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

CRIMINAL WRIT PETITION NO.1388 OF 2015

Pawan s/o Ranjithmal Lodha,
Aged about years,
Of Bombay, adult, Indian
inhabitant, residing at A-205,
Asha Sadan, Anand Nagar,
Vasai (W), District Palghar ..Petitioner

Versus

1. The State of Maharashtra,
through Inspector in charge,
Mohadi Nagar Police Station,
dhule, Maharashtra

2. Ashok Singh Poonam Singh
Gorad, Mumbai, adult,
Indian inhabitant, residing at
Jethana, Taluka Pisongon,
District Ajmer (Rajasthan State)
(Pin 305204) ..Respondents

Mr S.B. Narwade & Mr N.K. Singh, Advocate for petitioner
Mr K.D. Mundhe, A.P.P. for respondent no.1
Mr A.K. Bhosale, Advocate (appointed) for respondent no.2

CORAM : R.M. BORDE AND
A.M. DHAVALE, JJ.

DATE OF RESERVING
THE JUDGMENT : 7th June 2017

DATE OF PRONOUNCING
THE ORDER : 4th July 2017

JUDGMENT (Per A.M. Dhavale, J.)

Rule. Rule returnable forthwith. With the consent of learned Counsel for the parties, matter is heard finally at admission stage.

1. This is a petition under Section 482 of the Code of Criminal Procedure for quashing the proceedings Regular Criminal Case No.173/2015 on the file of Judicial Magistrate, 6th Court, Dhule arising out of C.R. No.1/2015, registered at Mohadinagar Police Station, Dhule on 6th January 2015 for the offences punishable under Sections 420, 467, 468, 471, 120-B read with Section 34 of the Indian Penal Code.

2. The argument advanced for quashing of the proceedings is that the proceedings are based on second F.I.R. on same facts.

3. The facts relevant for deciding this matter may be stated as follows:

4. The first F.I.R. was lodged by Sadanand Suvarna on 20th December 2014 at M.I.D.C. Police Station, Andheri under Section 420 read with Section 34 of the Indian Penal Code against the applicant Pawan Lodha and two others. Informant Sadanand Suvarna was running a trading business in iron and steel by name Indepth Impex Private Ltd**.** Prabjeetsing Bhambra was his partner and Ashoksing was his office staff. (Ashoksing is shown as accused No.3 in F.I.R. while he is the informant in second F.I.R.). As per the F.I.R., on 7th November 2014, Mr Suvarna directed Ashoksing to send Rs.17 lakhs by R.T.G.S. to M/s Rubber Craft. At that time, the petitioner Pawan Lodha and one Pradeep met Ashoksing and requested him that the R.T.G.S. transaction should be made by him through the companies suggested by them. The petitioner – Pawan Lodha informed him that in order to show more turnover, he was helping the companies to enter into such transactions, for which he was getting commission. Ashoksing, without permission of Mr Suvarna agreed for the same and as per inducement of Pawan Lodha, he entered into R.T.G.S. transaction through the companies suggested by him. On deep inquiry, Ashoksing gave admissions to Mr Suvarna. As per the assurance of the petitioner – Pawan Lodha, the amounts credited to the companies suggested by him were to be transferred to M/s Rubber Craft, but the

petitioner Pawan Lodha did not transfer such amounts. Mr Suvarna and Ashoksing made repeated requests for refund of Rs.17 lakhs, but the petitioner – Pawan Lodha and his partner Pradeep Sharma avoided to refund the amount and thereby cheated Indepth Intext Private Ltd., to the tune of Rs.17 lakhs. Out of the amount of Rs.17 lakhs, amount of Rs.10 lakhs was to be credited to Smile Trading and amount of Rs.7 lakhs was to be credited to Jenal Enterprises. Accordingly, F.I.R. of cheating was lodged and the crime was registered on 20th December 2014 at M.I.D.C Police Station, Andheri, Mumbai.

5. The supplementary statement of Suvarna showed that he made deeper inquiry and noticed that Pawan Lodha Ashoksing and Pradeep Sharma had misused cheques worth Rs.3.25 Crores and the amount involved was Rs.3.25 Crores. Further supplementary statement dated 3rd January 2015 filed by Sadanand Suvarna disclosed that though the cheques were issued for transfer of Rs.17 lakhs, in fact, the cheques were used for transfer of Rs.17 crores and accordingly, his Director Prabjeetsing Bhambra had given intimation to M.I.D.C Police Station, Andheri, Mumbai.

6. During investigation of this F.I.R. No.685/2014, accused No.1 – Pawan Lodha was arrested and cash of Rs.3 crore was recovered from him on 30th December 2014 and further cash of Rs. 4 crore was recovered from him on 3rd January 2015. As per the F.I.R., Pradeep Sharma was partner of petitioner Pawan Lodha and both of them had entered into conspiracy with Ashoksing, the employee of Indepth Impex Private Ltd. The statement of account of Indepth Inpex

Company shows two debit entries dated 7th November 2014 of Rs.7,10,00,056/- and Rs. 10,00,00,056/- (Rs.56/- seems to be R.T.G.S. Charges). In this case, after completion of investigation, the Police submitted charge-sheet in the Court of Additional Chief Metropolitan Magistrate**,** 22nd Court, Andheri, Mumbai on 5th February 2015, for offence punishable under Section 420 read with Sec. 34 of the Indian Penal Code. In this case, Pawan Lodha is the main accused and his partner Pradeep Sharma and employee of Indepth Impex Private Ltd., Ashoksing are the co-accused. Ashoksing is shown as absconding.

7. On 6th January 2015, Ashoksing appeared at Mohadinagar Police Station, Dhule and lodged F.I.R. against Pawan Lodha and his partner Praeep Sharma. He produced one authority letter of Board of Directors authorising him to lodge F.I.R./complaint. The F.I.R. discloses that Pawan Lodha assured to provide good quality textile cloth to Indepth Impex Company as a broker**.** He represented that he and Pradeep Sharma were doing brokering business in the name and style as Smile Trading Company. In last week of October 2014, Pawan Lodha represented that his partner Pradeep Sharma was at Ajmer and was facing problem in travelling and hence, a meeting was arranged at Dhule. On 3rd November 2014, the Director Bhambra, Ashoksing himself and three other employees met Pawan Lodha and Pradeep Sharma at Hotel Residency Park in Dhule. They were shown samples of cloth to be provided and they were told that if they wanted cloth worth Rs.40 lakhs, they should pay at least Rs.10 lakhs by R.T.G.S. or by cheque for creating confidence. Then, the Director issued cheque No.540752 of Rs.10 lakhs in the name of Smile Trading Company and

handed it over to Pradeep Sharma and Pawan Lodha. Thereafter, there was no response from Pawan Lodha and Pradeep Sharma to the communication made by his company. It was noticed that there was no office of Smile Trading Company and Jenal Enterprises at addresses shown by Pawan Lodha. (Then, crime was registered at C.R. No.685/2014 at M.I.D.C. Police Station, Andheri, Mumbai under Section 420 read with Sec. 34 of the Indian Penal Code). Ashoksing alleged that the cheque of Rs.10 lakhs was issued to Pawan Lodha and Pradeep Sharma added two zeros to make it Rs.10 crores and encashed it. They made enquiry with the concerned bank and found that the amount on the cheque was forged by adding two zeros. According to Ashoksing, he has no role to play in the alleged act of criminal breach of trust, cheating and forgery. His F.I.R. was registered on 6th January 2015 at C.R. No.1/2015 at Mohadinagar Police Station, Dhule. He contended that the transaction of Rs.10 Crores was at Dhule while the transaction of Rs.7 Crores was at Mumbai. The crime was registered under Sections 420, 467, 468, 471, 120-B read with Sec. 34 of the Indian Penal Code against Pawan Lodha and Pradeep Sharma. During investigation of the second crime, cash of Rs.2.50 Crore was recovered from the house of Pawan Lodha under a discovery statement made by him. It is pertinent to note that the statement of Prabjeetsing Bhmbra recorded by Dhule police supports the case of Ashoksing. It is materially different from the statement given by him to M.I.D.C. Police, Andheri, Mumbai. His statement shows that Ashoksing was not involved in the crime. In this case also, the investigation was completed and charge-sheet was submitted on 5th April 2015 on the basis of which Regular Criminal

Case No.173/2015 is pending in the Court of Judicial Magistrate, First Class, Dhule. The cognizance is taken under Sections 467, 468, 471, 120-B read with Section 34 of the Indian Penal Code.

8. Learned Counsel for the petitioner Mr S.B. Narwade argued that there cannot be two F.I.R.s for one and the same act. He relied on the judgment of Apex Court in the matter of **Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and anr.,** reported in **(2013) 6 SCC 348** and the order passed in **Writ Petition No.824 of 2013** by the High Court, Andhra Pradesh in the matter of **Akbaruddin Owaisi Vs. The Government of Andhra Pradesh** dated 19th July 2013.

9. Learned Additional Public Prosecutor Mr K.D. Mundhe for respondent No.1 and learned Counsel Mr A.K. Bhosale for respondent no.2 argued that the so called second F.I.R. is not second F.I.R., it relates to distinct offence which took place at Dhule and for which Mumbai Police and Mumbai Court had no jurisdiction. Secondly, it is submitted that the facts alleged in the said report are materially different. Fresh F.I.R. in the said matter is not barred.

10. The points for our consideration are :-

(1) Whether the F.I.R. dated 6th January 2015 lodged by Ashoksing and the proceedings initiated on the same is barred in view of F.I.R. registered at M.I.D.C. Police Station, Andheri, Mumbai ?

(2) Whether the proceedings arising out of F.I.R. dated 6th January 2015 at Mohadinagar Police Station, Dhule deserves to be quashed under Section 482 of Cr.P.C. ?

11. In Amitbhai Shah's case there were three killings by Police in encounter of Sohrabuddin and his wife Kausarbi and the only witness to the killings of these two, Tulshiram Prajapati. Sohrabuddin was murdered on 26th November 2015 at Ahmedabad and his wife was murdered on 30th November 2015, while Tulshiram was shown as arrested on 29th November 2006. He was in Udaipur jail and was allegedly murdered in an encounter on 28th December 2006. The facts therein were materially different, as the scope of conspiracy and the acts committed in the course of same transaction were involved therein. The Apex Court, after considering in detail the case law on the subject held that all the three murders were committed in the same transaction and "the consequence test" was applied.

12. After going through the record produced before us, we find that both the F.I.R. relate to one common transaction whereby amount of Rs.10 Crore was transferred from the account of Indepth Impex Pvt.Ltd., to the account of accused Pawan Lodha's Smile Trading Company. There is one debit entry of Rs.10,00,00,056/- on 7th November 2014 in the account of Indepth Intex Pvt.Ltd., and another entry of Rs.7,10,00,056/- dated 7th November 2014 towards payment to Jenal Enterprises. The first F.I.R. relates to these two entries of Rs.17 Crore. The statement of account of Smile Trading Company shows only one credit entry of Rs.10 Crores on 7th November 2014 and statement of account of Jenal Enterprises shows one credit entry

of Rs.7,10,00,000/- dated 7th November 2014. Thus, the first F.I.R. relates to misappropriation, cheating or whatever may be the offence that relates to amount of Rs.17 Crore, which was debited from the account of Indepth Impex Pvt.Ltd. on 7th November 2014. The F.I.R. lodged by Ashoksing deals with debit entry dated 7th November 2014 of Rs.10 Crore from the same account. Both relates to only cheque bearing No.540752. In the judgment of Amitbhai Shah's case, the Apex Court in paragraphs No.37 and 38 observed as follows :

> “37. This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T. Antory, this Court has categorically held that the registration of second FIR (which is not a cross-case) is violative of Article 21 of the Constitution. The following conclusion in paras 19, 20 and 27 of that judgment relevant read as under : (SCC pp. 196-97 & 200)
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> > “19. The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the F.I.R., on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or

documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC.

20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case it was, however, observed that it would be appropriate

to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution.” The above referred declaration of law by this Court has never been diluted in any subsequent judicial pronouncements even while carving out exceptions.

38. ….. ….. ….. ….. …..

As a matter of fact, the aforesaid proposition of law making registration of fresh FIR impermissible and violative of Article 21 of the Constitution is reiterated and re-affirmed in the following subsequent decisions of this Court: 1. Upkar singh Vs. Ved Prakashs (2) Babubhai v. State of Gujarat (3) Chirra Shivraj v.State of A.P. And (4) C.Muniappan v. State of T.N. In C. Muniappan this Court explained the

> “consequence test” i.e. if an offence forming part of the second FIR arises as a consequence of the offence alleged in the first FIR then offences covered by both FIRs are the same and, accordingly, the second FIR will be impermissible in law. In other words, the offences covered in both the FIRs shall have to be treated as a part of the first FIR.

13. The test of sameness laid down in Babubhai's case (2010) 12 SCC 254 in paragraph 49 of the aforesaid judgment is satisfied in the facts and circumstances of the present case.

14. In the facts and circumstances of the present case, we find that both the F.I.R.s relate to same transaction of Rs.10 Crore. No doubt, the first F.I.R. registered at M.I.D.C. Police Station, Andheri, Mumbai involves one more transaction of Rs.7 Crore and there are different names of the accused persons in both the F.I.R.s, none-the-less as far as the present petitioner – Pawan Lodha is concerned, both the F.I.R.s relate to a common transaction of Rs.10 Crores.

15. The question of territorial jurisdiction was raised. The fact alleged in first F.I.R. discloses that the entire transaction took place at Andheri Mumbai, whereas as per second F.I.R., part of the cause of action accrued at Dhule and part of cause of action for the transaction of Rs.7 Crores took place at M.I.D.C., Mumbai. Therefore, Police of M.I.D.C. Police Station Andheri has jurisdiction to investigate the crime and Metropolitan Magistrate, Mumbai has jurisdiction to try the case.

16. It appears that Ashoksing has filed second F.I.R. to get rid of the charges levelled and the accusations made against him in the first F.I.R. It is not clear whether the documents produced by him at Mohadinagar Police Station, Dhule like authorising him to lodge complaint by the Board of Directors etc. are true or false. It is also not clear whether Director Prabjeetsing has actually given statement at Mohadinagar Police Station, Dhule or a different person was produced for making such statement, but in any case, the entire offence including the consequential acts are part of one transaction between Indepth Impex Pvt.Ltd. on one hand and Pawan Lodha and Pradeep Sharma on the other hand. There are same additional accused in both the F.I.R.s different from each other, which makes no difference. The test of sameness is clearly applicable to the facts of the present case.

17. It is clearly laid down in case of Amitbhai Shah that in the facts and circumstances of the present case, the prosecution on the second F.I.R. is impermissible and violative of Article 21 of the Constitution. The same is required to be quashed by invoking the inherent powers under Section 482 of the Code of Criminal Procedure or under Articles 226, 227 of the Constitution.

18. The question that remains is what should be done with the papers of investigation which relate to the second F.I.R. Cash of Rs.2.5 Crores was recovered from accused Pawan Lodha while investigating the second F.I.R. Those papers will be useful in the action initiated on the basis of first F.I.R. Besides, there may be certain statements of witnesses or other documents, which may be helpful to prove the charges against the accused persons. It is obvious

that the F.I.R. lodged by Ashoksing which is termed as second F.I.R. cannot be treated as statement under Section 161 of the Code of Criminal Procedure as he is accused No.3 in first case. It will be, therefore, appropriate for the Investigating Officer from Dhule to transfer all the papers to the Investigating Officer, M.I.D.C. Police Station, Andheri, Mumbai, who shall consider the material useful for the prosecution of case at Andheri and may file it as supplementary charge-sheet under Section 173 (8) of the Code of Criminal Procedure.

19. We, therefore, answer points No.1 and 2 in the affirmative and pass the following order:

ORDER

(I) Rule is made absolute. The criminal proceeding bearing Regular Criminal Case No.173/2015 pending in the Court of Judicial Magistrate, First Class, 6th Court Dhule arising out of C.R.No.1/2015 registered at Mohadinagar Police Station, Dhule on 6th January 2015 on the report of Ashoksing for offences punishable under Sections 420, 467, 468, 471, 120-B read with Section 34 of the Indian Penal Code is hereby quashed.

(II) The prosecution is permitted to use the papers of investigation in this crime to file supplementary charge-sheet in the earlier proceedings initiated on the first F.I.R. of Sadanand Suvarna dated 20th December 2014 at M.I.D.C. Police Station, Andheri, Mumbai.

(A.M. DHAVALE, J.) **(R.M. BORDE, J.)**

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