

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 4222 OF 2016

1. Eknath S/o Rangnath Kadam,
(Correct Name: Eknath S/o Rangrao Kadam) Age : 26 years.
2. Bhagwan s/o Bhimrao Kadam,
Age: 30 years,
3. Pradeep s/o Uttam Kadam,
Age: 22 years,
4. Uddhav S/o Ramrao Kadam,
Age: 23 years,
5. Bali s/o Bhimrao Kadam,
(Correct name : Baliram S/o Bhimrao Kadam), Age 22 years,
6. Amit s/o Maroti Kadam,
Age: 20 years,
7. Rangrao S/o Dajiba Kadam,
Age: 65 years,
8. Rahul s/o Balaji Kadam,
Age: 21 years,
9. Bhagwat S/o Gangaram Kadam,
Age: 22 years,
10. Hiranman s/o Baburao Kadam,
(Correct name: Hiranman s/o Madhukar Kadam)
Age: 22 years,
11. Ganpat S/o Ramrao Kadam,
(Correct name: Ganesh s/o Ramrao Kadam)
Age: 40 years.
12. Gulab s/o Taterao Kadam,
Age: 45 years,

13. Masaji s/o Bandu Kadam,
(Correct Name: Masaji s/o Jalbaji Kadam), Age 20 years,
14. Dnyanoba s/o Mahaduji Kadam,
(Correct name: Dnyanoba S/o Mahadji Kadam) Age : 60 years,
15. Balaji s/o Mahadji Kadam,
Age: 50 years,
16. Gajanan s/o Balaji Kadam,
Age: 27 years,
17. Bandu s/o Mahadji Kadam
(correct Name: Bandu s/o Dnyanoba Kadam) Age: 32 years.
18. Gangadhar s/o Dashrath Kadam,
(correct Name: Gangadhar s/o Dattramji Kadam) Age: 28 years,
19. Bhaskar s/o Nanarao Kadam,
(Correct Name: Bhaskar s/o Bhivati Kadam] Age: 23 years,
20. Santosh s/o Subhash Kadam,
Age: 28 years,
21. Satish s/o Subhash Kadam,
Age: 26 years,
22. Nivrutti s/o Ramrao Bolke,
Age: 35 years,
23. Vyankati s/o Baburao Kadam,
Age: 32 years,
24. Subhash s/o Keshav Kadam,
Age: 40 years,
25. Sanjay s/o Baburao Kadam,
Age: 30 years,
26. Dnyanoba s/o Purbhaji Kadam,
Age: 23 years,

27. Shahaji s/o Nanarao Kadam,
(Correct Name: Shahaji s/o
Bhivaji Kadam], Age : 26 years,
28. Gajanan s/o Baburao Kadam,
(Correct Name: Gajanan s/o
Bapurao Kadam) Age: 30 years,
29. Pradeep s/o Sakharam Ladhe,
Age: 25 years,
30. Nitin s/o Maroti Kadam,
(Correct Name: Nitin s/o Maroti
Kadam), Age 23 years,
31. Vijay s/o Gulab Kadam,
(correct Name: Vijay s/o Vitthal
Kadam), Age 24 years,
32. Raju s/o Sambhaji Kadam,
Age: 32 years,
33. Gajanan s/o Sambhaji Kadam,
Age: 30 years,
34. Ganpat Bhimrao Kadam,
Age: 40 years,
35. Ankush s/o Ganpat Kadam,
Age: 20 years,
36. Rama s/o Sopan Kadam,
(correct Name: Ramprasad s/o
Sopan Kadam), Age 22 years,
37. Gajanan s/o Bapurao Kadam,
(correct Name: Gajanan s/o Kondiba
Kadam) Age: 28 years,
38. Maroti S/o Purbhaji Kadam,
Age: 45 years,
39. Balaji s/o Purbhaji Kadam,
Age: 43 years,
40. Abhimanyu s/o Eknath Kadam,
Age: 25 years,

41. Kashinath s/o Piraji Kadam,
Age: 40 years,
42. Gopal s/o Eknath Kadam,
Age: 26 years,
43. Omkar s/o Vishambhar Kadam,
Age: 26 years,
44. Soman s/o Keshav Kadam,
(Correct Name: Sopan s/o Keshav
Panchal) Age: 28 years,
45. Bandu s/o Keshav Panchal,
(Correct name :Purbhaji s/o Keshav
Panchal) Age 32 years,
46. Avadhoot s/o Chudaman Kadam,
(correct Name: Shivaji s/o Chudaman
Kadam), Age 41 years,
47. Pradyum s/o Kashinath Kadam,
(correct Name: Vibhakar s/o Kashinath
Kadam) Age: 19 years.
48. Gajanan s/o Shyamrao Kadam,
Age: 27 years,
49. Vikas s/o Shaymrao Kadam,
Age: 20 years,
50. Pintu s/o Baburao Kadam,
(Correct Name: Nitin s/o Baburao
Kadam), Age: 26 years,
51. Dnyaneshwar s/o Baburao Kadam,
(Correct name: Dnyaneshwar s/o
Kondiba Kadam), Age 27 years,
52. Balaji s/o Atmaram Kadam,
Age:21 years,
53. Vinod s/o Prakash Kadam,
Age: 21 years,
54. Ramu s/o Kishan Kadam,
(Correct Name: Ramrao s/o Kishan
Kadam) Age: 36 years,

- 54-A. Sandip s/o Dnyanoba Kadam,
(Correct Name: Sandip Dnyaneshwar
Kadam), Age: 24 yrs.
55. Rohji s/o Naroba Kadam,
Age: 23 years,
56. Gangadhar s/o Ganesh Panchal,
Age: 22 years,
57. Kailash s/o Vishwambhar Ware,
Age: 29 years,
58. Data s/o Deorao Kadam,
Age: 49 years,
59. Umakant s/o Ramesh Kadam,
Age: 29 years,
60. Ramesh s/o Vyanktrao Kadam,
Age: 50 years,
61. Purbhaji s/o Vyankatrao Kadam,
Age: 59 years,
62. Gangaram s/o Purbhaji Kadam,
Age: 55 years,
63. Kondiba s/o Datta Kadam,
Age: 26 years,
64. Govind s/o Datta Kadam,
Age: 28 years,
65. Ankush s/o Khemaji Kalyankar,
Age: 23 years,
66. -
67. Angad s/o Subhash Kadam,
Age: 29 years,
68. Rama s/o Pundlik Lade,
Age: 27 years,

69. Sadashiv s/o Kondiba Kadam,
Age :35 years,
70. Laxman s/o Umaji Kadam,
Age: 37 years,
71. Sakharam s/o Raosaheb Kadam,
Age: 33 years,
72. Dnyaneshwar s/o Vishwambhar Kadam,
Age: 27 years,
73. Madhav s/o Vitthalrao Ladhe,
Age: 38 years,
74. Sangram s/o Balaji Kadam,
Age: 28 years,
75. Pundlik s/o Mahadu Kadam,
Age: 36 years,
76. Ganesh S/o Gangaram Panchal,
Age: 46 years,
77. Namdeo Ranga Kadam,
Age: 48 years,
78. Gyanoji s/o Babhanaji Kadam,
Age: 32 years,
79. Gajanan s/o Purbhaji Kadam,
Age: 26 years,
80. Narayan s/o Bhujang Kadam,
Age: 32 years,
81. Narayan s/o Baburao Kadam,
Age: 28 years,
82. Raju s/o Prakash Kadam,
Age: 21 years,
83. Prabhakar s/o Tukaram Kadam,
Age: 42 years.
84. Dnyaneshwar s/o Sambhaji Kadam,
Age: 27 years,

85. Eknath s/o Naroba Kadam,
Age: 27 years
86. Gajanan s/o Vyankati Kadam,
Age: 22 years,
87. Dnyaneshwar s/o Ganesh Kadam,
Age: 21 years,
88. Chudaji s/o Baburao Kadam,
Age: 42 years,
89. Datta s/o Namdeo Giri,
Age: 25 years,
90. Vishwanath s/o Vitthalrao Kadam,
Age: 35 years,
91. Chandrakant Motiram Kadam,
Age: 23 years,
92. Vishwas s/o Vishwanth Kadam,
Age: 22 years,
93. Ananda s/o Ahilaji Kadam,
Age: 20 years,
94. Balaji s/o Umaji Kadam,
Age: 43 years,
95. Chandu s/o Vitthal Kadam,
Age: 44 years,
96. Govind s/o Narayan Kadam,
Age: 22 years,
97. Deorao s/o Shripati Kadam,
Age: 25 years,
98. Subhash s/o Digambar Walke,
Age: 46 years,
99. Sachin s/o Subhash Walke,
Age: 23 years,
100. Vishnu s/o Subhash Walke,
Age: 20 years,

Occupation of all Agriculture and
All R/o: Village Degaon (Kurahada)
Taluka Ardhapur, District Nanded.

...APPLICANTS

versus

1. The State of Maharashtra
Through the Police Inspector,
Ardhapur Police Station, Ardhapur,
Taluka: Ardhapur, District Nanded.

2. Devidar s/o Lohaji Atkore,
Age: 42 years, Occu: Labourer,
R/o : Village Degaon (Kurahada)
Taluka : Ardhapur, District Nanded.

...RESPONDENTS

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Mr. R.S. Deshmukh, Advocate for applicants

Mr. M.M. Nerlikar, APP for Respondent No. 1 - State

Mr. M.R. Jamdhade and Mr. K.R. Jamdhade, Advocate for respondent No. 2

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**CORAM : S.S. SHINDE AND
K.K. SONAWANE, JJ.**

RESERVED ON : 14th FEBRUARY, 2017.

PRONOUNCED ON : 8th MARCH, 2017.

ORAL JUDGMENT :- (Per : K.K. Sonawane, J.)

1] Rule. Rule made returnable forthwith. The matter is taken up for final hearing with the consent of parties.

2] The applicants, taking recourse of remedy under section 482 of the Criminal Procedure Code (for short “Cr.P.C.”), assailed the validity, legality and propriety of the registration of First Information Report (for short “FIR”) vide crime No. 81 of 2016 being an second FIR relating to the same cause of action, same incident and occurred during the same transaction. The

applicants prayed to quash and set aside the impugned FIR vide Crime No. 81 of 2016 registered at Ardhapur Police Station, District Nanded, for the offence punishable under sections 307, 341, 336, 324, 506, 147, 148 read with section 149 of the Indian Penal Code (for short “IPC”) and 3(1)(R)(5) and 3(2)(5) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “Atrocities Act”).

3] The facts giving rise to the present application in brief are that on the day of incident occurred on 03-05-2016, the members of the scheduled Caste and Scheduled Tribe community (for short “SC/ST”) were celebrating 125th Anniversary of Dr. Babasaheb Ambedkar in the village. They had also obtained legal permission for procession from concerned authority. But some of the villagers of upper caste raised objection for celebration and procession of 125th Anniversary of Dr. Babasaheb Ambedkar. It created communal tension and fragile atmosphere in the village. Therefore, Police *Bandobast* was deployed to monitor the law and order problem. A programme of celebrating 125th Anniversary of Dr. Babasaheb Ambedkar was commenced in the village since noon hours at about 12.00 on 03-05-2016. It has been alleged that the applicant Eknath Rangnath Kadam (corrected name Eknath s/o Rangrao Kadam), Chairman and applicant - Bhagwan Bhimrao Kadam, Sarpanch of the village and their accomplices were opposing to celebrate Anniversary of Dr. Babasaheb Ambedkar in the village. They started instigating and provoking the villagers. The police personnel deployed on *Bandobast* duty made endeavour to give them understanding to refrain themselves from spreading hatred against members of SC/ST

community in the village. But they were not in a condition to listen. They were also giving threats that, in case, any penal action is initiated against them, they will take law in their hands and set the entire village on fire. However, at 4.15 p.m. applicant Eknath Kadam, Chairman and applicant - Bhagwan Bhimrao, Sarpanch of the village and their accomplices in all 400 to 500 in numbers formed the unlawful assembly with an object to assault members of SC/ST community of the village and to prevent them from celebrating 125th Anniversary of Dr. Babasaheb Ambedkar in the village. They started pelting stones on the police. In order to disperse the miscreants police applied '*lathi-charge*' and made endeavour to control the mob. But the mob became berserk and started causing damages to the police vehicle. They smashed the glasses of Police Vehicle. It cause communal tension in the village. Police opened the fire and lobbed tear gas cells towards the mob. But, all efforts of police found unavailing. In the riot some of the Police Personnel received serious injuries. The miscreants flung the boulder on the head of the Police Personnel from roof of the house. Police fired empty bullet (dummy round) as well as rubber bullet. But, the miscreants gave threats to life to the Police. They were armed with iron pipes, sticks and stones etc. Eventually, Police opened the fire from rifle of Police Personnel. Thereafter, the miscreants started escaping from the spot. The police apprehended some of the miscreants red handed on the spot. Police Inspector Shri Satish Dattatraya Gaikwad, who was on duty for *Bandobast* in the village returned to the Police Station and on the following day i.e. on 04-05-2016 at about 10.26 a.m. he filed the FIR for penal action against

applicants and other miscreants.

4] Pursuant to the FIR of PI Gaikwad, concerned PSO of Ardhapur Police Station registered the crime No. 80 of 2016 under section 147, 148, 307, 353, 332, 333, 336 and 504, 506 read with section 149 of the IPC as well as Section 3 of the Damage to the Public Property, 1984 and set the investigation in motion.

5] Meanwhile, pending the investigation of Crime No. 80 of 2016 another FIR of Shri Devidas Lobhaji Atkore vide crime No. 81 of 2016 came to be lodged on 04-05-2016 about at 12.42 p.m in the Ardhapur Police Station. He ventilated the grievance in regard to murderous assault in the riot as well as castiest abuses to insult and humiliate the members of SC/ST community of the village within public view. It has been alleged that when leaders were addressing gathering for maintaining peace in the procession of Dr. Babasaheb Ambedkar, the members of upper caste of the village arrived at Venue from the back side of Statute of Dr. Babasaheb Ambedkar. Police tried to prevent the miscreants, but they did not succeed. The miscreants were giving slogans "*Jai Bhavani, Jai Shivaji*". They started to create hurdles in the function of celebrating 125th Anniversary of Dr. Babasaheb Ambedkar. They gave threats to life to the complainant and his associates. They also hurled abuses on caste to insult and humiliate the members of the SC/ST of the village within a public view. The miscreants created communal terror in the village and pelted stones. The complainant and others received injuries in the melee. Thereafter, the first informant - Devidas rushed to the Police

Station and filed the FIR. The concerned PSO immediately registered the Crime No. 81 of 2016 and swung into action.

6] The applicant put in question the validity, legality and propriety of the impugned FIR filed by the first informant Devidas Atkore, being second FIR of the same incident, on same cause of action and sameness in the occurrence of incident mentioned in the earlier FIR No. 80 of 2016. Therefore, the applicants knocked the door of this court by invoking remedy under section 482 of the Cr.P.C. and prayed to quash and set aside the second FIR registered against them.

7] Mr. Deshmukh, learned counsel appearing for the applicants scathingly assailed that the impugned FIR is not sustainable, appreciable and it is an abuse of process of law. There is no *prima facie* circumstance reflects from the FIR to nail the applicants in this case for the charges pitted against them. The alleged FIR is filed with an ill intention and purported motivation to harass the applicants. The impugned FIR is lodged on 04-05-2016 after lodging the first FIR vide Crime No. 80 of 2016. Therefore, second FIR of the same incident is bad-in-law. The learned counsel for the applicants explained the circumstances on record in detail and urged that second FIR on same set of facts and occurrence is not sustainable and required to be quashed and set aside by exercising powers under section 482 of the Cr.P.C. In support of his contention, the learned counsel for the applicants relied on the expositions of law in the cases of *T.T. Antony Vs. State of Maharashtra*

*and connected matters*¹, *Babubhai Vs. State of Gujrath and connected matters*², *Chirra Shivraj Vs. State of Andhra Pradesh*³ and *Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and another*⁴

8] Per contra, learned APP for the State and learned counsel appearing for respondent No. 2- first informant -Devidas Atkore of the impugned FIR vide Crime No. 81 of 2016, vociferously opposed the contentions put forth on behalf of applicants. They submitted that present application is not maintainable within purview of law. There is no reasonable ground to quash and set aside the impugned FIR. In contrast, the allegations nurtured in the FIR *prima facie* make out the case against the applicants for registration of cognizable offence. There was an procession in the village on account of celebrating 125th Anniversary of Dr. Babasaheb Ambedkar on 03-05-2016 and the members of SC/ST community of the village assembled near Statue of Dr. Babasaheb Ambedkar to participate in the procession. The leaders were addressing them to maintain the peace and harmony during the procession. But, suddenly at about 4.00 p.m. applicants and their accomplices from *Maratha* community arrived at the spot of function and started pelting stones. The villagers of SC/ST community as well as police received fatal injuries. The applicants and their accomplices hurled abuses on caste to the complainant and other members of SC/ST community to insult and humiliate them within public view. Therefore, learned APP appearing for respondent No. 1- State and learned counsel appearing for respondent No. 2 fervidly

1 (2001)6 SCC, 181

2 (2010) 12 SCC 254

3 (2010) 14 SCC 144

4 2013 Cri.L.J. 2313.

contended that it would be unjust and improper to set aside and quash the impugned FIR under the pretext of second FIR of the same incident. They explained that alleged incident verbalized in the impugned FIR is totally separate and distinct from the incident mentioned in the first FIR. It cannot be said that there is sameness in both the FIRs. The alleged incidents referred to in both the FIRs are not of the same incident nor arose from the same cause of action. Therefore, it cannot be considered as FIR would create anomalous situation. According to learned APP, the scope of enquiry of both the FIRs are totally different and based on distinct circumstances occurred at the spot of incident. Both the FIRs disclose different set of offences committed at different times and against different persons. According to learned APP and learned counsel for respondent No. 2, there is no propriety to set aside and quash the impugned FIR by exercising inherent powers under section 482 of the Cr.P.C. In support of the arguments, learned APP placed his reliance on judicial pronouncement in the cases of *Anju Chaudhary Vs. State of U.P. And another*⁵, *Surendra Kaushik and others Vs. State of Uttar Pradesh*⁶, *Ramlal Narang Vs. State, Delhi Administration*⁷ and *Babubhai Vs. State of Gujrath and others*.⁸

9] We have considered the rival submissions made on behalf of respective learned counsel appearing for the parties. We have also delved into the relevant documents produced on record. At the outset, it is worth to mention that applicants have invoked the remedy under Section 482 of

5 2012 DGLS(Soft) 688 : 2013(6) SCC 384

6 Criminal Appeal No. 305 of 2013

7 1979 DGL Soft 11 : 1979(2) SCC 322

8 2010 (12) SCC 254

Cr.P.C. to quash and set aside the impugned FIR vide Crime No. 81 of 2016 on two counts :-

[I] That, there is no *prima facie* case made out against the applicant, sufficient to set the penal law in motion;

[ii] That since the first FIR of Crime No. 80 of 2016 has already been registered on the allegation of occurrence of one and the same incident and same cause of action, the second FIR could not have been registered for penal action against the applicants which would be violative of principles of double jeopardy.

10] At this juncture, the minute scrutiny of the allegations nurtured against the applicants in the impugned FIR vide Crime No. 81 of 2016 reflects that there is a *prima facie* case against the applicants to set the criminal law in motion. The first informant - Devidas has in candid manner attributed the overt acts and participation of the applicants and their accomplices in the alleged incident. He has also disclosed about the castiest allegations hurled on the part of applicants to insult and humiliate the first informant and his associates within public view. Therefore, it would be improper and unjust to draw an inference that the impugned FIR has no substance but it is an abuse of process of law. If the allegations in the impugned FIR are taken at its face value and considered in its entirety, it would point out the commission of a cognizable offence. Moreover, at the initial stage of investigation, it would hard to believe that the impugned FIR came to be filed with ulterior motive to embroil the applicants by making false allegations on the part of First informant - Devidas. In the aftermath, we are not prepared to quash and

set aside the impugned FIR on the ground of abuse of process of law. It cannot be said that there is no prima facie case against the applicants for investigation of the allegations pitted against them in relation to commission of cognizable offence. Therefore, we are not inclined to nod in favour of applicants to exercise the inherent powers to quash and set aside the impugned FIR.

11] Now, turning to the another spectrum of the matter, in regard to the pivotal question, as to whether there can be more than one FIR, in relation to the same incident or different incidents arising from the same occurrence, it is imperative to have a glance on the relevant provisions of Cr.P.C. pertaining to receipts of complaints of cognizable offence, its registration and procedure prescribed for its investigation which culminates into filing of the police report to the concerned Magistrate for further legal process. It would facilitate to appreciate the issue in proper manner.

12] Chapter XII of the Code, deals with the information to the police and their powers to investigate. Section 154 of the Cr.P.C. contemplates that there has to be a FIR about the incident which constitute a cognizable offence. It further provides that every information relating to commission of cognizable offence, whether given orally or otherwise to the Officer in-charge of the police station, has to be reduced into writing by or under his own direction and be read over to the informant. The FIR recorded shall be signed by the person giving such information and substance of the same is required to be entered into a book to be kept by such Officer in such

form as the State Government may prescribe. The provisions of Section 156(3) of the Code postulates directions to the Officer Incharge of the police station to conduct the investigation by the order of the Magistrate in order to take cognizance of the same under Section 190 of the Cr.P.C. The specified magistrate, upon receiving the complaints of facts which constitute such offence, upon a police report of such facts, upon information received from any person other than police officer, or upon his own knowledge that such offence has been committed, is empowered to take cognizance of any offence. The Scheme of Section 154, 156 and 190 of the Code does not recognize more than one FIR about the occurrence. The very purpose of registration of FIR is to set the criminal investigation into motion which would culminate in filing of a police report under section 173 of the Code.

13] In the matter of *T.T. Antony vs. State of Kerala and others*, reported in (2001) 6 SCC 181, the Honourable Apex Court, observed as under :-

“A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang Case it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRS whether before or after filing the final report under section 173(2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C., nay, a case of abuse of the statutory power of

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

14] In T.T. Antony's case mentioned above, it has been held that the registration of another FIR in respect of very same incident as an FIR u/s 154 of Cr.P.C. was not valid and liable to be quashed. The earliest or the first information in regard to commission of cognizable offence only be treated as FIR u/s. 154 of Cr.P.C. Therefore, there cannot be second FIR and consequently no fresh investigation on receipt of subsequent information of the same cognizable offence.

15] In the case of Babubhai vs. State of Gujarat reported in (2006) 12 SCC 254, the Honourable Apex Court, had an occasion to consider various judicial pronouncements on the question of registration of subsequent FIR in connection with the same or connected offences, and elucidated the same in para.Nos. 16 to 19, which read thus :-

“16. In Upkar Singh Vs. Ved Prakash³, this Court considered the judgment in T.T. Antony² and explained that the judgment in the said case does not exclude the registration of a complaint in the nature of counterclaim from the purview of the court. What had been laid down by this Court in the aforesaid case is that any further complaint by the same complainant against the same accused, subsequent to the registration of a case, is prohibited under the Cr.P.C. because an investigation in this regard would have already

3 (2004) 13 SCC 292

2 (2001) 6 SCC 181

started and further the 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](#) Cr.P.C. However, this rule will not apply to a counter claim by the accused in the first complaint or on his behalf alleging a different version of the said incident. Thus, in case, there are rival versions in respect of the same episode, the Investigating Agency would take the same on two different FIRs and investigation can be carried under both of them by the same investigating agency and thus, filing an FIR pertaining to a counterclaim in respect of the same incident having a different version of events, is permissible.

17. In *Rameshchandra Nandlal Parikh Vs. State of Gujarat*³, this Court reconsidered the earlier judgment including *T.T. Antony*² and held that 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, there is no prohibition in accepting the second FIR.

18. In *Nirmal Singh Kahlon Vs. State of Punjab*⁵, this Court considered a case where an FIR had already been lodged on 14.6.2002 in respect of the offences committed by individuals. Subsequently, the matter was handed over to the Central Bureau of Investigation (CBI), which during investigation collected huge amount of material and also recorded statements of large number of persons and the CBI came to the conclusion that a scam was involved in the selection process of Panchayat Secretaries. The second FIR was lodged by the CBI. This Court after appreciating the evidence, came to the conclusion that matter investigated by the CBI dealt with a larger conspiracy. Therefore, this investigation has been on a much wider canvass and held that second FIR was permissible and required to be investigated.

19. The Court held as under: (*Nirmal Singh Kahlon* case SCC pp.466-67, para 67)

67. "The second FIR, in our opinion, would be maintainable not only because there were different versions but when new discovery is made on factual

³ (2006)1 SCC 732

² (2001) 6 SCC 181

⁵ (2009) 1 SCC 441

foundations. Discoveries may be made by the police authorities at a subsequent stage. Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature. If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, in our opinion, as and when the same surfaced, it was open to the State and/or the High Court to direct investigation in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged." (Emphasis added).

16] After analysing the various decisions of the Apex Court in the aforesaid Babubhai's case, the Hon'ble Supreme Court expressed the view that the court has to examine the facts and circumstances giving rise to file FIRs and test of sameness is to be applied to find out whether both the FIRs relates to the same incident and same occurrence or in regard to incident which was two or more part of the same transactions. In case the answer is affirmative, the FIR is liable to be quashed. However, when the version is different in second FIR and it relates to different incident or crimes, the second FIR is permissible under law.

17] In *Amitbhai Shah Vs. CBI*, reported in (2013) Cri.L.J. 2313, it has been reiterated that second FIR, if in the nature of cross complaint or counter complaint is permissible, which is an exception carved out in Upkar Singh's case (supra) to the effect that, when the second FIR consists of alleged offences which are in the nature of cross-case/cross-complaint or counter-complaint, such cross-complaint would be permitted as a FIR.

18] In the case of Anju Chaudhari vs. State of UP⁹, it has been held by the Honourable Supreme Court that the examination of in-built safeguards provided by the legislature in the very language of Section 154 of the Code is an significant aspect which can be deduced from the principle akin to the double-jeopardy, rule of fair investigation and to prevent the abuse of power by the Investigation Authority of the police. Therefore, the second FIR for the same incident can not be registered. 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 FIR recorded first, in such circumstances, the second FIR could be registered.

19] In Criminal Appeal No. 305 of 2013 (Surendra Kaushik and others Vs. State of UP) while dealing with the circumstances of registration of two FIRs on the similar and identical cause of action and allegations, the Honourable Supreme Court, in para.25, made the following observations :-

“25. In the case at hand, the appellants lodged the FIR No. 274 of 2012 against four accused persons alleging that they had prepared fake and fraudulent documents. The second FIR came to be registered on the basis of the direction issued by the learned Additional Chief Judicial Magistrate in exercise of power under Section 156(3) of the Code at the instance of another person alleging, inter alia, that he was neither present in the meetings nor had he signed any of the resolutions of the meetings and the accused persons, five in number, including the appellant No. 1 herein, had fabricated documents and filed the same before the competent authority. FIR No. 442 of 2012 (which gave rise to Crime No. 491 of 2012) was registered

because of an order passed by the learned Magistrate. Be it noted, the complaint was filed by another member of the Governing Body of the Society and the allegation was that the accused persons, twelve in number, had entered into a conspiracy and prepared forged documents relating to the meetings held on different dates. There was allegation and fabrication of the signatures of the members and filing of forged documents before the Registrar of Societies with the common intention to grab the property/funds of the society. If the involvement of the number of accused persons and the nature of the allegations are scrutinized, it becomes crystal clear that every FIR has a different spectrum. The allegations made are distinct and separate. It may be regarded as a counter complaint and cannot be stated that an effort has been made to improve the allegations that find place in the first FIR. It is well-nigh impossible to say that the principle of sameness gets attracted. We are inclined to think so, for if the said principle is made applicable to the case at hand and the investigation is scuttled by quashing the FIRs, the complainants in the other two FIRs would be deprived of justice. The appellants have lodged the FIR making the allegations against certain persons, but that does not debar the other aggrieved persons to move the court for direction of registration of an FIR as there have been other accused persons including the complainant in the first FIR involved in the forgery and fabrication of documents and getting benefits from the statutory authority. In the ultimate eventuate, how the trial would commence and be concluded is up to the concerned court. The appellants or any of the other complainants or the accused persons may move the appropriate court for a trial in one court. That is another aspect altogether. But to say that it is a second FIR relating to the same cause of action and the same incident and there is sameness of occurrence and an attempt has been made to improvise the case is not correct. Hence, we conclude and hold that the submission that the FIR lodged by the fourth respondent is a second FIR and is, therefore, liable to be quashed, does not merit acceptance.”

20] We would reiterate that there cannot be two FIRs registered in relation to the same occurrence or incidents or different incident forming part of the same transaction. Therefore, the act of registration of second FIR

of same occurrence/incident is contrary to law and very spirit of section 154 of the Cr.P.C. However, when the incident is separate, offences are similar or different or even where the subsequent crime is of such magnitude that it would not fall within the ambit and scope of the FIR recorded earlier, then the second FIR is required to be registered for investigation. The ultimate object of registration of FIR is to find out whether there was commission of alleged cognizable offences and if so who are the culprits. No any aggrieved victim of the crime should be precluded from his legitimate right to lodge FIR to book the real culprits of the crime.

21] While dealing with the issue in the case of *Anju Choudhary (supra)*, Their Lordships of the Hon'ble Supreme Court made reference of observations in the case of *Kari Choudhary Vs. Sita Devi 2002(1) SCC 714* by giving hypothetical illustrations, explained the very object and purport of the relevant provisions of the Cr.P.C, which reads as under:

“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 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 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 legitimate right to bring the real accused to book. This cannot be the purport of the Code.”

22] It is settled principle of law that issue of sustainability of two FIR has to be examined on merits of each case, whether a subsequently registered FIR is a second FIR about the same incident or offence or is based on distinct and different set of facts and whether its scope of inquiry is totally different and not identical one. There would not be any straight-jacket formula to be applied uniformly to all cases. It will always be a mixed question of law and facts depending on the merits of a given case (emphasis supplied on Anju Chudhary's case 2013(6) SCC 384).

23] Now, in the instant case, we should examine the facts of the present case in the light of settled legal provisions as referred supra. If the recitals of both the FIRs are perused together and compared with each others, it would find that the FIR giving rise to crime No. 80 of 2016, was filed by the Police Inspector Shri Satish Gaikwad on 04-05-2016 at 10.26 a.m. for the offence punishable under sections 307, 353, 336, 147, 148 read with section 149 of the IPC. The place of crime was shown near Hanuman Temple on the public road in village Degaon. He has figured in all 200-300 miscreants for alleged crime of rioting and attempt to murder of police personnels etc. The complainant mentioned the names of in all 15 accused out of 200-300 accused in his FIR registered at the first point of time. It has been alleged

that the accused committed the offence of rioting with deadly weapons and attacked the police personnels by pelting stones and boulder from the roof of their houses. They smashed the glasses and caused damage to the police vehicle. The alleged accused used the criminal force to deter the police personnels from discharging their duties.

24] However, the recitals of FIR filed by the first informant Devidas Atkore for giving cause to register the another crime no. 81 of 2016, reflects that the impugned FIR is lodged on 4.5.2016 at about 12.42 p.m. for the allegations of commission of cognizable offences under section 307, 341, 324, 147, 148 read with section 149 of IPC and 3(1)(R)(F) and 3(2)(5) of the Atrocities Act. The place of offence is shown in front of statue of Dr. Babasaheb Ambedkar in the village Degaon. The first informant Devidas Atkore mentioned in all 32 accused including Applicants no. 1 and 2 in the impugned FIR for commission of crime. It has been alleged that on the day of incident at about 4.15 p.m. when speakers were addressing the gathering for maintaining peace and harmony in the procession, that time the alleged accused arrived in front of statue of Dr. Babasaheb Ambedkar and started giving slogans "*Jai Bhavani Jai Shivaji*". They opposed for procession and to celebrate 125th Anniversary of Dr. Babasaheb Ambedkar. The miscreants pelted the stones and caused serious injuries to the members of SC/ST of the village and police personnels. They hurled the castiest abuses to complainant and others on their caste and insulted and humiliate them within public view. There were threats to life to the complainant and others.

25] The comparison of facts and circumstances mentioned in both the FIR would go to show that, in totality there were two different FIRs filed by two different informants relating to occurrence of different cognizable offences against the different persons. Except applicant no. 1 Eknath and applicant no.2 Bhagwan Kadam, who are the leaders, being Chairman and Sarpanch of the village and they were seen prominently in the mob, rest of the accused are different in both the FIRs. The investigation of first crime is in no way dependent upon the investigation of second crime which is registered for the offence under Atrocities Act, for casteist abuses etc. It is also necessary to take into consideration that the requirement of proof in both the FIRs also appears completely different and distinct one. Therefore, lodging of subsequent FIR cannot be termed as second FIR for the same occurrence or incident narrated in the FIR registered first. The allegations nurtured in both the FIR are from different spectrum against the different accused. The ingredients of offences shown committed in both the FIRs are having some what overlapping features in regard to assault with deadly weapon. But, it does not mean that it has a characteristic of similarity. It would be unjust and improper to scuttle the investigation by the Police on adopting such restricted and technical view to pave the escape route for the alleged culprits of the crime. Definitely, it would cause injustice and prejudice to the aggrieved victim of the crime.

26] It is true that law does not permit second FIR for the same cause of action, only because the principle of law does not allow that the person should be vexed twice. But, if there are offences having different and

distinct character and ingredients, even if there are some overlapping features, it would not violate the principles of Article 20 of the Constitution of India. The subsequent FIR filed by the first informant Shri Devidas Atkore should be treated as separate FIR for all purpose including the investigation under the provisions of the Cr.P.C. The canvas of impugned two FIRs, are totally different and not identical one. The subsequent FIR is pertains to allegation of offence under Atrocities Act, which are serious in nature. It has such magnitude, that does not fall within the ambit and scope of inquiry of the FIR recorded first.

27] No doubt, the FIR is a very important document as well as it sets the criminal law in motion. The entire edifice of the prosecution case is always rests on the allegation made in the FIR. In the present case, the information of commission of offence under Atrocities Act came to be lodged on receipt of first information report from the informant Shri Devidas Atkore, who has an legitimate right to file FIR being members of SC/ST community and one of the victim of crime. The object of commission of crime shown in subsequent FIR was not similar as compare to the earlier FIR. In such eventuality in case, he is not allowed to filed FIR for investigation, it would cause injustice and prejudice to the real victim of the crime and he may be precluded from seeking justice. Therefore, subsequent FIR is essential to be investigated separately to collect the evidence separately by the Investigating Officer so that the aggrieved victim would not be deprived of justice. The involvement of number of different accused and distinct nature of allegations made in the FIR registered later-on, are indicative of the fact

that there would not be any attempt to make improvement in the allegation that find place in the FIR recorded first.

28] In view of aforesaid circumstances, we are not inclined to quash and set aside subsequent FIR giving rise to crime No. 81 of 2016 for the charges of castiest abuses etc. It would not justifiable to prohibit the aggrieved victim of the crime to lodge separate FIR for commission of distinct cognizable offence.

29] We propose that respective I.O.'s should continue their investigation in both FIRs separately for collection of evidence in regard to charges pitted against applicants/accused. After completion of investigation separately in both crimes, the Investigating Officer should file final report as prescribed under the Cr.P.C. However, in case the concerned court received the report under section 173 of the Cr.P.C, in both the FIRs, it is for the concerned court how to commence and conclude the trial in both the cases. The trial of both crimes may be in one court for joint/common trial or it may be separate in the interest of justice.

30] In such premise, we conclude and hold that the submission on behalf of applicants that the subsequent FIR of crime No. 81 of 2016 is an abuse of process of law and being second FIR of the same incident liable to be quashed and set aside, is not sustainable and acceptable. In sequel, the application is rejected. Rule stands discharged.

grt/- [K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE