

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47468 of 2012

Arising Out of PS.Case No. -49 Year- 2010 Thana –Ara(M) District- -Bhojpur

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1. Madan Rai Son Of Hira Lal Rai Resident Of Village- Daulatpur, P.S. Ara (M), District- Bhojpur

2. Khelari Yadav @ Khelari Prasad Son Of Mahendra Yadav Resident Of Village- Daulatpur, P.S. Ara (M), District- Bhojpur

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Singh No.4, Adv.

For the Opposite Party/s : Dr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
CAV JUDGMENT

Date: 25-06-2015

By filing the instant application under section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the petitioners have challenged the order dated 01.10.2012 passed by the learned Judicial Magistrate 1st Class, Ara in Tr. No.3577 of 2012 arising out of Ara (M) P.S.Case No. 49 of 2010, by which the petition dated 13.03.2012 filed under section 239 of the Cr.P.C. for discharge has been rejected.

2. Ara Muffasil P.S.Case No. 49 of 2010 was registered on the basis of self written report of Lal Bihari Paswan, Officer-in-Charge, Ara Muffasil Police Station against the petitioners under sections 25(1-B)(a) and 26 of the Arms Act. According to the allegations made in the First Information Report, on the basis of



statement of petitioner no.1 Madan Rai, Ara Muffasil P.S.Case No. 39 of 2010 was registered under sections 341, 384, 354, 379 read with 34 of the Indian Penal Code as well as 25(1-B) (a), 26 and 27 of the Arms Act against one Pankaj Kumar Singh @ Guddu and others. During the course of investigation, the police found the case to be false. It was found that due to previous enmity the petitioners had actually beaten up Pankaj Kumar Singh @ Guddu severely and upon realizing that his injuries were serious and life threatening, in a bid to save themselves, they gave their own pistol and cartridges to the village Chowkidar and alleged that it had been recovered from Pankaj Kumar Singh @ Guddu. As stated in the FIR, the Supervising Officer of Ara Muffasil P.S.Case No. 39 of 2010 has directed for institution of a case against the petitioners, pursuant to which the case has been instituted.

3. In order to appreciate the facts of the present case, it would be proper to take note of the facts of Ara Muffasil P.S.Case No. 39 of 2010 first. On the basis of written report submitted by petitioner no.1 Madan Rai, Ara Muffasil P.S.Case No. 39 of 2010 dated 01.03.2010 was registered under sections 341, 384, 354, 379 read with 34 of the Indian Penal Code as well as 25(1-B) (a), 26 and 27 of the Arms Act against one Pankaj Kumar Singh @ Guddu, his elder brother Krishna Yadav and five other unknown persons. On that day



at about 7.00 p.m., while he was going together with his wife Munni Devi to his sister's house, his co-villager Pankaj Kumar Singh @ Guddu along with five others started teasing his wife. When he protested, the accused Pankaj Kumar Singh @ Guddu started abusing him and said that earlier also he had demanded Rs.20,000/- from him which had not been paid as yet. He threatened that he would ruin his life and took away Rs.1100/- from his pocket.

4. It has further been alleged that petitioner no.1 Madan Rai came back to his house. When his father came to know about the incident, he went to the house of the co-villager Pankaj Kumar Singh @ Guddu to complain. On hearing the complaint, Pankaj's elder brother Krishna Yadav got infuriated and said that if he has to live in the village, he will have to pay rangdari. Thereafter, Pankaj Kumar Singh @ Guddu along with his associates came to the house of the petitioner Madan Rai. He also made firing from his pistol. It has further been alleged that on hearing the sound of firing, petitioner Madan Rai and his family members ran towards their house but the accused persons chased them away and entered the house. They abused and assaulted them and snatched his mother's gold chain. However, while retreating, Pankaj Kumar Singh @ Guddu fell down and he was caught. In the meantime, village Chowkidar also arrived at the place of occurrence. In course of search one country made pistol

and two .315 bore cartridges were recovered from his possession, which were handed over to the village Chowkidar, who presented the same at the police station.

5. It is important to note here that another FIR being Ara Muffasil P.S.Case No. 40 of 2010 was instituted on the basis of oral statement of Pankaj Kumar Yadav @ Guddu Yadav in respect of the occurrence which took place on 01.03.2010 at 7.00 p.m. In Ara Muffasil P.S.Case No. 40 of 2010, petitioner no.1 Madan Rai and 5-6 others were made accused. The said case was registered for the offences punishable under sections 147, 148, 341, 323, 324, 307 and 379 of the Indian Penal Code. It has been alleged by Pankaj Kumar Yadav in Ara Muffasil P.S.Case No. 40 of 2010 that on 01.03.2010 at about 7.00 p.m. two of his friends, namely, Shatrughan Yadav and Raju Yadav were dancing to the music being played on car stereo. In the meantime, the accused persons came and started beating Shatrughan Yadav and Raju Yadav. This was protested by the informant, pursuant to which petitioner no.1 Madan Rai assaulted him with tangi, as a result of which he sustained cut injury over his face. They also snatched Rs.25,000/- in cash, a gold chain and two mobile sets from him on the point of pistol. When he tried to escape, he was again overpowered by them and was badly assaulted with lathi, iron rod etc., as a result of which he became unconscious.



6. The S.H.O. of Ara Muffasil Police Station Lal Bihari Paswan himself took up the investigation of both the cases i.e. Ara Muffasil P.S.Case No. 39 of 2010 and Ara Muffasil P.S.Case No. 40 of 2010. Both cases were being supervised by the Sub Divisional Police Officer. During the course of investigation, the police found the allegations made in Ara Muffasil P.S.Case No. 39 of 2010 to be false. It was found that the petitioners of the present case had actually beaten up Pankaj Kumar Singh @ Guddu badly and upon realizing that his injuries were serious and life threatening, in a bid to save themselves, they gave their own pistol and cartridges to the village Chowkidar by falsely alleging that it had been recovered from Pankaj Kumar Singh @ Guddu. The Supervising Officer of Ara Muffasil P.S.Case No. 39 of 2010 directed the Investigating Officer of the case to submit final form as false against Pankaj Kumar Singh @ Guddu and others and to institute a case under the relevant provisions of Arms Act against the petitioners of the present case. In view of the direction given by the Supervising Officer of Ara Muffasil P.S.Case No.39 of 2010, the Investigating Officer Lal Bihari Paswan instituted Ara Muffasil P.S.Case No. 49 of 2010 on 22.03.2010 against the petitioners under sections 25(1-B)(a) and 26 of the Arms Act. Immediately after institution of Ara Muffasil P.S.Case No. 49 of 2010, the Investigating Officer Lal Bihari Paswan submitted final

form on 31st March, 2010 before the learned Chief Judicial Magistrate, Muzaffarpur in Ara Muffasil P.S. Case No. 39 of 2010 holding the accusation to be false.

7. In Ara Muffasil P.S. Case No. 49 of 2010, the Investigating Officer of the case submitted charge sheet against the petitioners under sections 25(1-B)(a), 26 and 35 of the Arms Act on 31st July, 2010, pursuant to which cognizance was taken.

8. At the stage of framing of charge, an application under section 239 Cr.P.C. was filed before the learned Judicial Magistrate 1st Class, Ara for discharge on the ground that the facts of this case were collected during investigation of Ara Muffasil P.S. Case No. 39 of 2010 which was instituted on the basis of written report submitted by petitioner no.1 Madan Rai. It was contended before the learned Magistrate that two FIRs for the same offence are not maintainable. It was also contended that the entire materials on the basis of which charge sheet has been submitted in the present case were collected in course of investigation of Ara Muffasil P.S. Case No. 39 of 2010. After hearing the parties, though the learned Magistrate has found that the charge sheet of Ara Muffasil P.S. Case No. 49 of 2010 was based on investigation conducted and supervision made in Ara Muffasil P.S. Case No. 39 of 2010, he rejected the application for discharge on the ground that there is sufficient material on record against the

petitioners for putting them on trial and the charges levelled against them do not appear to be groundless.

9. In the background of the facts mentioned above, learned counsel for the petitioners has submitted that the institution of Ara Muffasil P.S.Case No. 49 of 2010 was not permissible in law. It is submitted that once after investigation the police came to the conclusion that the allegations made in Ara Muffasil P.S.Case No. 39 of 2010 was false, it ought to have submitted final report against the accused persons and charge-sheeted the accused persons, who were guilty of planting a false story but under no circumstance a separate case could have been instituted. The further contention is that while further investigation is permissible under section 173(8) Cr.P.C., no fresh investigation or re-investigation can be made by the police upon registration of another FIR with regard to the same occurrence. According to him, there is nothing in the Cr.P.C. which prevents the police from submitting charge sheet against the informant of the case on whose information the FIR was initially instituted or anyone else, as in course of investigation the duty of the police is to find out who the actual culprits are and to bring them to book and not to multiply cases relating to the same occurrence.

10. Learned counsel for the petitioners has further contended that the language of the FIR of Ara Muffasil P.S.Case No. 49 of 2010



would itself make it evident that during the course of investigation of Ara Muffasil P.S.Case No. 39 of 2010, the police came to a finding that it was the petitioners, who had actually beaten up the accused Pankaj Kumar Singh @ Guddu and they gave their own pistol and cartridges to the village Chowkidar making false allegation of recovery of the same from Pankaj Kumar Singh @ Guddu. Thus, there was nothing left to be investigated by the police and the institution of Ara Muffasil P.S.Case No. 49 of 2010 would amount to institution of an FIR for the purposes of re-investigation or fresh investigation of the case.

11. Per contra, learned counsel for the State has submitted that to hold investigation into a cognizable offence is the statutory right of the police. The allegations made in the FIR of Ara Muffasil P.S.Case No. 49 of 2010 do attract the ingredients of the offences punishable under sections 25(1-B)(a), 26 and 35 of the Arms Act and as such there was no fetter on the powers of the police to institute FIR and investigate the same. According to him, the principle of sameness would not apply to the facts of the present case as in the first case the allegation was that the recovery of country made pistol and two .315 bore cartridges was made from the possession of Pankaj Kumar Singh @ Guddu, but in the present case, the allegation is that actually the country made pistol and the cartridges belong to the petitioners. He

has submitted that the allegations made in the FIR were found true in course of investigation and accordingly the police submitted charge sheet in the case. The materials collected in course of investigation are sufficient to put the petitioners on trial and the charges leveled against them do not appear to be groundless.

12. I have heard the respective counsel for the parties and with their assistance perused the record.

13. In order to examine the legal issue raised in this case, it would be appropriate to consider the relevant provisions of Cr.P.C. first.

14. Section 154 Cr.P.C. places a duty upon the Officer-in-Charge of the Police Station to register an FIR upon receipt of information about a cognizable offence. It is a settled principle of law that two F.I.Rs. can not be registered for the same offence. The safeguard provided under the Cr.P.C. against institution of the second FIR is based on the principle akin to that of double jeopardy, rule of fair investigation and prevention of abuse of power by the investigating authority of the police. The possibility that more than one piece of information is given to the Officer-in-Charge of a Police Station in respect of the same incident involved in one or more than one cognizable offence cannot be ruled out. Under such circumstances, only the earliest or the first information with regard to



the commission of a cognizable offence would satisfy the requirement of section 154 Cr.P.C. and all other materials and information given to or received otherwise by the Investigating Officer would be the statements covered under section 162 Cr.P.C. However, a second FIR may be validly instituted in certain circumstances such as : (a) where the incidents are separate and independent, or (b) where the offences, whether they may be similar or different, are committed in course of single incident, or (c) where the subsequent offence is of such a magnitude that it does not fall within the ambit and scope of the FIR recorded first. On coming to know about the commission of a cognizable offence, it is the duty of the Investigating Officer to commence investigation as provided under section 156 or 157 Cr.P.C. On completion of investigation and on the basis of evidence collected, the Investigating Officer has to form an opinion under section 169 or 170 Cr.P.C. and forward his report to the Magistrate concerned under section 173(2) Cr.P.C. Even after filing of such report, if he comes into possession of further information or material, there is no need to register a fresh FIR. He is empowered to make further investigation in terms of section 173(8) Cr.P.C. and submit a supplementary report to the Magistrate notwithstanding that the Magistrate has taken cognizance of the offence upon a police report submitted earlier.

15. The matter as to whether there exists sufficient and valid



ground for further investigation is entirely for consideration of the Investigating Officer. The law is also well settled that there can be no second FIR, and secondly, 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 offence.

16. In *Ram Lal Narang Vs. State (Delhi Administration)* [(1979) 2 SCC 322], in paragraph 20, the Supreme Court held as under :-

“20. 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 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”.

17. While acknowledging the power of the police authorities to carry out investigation in terms of section 173 Cr.P.C., in **Ram Lal Narang** (*supra*), in paragraph 21, the Supreme Court observed as under :-

“21. 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.”

18. In **K. Chandrasekhar Vs. State of Kerala & Ors.** [1998(5) SCC 223] the Supreme Court took into consideration the scope and ambit of section 173(2) and 173(8) of the Code and observed, inter alia, in paragraph 24 as under :-

“24.The dictionary meaning of “further” (when used as an adjective) is “additional; more; supplemental”. “Further” investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that sub section (8) clearly envisages that on completion of further investigation the investigating agency has to

forward to the Magistrate a “further” report or reports – and not fresh report or reports – regarding the “further” evidence obtained during such investigation.”

19. In *Mithabhai Pashabhai Patel and Others Vs. State of Gujarat [(2009) 6 SCC 332]*, in paragraph 13, the Supreme Court has observed as under :-

“13. It is, however, beyond any cavil that “further investigation” and “reinvestigation” stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a “State” to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction.”

20. In *Anju Chaudhary Vs. State of U.P. & Anr. [(2013) 6 SCC 384]*, in paragraphs 41 and 42, the Supreme Court held as under :-

“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".

21. It is, thus, obvious from the law laid down by the Supreme Court that in order to examine the impact of one or more FIRs the court has to rationalize 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 or are in regard to incident which are two or more parts of the same transaction or relate completely to two different occurrences. There cannot be a 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. However, the Supreme Court has clearly held that 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.

22. The Supreme Court considered the permissibility of institution of second FIR in great detail in ***Amitbhai Anilchandra Shah Vs. CBI [(2013) 6 SCC 348]***. While deciding the case of Amitbhai Anilchandra Shah, the Supreme Court considered its earlier decisions in (2013) 6 SCC 384 : Anju Chaudhary Vs. State of U.P., (2013) 5 SCC 148 : Surender Kaushik Vs. State of U.P., (2011) 5 SCC 79 : Narmada Bai Vs. State of Gujarat, (2010) 14 SCC 444 : Chirra Shivraj Vs. State of A.P., (2010) 12 SCC 254 : Babubhai Vs. State of Gujarat, (2010) 9 SCC 567 : C. Muniappan Vs. State of T.N., (2010) 2 SCC 200 : Rubabbuddin Sheikh Vs. State of Gujarat, WP(Crl.) No.6 of 2007, order dated 12.08.2010 (SC) Rubabbuddin Sheikh Vs. State of Gujarat, (2009) 1 SCC 441 : Nirmal Singh Kahlon Vs. State of Punjab, (2004) 13 SCC 292 : Upkar Singh Vs. Ved Prakash, (2002) 1 SCC 714 : Kari Choudhary Vs. Sita Devi, (2001) 6 SCC 181 : T.T.Antony Vs. State of Kerala, (1979) 2 SCC 322 : Ram Lal Narang Vs. State (Delhi), AIR 1963 SC 1850 : State of A.P. Vs. Cheemalapati, AIR 1961 SC 1241 : State of A.P. Vs. Kandimalla, and AIR 1957 SC 340 : Swamirathnam Vs. State of Madras. The Court summarized its conclusions in paragraphs 58 to 60, which read as under :-

“58. As against this, Mr. Mahesh Jethmalani, learned senior counsel for the petitioner



submitted that the CBI is not faced with any prejudice which is to be caused to it, if the relief as prayed for by the petitioner is granted. Admittedly, the petitioner is not praying for quashing of the charge sheet dated 04.09.2012. During the course of argument, when this Court specifically put a question to learned ASG appearing for the CBI as to what prejudice would be caused to the CBI if instead of treating the charge sheet dated 04.09.2012 to be fresh and independent charge sheet, the same will be treated as a supplementary charge sheet in the first charge sheet, there was no definite answer as to what prejudice would be caused to the CBI. For the sake of repetition, it is relevant to mention that in our order dated 08.04.2011 in *Narmada Bai (supra)*, while disposing of the said writ petition, this Court directed the CBI to take up the investigation as prayed accepting their contention that killing of Tulsiram Prajapati is a part of the same series of acts in which Sohrabuddin and Kausarbi were killed and, therefore, Tulsiram Prajapati encounter should also be investigated by the CBI. Accepting the above assertion of the CBI, this Court directed to complete the investigation within six months.

Summary:

58.1. This Court accepting the plea of the CBI in *Narmada Bai (supra)* that killing of Tulsiram Prajapati is part of the same series of cognizable offence forming part of the first FIR directed the CBI to “take over” the investigation and did not grant the relief prayed for i.e., registration of a fresh FIR. Accordingly, filing of a fresh FIR by the CBI is contrary to various decisions of this Court.

58.2. The various provisions of the Code of Criminal Procedure clearly show that an officer-in-charge of a police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the First Information Report, on coming to know of the commission of cognizable offence. On

completion of investigation and on the basis of evidence collected, Investigating Officer has to form an opinion under Section 169 or 170 of the Code and forward his report to the concerned Magistrate under Section 173(2) of the Code.

58.3. Even after filing of such a report, if he comes into possession of further information or material, there is no need to 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 which is evident from sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. 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.

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. 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 25/26.11.2005. 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.

58.7. For vivid understanding, let us consider a situation in which Mr. ‘A’ having killed ‘B’ with the aid of ‘C’, informs the police that unknown persons killed ‘B’. During investigation, it revealed that ‘A’ was the real culprit and ‘D’ abetted ‘A’ to commit the murder. As a result, the police officer files the charge sheet under Section 173(2) of the Code with the Magistrate. Although, in due course, it was discovered through further investigation that the person who abetted Mr. ‘A’ was ‘C’ and not ‘D’ as mentioned in the charge sheet filed under Section 173 of the Code. In such a scenario,

uncovering of the later fact that 'C' is the real abettor will not demand a second FIR rather a supplementary charge sheet under section 173(8) of the Code will serve the purpose.

58.8 Likewise, in the case on hand, initially the CBI took a stand that the third person accompanying Sohrabbuddin and Kausarbi was Kalimuddin. However, with the aid of further investigation, it unveiled that the third person was Tulsiram Prajapati. Therefore, only as a result of further investigation, the CBI has gathered the information that the third person was Tulsiram Prajapati. Thus a second FIR in the given facts and circumstances is unwarranted; instead filing of a supplementary charge sheet in this regard will suffice the issue.

58.9. Administering criminal justice is a two-end process, where guarding the ensured rights of the accused under Constitution is as imperative as ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the court of law to protect and shield the rights of both. Thus, a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. Accordingly, 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. As a consequence, in our view this is a fit case for quashing the second F.I.R to meet the ends of justice.

58.10. The investigating officers are the kingpins in the criminal justice system. Their reliable investigation is the leading step towards affirming complete justice to the victims of the case. Hence they are bestowed with dual duties i.e. to investigate the matter exhaustively and

subsequently collect reliable evidences to establish the same.

Conclusion:

59. In the light of the specific stand taken by the CBI before this Court in the earlier proceedings by way of assertion in the form of counter affidavit, status reports, etc. we are of the view that filing of the second FIR and fresh charge sheet is violative of fundamental rights under Article 14, 20 and 21 of the Constitution since the same relate to alleged offence in respect of which an FIR had already been filed and the court has taken cognizance. This Court categorically accepted the CBI's plea that killing of Tulsiram Prajapati is a part of the same series of cognizable offence forming part of the first FIR and in spite of the fact that this Court directed the CBI to "take over" the investigation and did not grant the relief as prayed, namely, registration of fresh FIR, the present action of CBI filing fresh FIR is contrary to various judicial pronouncements which is demonstrated in the earlier part of our judgment.

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 Writ Petition (Criminal) No. 115 of 2009 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.”

23. Regard being had to the law laid down by the Supreme Court in the decisions cited above, when I look at the facts of the present case, I find that the implication of Pankaj Kumar Singh @ Guddu in a false case of recovery of illegal pistol and cartridges had already been investigated by the police in Ara Muffasil P.S.Case No. 39 of 2010. The Investigating Officer and the Supervising Officer had also come to a conclusion in the said case that it was the petitioners, who were responsible for planting a false story of recovery of country made pistol and cartridges against Pankaj Kumar Singh @ Guddu. The investigating agency had also come to a conclusion that the pistol and cartridges produced and seized in Ara Muffasil P.S.Case No.39 of 2010 belong to the petitioners. If that was the outcome of investigation in Ara Muffasil P.S.Case No. 39 of 2010, there was no occasion for the police to register a fresh FIR and reinvestigate the case inasmuch as fresh investigation or reinvestigation is beyond the jurisdiction of the police. Even if it is presumed that there was need for further investigation of the case, the police would have resorted to the powers conferred under section 173(8) Cr.P.C. and investigated the case further instead of instituting a fresh case.

24. As noted above, further investigation is continuation of earlier investigation and, as such, permissible in law, but fresh

investigation or reinvestigation is not permissible. If law prohibits reinvestigation or *de novo* investigation by the investigating agency on its own, in my considered opinion, the same cannot be permitted merely by registering another FIR with regard to the same occurrence.

25. While saying so, I am conscious of the fact that a counter case giving two different versions in respect of the same occurrence can always give rise to institution of two separate FIRs. In such a case both the FIRs shall be permissible in law. However, in the present case, there is a counter case bearing Ara Muffasil P.S.Case No. 40 of 2010 in respect of the same occurrence but in that case the informant Pankaj Kumar Singh @ Guddu has not stated a word against the petitioners in respect of planting of pistol and cartridges or fabrication of false story of recovery of pistol and cartridges from his possession. The allegations made in the second FIR i.e. Ara Muffasil P.S.Case No. 49 of 2010 are, as a matter of fact, no more than the result of investigation of the first case itself. Thus, I find that both the FIRs i.e. Ara Muffasil P.S.Case No. 39 of 2010 and Ara Muffasil P.S.Case No. 40 of 2010 relate to the same occurrence. The issue involved in both the FIRs is recovery of one country made pistol and two .315 bore cartridges. The petitioner no.1 Madan Rai had already reported about the recovery of the pistol and cartridges in question to the police for which investigation was carried on. If the police came to the

conclusion after investigation and supervision that the story was false and the pistol and the cartridges belonged to the petitioners, the charge sheet should have been submitted against them exonerating the original accused under the Arms Act in Ara Muffasil P.S.Case No. 39 of 2010 itself instead of filing a fresh FIR.

26. In view of the above discussions and conclusions, the second FIR bearing Ara Muffasil P.S.Case No. 49 of 2010 dated 22.03.2010 filed by the S.H.O. Lal Bihari Paswan was not permissible in law. Though the case has reached the stage of framing of charge, in my opinion, the same would make no difference to the fate of the case. If the FIR itself was not permissible, the petitioners cannot be put on trial in the case arising out of Ara Muffasil P.S.Case No.49 of 2010. In that view of the matter, the impugned order dated 01.10.2012 passed by the learned Judicial Magistrate 1st Class, Ara is set aside. The petitioners are discharged from Ara Muffasil P.S.Case No. 49 of 2010.

27. However, in view of the law laid down by the Supreme Court in *Amitbhai Anilchandra Shah* (Supra), the charge sheet filed on 31st July, 2010 in Ara Muffasil P.S.Case No. 49 of 2010 shall be treated as a further report in the first FIR i.e. Ara Muffasil P.S.Case No. 39 of 2010. The entire record of Ara Muffasil P.S.Case No. 49 of 2010 will form part of the record of Ara Muffasil P.S.Case No. 39 of

2010.

28. It has been stated at the bar that in view of the final form submitted in Ara Muffasil P.S.Case No. 39 of 2010, the Magistrate concerned has dropped the proceedings of Ara Muffasil P.S.Case No. 39 of 2010.

29. Be that as it may, the Magistrate concerned shall consider the charge sheet dated 31st July, 2010 filed in Ara Muffasil P.S.Case No. 49 of 2010 as further report in Ara Muffasil P.S.Case No. 39 of 2010 in terms of section 173(8) Cr.P.C. and pass appropriate orders in accordance with law. It is made clear that while passing the order, the Magistrate concerned shall not be prejudiced in any manner by any observations made by this Court in the present case or the orders passed by the Magistrate concerned in Ara Muffasil P.S.Case No. 49 of 2010.

30. The application is allowed with the aforesaid observations and directions.

(Ashwani Kumar Singh, J)

Pradeep/-

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