

9. In the present appeal by way of special leave, the appellant Smt. Anju Chaudhary challenges the legality and correctness of the order of the High Court primarily on the following grounds :

(a) The order passed by learned CJM dated 29th July, 2008 did not suffer from any error of jurisdiction and, thus, the High Court could not have upset the said order in exercise of its revisional jurisdiction.

(b) While making certain observations, the High Court, in the impugned order held that *prima facie* cognizable offences were made out and while virtually directing the learned Magistrate to get an FIR registered, has foreclosed the exercise of judicial discretion by the learned Magistrate. As such, the order of the High Court is not sustainable.

(c) In law, there cannot be two FIRs registered in relation to the same occurrence or different events or incidents two or more but forming part of the same transaction. The direction to register a second FIR, therefore, is contrary to law and the very spirit of Section 154 of the Code.

(d) The order of the High Court is in violation of the principles of natural justice inasmuch as the High Court neither gave any notice nor heard the appellant before passing the impugned order dated 26th September, 2008.

10. Contra to the above submissions made by the appellant, the counsel appearing for the State as well as respondent No.2 have supported the order of the High Court in law as well as with reference to the facts of the case in hand. It is contended on their behalf that there were no two separate FIRs in relation

to the same offence or occurrence, but these FIRS related to two different incidents which is permissible in law. The appellant was not entitled to any hearing in law at the stage of filing the FIR, and in any case no direction has been made to register a case particularly against the appellant for any given offence. Thus, the order of the High Court does not call for any interference.

11. Having noticed the contentions of the parties and in order to complete the factual matrix of the case, we may also notice at this stage that in furtherance to the order of the High Court dated 26th September, 2008, the learned CJM, vide order dated 17th October, 2008 accepted the application of respondent No.2 and directed the Police Station Cantt., Gorakhpur to register the case under appropriate sections and to ensure the investigation in terms of the order passed by the High Court. A copy of the order was placed before this Court during the course of hearing.

12. Since all these contentions are inter-related and inter-dependant, it will be appropriate for the Court to examine them collectively. Of course, the foremost contention raised before us is as to whether it is permissible to register two different

FIRs in law. We may deal with the legal aspect of this issue first and then turn to the facts.

13. Section 154 of the Code requires that every information relating to the commission of a cognizable offence, whether given orally or otherwise to the officer in-charge of a police station, has to be reduced into writing by or under the direction of such officer and shall be signed by the person giving such information. The substance thereof shall be entered in a book to be kept by such officer in such form as may be prescribed by the State Government in this behalf.

14. A copy of the information so recorded under Section 154(1) has to be given to the informant free of cost. In the event of refusal to record such information, the complainant can take recourse to the remedy available to him under Section 154(3). Thus, there is an obligation on the part of a police officer to register the information received by him of commission of a cognizable offence. The two-fold obligation upon such officer is that (a) he should receive such information and (b) record the same as prescribed. The language of the section imposes such imperative obligation upon the officer. An investigating officer, an officer-in-charge of a police station

can be directed to conduct an investigation in the area under his jurisdiction by the order of a Magistrate under Section 156(3) of the Code who is competent to take cognizance under Section 190. Upon such order, the investigating officer shall conduct investigation in accordance with the provisions of Section 156 of the Code. The specified Magistrate, in terms of Section 190 of the Code, is entitled to take cognizance upon receiving a complaint of facts which constitute such offence; upon a police report of such facts; upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

15. On the plain construction of the language and scheme of Sections 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. 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. 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).

16. 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. In the case of *Ram Lal Narang* v. *State (Delhi Administration)* [(1979) 2 SCC 322], the Court was concerned with the registration of a second FIR in relation to the same facts but constituting different offences and where ambit and scope of the investigation was entirely different. Firstly, an FIR was registered and even the charge-sheet filed was primarily concerned with the offence of conspiracy to cheat and misappropriation by the two accused. At that stage, the investigating agency was not aware of any conspiracy to send the pillars (case property) out of the country. It was also not known that some other accused persons were parties to the conspiracy to obtain possession of the pillars from the court, which subsequently surfaced in London. Earlier, it was only known to the Police that the pillars were stolen as the property within the meaning of Section 410 IPC and were in possession of the accused person (Narang brothers) in London. The Court declined to grant relief of discharge to the petitioner in that case where the contention raised was that entire investigation

in the FIR subsequently instituted was illegal as the case on same facts was already pending before the courts at Ambala and courts in Delhi were acting without jurisdiction. The fresh facts came to light and the scope of investigation broadened by the facts which came to be disclosed subsequently during the investigation of the first FIR. The comparison of the two FIRs has shown that the conspiracies were different. They were not identical and the subject matter was different. The Court observed that there was a statutory duty upon the Police to register every information relating to cognizable offence and the second FIR was not hit by the principle that it is impermissible to register a second FIR of the same offence. The Court held as under :

> "20.Anyone acquainted with the day-to-day working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualize a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of

the plea of alibi and submit a report to the Magistrate? After all, the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the CrPC in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceeding before the court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a court and investigate

every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light.

21. As observed by us earlier, there was no provision in the CrPC, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation.

22. As in the present case, occasions may arise when a second investigation started independently of the first may disclose a

wide range of offences including those covered by the first investigation. Where the report of the second investigation is submitted to a Magistrate other than the Magistrate who has already taken cognizance of the first case, it is up to the prosecuting agency or the accused concerned to take necessary action by moving the appropriate superior court to have the two cases tried together. The Magistrates themselves may take action suo motu. In the present case, there is no problem since the earlier case has since been withdrawn by the prosecuting agency. It was submitted to us that the submission of a charge-sheet to the Delhi court and the withdrawal of the case in the Ambala court amounted to an abuse of the process of the court. We do not think that the prosecution acted with any oblique motive. In the charge-sheet filed in the Delhi court, it was expressly mentioned that Mehra was already facing trial in the Ambala Court and he was, therefore, not being sent for trial. In the application made to the Ambala Court under Section 494 CrPC, it was expressly mentioned that a case had been filed in the Delhi Court against Mehra and others and, therefore, it was not necessary to prosecute Mehra in the Ambala court. The Court granted its permission for the withdrawal of the case. Though the investigating agency would have done better if it had informed the Ambala Magistrate and sought his formal permission for the second investigation, we are satisfied that the investigating agency did not act out of any malice. We are also satisfied that there has been no illegality. Both the appeals are, therefore, dismissed."

17. In the case of *M. Krishna* v. *State of Karnataka* [(1999) 3 SCC 247], this Court took the view that even where the article of charge was similar but for a different period, there was nothing in the Code to debar registration of the second FIR. The Court opined that the FIR was registered for an offence under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act related to the period 1.8.1978 to 1.4.1989 and the investigation culminated into filing of a report which was accepted by the Court. The second FIR and subsequent proceedings related to a later period which was 1st August, 1978 to 25th July, 1978 under similar charges. It was held that there was no provision which debar the filing of a subsequent FIR.

18. In the case of *T.T. Antony* v. *State of Kerala* [(2001) 6 SCC 181], the Court explained that an information given under sub-Section (1) of Section 154 of the Code is commonly known as the First Information Report (FIR). Though this term is not used in the Code, it is a very important document. The Court concluded that second FIR for the same offence or occurrence giving rise to one or more cognizable offences was not permissible. In this case, the Court discussed the judgments in

Ram Lal Narang (supra) and *M. Krishna* (supra) in some detail, and while quashing the subsequent FIR held as under :

> "23. The right of the police to investigate into a cognizable offence is a statutory right over which the court does not possess any supervisory jurisdiction under CrPC. In *Emperor* v. *Khwaja Nazir Ahmad* the Privy Council spelt out the power of the investigation of the police, as follows:
>
> > "In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court."
>
> 24. This plenary power of the police to investigate a cognizable offence is, however, not unlimited. It is subject to certain well-recognised limitations. One of them, is pointed out by the Privy Council, thus:
>
> > "[I]f no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation...."
>
> 25. Where the police transgresses its statutory power of investigation the High Court under Section 482 CrPC or Articles 226/227 of the Constitution and this Court in an appropriate case can interdict the investigation to prevent abuse of the

process of the court or otherwise to secure the ends of justice.

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35. For the aforementioned reasons, the registration of the second FIR under Section 154 CrPC on the basis of the letter of the Director General of Police as Crime No. 268 of 1997 of Kuthuparamba Police Station is not valid and consequently the investigation made pursuant thereto is of no legal consequence, they are accordingly quashed. We hasten to add that this does not preclude the investigating agency from seeking leave of the Court in Crimes Nos. 353 and 354 of 1994 for making further investigations and filing a further report or reports under Section 173(8) CrPC before the competent Magistrate in the said cases. In this view of the matter, we are not inclined to interfere with the judgment of the High Court under challenge insofar as it relates to quashing of Crime No. 268 of 1997 of Kuthuparamba Police Station against the ASP (R.A. Chandrasekhar); in all other aspects the impugned judgment of the High Court shall stand set aside."

19. The judgment of this Court in *T.T. Antony* (supra) came to be further explained and clarified by a three Judge Bench of this Court in the case of *Upkar Singh* v. *Ved Prakash* [(2004) 13 SCC 292], wherein the Court stated as under :

"17. It is clear from the words emphasised hereinabove in the above quotation, this Court in the case of *T.T. Antony* v. *State of Kerala* has not excluded the registration of

a complaint in the nature of a counter-case from the purview of the Code. In our opinion, this Court in that case only held that any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited under Section 162 of the Code. This prohibition noticed by this Court, in our opinion, does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident.

18. This Court in *Kari Choudhary* v. *Sita Devi* discussing this aspect of law held:

> "*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."

(emphasis supplied)

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23. Be that as it may, if the law laid down by this Court in *T.T. Antony case* is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.

24. We have already noticed that in *T.T. Antony case* this Court did not consider the legal right of an aggrieved person to file counterclaim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter-complaint is permissible.

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 separate 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."

20. Somewhat similar view was taken by a Bench of this Court in the case of *Rameshchandra Nandlal Parikh* v. *State of Gujarat* [(2006) 1 SCC 732], wherein the Court held that the subsequent FIRs cannot be prohibited on the ground that some other FIR has been filed against the petitioner in respect of other allegations filed against the petitioner.

21. This Court also had the occasion to deal with the situation where the first FIR was a cryptic one and later on, upon receipt of a proper information, another FIR came to be recorded which was a detailed one. In this case, the court took the view that

no exception could be taken to the same being treated as an FIR. In the case of *Vikram v. State of Maharashtra* (2007) 12 SCC 332, the Court held that it was not impermissible in law to treat the subsequent information report as the First Information Report and act thereupon. In the case of *Tapinder Singh v. State of Punjab* [(1970) 2 SCC 113] also, this Court examined the question as to whether cryptic, anonymous and oral messages, which do not clearly specify the cognizable offence, can be treated as FIR, and answered the question in the negative.

22. In matters of complaints, the Court in the case of *Shiv Shankar Singh v. State of Bihar* (2012) 1 SCC 130 expressed the view that the law does not prohibit filing or entertaining of a second complaint even on the same facts, provided that the earlier complaint has been decided on the basis of insufficient material or has been passed without understanding the nature of the complaint or where the complete facts could not be placed before the court and the applicant came to know of certain facts after the disposal of the first complaint. The Court applied the test of full consideration of the complaints on merits. In paragraph 18, the Court held as under: -

> "18. Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit."

23. The First Information Report is a very important document, besides that it sets the machinery of criminal law in motion. It is a very material document on which the entire case of the prosecution is built. Upon registration of FIR, beginning of investigation in a case, collection of evidence during investigation and formation of the final opinion is the sequence which results in filing of a report under Section 173 of the Code. The possibility that more than one piece of information is given to the police officer in charge of a police station, in respect of the same incident involving one or more than one cognizable offences, cannot be ruled out. Other materials and information given to or received otherwise by the investigating officer would be statements covered under

Section 162 of the Code. The Court in order to examine the impact of one or more FIRs has to rationalise the facts and circumstances of each case and then apply the test of 'sameness' to find out whether both FIRs relate to the same incident and to the same occurrence, are in regard to incidents which are two or more parts of the same transaction or relate completely to two distinct occurrences. If the answer falls in the first category, the second FIR may be liable to be quashed. However, in case the contrary is proved, whether the version of the second FIR is different and they are in respect of two different incidents/crimes, the second FIR is permissible, This is the view expressed by this Court in the case of *Babu Babubhai v. State of Gujarat and Ors.* [(2010) 12 SCC 254]. This judgment clearly spells out the distinction between two FIRs relating to the same incident and two FIRs relating to different incident or occurrences of the same incident etc.

24. To illustrate such a situation, one can give an example of the same group of people committing theft in a similar manner in different localities falling under different jurisdictions. Even if the incidents were committed in close proximity of time, there could be separate FIRs and institution of even one stating that

a number of thefts had been committed, would not debar the registration of another FIR. Similarly, riots may break out because of the same event but in different areas and between different people. The registration of a primary FIR which triggered the riots would not debar registration of subsequent FIRs in different areas. However, to the contra, for the same event and offences against the same people, there cannot be a second FIR. This Court has consistently taken this view and even in the case of *Chirra Shivraj v. State of Andhra Pradesh* [(2010) 14 SCC 444], the Court took the view that there cannot be a second FIR in respect of same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the First Information Report.

25. Now, we should examine the facts of the present case in light of the principles stated supra. The complaint/application under Section 156(3) filed by respondent No. 2 was founded on the condolence meeting which was attended by a large number of persons including the persons named in the complaint. According to respondent No. 2, named persons had given speeches which were communal, provoking and were creating

disharmony between the communities, and encouraging people to commit criminal offences rather than to follow the due process of law. The complaint of respondent No. 2 did not relate to any event prior to the holding of the meeting and participation of the stated persons. This complaint was of a general nature and related to various communal riots that occurred subsequent to and as a result of the meeting. Thus, it related to a different case, grievance and alleged commission of offences at the time and subsequent to the holding of the meeting.

26. The First Information Report 145/2007 lodged by Hazrat son of Bismillah related to burning of a shop prior to holding of a meeting. He categorically stated that he did not know the persons or names of the perpetrators who attacked the shop where he was working. This incident occurred at 6 p.m. as per the records while the meeting itself, as per respondent No. 2 was held after 8 p.m., though on the same date. His report clearly states that when he was going back to his house at about 8.30 p.m., he stopped at the place where the meeting was being held. The FIR registered by Hazrat was against unknown persons and related to a particular event and

commission of a particular crime. There was no question of any provocation, conspiracy or attempt by the persons premeditatedly committing the offences which they committed.

27. As per the FIR, it was an offence committed at random by some unknown persons. The registration of such FIR was neither intended to be nor was it in fact in relation to a matter of larger investigation, or commission of offences, as alleged by the respondent no.2.

28. Even the offences which are stated to have been committed, and for which the two FIRs were registered in these respective cases were different and distinct. In the complaint filed by Parvez Parwaz, which was registered as a FIR, names of the persons were mentioned and a general investigation was called for, while FIR 145/2007 registered by Hazrat, was against unknown persons for damage of his property, which was for a specific offence, without any other complaint or allegation of any communal instigation or riot. In other words, these were two different FIRs relatable to different occurrences, investigation of one was no way dependent upon the other and they are neither inter-linked nor inter-dependent. They were lodged by different persons in relation to occurrences which are

alleged to have occurred at different points of time against different people and for different offences. Requirement of proof in both cases was completely distinct and different. Thus, there was no similarity and the test of similarity would not be satisfied in the present case. Thus, we have no hesitation in coming to the conclusion that lodging of the subsequent FIR was not a second FIR for the same occurrence as stated in FIR 145/2007, and thus, could be treated as a First Information Report for all purposes including investigation in terms of the provisions of the Code. It was not in the form of a statement under Section 162 of the Code.

Is an accused entitled to hearing pre-registration of an FIR?

29. Section 154 of the Code places an unequivocal duty upon the police officer in charge of a police station to register FIR upon receipt of the information that a cognizable offence has been committed. It hardly gives any discretion to the said police officer. The genesis of this provision in our country in this regard is that he must register the FIR and proceed with the investigation forthwith. While the position of law cannot be dispelled in view of the three Judge Bench Judgment of this

Court in *State of Uttar Pradesh v. Bhagwant Kishore Joshi* [AIR 1964 SC 221], a limited discretion is vested in the investigating officer to conduct a preliminary inquiry pre-registration of a FIR as there is absence of any specific prohibition in the Code, express or implied. The subsequent judgments of this Court have clearly stated the proposition that such discretion hardly exists. In fact the view taken is that he is duty bound to register an FIR. Then the question that arises is whether a suspect is entitled to any pre-registration hearing or any such right is vested in the suspect.

30. The rule of *audi alteram partem* is subject to exceptions. Such exceptions may be provided by law or by such necessary implications where no other interpretation is possible. Thus rule of natural justice has an application, both under the civil and criminal jurisprudence. The laws like detention and others, specifically provide for post-detention hearing and it is a settled principle of law that application of this doctrine can be excluded by exercise of legislative powers which shall withstand judicial scrutiny. The purpose of the Criminal Procedure Code and the Indian Penal Code is to effectively execute administration of the criminal justice system and protect society from perpetrators of

crime. It has a twin purpose; firstly to adequately punish the offender in accordance with law and secondly to ensure prevention of crime. On examination, the scheme of the Criminal Procedure Code does not provide for any right of hearing at the time of registration of the First Information Report. As already noticed, the registration forthwith of a cognizable offence is the statutory duty of a police officer in charge of the police station. The very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect. It is not that the liberty of an individual is being taken away or is being adversely affected, except by the due process of law. Where the Officer In-charge of a police station is informed of a heinous or cognizable offence, it will completely destroy the purpose of proper and fair investigation if the suspect is required to be granted a hearing at that stage and is not subjected to custody in accordance with law. There would be the pre-dominant possibility of a suspect escaping the process of law. The entire scheme of the Code unambiguously supports the theory of exclusion of *audi alteram partem* pre-registration of an FIR. Upon registration of an FIR, a person is entitled to take recourse to the various provisions of bail and anticipatory bail

to claim his liberty in accordance with law. It cannot be said to be a violation of the principles of natural justice for two different reasons. Firstly, the Code does not provide for any such right at that stage. Secondly, the absence of such a provision clearly demonstrates the legislative intent to the contrary and thus necessarily implies exclusion of hearing at that stage. This Court in the case of *Union of India v. W.N. Chadha* (1993) Suppl. (4) SCC 260 clearly spelled out this principle in paragraph 98 of the judgment that reads as under:

> "98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary."

31. In the case of *Samaj Parivartan Samuday v. State of Karnataka* (2012) 7 SCC 407, a three-Judge Bench of this Court while dealing with the right of hearing to a person termed as 'suspect' or 'likely offender' in the report of the CEC observed that there was no right of hearing. Though the

suspects were already interveners in the writ petition, they were heard. Stating the law in regard to the right of hearing, the Court held as under :

> "50. There is no provision in CrPC where an investigating agency must provide a hearing to the affected party before registering an FIR or even before carrying on investigation prior to registration of case against the suspect. CBI, as already noticed, may even conduct pre-registration inquiry for which notice is not contemplated under the provisions of the Code, the Police Manual or even as per the precedents laid down by this Court. It is only in those cases where the Court directs initiation of investigation by a specialised agency or transfer investigation to such agency from another agency that the Court may, in its discretion, grant hearing to the suspect or affected parties. However, that also is not an absolute rule of law and is primarily a matter in the judicial discretion of the Court. This question is of no relevance to the present case as we have already heard the interveners."

32. While examining the above-stated principles in conjunction with the scheme of the Code, particularly Section 154 and 156(3) of the Code, it is clear that the law does not contemplate grant of any personal hearing to a suspect who attains the status of an accused only when a case is registered for committing a particular offence or the report under Section 173 of the Code is filed terming the suspect an accused that his

rights are affected in terms of the Code. Absence of specific provision requiring grant of hearing to a suspect and the fact that the very purpose and object of fair investigation is bound to be adversely affected if hearing is insisted upon at that stage, clearly supports the view that hearing is not any right of any suspect at that stage.

33. Even in the cases where report under Section 173(2) of the Code is filed in the Court and investigation records the name of a person in column (2), or even does not name the person as an accused at all, the Court in exercise of its powers vested under Section 319 can summon the person as an accused and even at that stage of summoning, no hearing is contemplated under the law.

34. Of course, situation will be different where the complaint or an application is directed against a particular person for specific offence and the Court under Section 156 dismisses such an application. In that case, the higher court may have to grant hearing to the suspect before it directs registration of a case against the suspect for a specific offence. We must hasten to clarify that there is no absolute indefeasible right vested in a suspect and this would have to be examined in the

facts and circumstances of a given case. But one aspect is clear that at the stage of registration of a FIR or passing a direction under Section 156(3), the law does not contemplate grant of any hearing to a suspect. Coming to the facts of the present case, the complaint under Section 156 had named certain persons, but it had also referred to a number of other persons and the investigation prayed for was of a generic nature and not against a particular person for commission of any specified offence. The substance and nature of the allegations made in the complaint were such that it was not possible to state with certainty as to how the offences were committed and by whom. Thus, the Court was called upon to pass an order directing general investigation of very wide scope. It was to be investigated, as to who besides the named persons gave speeches, incited the public at large, what its impact was on the violence as alleged and who were the persons who had participated in the alleged communal violence. Thus, it was not a case where one or more persons committed the murder of someone and clearly fell under Section 302 IPC. The merit of the case was not disclosed by the learned Magistrate while passing the order dated 29th July, 2008 under Section 156(3) of the Code. The Court did not

analyze at all the ingredients of an offence, participation of persons and their other effects. The court primarily proceeded on a legal issue without reference to the facts of the case stating that since one FIR had been recorded i.e. FIR No. 145/2007, it was not permissible to register second FIR and direct investigation thereof. This view, as already discussed above was, in fact and in law, not sustainable. The Court had not recorded any finding in favour of the appellant to the effect that she was not present, she had not participated or that she was in no way connected with communal violence. We must not be understood to state that the appellant was involved in any manner in the commission of the said crime. This has to be investigated as directed by the court in accordance with law and that too without prejudice to the rights and contentions of the appellant. The grievance of non-grant of hearing in any case loses its significance as we have heard the appellant at some length and have dealt with the contentions raised before us. In the facts of the present case, thus, no prejudice is caused to the appellant.

Power of the Magistrate under Section 156(3)

35. Investigation into commission of a crime can be commenced by two different modes. First, where the police officer registers an FIR in relation to commission of a cognizable offence and commences investigation in terms of Chapter XII of the Code, the other is when a Magistrate competent to take cognizance in terms of Section 190 may order an investigation into commission of a crime as per the provisions of that Chapter XIV. Section 156 primarily deals with the powers of a police office to investigate a cognizable case. While dealing with the application or passing an order under Section 156(3), the Magistrate does not take cognizance of an offence. When the Magistrate had applied his mind only for order an investigation under Section 156(3) of the Code or issued a warrant for the said purpose, he is not said to have taken cognizance. It is an order in the nature of a preemptory reminder or intimation to the police to exercise its primary duty and power of investigation in terms of Section 151 of the Code. Such an investigation embraces the continuity of the process which begins with collection of evidence under Section 156 and ends with the final report either under Section 159 or submission of chargesheet under Section 173 of the Code. Refer *Mona Pawar v. High Court of Allahabad* [2011) 3 SCC 496]. In the case of

Dilawar Singh v. State of Delhi [2007) 9 SCR 695], this Court as well stated the principle that investigation begin in furtherance to an order under Section 156(3) is not anyway different from the kind of investigation commenced in terms of Section 156(1). They both terminate with filing of a report under Section 173 of the Code. The Court signified the point that when a Magistrate orders investigation under Chapter XII he does so before taking cognizance of an offence. The court in paragraph 17 of the judgment held as under:-

> "The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant

> because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

36. Caution in this process had been introduced by this Court vide its judgment in the case of *Tula Ram & Ors. v. Kishore Singh* [1977) 4 SCC 459] where it was held that the Magistrate can order the police to investigate the complaint, but it has no power to compel the police to submit a charge sheet on a final report being submitted by the police.

37. Still another situation that can possibly arise is that the Magistrate is competent to treat even a complaint termed as an application and pass orders under Section 156(3), but where it takes cognizance, there it would have to be treated as a regular complaint to be tried in accordance with the provisions of Section 200 onwards falling under Chapter XV of the Code. There also the Magistrate is vested with the power to direct investigation to be made by a police officer or by such other person as he thinks fit for the purposes of deciding whether or not there is sufficient ground for proceeding. This power is restricted and is not as wide as the power vested under Section 156(3) of the Code. The power of the Magistrate under Section 156(3) of the Code to order investigation by the police have not

been touched or affected by Section 202 because these powers are exercised even before the cognizance is taken. In other words, Section 202 would apply only to cases where Magistrate has taken cognizance and chooses to enquire into the complaint either himself or through any other agency. But there may be circumstances where the Magistrate, before taking cognizance of the case himself, chooses to order a pure and simple investigation under Section 156(3) of the Code. These cases would fall in different class. This view was also taken by a Bench of this Court in the case of *Rameshbhai Pandurao Hedau v. State of Gujarat* [(2010) 4 SCC 185]. The distinction between these two powers had also been finally stated in the judgment of this Court in the case of *Srinivas Gundluri & Ors. v. SEPCO Electric Power Construction Corporation & Ors.* [(2010) 8 SCC 206] where the Court stated that to proceed under Section 156(3) of the Code, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceeding, may direct the police for investigation. But where it takes cognizance and decides as to

whether or not there exists a ground for proceeding any further, then it is a case squarely falling under Chapter XV of the Code.

38. Thus, the Magistrate exercises a very limited power under Section 156(3) and so is its discretion. It does not travel into the arena of merit of the case if such case was fit to proceed further. This distinction has to be kept in mind by the court in different kinds of cases. In the present case, the learned Magistrate while passing the order dated 29th July, 2008, had not dealt with the case on merits, but on a legal assumption that it was not a case to direct investigation because investigation was already going on under FIR No. 45/2007. Once it is held as done by us above, there were two different and distinct offences committed by different persons and there was no commonality of transaction between the two. We do not find any error of jurisdiction in the order of the High Court requiring the learned Magistrate to deal with the cases afresh and pass an order under Section 156(3) of the Code. Once, that view is taken, the direction passed by the learned Magistrate directing further investigation under Section 156(3) can also not be complied with though there is no specific challenge to that order before us.

39. Thus, we are called upon to deal with from the point of view as to whether the investigating agency should be restrained from conducting further investigation or there should be stay of such investigation.

40. 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.

41. 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.

42. 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".

43. For the reasons afore-stated, we find no jurisdictional or other error in the judgment of the High Court and that leads us to direct the dismissal of this appeal.

.....J.

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[Swatanter Kumar]

.....J.
[Madan B. Lokur]

New Delhi
December 13, 2012