

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

CRIMINAL APPLICATION NO. 6331 OF 2016

1. Lalasaheb S/o Rajesaheb Shaikh,
Age: 42 years, Occu: Service,
R/o : Nath Nagar, latur,
District Latur.

2. Tabbsumbi D/o Ismile Shaikh,
Age: 30 years, occu: service,
R/o: Nath Nagar, Latur,
District Latur.

...APPLICANTS

versus

1. The State of Maharashtra
Through the Police Inspector,
Shivaji Nagar Police Station, ,
Latur, District Latur.

2. Dr. Superintendent of Police,
District Latur.

3. Dr. Ganpat S/o Shankarrao More,
Age: Major Occ: Education Officer,
(Secondary) Zilla Parishad Latur,
Dist. Latur.

...RESPONDENTS

....

Mr. P.M. Nagargoje, Advocate for applicants
Mr. S.G. Karlekar, APP for Respondents No. 1 and 2
Respondent No. 3 - Served

....

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

RESERVED ON : 13th FEBRUARY, 2017.

PRONOUNCED ON : 21st 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, by availing the remedy under section 482 of the Criminal Procedure Code (for short "Cr.P.C.") moved the present application and prayed to quash and set aside the impugned first information report(for short "FIR") bearing crime 361 of 2016 registered against the applicants at Shivajinagar Police Station for the offence of criminal breach of trust punishable under section 409 read with section 34 of the Indian Penal Code (for short "IPC"). The applicants agitated the validity, legality and propriety of the registration of impugned FIR, being second FIR in respect of the same offence and incident forming part of the same transactions as contained in the first FIR bearing Crime No. 9 of 2012 registered earlier pursuant to the directions of the learned Magistrate under section 156(3) of the Cr.P.C. at the behest of complainant Mr. Hamid Sarwar Sahab Shaikh.

3. The genesis of the application in brief is that, the first informant Dr. Ganpat Shankarrao More, Education Officer (Secondary) Zilla Parishad, Latur filed the FIR alleging that applicant No.1 Shaikh Lalasaheb Rajasaheb, President of Bhartiya Janhitwadi Sevabhavi Santha, Latur in connivance with applicant No. 2 Secretary of the Institution and respective Headmasters of five minority Schools, misappropriated and swindled the funds sanctioned under the Government scheme for providing basic amenities to the minority School run by the applicants' Institution. It has been alleged that the applicants did not utilize the funds procured from the Government for

basic amenities of the minority school nor they obtained utilization certificate from the concerned Collector to show that funds were properly spent for valid purpose as prescribed under the scheme. Moreover, it has also been reported that there were no minority Schools in existence and applicants played the mischief of misappropriation of Government funds procured under the garb of minority schools and committed criminal breach of trust. Pursuant to the report of first informant Dr. Ganpat Shankarrao More, Police of Shivajinagar Police Station, Latur registered the crime No. 361 of 2016 and set the criminal law in motion. Being aggrieved by registration of subsequent FIR bearing crime No. 361 of 2016 under section 409 read with section 34 of the IPC, the applicants rushed to this court and preferred the present application to redress their grievance.

4. The applicants, ventilated the grievances that one Hamid Sarwar Sahab Shaikh filed private complaint bearing RCC No. 113 of 2012, before the learned Judicial Magistrate, First Class, Latur on the accusation that the applicants and others committed the offences of forgery and cheating punishable under sections 406, 409, 463, 464, 465, 415, 417, 420, 467, 468, 470 and 471 read with section 34 of the IPC. The complainant Hamid Sarwar Sahab Shaikh also casted aspersions against Education Officer and other Government Personnels including applicants for misappropriation of Government funds and cheating etc. The learned Magistrate appreciated the nature of

allegations and on exercising the powers under section 156(3) of the Cr.P.C. referred the matter to the Police of Shivajinagar Police Station for investigation. Pursuant to directions of the learned Magistrate, Police of Shivajinagar Police Station registered the crime No. 9 of 2012 and swung into action. Pending the investigation, applicants approached to this court by filing criminal application No. 3913 of 2012 and put in controversy the propriety and legality of the criminal proceedings initiated against the applicants following directions of the learned Magistrate under section 156(3) of the Cr.P.C. However, during the course of hearing of aforesaid criminal application, it was communicated that the Investigating Officer preferred "C" summary report into crime No. 9 of 2012 before the learned Magistrate. The I.O. did not come across with the fact of misappropriation of Government funds by fabricating forged and fake documents. After the report of "C" Summary, the criminal proceedings of crime No. 9 of 2012 came to be closed. It has been contended that issue of misappropriation of Rs. 10,00,000/- (Rupees Ten Lakhs) obtained by the applicants for their five minority Schools was also discussed and deliberated in the Legislative Council being Star question No. 57282 and it was asserted by the Government Personnels that there was no misappropriation of Government funds and no question arises for taking action against the concerned persons. The applicants added that complainant Mr. Hamid Sarwar Sahab Shaikh of the RCC No. 113 of 2012 was the Vice President of the applicants' Institution and he attempted to embroil the

applicants unnecessarily in multiple proceedings filed before the Charity Commissioner, Latur etc. The allegation of misappropriation of Government funds allocated to the applicants' Institution has already been investigated and set at rest by filing "C" summary report before the concerned Magistrate. Therefore, no question arises for lodging second FIR on the same allegation forming same transactions, which were contained in the first FIR by the complainant Mr. Hamid Sarwar Sahab Shaikh against the applicants. Hence, applicants rushed to this court and prayed to quash and set aside the second FIR bearing crime No. 361 of 2016 being contrary to the provisions of law.

5. The learned counsel for the applicants vehemently submitted that the second FIR of first informant Shri Ganpat Shankarrao More, Education Officer, on the same allegations forming part of the same transaction are not permissible and it is violative of article 21 of the Constitution of India. He contends that allegation of misappropriation of the Government funds allocated under the Government Scheme for minority Schools were already investigated, after registration of first FIR bearing Crime No. 9 of 2012 and IO also filed "C" summary report under section 173 of the Cr.P.C. before the concerned Magistrate. Therefore, there was no need of fresh investigation once again on receipt of subsequent information of same cognizable offences. According to learned counsel, proposal of sanctioning funds to the applicants' institution under the Government Scheme was duly

considered and verified by the concerned authority of the Government of Maharashtra in 2008-2009. The concerned Education Officer of Zilla Parishad, Latur has carried out inspection and after due enquiry proposal came to be sanctioned for release of grants in favour of applicants' Institution. According to learned counsel, unfortunately, Schools were later-on closed down in the year 2011 due to paucity of students. The requisite information about closure of Schools was given to the concerned authority of Zilla Parishad, Latur vide letter dated 30-07-2011.

6. The learned counsel explained that writ petition No. 10252 of 2012 filed by one Mr. Sayeed Ifakatali Dastagir, was one of the associates of original complainant Mr. Hamid Sarwar Sahab Shaikh. They attempted to mislead this court in earlier proceeding of Criminal Application No. 10252/2012 for filing present criminal proceedings by lodging second FIR. The learned counsel explained that there was no such direction from this court to file criminal proceedings against the applicants. But, the Education Officer under the pretext of court proceedings of writ petition bearing No. 10252 of 2012 filed the impugned second FIR against the applicants for the same nature of allegations, which is not permissible and sustainable under the provisions of law. It is an abuse of process of law and caused prejudice and injustice to the applicants. The learned counsel in support of his submissions relied upon the judicial pronouncements in the cases of *T.T. Antony Vs. State of Kerla*

*and others*¹, *Upkar Sing Vs. Ved Prakash and others*², and *Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and another*³.

7. Per contra, learned APP for respondent No. 1 filed affidavit in reply and vociferously opposed the contentions put forth on behalf of applicants. He submits that first FIR bearing Crime No. 9 of 2012 was in respect of allegation of forgery for procuring the Government funds by the applicants. There were allegations that the applicants fabricated the forged and fake documents and opened the bogus bank account for misappropriation of funds allocated to the applicants' Institution. There was complaint that the applicant No. 1 prepared the fake change report with forged signatures of the members and incorporated the name of his wife i.e applicant No. 2 as Secretary of the Institution. According to learned APP, the present FIR bearing crime No. 361 of 2016 is in respect of improper utilization of funds sanctioned by the Government under the scheme. The funds were sanctioned for providing basic amenities to the five minority schools of the applicants' Institution, but it was noticed that alleged five minority Schools were not at all in existence. The applicants and other office bearers of the Institution in connivance with concerned Headmaster of the alleged Schools fabricated forged documents and obtained the benefits under the Government scheme for personal gain. The learned APP has shown possibility of involvement of original complainant Mr. Hamid Sarwar

1 AIR 2001 Supreme Court 2637

2 AIR 2004 Supreme Court 4320

3 AIR 2013 Supreme Court 3794

Sahab Shaikh, in this crime (being Vice Chairman of the Institution) who had filed private complaint bearing RCC No. 113 of 2012 for registration of first FIR bearing Crime No. 9 of 2012 against the applicants and others. The scope of investigation of second FIR is totally different and distinct from the first information. Therefore, there would not be any impediment to lodge subsequent FIR against the applicants. There was no utilization certificate obtained by the applicants from the concerned District Collector. The Minority Schools were seen not in existence. In view of the nature of allegations, it is essential to conduct separate investigation into the crime. Therefore, learned APP prayed not to nod in favour of applicants and dismiss the application.

8. We have given anxious consideration to the arguments canvassed on behalf of both sides. We have also delved into relevant documents produced on record. The pivotal issue to be ponder over in this matter is that since first FIR bearing crime No. 9 of 2012 registered on similar and identical allegations as well as cause of action pertains to the misappropriation of funds allocated to the applicants' Institution under the Government Scheme meant for minority Schools, the subsequent FIR could not have been lodged and entertained for the same allegations of misappropriation of the Government funds and the same is violative of principles of double jeopardy.

9. Obviously, it is the settled principle of law that very purpose of

registration of FIR is to set criminal investigation in motion, which would culminate in filing of police report under section 173 of the Cr.P.C. The law does not permit more than one FIR in relation to the same incident or different incident arising from same transaction.

10. The chapter XII of the Cr.P.C. deals with the information to the Police and their powers to investigate. Section 154 of the Cr.P.C. deals with in respect of cognizable cases whereas section 155 deals with information as to non-cognizable cases and investigation of such cases. The provision of section 154 of the Cr.P.C., contemplates that there has to be a FIR about incident which constitute a cognizable offence and every such 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 Cr.P.C. command the learned Magistrate for directions to the Officer In-charge of the Police Station to conduct investigation and report under section 173 of the Cr.P.C. The section 190 of the Cr.P.C. describes powers of the Magistrate to take cognizance of the offence under certain circumstances. It is crystal clear that the scheme of sections 154, 156 and 190 of the Cr.P.C. does not recognize more than

one FIR about the occurrence.

11. In the matter of *T.T. Antony Vs. State of Kerala and others* relied upon by the learned counsel appearing for the applicants, it has been held that registration of another FIR in respect of same incident as FIR under section 154 of the Cr.P.C. was not valid and legal and required to be quashed. The earliest or the first information in regard to commission of cognizable offence only be treated as FIR under section 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.

12. In the matter of ***T.T. Antony vs. State of Kerala and others, reported in (2001)6 SCC 181***, the Honourable Apex Court, in paragraph No. 27 has 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."

13. 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 Prakash*³, this Court considered the judgment in *T.T. Antony*² 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 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.

³ (2004) 13 SCC 292

² (2001) 6 SCC 181

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 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).

³ (2006)1 SCC 732

² (2001) 6 SCC 181

⁵ (2009) 1 SCC 441

14. 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.

15. In *Criminal Appeal No. 305 of 2013 (Surendra Kaushik and others Vs. State of UP)*⁴ 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

4 (2013)5 SCC 148

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 the quashed, does not merit acceptance."

16. While dealing with the issue in the case of *Anju Choudhary Vs. State of U.P and another reported in 2012 DGLS (Soft) 688: 2013(6) SCC 384*, 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, and explained the very

object and purport of the relevant provisions of the Cr.P.C, which would read 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.”

17. In the case of *Anju Chaudhari vs. State of UP*⁵, 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.

5 (2013)6 SCC 384

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. 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.

18. 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.

19. 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*).

20. In the instant case, on the backdrop of aforesaid legal guidelines delineated by the Honourable Supreme Court, it is imperative to examine factual aspects leading to registration of multiple FIRs against the applicants. Intense scrutiny of the recitals of both the FIRs reflects that these FIRs are not similar in nature. The allegations casted in both the FIRs are totally based on different circumstances and having distinct spectrum. The scope of investigation of both FIRs are not identical and similar in nature. Therefore, it would be cumbersome to construe that both FIRs are in respect of same offence. Admittedly, first FIR bearing crime No. 9 of 2012 was registered on the basis of exercise of powers by the learned Magistrate under section 156(3) of the Cr.P.C at the behest of complainant Mr. Hamid Sarwar Sahab

Shaikh. There were allegations that applicants including Government Personnels of the Panchayat Samiti, Bank employees, Headmasters of the minority Schools etc. prepared/fabricated forged and fake documents to procure the Government grants meant under the scheme for minority Schools. It was also alleged that the applicants and others opened the bogus account in the bank, and encashed the cheques of the Government funds. There were also allegations that the applicants prepared fake documents under forged signatures of the members of the Institution and submitted the spurious change report before the Charity Commissioner to show newly elected Board of Trustees of the Institution. Simultaneously, the complainant Mr. Hamid Sarwar Sahab Shaikh has also casted aspersions against the applicants and others about embezzlement of the funds procured under the Government Scheme by committing mischief of forgery. In view of allegations nurtured on behalf of complainant Mr. Hamid Sarwar Sahab Shaikh, the learned Magistrate exercised the powers under section 156(3) of the Cr.P.C. and referred the matter to the Police of Shivaji Nagar Police Station for investigation as per the provisions of law, and consequently, the crime No. 9 of 2012 came to be registered against the applicants and Government Personnels of the Zilla Parishad, Panchayat Samiti, Bank Officials as well as Headmasters of the minority schools etc. At this juncture, it is worth to mention that, concerned IO after registration of crime proceeded to collect evidence to bring home guilt of the applicants and other co-accused, for the charges pitted against

them. After examination of ramification of the crime of forgery as alleged against the applicants and others, unfortunately, IO did not prefer charge-sheet against applicants and he submitted report of "C" summary under section 173 of the Cr.P.C. In the aftermath proceeding came to be closed.

21. It is to be noted that when the IO is of the opinion that no judicial proceedings needs to be initiated, the Maharashtra Police Manual classifies the orders which may be requested by IO as Summaries "A" "B" and "C". The request for "A" Summary is to be made when the Police Officer investigate the case is of the view that the offence is true but undetected and where there is no clue whatever about the culprits or property or where the accused is known but there is no evidence to justify for criminal trial. A request for "B" Summary is sustainable when the complaint is maliciously false and there is no substance for further proceedings or trial against so called accused. A request for "C" summary is required to be made when the complaint is neither true nor false, that is, due to mistake of facts or being of a civil nature.

22. In the instant case, it is incumbent to appreciate that the parties are *ad-idem* to the factual aspects that earlier proceedings of Crime No. 9 of 2012 registered pursuant to the directions of the learned Magistrate under sections 156(3) of the Cr.P.C. came to be closed after final report of "C" Summary in nature under section 173 of

the Cr.P.C. by the IO. Therefore, there would not be any further trial of the applicants in the court of Law for the allegations nurtured in the first FIR bearing crime No. 9 of 2012 registered in this matter.

23. Now, appreciating the circumstance which gives rise for registration of subsequent FIR No. 361 of 2016 for the offence punishable under section 409 read with section 34 of the IPC against applicants and Office bearers of the institution etc, it transpired that allegations made in the another FIR bearing crime No. 361 of 2016 are totally rest on the different footing for the different nature of mischief allegedly committed by the applicants. The complainant is the Government Personnel, i.e. Education Officer of the Zilla Parishad, Latur. A background for registration of another crime No. 361 of 2016 is also significant for consideration to set criminal law in motion. As referred supra there was criminal writ petition No. 10252 of 2012 filed before this Court by one Sayyed Hifakatali Dastgir for requisite enquiry and directions to take action against errant individuals. Pending the proceedings before this Court, the Government personnels of Education Department of Zilla Parishad conducted the enquiry and it was revealed that five minor Schools for which the applicants had obtained funds of Rs. 10,00,000/- (Rupees Ten Lakhs) under the Government Scheme were not in existence at all. The funds were not utilized for which it came to be disbursed to applicants' Institution under the Government Scheme. The applicants did not obtain requisite certificate from the

concerned District Collector for proper utilization of funds as required under the scheme. Therefore, it has been alleged that applicants and other Office bearers of the Institution in connivance with Headmasters of the so called Schools procured the Government funds for personal gain and misappropriated the same.

24. The comparison of the allegations contained in both the FIRs demonstrate that the earlier complaint was filed by one Mr. Hamid Sarwar Sahab Shaikh, Vice President of the applicants' Institution. He had filed complaint for the allegation of preparation of forged document i.e. change report in respect of the newly elected Board of Trustees. He had also made allegation that the applicants opened the bogus bank accounts and misappropriated the funds. The earlier complaint bearing Crime No. 9 of 2012 appears to be personal agenda of the complainant Mr. Hamid Sarwar Sahab Shaikh, who was one of the Office bearers of the applicants' Institution. Moreover, he had initiated multiple proceedings against the applicants and others before the learned Charity Commissioner in regard to the dispute pertains to the nomination of the trustees on the Board of applicants' Institution. It seems that the complainant Mr. Hamid Sarwar Sahab Shaikh attempted to use the court seeking private vendetta or with an ulterior motive. However, the second FIR is pertains to misuse of Government Funds by committing mischief of criminal breach of trust. The complainant is the Government Personnel i.e. Education Officer of the

Zilla Parishad, Latur. He was also arraigned as one of the accused in the earlier proceeding of Crime No. 9 of 2012 filed by the complainant Mr. Hamid Sarwar Sahab Shaikh.

25. According to learned APP, subsequent FIR bearing crime No. 361 of 2016 pertains to the misappropriation of Government funds obtained under the garb of five minority schools, which were found not in existence at all and possibility of involvement of Office bearers of the applicants' Institution including the earlier complainant Mr. Hamid Sarwar Sahab being Vice Chairman of the applicants' Institution, could not be ruled out. If involvement of number of accused persons and the nature of allegations nurtured on behalf of first informant Mr. Ganpat More, who is employee of the Zilla Parishad, Latur are scrutinized, no expert is required to arrive at the conclusion that the subsequent FIR has a different spectrum. The allegation of misappropriation made in both the FIRs are based on different footings and distinct circumstances. The subsequent FIR may be regarded as counter-complaint against Mr. Hamid Sarwar Sahab Shaikh complainant in first FIR. It would fallacious to blame the subsequent FIR as an endeavour to improve the allegations that find place in the first FIR. It would be reiterated that proceeding of earlier FIR has already been closed following "C" summary report preferred by the IO under section 173 of the Cr.P.C. Therefore, we are not inclined to appreciate that there would be a violation of principle of double-jeopardy.

26. In contrast, in view of rule of fair investigation, it would be essential to give reasonable opportunity to aggrieved victim of such crime for fair investigation to collect the evidence and to find out whether any cognizable offence as alleged has been committed and if yes, then who are the perpetrator of the crime. In case, the subsequent FIR is not allowed to be investigated it would cause injustice and prejudice to the aggrieved victim of the crime and the State machinery would be precluded from its legitimate rights to lodge the FIR to bring home the guilt of real culprits. In the case of Nirmal Singh Kahlon Vs. State of Punjab and ors.¹ Their Lordship's of Supreme Court discussed the concept of fair trial and fair investigation and in para 27 observed as under:

An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation."

27. The second FIR, in our opinion, would be maintainable for the reason that, earlier proceeding of FIR crime No. 9 of 2012 has been closed following "C" summary report by concerned IO under section 173 of the Cr.P.C. Thereafter, new discovery came to be unearthed on the factual foundation during enquiry initiated by the authority of Zilla Parishad. It was revealed that five minority schools for which Office

¹ AIR 2009 SC 984

bearers of the applicants' Institution procured the Government funds under the scheme were not at all in existence. The applicants and others under the garb of minority Schools misappropriated the Government funds. Therefore, in view of new discovery of the facts, fair investigation is required to be carried out otherwise, it would pave escape route for the miscreants. The discovery of new facts would enhance the scope of investigation. It is worth to mention that the earlier complainant Mr. Hamid Sarwar lodged the FIR making allegations against the applicants and Government personnel of Zilla Parishad etc. But, it does not debar the aggrieved first informant to move for registration of another FIR against the applicants as well as other office bearers of the institution including the complainant of the first FIR. If the principle of sameness is applied in this matter and investigation is scuttled by quashing FIR, it would cause miscarriage of justice and aggrieved complainant would be deprived of justice. (emphasis supplied on the exposition in Surendra Kaushik's case (2013) 5 SCC 148 referred supra). Hence, in order to facilitate fair investigation it would be justifiable to allow the prosecution to proceed further separately on the basis of second FIR to find out truth and veracity in the allegations made on behalf of Government personnels of the Zilla Parishad, Latur so that the aggrieved complaint would not be deprived of justice. Moreover, there would not be any question of joint/common trial or separate trial as the earlier proceeding in respect of Crime No. 9 of 2012 has already been closed following "C" Summary

report by the I.O. The question of violation of Article 20 of the Constitution of India would not arise for the contravention of principle of double jeopardy. The investigation agency should have the freedom to go into the whole gamut of the allegations to reach the conclusion on its own.

28. In view of the circumstances discussed above, we are not inclined to quash and set aside subsequent FIR giving rise to Crime No. 361 of 2016 for the charges of criminal breach of trust against the applicants and others as envisaged under section 409 read with section 34 of the IPC. We are of the considered opinion that submission on behalf of the applicants that subsequent FIR bearing Crime No. 361 of 2016 registered with Shivajinagar Police Station, Latur, District Latur is an abuse of process of law and being second FIR of the same allegations liable to be quashed and set aside, is not sustainable and acceptable. In sequel, the application deserves to be rejected. Accordingly, the application is rejected. Rule stands discharged.

Sd/-

[K.K.SONAWANE]
JUDGE

Sd/-

[S.S. SHINDE]
JUDGE

29. After pronouncement of the judgment, the prayer is made by the learned counsel appearing for the applicants to continue the ad-interim relief, which was in force during the pendency of the application. The

prayer is seriously opposed by the learned A.P.P. appearing for the respondent – State.

30. Since, we have rejected the application, there is no question of continuing an ad-interim relief any further. Hence, the prayer to continue ad-interim relief, which was in force during pendency of this application stands rejected.

Sd/-

[K.K.SONAWANE]
JUDGE

Sd/-

[S.S. SHINDE]
JUDGE

MTK