

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3753/2014

- 1] Shri Jayant Ramrao Rohmare
Age 41 years, Occ-Contractor
- 2] Shri Sachin S/o Ramrao Rohmare
Age 39 years, Occ-Agriculture and
Social Worker
- 3] Shri Shubham s/o Sanjay Rohmare
Age 24 years, Occ-Student

All R/o Pohegaon, Tq.Kopargaon
Dist.Ahmednagar.

..PETITIONERS

Versus

- 1] The State of Maharashtra
Through Incharge Police Station
Shirdi, Tal. Rahata
Dist.Ahmednagar
- 2] Shri Amol s/o Bhausahab Autade
Age 33 years, Occ-Agriculturist,
R/o Pohegaon,
Tal.Kopargaon,
Dist.Ahmednagar.

..RESPONDENTS

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Mr.V.D.Sapkal h/f Mr.Sandeep Gorde Patil,Adv. for petitioners
Mr.S.A.Ambad ,APP for Respondent no.1 State
Mr.N.V.Gavare h/f Mr.S.N.Patil,Adv. For respondent no.2.

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CORAM:S.S.SHINDE & V.L.ACHLIYA,JJ.

DECIDED ON : 5th March, 2015.

ORDER [V.L.ACHLIYA,J.] :

The petitioners have filed this application u/s 482 of Cr.P.C. with relief to quash FIR No.104/2014 registered against them on 28/6/2014 with Police Station, Shirdi, Dist.Ahmednagar mainly on the ground that the registration of IInd FIR is not permissible under law in respect of same incident.

2] Before advertng to appreciate the rival contentions, it is necessary to consider in brief the facts leading to registration of two FIRs relating to same incident.

3] The subject matter of this application filed for quashing U/s 482 of Cr.P.C. are the registration of two first information reports i.e. C.R.101/2014 and C.R. No. 104/2014 registered with Police Station Shirdi, District- Ahmednagar on 28/06/2014.

Undisputedly both the First Information Reports relates to same incident which was occurred on 27/06/2014 at about 22.30 hours in front of Khondba Mandir at village Pohegaon Tq.- Kopargaon, Dist.- Ahmednagar.

4] The C.R. No. 101/2014, which is claimed to be registered First in time was lodged by Police Naik, Suresh Auti, posted at outpost of Police Station Shirdi at Pohegaon. On 28/06/2014, he visited Police Station, Shirdi and reported the incident which was occurred on 27/06/2014 at about 22.30 hours. In his oral report which was reduced into writing reported that on 27/06/2014 at about 22.30 hours, while he was on patrolling duty at village Pohegaon, the incident in question was occurred. On account of labours employed at the construction site of Pohegaon Vividh Karyakari Society the quarrel had taken place in between [1] Nitin Bhanudas Autade [2] Ravi Changdev Autade [3] Amol Bhanudas Autade [4] Sunil Bhanudas Autade [5] Pramod Autade the petitioners on one side and Jayant Ramrao Rohmare, Sachin Rohmare., Raju Rohmare and Appa Rohmare and two other persons on other side. They abused each other. Lateron they assaulted each other by means of stick and iron rod. They assaulted each other by means of sticks and iron rod and also

pelted stone on each other. In that incident Nitin Autade, Jayant Rohmare and Sachin Rohmare sustained minor injuries. He has further reported that in that incident Jayant Rohmare fired three bullets in air from his licenced revolver in self defence. Thereafter the mob was dispersed. He immediately informed about the incident to Police Station, Shirdi. Thereafter Police Inspector, Shirdi reached on the spot with striking force. On the basis of report lodged by police Naik Auti, the offences U/s 143,147,148,336,337 of IPC and Section 37 (1)(3) of Bombay Police Act registered vide C.R. No.101/2014 as against aforesaid ten persons.

5] The C.R.No. 104/2014 relating to same incident was registered on 28/06/2014 on the basis of statement of Amol Bhausahab Autade the respondent No. 2, recorded by Shri Ambad, Sub-Police Inspector attached to Police station, Nashik while the respondent no.2 was lying admitted in Hospital at Nashik. The Respondent No. 2/ the complainant has narrated in his statement that the incident was occurred on 27/06/2014 at about 10.30 A.M. in front of Khandoba Mandir. He has stated in his complainant that on

27/06/2014 at about 10.30 P.M. , while he was returning to Pohegaon from Kopargaon he saw mob of about 25 to 30 persons gathered in front of Khandoba Mandir. Therefore, he went there to see as to why the mob has gathered. On reaching there, he saw the quarrel in between his cousin brothers viz. Nitin Autade, Amol Autade and nephew Sunil Autade on one side and Sachin Ramrao Rohmare, Jayant Ramrao Rohmare and Shubham Rohmare on other side, on account of labours employed at construction site of Vividh Karyakari Society, Pohegaon who were suspected to be indulging into the committing theft in the village. In that incident the petitioner started abusing his cousin brothers and nephew and then assaulted them. In that incident, all of sudden Sachin Rohmare took out the revolver which was lying tagged to his waist and fired towards his cousin brother Nitin Autade. The bullet fired hit on his left thigh. Jayant Rohmare assaulted his cousin Nitin over his head with sword. When he went ahead and tried to rescue his cousin Nitin, the accused Shubham Rohmare assaulted him over his head with wooden log. He removed his cousin brother Nitin from spot in Maruti Swift Car and brought him to Hospital of Dr. Mule at

Kopargaon. Dr.Mule advised him to immediately take Nitin for treatment to Nashik. He therefore, brought Nitin to Nashik and got him admitted in Ashwini Hospital at Nashik at about 02.00 hours on 28/06/2014. Since he has also sustained injury over his head he was also admitted in Hospital for treatment. On the basis of said statement of Respondent No. 2 recorded at Nashik and forwarded to Police Station Shirdi, within whose jurisdiction the cognizable offence was committed, the Police Inspector, Shirdi registered offence U/s 307,323,504,526 of I.P.C. and Section 3 R/w 25, 4/25 and Section 30 of Indian Arms Act as against the petitioners. The registration of said F.I.R. is the subject matter of challenge in the present Criminal Application.

6] We have heard Mr. V.D. Sapkal the learned counsel appearing for the petitioners as well as Mr. N.V. Gavare the learned counsel appearing for respondent No. 2 and the learned Additional Public Prosecutor for the State and further perused the contents of both the FIRs.

7] Mr. Sapkal the learned counsel for the petitioners by referring the contents of both the FIRs, strenuously

contended that FIR No. 104/2014 being second FIR relating to same incident in respect of which the police have already registered offence vide FIR No. 101/2014, the same is not maintainable in law. It is further contended that FIR No. 104/2014 has been lodged by respondent No.2 after due deliberation and that too with a malafide intention to subject the petitioners to suffer rigours of investigation and prosecution twice for same offence. He has further argued that the FIR which was lodged first in time was not lodged by the petitioners or any member from their family but same has been lodged by independent person i.e. the police constable Sudhakar Auti. Therefore the truthfulness of F.I.R. lodged first in time cannot be doubted. In the FIR lodged, it is specifically mentioned that the petitioner No. 2 has fired shots from revolver in air that too in his self defence. Complainant has not stated anything about the shot being fired aiming Nitin Autade or bullet injury being caused to any person present on the spot of incident. So also the complainant/police constable has also not disclosed anything about the assault being made with sword. It is pointed out that Nitin Rohmare petitioner shown to be admitted in the

Hospital of Dr. Girish Autade, who is closely related with respondent No.2. According to him, in natural course after sustaining bullet injury the injured was expected to be taken nearby Civil Hospital. But the injured was shown to be admitted in Hospital at Nashik. It is therefore, contended that the second FIR is nothing but improved version of the incident dated 27/06/2014 made after due deliberations to rope in petitioners in a case involving commission of serious offences. He has further contended that the alleged statement of respondent No. 2 which has been treated as FIR No. 104/2014 ought to have been treated as statement recorded under Section 162 of Cr.P.C. during the course of investigation of FIR No. 101/2014. The learned counsel has submitted that as per the well settled position in law, the second FIR is not maintainable relating to same incident and in support of this contention, the learned counsel has referred and relied upon the decisions of the Apex Court in the case of **T.T. Anthony v/s State of Kerala 2001 Cr.L.J 3329, Amit Bhai Anilchandra Shah v/s CBI and another reported (2013) 6 SCC 348 and the decision of the High**

Court of Andhra Pradesh in the case of Akbaruddin Owaisi v/s The Government of Andhra Pradesh and others reported in 2014 CRI. LJ 2199 as well as unreported decision of this Court in Writ Petition No. 1234/2013 decided on 07/08/2014.

8] On the other hand, Mr. N.V. Gavare, the learned counsel representing respondent No. 2, by referring the contents of both the FIRs strenuously contended that the FIR No. 104/2014 can not be termed as second FIR. According to him FIR No. 104/2014 is an independent and substantive FIR lodged by person disclosing the cognizable offence though in respect of the same incident but giving different version relating to same incident. According to him registration of such FIR is not barred under any provisions of law. By inviting our attention to the contents of both the FIRs, the learned counsel has pointed out that the contents of both the FIRs are altogether different and provides two different versions though relating to same incident. The learned counsel has submitted that the FIR which was registered first

in time was not based upon true and correct version of the incident. It is pointed out that although the incident was occurred at 10.30 P.M. on 27/06/2014 and the police constable Sudhakar Auti the complainant in FIR No. 101/2014 has claimed that he immediately reached on the spot and witnessed the incident, still the complaint in respect of said incident was lodged on 28/06/2014 at 8.30 A.M. i.e. after about ten hours after the incident.

9] The learned counsel has further pointed out that in the complaint the complainant has mentioned that petitioner No. 2 has fired three shots from revolver in air in self-defence. The learned counsel has argued that the shots fired from revolver were in self-defence or otherwise can be matter of investigation or defence of a person in criminal trial. The learned counsel has further pointed out that the complainant has mentioned in the FIR that the respondent No.2 was holding licensed revolver. It is therefore contended that the FIR lodged by respondent No. 2 can not be treated as a complaint lodged by independent person and that too giving true and correct account of incident. The delay and manner

in which the FIR was lodged by the complainant clearly reflects that deliberate attempt has been made to exonerate certain persons from a particular group and to implicate the persons from other group. He has therefore, contended that the complainant who lodged F.I.R. cannot be termed as fair and independent person. The manner in which the FIR No. 101/2014 was lodged also leads to draw inference that the same was lodged after due deliberation with petitioners and at their instance. On the contrary, the FIR lodged by respondent No. 2 i.e. C.R.No.104/2014 provides true and correct account of the incident as same is supported by injuries which were found on the person of Nitin Autade and others who were admitted in Hospital at Nashik. The certificate of injury prima facie supports the complaint filed by complainant. Only for the reason that the injured was admitted in Hospital at Nashik can not be treated as circumstance to accept the contention of petitioners that the false and forged record in respect of injury has been created in connivance with the Doctor from Hospital at Nashik. By referring the various decisions of the Apex Court on the issue, the learned counsel has submitted that as per settled position in law though it is

a rule that successive FIRs relating to same incident are not permissible but there are certain exceptions to rule in general, which recognizes the registration and investigation of second or successful FIR though relating to same incident but giving different versions relating to same incident. In support of this contention, the learned counsel has referred and relied upon the judgments of Apex Court in the case of **Upkar Singh v/s Ved Prakash reported in 2004 (13) SCC 292, Surender Kaushik and others v/s State of Uttar Pradesh and others reported in 2013 (5) SCC 148, Kari Choudhary v/s Sita Devi reported in 2002 (1) SCC 714 and Ram Lal Narang Om Prakash Narang v/s State (Delhi Administration) reported in 1979 (2) SCC 322.**

10] Mr. N.V. Gavare the learned counsel for the respondent has further argued that the present case is not a fit case wherein Court is expected to invoke its inherent powers under section 482 of Cr.P.C. By referring the decisions of Apex Court in the case of **Gorige Pentaiah v/s State of Andhra Pradesh and others reported in (2008)12 SCC 531,**

and of Som Mittal v/s Government of Karnataka reported in 2008 (3) SCC 574 the learned counsel has strenuously contended that it is well settled position in law that powers under Section 482 of Cr.P.C. should not be exercised as of routine but same are to be exercised sparingly, carefully and with great caution and that too if the Court is fully satisfied that in order to prevent the abuse of process of law leading to injustice or where Court feels it expedient under the facts and circumstances of the case to exercise such powers.

11] We have carefully considered the submission advanced as well as various decisions referred and relied by learned counsel for respective parties in light of contents of both the First Information Reports. The fact is not in dispute that both the FIRs are registered in respect of the same incident and same were registered on next day of the incident. The FIR No. 101/20114 was registered on 28/06/2014 at 8.15 A.M. on the basis of report lodged by police constable Sudhakar Auti. On the basis of which the offences under Sections 143,147,148,149,336,337 of IPC and Section 37(1)(3) of

Bombay Police Act came to be registered as against ten persons which includes the petitioner Nos. 1 to 3. In said FIR five members each from the group of petitioners and respondent are shown as accused involved in commission of offence. The FIR No. 104/2014 relating to same incident, has been registered on 28/06/2014 at 8.15 p.m. on the basis of oral statement of Amol Bhausahab Autade i.e. respondent no.2 recorded on 28/6/2014 in Hospital at Nashik and subsequently transmitted to Police Station, Shirdi. On the basis of said statement/complaint police have registered offence under sections 307,326,504,526 of IPC and under Section 3 read with section 25 and 30 of Arms Act as against the petitioners.

12] The pertinent question which falls for our consideration is whether under the facts and circumstances of the case in hand two FIRs though lodged in respect of the same incident are permissible under law. In short, it is the contention of learned counsel for the petitioners that as per the law laid down by Apex Court in the case of **T.T. Anthony** (cited

supra) the second FIR in respect of same incident is not permissible in law. According to him the only exception to the general rule is an exception in the form of counter case. It is further contention of the learned counsel for petitioner that the decision in **T.T. Anthony's** case has been consistently followed in all the subsequent pronouncements made on this issue. The learned counsel has further submitted that in the latest case decided by Apex Court in the case of **Amit Bhai Shah v/s CBI**, the Apex Court has considered all the earlier pronouncements on this issue, which includes the decisions referred and relied by the learned counsel for respondent No. 2 and after considering these decisions the Apex Court has observed that the declaration of law laid down in **Anthony's case** has not been diluted in any subsequent judicial pronouncements. It is therefore contended that as FIR No.104/2014 being a second FIR filed in respect of same incident, is not maintainable in law as it amounts to second FIR in respect of same incident. The learned counsel has further submitted that the statement of respondent No. 2 recorded in hospital at Nashik should

have been treated as statement made under section 162 of Cr.P.C. and not the substantive F.I.R. According to him, the registration of FIR being a step in aid of investigation, the other version of incident given by respondent No. 2 can be investigated while conducting investigation of C.R.No.101/2014 and based upon the outcome of such investigation, police can file charge-sheet. According to him, the registration of FIR No.104/2014 being IInd F.I.R. in respect of same incident, same is impermissible under the law.

13] On the other hand the learned counsel for respondent No.2 by referring the decision in the case of **Amit Bhai Shah** has pointed out that none of the earlier decisions of Apex Court recognizing the registration of second FIR based upon same incident has been over-ruled. On the contrary, the Apex Court after considering the earlier judicial pronouncements on the issue held to be laying down correct proposition of law.

14] We are not inclined to accept the contention of learned counsel for the petitioners that the law recognizes counter case in the form of complaint as only exception carved out to rule in general that second FIR is not permissible under law. In the case of **Akbaruddin Owaisi** cited by learned counsel for the petitioner, the High Court has examined all the earlier cases decided by Apex Court, wherein the rule against registration of two FIRs in respect of same incident did not apply. In Para 21 of the judgment the Court has discussed and list out all such pronouncements made on this issue, by Apex Court, which reads as under :-

CASES WHERE THE RULE AGAINST
REGISTRATION OF TWO FIRS FOR THE SAME
OCCURRENCE/INCIDENT WILL NOT APPLY.

21] The submission of Sri S. Sriram, Learned Counsel, that T.T.Antony, (2001 Cri L.J. 3329) is a fact based judgment, and the principle laid down therein cannot be said to be the “law“ for the proposition of a bar on registration of multiple FIRs irrespective of the facts of each case, does not merit acceptance as the declaration of law, in T.T.Antony), has not been diluted in any subsequent judgments of the Supreme Court even though exceptions have been carved out. (Amitbhai Anil Chandra Shah, (2013 Cri L.J. 2313). The rule, that any further complaint against the same accused for the same incident, subsequent to the registration of a case is

prohibited under the Cr.P.C., will not apply :-

“[i] in case the FIRs are not in respect of the same cognizable offence or the same occurrence giving rise to one or more cognizable offences nor are they alleged to have been committed in the course of the same transaction or the same occurrence as the one alleged in the first FIR. (Rameshchandra Nandlal Parikh v. State of Gujarat (2006) 1 SCC 732) : (2006 Cri LJ 964).

[ii] where the incident is separate and the offences are similar or different, or whether the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first. (Anju Chaudhary v. State of Uttar Pradesh : (2013) Cri.L.J. 776 (SC).

[iii] where several distinct offences/incidents have been reported. In such a case the investigating agency should issue separate FIRs under Section 154 (1) Cr.P.C. (M/s. Jagathi Publications Ltd. Rep. By Y. Eshwara Prasad Reddy v. Central Bureau of Investigation : 2012 (2) ALD (Cri) 762)

[iv] to cryptic, anonymous or oral messages which do not clearly specify a cognizable offence and cannot be treated as an FIR. No exception can be taken if, upon receipt is proper information, another detailed FIR is recorded, and the detailed FIR is treated as the FIR. (Tapinder Singh v. State of Punjab (1970) 2 SCC 113 : (1970 Cri LJ 1415); Vikram v. State of Maharashtra (2007) 12 SCC 332) : (2007 Crj LJ 3193).

[v] where, for an earlier period, there was an FIR which was duly investigated into and culminated in a final report which was accepted by a Competent Court. (M. Krishna v. State of Karnataka ((1999) 3 SCC 247: AIR 1999 SC 1765) : (1999 Crj LJ 2583).

[vi] where the earlier complaint was decided on insufficient material or was passed without understanding the nature of the complaint, or where 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. In such cases the test of full consideration of the complaints on merits must be applied. (Shiv Shankar Singh v. State of Bihar [(2012) 1 SCC 130).

[vii] in cases where there are different versions, they are in respect of two different incidents/crimes, and when new discovery is made on factual foundations. Discoveries may be made by the police authorities at a subsequent stage and can also surface in another proceeding. (Nirmal Singh Kahlon v. Stat of Punjab: (2009) 1 SCC 441 : (2009 Cri LJ 958); Babubahi v. State of Gujarat : (2010) 12 SCC 254) : (2010 AIR SCW 5126).

[viii] even in cases where the first complaint is registered and investigation initiated, it is possible to file a further complaint based on the material gathered during the course of investigation. (Upkar Singh v. Ved Prakash (2004) 13 SCC 292 : AIR 2004 SC 4320 : (2004 Cri.L.J. 4219); Ram Lal Narang v. State (Delhi Administration) (1979 CriLJ 1346) : (1979) 2 SCC 322).

[ix] where two FIRs are lodged in respect of the same incident having materially different allegations of commission of different cognizable offences. (T.T. Anthony v. State of Kerala (2001 CriLJ 3329 : (2001) 6 SCC 181; Upkar Singh v. Ved Prakash (2004) 13 SCC 292 : AIR 2004 SC 4320) : (2004 Cri LJ 4219).

[x] to a counter claim by the accused in the first complaint, or on his behalf, alleging a different

version of the said incident. In case there are rival versions in respect of the same episode, it would be treated as two different FIRs and investigation can be carried under both of them by the same investigating agency. (Upkar Singh v. Ved Prakash (2004) 13 SCC 292 : (2004 Cri LJ 4219); Kari Choudhary v. Most. Sita Devi : (2002) 1 SCC 714 : AIR 2002 SC 441) : (2002 Cri LJ 923); Ashok Kumar Tiwari v. State of U.P. (2008 CriLJ 4668 (Allahabad High Court)).

[xi] where the FIRs are regarding independent and distinct offences, registration of a subsequent FIR cannot be prohibited on the ground that some other FIR had been filed against the petitioner in respect of other allegations made against him. (Rameshchandra Nandlal Parikh V. State of Gujarat, (2006) 1 SCC 732) : (2006) Cri LJ 964).

(xii) in cases where the same group of people commit offences in a similar manner in different localities falling under different jurisdictions. Even if these incidents are committed in close proximity of time, there can be separate FIRs. (Anju Chaudhary v.s State of Uttar Pradesh : (2013) Cri.L.J. 776).

15] Thus, if we consider the various pronouncements of Apex Court referred above in **Akbaruddin Owaisi Versus Government of Andhra Pradesh**, providing an exception to rule in general that second FIR is not permissible then the Apex Court has not confined such categories of cases to

cases by way of counter case only. The applicability of rule in general that second FIR is not permissible based upon same incident has to be applied depending upon the facts of each case. The registration of more than one FIR lodged in respect of same incident having materially different allegations of commission of different cognizable offence has been recognized in law as a counter complaint.

16] In the case of **Upkar Singh v/s Ved Prakash**, (supra) three Judge, Bench of Apex Court has specifically examined the same issue in the light of decision in the case of **T.T. Anthony** and observed that even if we consider the decision in the case of **T.T. Anthony** then said decision itself not provides absolute bar from registration of second FIR relating to same incident but based upon different version relating to same incident. In fact the correctness of the Judgment in the case of **T.T, Antony v/s State of Kerala** was examined by larger Bench of Apex Court in **Upkar Singh's case**. After examining the decision in **T.T. Anthony's** case the Apex Court has recorded its observations in para 16 of the

judgment, which reads as under :

“16] Having carefully gone through the above judgment, we do not think that this Court in the said case of **T.T.Antony v. State of Kerala & Ors.** has precluded an aggrieved person from filing a counter case as in the present case. This is clear from the observations made by this Court in the above said case of T.T.Antony v. State of Kerala & Ors in paragraph 27 of the judgment wherein while discussing the scope of Sections 154, 156 and 173(2) Cr.P.C. this is what the Court observed :

“In our view a case of fresh investigation based on the second or successive FIRs not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 of Cr.P.C. or under Articles 226/227 of the Constitution.”

17] Thus after considering the decision in **T.T. Anthony's** case in **Upkar Singh** case the Apex Court has observed that the decision in **T.T. Anthony's** case itself has not excluded the registration of complaint in the nature of counter case from the purview of the criminal procedure code. The Court has further observed that what has been prohibited under **T.T. Anthony's** case is the further complaint by same

complainant or others against same accused, subsequent to registration of a case because an investigation in that regard has already started and further complaint against the same accused would amount to improvement of facts mentioned in the criminal complaint. After considering the earlier judgments on this issue in the case of **Kari Choudhari v/s Sita Devi reported In 2002 (1) SCC 714 and Ram Lal Narang: Om Prakash Narang v/s State (Delhi Administration) reported in 1979 (2) SCC 322** the Apex Court has further observed in para 23, 24 and 25 of the judgment as under.

“23] Be that as it may, if the law laid down by this Court in T.T. Anthony's case is to be accepted as holding 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 herein below 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 jurisdiction 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 books. This cannot be the purport of the Code.

24] We have already noticed that in the T.T. Anthony's case this Court did not consider the legal right of an aggrieved person to file counter claim, on the contrary from the observations found in the said judgment it clearly indicates that filling a counter complaint is permissible.”

18] The decision of Apex Court in Upkar Singh's case is squarely applicable in the light of facts involved in present case. If we accept the proposition that in no circumstances the F.I.R. Lodged by respondent no.2 is permissible in law and it would cause serious prejudice to respondent no.2 as the complaint lodged by respondent no.2 provides altogether different version relating to same incident. The purpose of registration of F.i.R. is to set the law in motion. Even if the F.I.R. lodged by respondent no.2 investigated alongwith F.I.R. registered first in time no serious prejudice would cause to petitioner as the prosecution of accused will ultimately depend upon the final outcome of investigation by investigating agency.

19] In the case of **Surendra Kaushik and others v/s State of Uttar Pradesh and Others reported in 2013 (5) SCC 148**

the Apex Court had again examined the issue in respect of registration of second FIR in a case based upon two different FIRs filed by two different persons relating to same incident but giving different version. After tracing the precedence of law on this issue, the Court has observed in para 22 and 24 of the judgment as under:-

“22] In Babubhai (supra), this Court, after surveying the earlier decisions, expressed the view that the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case the contrary is proved, where the version in the second FIR is different and they are in respect of two different incidents/crimes, the second FIR is permissible. **In case the accused in the first FIR comes forward with a different version or counterclaim in respect of the same incident, investigation on both the FIRs has to be conducted.**

24] From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. **The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same**

accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. It is further made clear by the three-Judge Bench in Upkar Singh (supra), the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible. “

20] In the case of **Kari Choudhari** referred supra, the Apex Court has held that in a case based upon two different versions in respect of same incident separate FIR is permissible under law. It is further held that both the FIRs relating to same incident provide different versions can be investigated by same investigating agency as ultimate object of the investigation is to find out whether the offence alleged has been committed and if so who has committed it.

21] In view of the discussion made in the foregoing para, we are of the view that considering the facts of the present case the registration of separate FIR and investigation based upon

complaint registered at the instance of respondent No.2 as against petitioners is fully justified. There is no question of any prejudice being caused to the petitioners, as the registration of FIR itself will not result into prosecution of petitioners. Since the registration of FIR being a step in aid of investigation, the FIR lodged by respondent No. 2 can very well be investigated along with FIR No. 101/2014. Based upon outcome of such investigation, it is for the investigating agency to decide the further course of action as regards filing of charge-sheet.

22] The submission advanced by the learned counsel for the petitioner that the subsequent F.I.R. registered on the basis of complaint lodged by respondent no.2 is improved version of the incident and same has been lodged after due deliberations and creating false evidence of injury to Nitin Autade cannot be accepted in deciding application under Section 482 of Cr.P.C. What has been contended may be set up as defence of petitioners. So also same can be matter of investigation by the investigating agency. The veracity of the allegations made in the subsequent F.I.R. cannot be adjudged while deciding

the instant application. It is for the investigating agency to enquire into veracity in respect of two different versions relating to same incident given in respective F.I.Rs.

23] We are also not inclined to entertain this application moved by the petitioner for quashing of F.I.R. lodged at the instance of respondent no.2 in the light of peculiar facts and circumstances of the case. If we accept the contention of the petitioners that the F.I.R. lodged at the instance of respondent no.2 is not permissible in law and matter requires to be investigated only on the basis of F.I.R. lodged in first instance by police constable Sudhakar Auti, then it may lead to anomalous position. As per the F.I.R. by police constable Sudhakar Auti the offence in question was occurred in furtherance of common object of unlawful assembly formed by group of persons belonging to the petitioners and respondent no.2. In the F.I.R. the said complainant has disclosed names of ten persons who were involved in commission of offence. Out of ten persons, five persons belonged to the petitioner's side which includes petitioners and five persons from the group of respondent no.2 including

the respondent no.2. Thus, as per the F.I.R. lodged the incident in question was outcome of clashes between two groups in which they abused each other and also assaulted the members of rival group. If we accept the contention of learned counsel for the petitioner that the statement of respondent no.2 recorded at hospital in Nashik and which subsequently formed basis for registration of second F.I.R. to be treated as statement under Section 162 of Cr.P.C. and can be considered during the course of investigation of F.I.R. first in time then the possibility of anomalous situation being created cannot be ruled out. If the allegations made in the statement of respondent no.2 are found to be correct, then in that eventuality one charge sheet cannot be filed. We cannot visualize a situation in which a single charge sheet filed against the accused wherein they are made witnesses against each other. In order to avoid such anomalous situation to crop up, it is necessary that both the F.I.Rs. be investigated separately but by same investigating officer and based upon outcome of such investigation, the further course in respect of filing of one charge sheet or separate charge-sheet be decided by the investigating agency.

24] In view of the discussion made in the foregoing paras, we are of the view that criminal application filed by the petitioners is without merit and deserves to be rejected. Accordingly, we reject the application. However in the facts and circumstances of the case we direct the investigating agency to conduct the investigation of both the FIRs together and then to take final decision in respect of filing of charge-sheet.

25] It is clarified that none of the observations made by us in foregoing paras be treated as any conclusions drawn or any findings given by this Court as to merits of the case. The investigating officer is directed to investigate both the First Information Reports without influenced by any of the observations made during the course of disposal of this application. With this order and direction the application be marked as disposed of with no order as to costs.

V.L.ACHLIYA,J.

S.S.SHINDE,J.

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