

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Petition No.40742 of 2016

Between

Operation Mobilization India, rep. by
Dr. Joseph D'Souza and others

.... Petitioners

And

The State of Telangana, rep. by its
Principal Secretary, Home Department,
Secretariat, Hyderabad and others.

... Respondents

JUDGMENT PRONOUNCED ON

: 03.04.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : YES
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : YES
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? : YES

* THE HON'BLE SRI JUSTICE A.RAMALI NGESWARA RAO

+ Writ Petition No. 40742 of 2016

% 03.04.2017

Operation Mobilization India, rep. by
Dr. Joseph D'Souza and others

..Petitioners

Vs.

\$ The State of Telangana, rep. by its
Principal Secretary, Home Department,
Secretariat, Hyderabad and others.

... Respondents

!Counsel for the Petitioners : Sri V. Pattabhi

^ Counsel for the Respondents 1 to 4 : GP for Home
Counsel for the Respondent No.5 : Sri J. Sudheer

< Gist :

> Head Note :

? Cases referred

1. (1992) Supp (1) SCC 335
- 2 (1994) 4 SCC 260
- 3 (2000) 4 SCC 168
- 4 (2001) 6 SCC 181
- 5 (2002) 1 SCC 714
- 6 (2007) 6 SCC 171
- 7 (2010) 12 SCC 254
- 8 (2013) 5 SCC 148
- 9 (2013) 5 SCC 762
- 10 (2013) 6 SCC 348
- 11 (2013) 6 SCC 384
- 12 (2013) 6 SCC 740
- 13 (2014) 2 SCC 1
- 14 (2014) 8 SCC 273
- 15 (2015) 6 SCC 287
- 16 (2015) 6 SCC 439
- 17 (2016) 3 SCC 8
- 18 (2016) 11 SCC 703
- 19 (1979) 2 SCC 322
- 20 (2011) 5 SCC 79
- 21 (2010) 9 SCC 567
- 22 (2010) 2 SCC 200
- 23 (2009) 1 SCC 441
- 24 (2004) 13 SCC 292
- 25 (2016) 3 SCC 135
- 26 (1962) Supp 2 SCR 297 : AIR 1962 SC 876
- 27 AIR 2003 SC 702
- 28 AIR 1918 Mad 494
- 29 AIR 1946 Mad 167
- 30 AIR 1949 Bom 384
- 31 AIR 1949 Pat 256
- 32 AIR 1930 Lahore 879
- 33 AIR 2005 SC 38

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No.40742 of 2016

Order:

Heard learned counsel for the petitioners, learned Government Pleader for the respondents 1 to 4 and learned counsel for the fifth respondent.

In this case, this court is called upon to examine a century old settled law by relying on some subsequent judgments decided on facts of those cases and laying down law applicable to those circumstances.

The first petitioner is a Religious Trust registered under the Bombay Public Trusts Act, 1950 and running different Charities/NGOs from the same office premises with a turn over of more than Rs.200 Crores. The second petitioner is a Moderator of these organizations and a Bishop also. The third petitioner is the son of the second petitioner. The fifth respondent lodged a complaint on 29.09.2016 with the third respondent and the third respondent directed the registration of the complaint. Accordingly, the fourth respondent registered the complaint as Crime No.22 of 2016. In the complaint, the fifth respondent claimed that he worked as Chief Financial Officer and in other roles in the first petitioner organization from 1989 to 2012. He listed out various acts and omissions by the petitioners.

The petitioners filed the present Writ Petition stating that, on an earlier occasion, on the basis of complaint of one Mr. Ratnakar, an associate of the fifth respondent, on reference from the court, Crime No.350 of 2012 was registered and ultimately the complaint was closed due to lack of evidence after a final report was filed in the Court. After filing the final report, no action was taken by the *de facto* complainant

therein, but, however, he submitted representations to the Commissioner of Police, Cyberabad in November 2013 and again in August 2015 requesting the Commissioner of Police, Cyberabad to entrust the case to the CBCID. Apart from the above, he sent anonymous complaints to the Director of Enforcement, Hyderabad, and an enquiry was made pursuant to the said complaints, and it did not reveal anything. He also lodged complaints with the Labour Department, but the Labour Department disposed of the complaints advising him to approach appropriate forum. He was also addressing the foreign christian communities by e-mail by repeating the false allegations against the first petitioner and its management. The Writ Petition was filed on the ground that in respect of the same allegations the second complaint is not maintainable, the complainant earlier worked as Group Finance Director and he was suspended from service due to gross misconduct, sexual abuse, wife abuse and breach of other organizational policies. Since the time of his suspension, he started a dissident group, started indulging in the acts of mudslinging, false complaints and was indulging in the acts of destabilization of the organization. The fifth respondent and his colleagues, with the support of one Mr. Vasanth Kumar, who styled himself as a Director General of Police, Hyderabad, and the earlier complainant Ratnakar Kanapala, created an organization by the name 'Christian Bureau of Crimes Information Desk (CB CID)' and started addressing various christian societies abroad affiliated to the first petitioner institution. In fact, when the said Ratnakar was confronted, he accepted the same and tendered his resignation to the employment on 03.05.2012. Thereafter, he approached the Magistrate by filing a private complaint which was referred, registered as Crime No.350 of 2012 and

closed as aforesaid. However, he filed another complaint with the Police at Pet-Basheerabad Police Station and the same was registered as Crime No.384 of 2012 against the second petitioner and six (6) others. The said complaint was lodged with the allegation that the second petitioner and others threatened him and forcibly took his resignation on 03.05.2012. Though the police tried to investigate the said complaint, when the complainant did not cooperate with them, a final report was filed on 30.11.2013 closing the complaint for lack of evidence. The said complaint was not pursued. The petitioners earlier faced investigation by the Enforcement Directorate and other agencies and registration of the present complaint is nothing but harassment of the petitioners for the self same allegations.

The fourth respondent filed a counter affidavit stating that after registration of Crime No.22 of 2016, under Sections 409, 420 and 477(A) IPC and Section 37 of the Foreign Contribution (Regulation) Act, 2010, by the CID PS, TS, Hyderabad, investigation was taken up. The investigation revealed that the petitioners received funds from the foreign donors for the benefit of Dalit children promising to provide free education and meals to them, as they are studying in their Good Shepherd Schools, but the petitioners intentionally did not reveal the information with regard to collection of fee and donation from each student who wished to study in the Good Shepherd School which is supposed to provide free education. The said School is organized by OM Group of Charities, Hyderabad. The investigation further revealed that the foreign donors were donating \$ 27 to \$ 33 for education per month per child and separate funds for uniform. Besides the foreign donors, the OM Group of Charities is obtaining huge amounts from the Indian donors for Dalit children education, but the said

amounts were not credited to Operation Mercy India Foundation which runs the Schools and they were shown in the accounts of Good Shepherd Community Society which runs Churches. Even after receiving donations they have been collecting fee and donation from each child who was studying in the Good Shepherd School. Thus, they have cheated Dalit people by manipulating the records and committed breach of trust of the foreign donors, Indian donors and Dalit downtrodden people with a criminal intention to swallow and siphon off the funds to gain wrongfully and misappropriated huge funds of OM Group of Charities. Thus, a *prima facie* case was established against the petitioners 1 to 8 under the registered sections of the crime. In view of the same, notices were issued for production of certain records and information, but the petitioners are not co-operating with the investigating agency and they have been replying that the complainant and others are trying their best to destabilize and ruin the organization. It is noticed that the police on earlier occasions, did not collect any documentary evidence, being busy with law and order duties, non-cooperation of the petitioners and simply referred the cases as lack of evidence. The earlier cases have nothing to do with the present case as the complainant is different and allegations are not similar. When the petitioners were asked to furnish information, they replied that they could not provide details required for investigation in relation to the Good Shepherd Schools, OM Group of Charities as the present Writ Petition would be coming up for hearing before this Court. There are apparent differences between the allegations contained in Crime No.350 of 2012 and the present crime. The petitioners, instead of co-operating with the investigating agency, have attacked one Sardar Sathpal Singh and his staff of CID, TS, Hyderabad, and a case was

registered for obstructing the investigating agency in discharging their legitimate duties in FIR No.109 of 2016. The earlier case in Crime No.350 of 2012 was closed after issuing notice under Section 91/160 Cr.P.C and due to lack of response from the complainant. But, in the present case, the CID collected oral and documentary evidence which *prima facie* established the case against the petitioners. Still investigation has to be continued as several witnesses have to be examined and documentary evidence has to be collected. The investigation took a different turn after thorough interrogation and upon revelation of new facts which are alarming. The accused being Directors/Employees of OM Group of Charities have misappropriated huge amounts of the Trust and Charities and established themselves as a big power with the help of their associates and their wealth. The investigating agency (CID) is having documentary evidence against the petitioners to prove their guilt, illegal activities against poor Dalit people and their children and for their dishonest and fraudulent misappropriation of funds. The investigation revealed wide spread network of the offenders and illegal receipt of money in the guise of OM International Dalit Freedom Network.

The fifth respondent filed a separate counter affidavit stating that a reading of the earlier two FIRs and the present FIR would show that the allegations are not same. However, it is admitted that three allegations raised earlier by K. Ratnakar included in Crime No.350 of 2012 are also raised by the fifth respondent herein and besides the said three allegations four more allegations were raised. Though the earlier crime in respect of three allegations was closed for lack of evidence, a perusal of final report would show that no proper investigation was done. In fact, the petitioners filed a false case against K. Ratnakar under Cyber Laws

and he was acquitted later on. The closure of the earlier complaint does not mean that the present complaint is not maintainable. What is material is the evidence gathered during the process of investigation and, when it is the duty of the police to investigate a crime they should be allowed to continue the investigation. The fifth respondent is not a disgruntled employee as made out, but he was thrown out of the organization.

A reply affidavit running into 44 pages is filed by the petitioners stating that the CID branch of the State Police is not a regular Police Station like any other law and order Police Station in the State and the same is evident from Para 861(1) of the A.P. Police Manual and PSO 1028 and 1031 read with Official Memorandum in RC No.6774/Compts-3/2012, dated 05.12.2012. The CB CID conducts investigation under the orders of the Supreme Court or High Court or on direction under Section 156(3) Cr.P.C from a designated CID Court in the State. Thus, they have no power to entertain the complaint. The very allegation in the counter affidavit that the earlier investigation in Crime No.350 of 2012 by Pet Basheerabad Police Station was not done properly clearly shows that it is reinvestigating the said allegations and it has no jurisdiction to do the same. The other averments made by the police in their counter that they are proceeding with the investigation in consultation with legal advisors clearly shows that the investigation is not independent or impartial and was manipulated and misdirected by interested agencies. Even the Court has no power to entertain a fresh complaint, when the investigation is pending in relation to a particular set of facts and circumstances and this could be seen from Section 210 of Cr.P.C. In view of this, the CID should have called for a report with regard to investigation in Crime No.350 of 2012 and then should have considered with regard to maintainability of

the present complaint before registering it as a crime. The investigating agency is not investigating fairly, as could be seen from their act of not allowing the petitioners 7 and 8 to come to Hyderabad. On the “sameness test/principle” also the registration of second FIR is not permissible. The fifth respondent is accustomed to speaking falsehoods, as, even though he never occupied the position of Chief Finance Officer, he claimed that he worked as such and in different roles from 1989 to 2012. In fact, the fifth respondent was behind Ratnakar who lodged a complaint earlier resulting in registration of Crime No.350 of 2012. The fifth respondent bore grudge against the first petitioner Trust and Mr. Joseph D’ Souza who was operating it. The petitioners are running 103 schools having 26,000 students and they have been filing income tax returns. The Ministry of Home Affairs has been renewing the registration of the first petitioner for the purpose of Foreign Contribution Regulation Act. The renewals were granted only after scrutiny of the accounts of the first petitioner. There are no complaints against the petitioners except from the fifth respondent. In order to constitute an offence under Section 420 IPC, the ingredients mentioned in Section 415 IPC should be made out. In the instant case, there is nothing on record to show that there is any aggrieved person falling within the definition of Sections 405 or 409 IPC claiming that the property was entrusted by that person to the petitioners and he suffered breach of trust at the hands of the petitioners. On the other hand, all the foreign organizations who were the contributors have given letters reposing faith and trust in the first petitioner Trust and its management. The first petitioner trust is being maintained by the employees and there is no question of falsification of accounts. The Ministry of Home Affairs, Foreigners Wing issued a notice on 23.08.2013

to the first petitioner Trust and sent an inspection team also. They conducted a thorough investigation by inspecting all books of accounts and records and after such thorough inspection the inspection team did not find any illegality or irregularity in the books of accounts and records of the first petitioner Trust and its management. Thus, it is stated that the complaint is vindictive, false, frivolous, misconceived and intended to continue the vendetta against the petitioners.

Learned counsel appearing for the petitioners submitted that the second complaint on the same set of allegations is not maintainable and the police should not have registered a crime on the basis of such second complaint. He relied on the decisions reported in *State of Haryana v. Bhajanlal*¹, *Joginder Kumar v. State of UP*², *Hridaya Ranjan Prasad Verma v. State of Bihar*³, *T.T. Antony v. State of Kerala*⁴, *Kari Choudhary v. Sita Devi*⁵, *Aleque Padamsee v. Union of India*⁶, *Babubhai v. State of Gujarat*⁷, *Surender Kaushik v. State of UP*⁸, *Vinay Tyagi v. Irshad Ali*⁹, *Amitbhai Anilchandra Shah v. CBI*¹⁰, *Anju Chaudhary v. State of UP*¹¹, *Chandran Ratnaswamy v. K.C. Palanisami*¹², *Lalita Kumari v. Govt. of UP*¹³, *Arnesh Kumar v. State of Bihar*¹⁴, *Priyanka Srivastava v. State of UP*¹⁵, *Ramdev Food Products Pvt. Ltd. v. State of Gujarat*¹⁶, *Awadesh Kumar Jha*

¹ (1992) Supp (1) SCC 335

² (1994) 4 SCC 260

³ (2000) 4 SCC 168

⁴ (2001) 6 SCC 181

⁵ (2002) 1 SCC 714

⁶ (2007) 6 SCC 171

⁷ (2010) 12 SCC 254

⁸ (2013) 5 SCC 148

⁹ (2013) 5 SCC 762

¹⁰ (2013) 6 SCC 348

¹¹ (2013) 6 SCC 384

¹² (2013) 6 SCC 740

¹³ (2014) 2 SCC 1

¹⁴ (2014) 8 SCC 273

¹⁵ (2015) 6 SCC 287

¹⁶ (2015) 6 SCC 439

v. State of Bihar¹⁷ and Rini Johar v. State of MP¹⁸. Learned counsel for the petitioners further submitted that the present complaint is nothing but a replica of the previous brief note submitted to the Commissioner of Police in 2013 and he did not choose to take any action, but, for the reasons best known to the present Additional Director General of Police, the complaint was directed to be registered. He further submitted that when a final report was filed, the earlier complainant did not choose to file any objections/protest petition and he allowed it to become final. The earlier complainant and the present complainant are disgruntled employees who wanted to bring bad name to the organization and have been repeatedly lodging complaints in order to settle their personal scores.

Learned Government Pleader as well as learned counsel for the fifth respondent submitted that the earlier complaint was not properly investigated but a final report was filed. Though three of the allegations in the present complaint are similar to the earlier complaint, three more allegations are included in the present complaint which require investigation. Learned Government Pleader produced voluminous material before this Court and submitted that the investigation revealed *prima facie* case for continuing the investigation and the closure of earlier crime is not a bar for continuing the investigation. He relied on a decision of the Hon'ble Supreme Court reported in Ram Lal Narang v. State (Delhi Administration)¹⁹.

Learned counsel appearing for the *de facto* complainant/fifth respondent brought to the notice of this Court the perfunctory manner of conducting the investigation pursuant to registration of Crime No.350 of

¹⁷ (2016) 3 SCC 8

¹⁸ (2016) 11 SCC 703

¹⁹ (1979) 2 SCC 322

2012 and submitted that in view of such investigation the Court should not stall the present investigation. He relied on the decisions reported in T.T. Antony's case (supra), Babubhai's case (supra) and Awadesh Kumar Jha's case (supra).

On the basis of the above pleadings and submissions made, the following points arise for consideration:

1. Whether the CID Police, TS, Hyderabad can register a complaint on the endorsement made by the fourth respondent?
2. Whether registration of FIR No.22 of 2016 on 29.09.2016, even after submission of a closure report, pursuant to registration of FIR No.350 of 2012 on 10.03.2013 containing some of the allegations in the present complaint, is valid or not?

The undisputed facts in the instant case are that the first petitioner is a Trust registered under the Bombay Public Trusts Act, 1950. The third petitioner is the son of the second petitioner. The second petitioner's daughter was appointed as Director of Health Initiative, daughter-in-law as Skin Specialist and his relatives are also actively associated with the trust activities. The second petitioner is stated to be its principal trustee, whereas the petitioners 3 to 6 are adhoc trustees and petitioners 7 and 8 are consultants. The first petitioner trust is managing different non-governmental organizations viz; (1) Operation Mercy India Foundation, (2) OM Books Foundation, International Bible Society (Biblica), (3) Good Shepherd Community Society, (4) All India Christian Council, (5) Mercy Community Development Foundation, (6) Dayspring Enterprises of India and (7) Kadwell Consultancy Private Limited etc. It obtained seven permissions from the Government of India under the Foreign Contribution (Regulation) Act, 2010 and its activities involved around Rs.200 Crores.

One K. Ratnakar filed a complaint before the learned Metropolitan Magistrate, Medchal Courts, Ranga Reddy District on 09.07.2012 stating that he was an ex-employee of the first petitioner Trust which was initially registered under the provisions of the Bombay Public Trusts Act, 1950 at Bombay by the international charity "SEND THE LIGHT" on 21.08.1971 in the name and style of "Operation Mobilization India". Later on, the office was shifted to Hyderabad during the year 1989-90. The nomenclature of the international organization "SEND THE LIGHT" is also changed to "OM INTERNATIONAL". He further stated that while working in the post of Zonal Manager, he came to know several financial irregularities and misappropriations of trust funds to a tune of more than Rs.80.00 lakhs. Having noticed the same, he requested the Chief Financial Officer, who was shown as second witness in his complaint, to initiate departmental enquiry into the entire episode. Basing on the departmental enquiry, a confidential report was prepared by the second witness and submitted the same to the petitioners 1 and 3 herein, but no action was taken by them. He also stated that the second witness also observed several irregularities and fraud during Tsunami relief operations undertaken by the Operation Mercy India. There was embezzlement to the tune of Rs.13,26,000/-. He further stated that the property belonging to the subsidiary of OM Books situated in Jubilee Hills was sold to some third parties in the year 2011 and the entire sale proceeds were received in cash and transmitted to USA under hawala transaction without accounting the same in the books of accounts of the organization. The third petitioner herein received an amount of Rs.40.00 lakhs towards commission for the services rendered by him. A part of the said commission was used to buy a flat in his son's name. There is a whistle blower policy in the first petitioner organization

and as per the said policy the complaints against the organization's misdeeds were welcome. Though the accused Nos. 4 and 5 shown in the complaint were at the helm of the affairs, they have not taken any action. Though, as per the proceedings of the Chief Commissioner of Land Administration dated 26.07.2005, no property belonging to the Christian missionaries should be sold without obtaining NOC from the concerned Collectors, the fourth accused in connivance with the accused Nos.1 and 3 executed sale deed bearing document No.4368 of 2010 dated 08.11.2010. Part of the sale proceeds were utilized for purchase of Flat No.302, Prithvi Ganga Vihar, Jeedimetla, Hyderabad in the name of son of the third accused and the document was registered as document No.12493 of 2010 dated 28.12.2010. When the illegalities came to the knowledge of the complainant on 20.06.2012, he was unceremoniously sent off by dictating the resignation and accepting the same by putting pressure. Though he lodged a complaint on 28.05.2012 before the Pet-Basheerabad Police Station, the same was not entertained. Thus he lodged the complaint with the magistrate who referred it to the police for investigation and was registered by the police as FIR No.350 of 2012 on 24.08.2012, under Sections 406, 420 read with Sections 120-B and 34 IPC. A final report was filed on 28.10.2013 stating that there was no evidence. The details of the final report will be dealt with later.

The said K. Ratnakar also lodged a complaint with the Station House Officer, Pet-Basheerabad Police Station, Cyberabad on 04.09.2012 stating that OM International has a 'whistle blowing policy' and encouraged its members to bring in any complaints with respect to financial irregularities, leadership abuses and such other concerns. In order to use that opportunity, he created an anonymous mail ID as

cbcidhyd@gmail.com (Christian Bureau of Crimes Information Desk) and informed the international members with regard to alleged frauds and irregularities committed by the second petitioner and his team members. He further states that on his complaints the international members came to India, conducted enquiries and the matter was pending in the Head Office. Later on, a meeting was called on 30.04.2012, wherein 70 employees attended and asked for the confession of the person who sent the e-mail to the international authorities. The complainant, K. Ratnakar confessed to have sent the e-mails. He named seven persons responsible for his harassment and sought action against them. On the basis of the said complaint, Crime No.384 of 2012 was registered under Sections 384 and 506 IPC. On 03.05.2012 he was taken to a room where he was threatened by a stranger who identified himself as a CBI Officer. He further states that resignation was obtained from him on 03.05.2012. However, the said complaint was closed by filing a final report on 30.11.2013 stating that there was lack of evidence. The report was filed stating that though the complainant was contacted and was requested to produce evidence, he never responded to the calls nor replied to the notices issued under Section 91/160 Cr.P.C.

A complaint was lodged by one G. Jonathan claiming to be a trustee of OM Books Foundation on 08.11.2012 to the Station House Officer, Cyber Crime Police Station, Cyberabad stating that they have been receiving spate of threatening, extorting, blackmailing and defamatory messages from one e-mail address "cbcid@gmail.com" and it is an impersonation of a Government organization. The said complaint was registered as Crime No.50 of 2012 under Section 66 (A & D) of the Information Technology Act and a charge sheet was filed against

K. Ratnakar and he was arrested on 08.05.2013. However, he was acquitted by the learned XVI Metropolitan Magistrate, Cyberabad, Kukatpally, at Miyapur on 13.01.2015.

Thereafter, the said K. Ratnakar lodged a complaint on 20.11.2013 with the Commissioner of Police, Cyberabad alleging that the investigation in Crime No.350 of 2012 was perfunctory, the Investigating Officer connived with the accused and accordingly sought necessary action. He enclosed a brief note of facts on the embezzlement of public funds by the accused. The same was received in the office of the Commissioner on 16.12.2013. It appears that some employees separately lodged a complaint with the Assistant Commissioner of Police, Pet-Basheerabad, Hyderabad on 28.10.2015 alleging threat to their lives by the petitioners herein. No action appears to have been taken on the said complaints.

One Gowripaga Albert Lael, the fifth respondent herein, who stated to be a former Chief Financial Officer for OM Group of Charities and former National Director for Dalit Education, OMIF Founding Director of several groups of OM Group of Charities, lodged a complaint with the Additional Director General of Police, Crime Investigation Department, Telangana State, Hyderabad on 29.09.2016 reiterating the earlier allegations and adding three more allegations and specifically stated that the petitioners 2 and 3 herein had appointed retired police officials as advisors by paying exorbitant consultation charges to avoid police action and the closure of the case in Crime No.350 of 2012 was a result of such interference of the retired police officials. It is pertinent to notice that the present complainant is none other than the second witness shown in the earlier complaint lodged by the complainant in Crime No.350 of 2012 which was closed. After receipt of the said complaint, a memo appears to

have been issued by the Additional Director General of police, CID, Hyderabad and in pursuance of the same the complaint was registered as Crime No.22 of 2016 under Sections 409, 420, 477-A IPC and Section 37 of the Foreign Contribution (Regulations) Act 2010 at CID PS, Telangana State, Hyderabad and the copy of the FIR was sent to DSP, CID (Economic Offences Wing), Telangana State, Hyderabad for further investigation. Challenging the registration of the said crime, this Writ Petition was filed on 22.11.2016 and this Court while adjourning the matter on 02.12.2016 for filing counter directed the official respondents not to arrest the writ petitioners. The said order was extended from time to time and lastly on 09.03.2017.

The allegations in the two complaints are as follows:

Allegations in Crime No.350 of 2012	Allegations in Crime No.22 of 2016
1. Allegation of Sale of Bible Books and encashment of the same without accounting. 2. Purchase of boats and nets in connection with Tsunami and misappropriation of the same. 3. Sale of building at Jubilee Hills and transmitting entire amount to USA through HAWALA and also purchase of flat by one of the accused. Indulging in illegal activities such as receiving black money contrary to Income Tax, flouting RBI guidelines etc., in the guise of running a charitable organization.	1. Misappropriation of Rs.80.00 Lakhs to Rs.2.00 Crores in sale of Bibles, which are to be distributed free of cost. 2. Embezzlement of trust funds (Tsunami Relief Fund) to the tune of Rs.4.00 Crores to Rs.5.00 Crores. 3. Embezzlement of funds of Rs.4.00 Crores from the funds of the trust by the Chairman and his son by showing falsification of records with the active connivance of others. 4. Diversion of donations worth of \$ 400,000 US dollars meant for dalit education centers in India through Hawala contrary to Foreign Contribution Regulation Act, Foreign Exchange Management Act and public trust acts/laws. 5. Diversion of Trust funds into private investments. 6. Accumulation of funds in Fixed Deposits (over Rs.100.00 Crores) meant for Dalit Schools/Dalit community.

	7. Using retired police officials to save their skin.
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At this stage, it is relevant to notice the reasons for submitting a final report in respect of Crime No.350 of 2012 on 28.10.2013. In the said report it was stated that out of twelve (12) witnesses cited including the complainant therein, eleven (11) witnesses were examined and their statements were recorded. Eight (8) witnesses out of eleven (11) witnesses denied the allegations and the remaining three (3) witnesses are none other than the terminated/resigned employees including the complainant. No summary of the statement of the witnesses, who supported the case of the complainant, was submitted and no investigation appears to have been done on the basis of their statements. It was simply stated that the first witness was the complainant, second witness was an ex-employee and third witness corroborates the said witnesses but their statements were not recorded. With regard to rest of the witnesses it was merely stated that their names were cited as witnesses without their consent. Only three (3) witnesses, witnesses 8, 9 and 10 were stated to have denied the allegations. The Investigating Officer opined that there was no sale of Bibles, there was free distribution of boats to the Tsunami affected people and the sale consideration of property was available in the form of fixed deposit with Indian Overseas Bank. Thus, it was held that the allegations were not supported by substantial evidence. This investigation was found fault with by the second witness of the said final report who lodged a separate complaint now with the Additional Director General of Police, which was registered as Crime No.22 of 2016.

In the light of the above facts, the points framed as above have to be answered.

So far as the first point is concerned, G.O.Ms.No.438, Home (Police-D) Department, dated 05.10.1988, was issued by the erstwhile Government of Andhra Pradesh declaring the office of the CID as a Police Station for the entire State of Andhra Pradesh under Section 2(s) of the Code of Criminal Procedure, 1973 and directed that one of the Deputy Superintendent of Police (DSP) working in the said office nominated for this purpose shall be the Station House Officer within the meaning of said Section. After bifurcation of the State, the Government of Telangana issued G.O.Ms.No.17, Home (Legal) Department, dated 07.08.2014, declaring the Crime Investigation Department, Telangana, Hyderabad as a Police Station. In view of the same, it cannot be said that the Crime Investigation Department cannot register a complaint.

The only point that remains for consideration is whether a second FIR, containing the earlier allegations, which resulted in submitting a final report as false, and adding few more allegations, is maintainable in law.

At this stage, it is not for this Court to go into the merits of the case, except to the limited extent of perusing the nature of allegations covered by Crime No.350 of 2012 and Crime No.22 of 2016 and they were already extracted above.

Chapter 12 of the Code of Criminal Procedure, 1973 deals with information to the police and their powers to investigate. Section 154 Cr.P.C deals with information as to cognizable cases, whereas Section 155 Cr.P.C deals with information as to non-cognizable cases. The police officer's power to investigate non-cognizable cases and the procedure for investigation is provided in Sections 156 and 157 of the Code. The Crime

No.350 of 2012 was registered under Sections 406, 420 read with Sections 120-B and 34 IPC. The present FIR No.22 of 2016 was registered under Sections 409, 420 and 477–A IPC read with Section 37 of the Foreign Contribution (Regulations) Act, 2010. The Sections under which the crime was registered are cognizable offences. In the case of cognizable offences, as held by the Hon'ble Supreme Court in Lalita Kumari's case (supra), the police are bound to register the crime.

In Ram Lal Narang's case (supra) the Hon'ble Supreme Court was considering the statutory right of the police to further investigate after submitting the report under Section 173(1) Cr.P.C., when the Magistrate had already taken cognizance of the offence. In the said case, consequent to the registration of FIR by the CBI and filing a charge sheet on 30.12.1972, the learned Special Magistrate directed framing of charges against two accused. Thereafter, the Public Prosecutor filed an application under Section 494 Cr.P.C seeking permission to withdraw the case against them. The learned Special Magistrate passed an order on 16.05.1977 permitting withdrawal of the case and discharged the accused. Thereafter, another case was registered and a charge sheet was filed before the Chief Judicial Magistrate, Delhi against some other accused. The accused in the case before the Delhi High Court took a plea that the earlier case before Ambala Court covers the same facts and the prosecution in the subsequent case is unwarranted. When the learned Magistrate refused to quash the proceedings, the matter was taken to the High Court of Delhi. In the meanwhile, a supplementary charge sheet was filed against the accused, who were discharged by the Ambala Court in the Delhi case. The Delhi High Court refused to quash the proceedings and the matter was taken to the Supreme Court. The Supreme Court held

that the power of the police to further investigate was not exhausted by the Magistrate by taking cognizance of the offence and they can exercise such right as often as necessary when fresh information came to light. But, when a further investigation is required, the police should seek formal permission to make further investigation. It was also observed that, when a second investigation is started independently of the first, which discloses a wide range of offences including those covered by the first investigation, and the report of the second investigation is submitted to a Magistrate other than the Magistrate who has already taken cognizance of the first case, it is for the prosecuting agency or the accused concerned to take necessary action by moving the appropriate superior Court to have the two cases tried together or the Magistrates may themselves take action *suo motu*. The Supreme Court on the facts of that case came to the conclusion that the investigating agency did not act out of any malice and accordingly held that there was no illegality. The said case arose out of the application of the provisions of Section 482 of Cr.P.C and though a subsequent investigation was allowed, the facts are not identical.

In T.T. Antony's case (supra) the Supreme Court explained the meaning of FIR and the course of action to be taken, if further information pertaining to the same incident comes to light. In the said case, in connection with an incident involving the Minister for Cooperation and Ports of UDF Government in Kerala, where five persons died, six persons were injured in the police firing resorted to for protection of the Hon'ble Minister, two crimes were registered on the same day, viz., 353 and 354 of 1994. When LDF Government came to power, another crime was registered as Crime No.268 of 1997 against three persons including the

erstwhile Minister but the earlier cases were closed as being false and undetected. When a fresh investigation was ordered by the High Court pursuant to the challenges made to the registration of the crime, the matter went up before the Supreme Court. The Supreme Court after examining Section 154 Cr.P.C held that the scheme of Cr.P.C provides that an officer in-charge of a Police Station has to commence investigation as provided in Section 156 or 157 Cr.P.C on the basis of entry of the first information report, and on coming to know of the commission of the 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 Cr.P.C and forward his report to the Magistrate concerned under Section 173(2) Cr.P.C. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR, but he is empowered to make further investigation, normally with the leave of the Court and where during further investigation if he collects further information, oral or documentary, he is obliged to forward the same with one or more further reports. In view of the scheme of the provisions of Sections 154 to 173 Cr.P.C, only the earliest or the first information with regard to commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus, there can be no second FIR and consequently there could 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. In the said case, Ram Lal Narang's case (supra) was cited by the counsel and after considering the case law the Supreme Court summarized the position for exercise of power by this Court to interfere with the investigation. It observed that 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. It was held that though in Ram Lal Narang's case (supra) it was held that the police have power to conduct further investigation with the permission of the Court, but the sweeping power of the investigation does not warrant subjecting a citizen each time for 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 was further held that in such cases, this Court can intervene in exercise of power under Section 482 Cr.P.C or under Article 226 or 227 of the Constitution of India. In the said case, the Supreme Court took note of the fact that the offences mentioned in the crimes of 1994 and 1997 are same and in such circumstances the correct course of action should have been to take note of the findings and the contents of the report, streamline the investigation to ascertain the true and correct facts, collect the evidence in support thereof, form an opinion under Sections 169 and 170 Cr.P.C and forward the report under Section 173(2) or Section 173(8) Cr.P.C. to the Magistrate concerned. It was categorically held that the registration of information as the second FIR in regard to the same incident and making a fresh investigation is not permissible under the scheme of the provisions of Cr.P.C. Therefore, the investigation undertaken was held not valid.

The said Ram Lal Narang's case (supra) and T.T. Antony's case (supra) came up for consideration in Babubhai's case (supra). The Supreme Court held that the courts interference with the investigation is warranted only in extraordinary or exceptional cases of gross abuse of

power and failure of justice. It was held that the Court would direct *de novo* investigation to prevent miscarriage of justice, if investigation is tainted and biased, suffers from illegalities and conducted in *mala fide* exercise of power by police causing serious prejudice and harassment to any party.

In Amitbhai Anilchandra Shah's case (supra) the Supreme Court considered the permissibility of second FIR. The said case arose out of a writ petition filed by the first accused challenging the fresh FIR dated 29.04.2011 by the CBI and charge sheet dated 04.09.2012 consequent to the entrustment of case from Gujarat Police to CBI relating to the death of one Tulsiram Prajapati, a material witness to the killings of Sohrabuddin and his wife Kausarbi. The Supreme Court in Narmada Bai v. State of Gujarat²⁰, took note of the fact of filing a charge sheet by the State of Gujarat and after going through the same rejected the investigation conducted/concluded by the State Police and directed the State Police to hand over the case to CBI. After investigation, the CBI filed a fresh FIR on 29.04.2011 against various police officials of the States of Gujarat and Rajasthan and others for acting in furtherance of a criminal conspiracy to screen themselves from legal consequences of their crime by causing the disappearance of human witness i.e., Tulsiram Prajapati, by murdering him on 28.12.2006 and showing it off as a fake encounter. On behalf of the petitioner reliance was placed on C. Maniappan v. State of Tamil Nadu²¹, wherein it was held that when two separate complaints had been lodged, it does not mean that they could not be clubbed together and one charge sheet could not be filed. A

²⁰ (2011) 5 SCC 79

²¹ (2010) 9 SCC 567

stand was taken by the CBI by relying on Section 218 of the Code and was submitted that a distinct charge has to be framed for a distinct offence and each distinct charge has to be tried separately. It was also submitted that there is no concept of joint investigation. It was stated that the only exception is under Sections 219 and 220 of the Code that a person can be tried at one trial for more offences than one committed within a period of one year. But, there is no bar in law to filing a separate FIR/complaint in respect of two distinct offences and similarly there is no bar to file two separate charge sheets for seeking prosecution of accused in two distinct offences. It was also submitted that in T.T. Antony's case (supra) the principle laid down was that there cannot be second FIR only in respect of the same incident or occurrence. It was submitted that whether the offences are distinct or the same would necessarily have to be examined in the facts and circumstances of each case. On the above pleas, the Supreme Court went through the record in Narmada Bai's case (supra) and Rubabbuddin Sheikh v. State of Gujarat²², and noticed that the CBI took a stand that killing of two individuals and killing of the third person who was Tulsiram Prajapati was part of the very same conspiracy and since the same series of acts was connected, they will have to be tried in one trial under Section 220 of the Code. The Supreme Court also perused the charge sheet dated 04.09.2012 filed pursuant to registration of second FIR and observed that what the CBI conducted was mere "further investigation" and the alleged killing of Tulsiram Prajapati was in continuance of and inseparable part of conspiracy which commenced in November 2005 and hence the second charge sheet, in law and on facts, deserves to be treated as "supplementary charge sheet in

²² (2010) 2 SCC 200

the first FIR". Then it examined the permissibility or impermissibility of the second FIR. It approved the ratio laid down in T.T Antony's case (supra) that a second FIR in respect of an offence or different offences committed in the course of same transaction is not only impermissible but it violates Article 21 of the Constitution. It further observed that the declaration of law in the said case has never been diluted in any subsequent judicial pronouncements even while carving out exceptions. The decisions cited by the learned Additional Solicitor General on Anju Chaudhary's case (supra), Babubhai's case (supra), Surender Kaushik's case (supra), Nirmal Singh Kahlon v. State of Punjab²³, Ram Lal Narang's case (supra), Upkar Singh v. Ved Prakash²⁴ and Kari Choudhary's case (supra), in support of his contention that the second FIR is maintainable, were held not to be applicable. The Supreme Court ultimately summarized its findings as follows.

"Summary:

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

58.2. The various provisions of the Code of Criminal Procedure clearly show that an officer-in-charge of a police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the First Information Report, on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of evidence collected, Investigating Officer has to form an opinion under Section 169 or 170 of the Code and forward his report to the concerned Magistrate under Section 173(2) of the Code.

58.3. Even after filing of such a report, if he comes into possession of further information or material, there is no

²³ (2009) 1 SCC 441

²⁴ (2004) 13 SCC 292

need to register a fresh FIR, he is empowered to make further investigation normally with the leave of the Court and where during further investigation, he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports which is evident from sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. Thus, there can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.

58.4. Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering FIR in the Station House Diary, the officer-in-charge of the police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Code. Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report(s) to the Magistrate. A case of fresh investigation based on the second or successive FIRs not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution.

58.5. First Information Report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR.

58.6. In the case on hand, as explained in the earlier paras, in our opinion, the second FIR was nothing but a consequence of the event which had taken place on 25/26.11.2005. We have already concluded that this Court having reposed faith in the CBI accepted their contention that Tulsiram Prajapati encounter is a part of the same chain of events in which Sohrabuddin and Kausarbi were killed and directed the CBI to "take up" the investigation.

58.7. For vivid understanding, let us consider a situation in which Mr. 'A' having killed 'B' with the aid of 'C', informs the police that unknown persons killed 'B'. During investigation, it revealed that 'A' was the real culprit and 'D' abetted 'A' to commit the murder. As a result, the police officer files the charge sheet under Section 173(2) of the Code with the Magistrate. Although, in due course, it was discovered through further investigation that the person who abetted Mr. 'A' was 'C' and not 'D' as mentioned in the charge sheet filed under Section 173 of the Code. In such a scenario, uncovering of the later fact that 'C' is the real abettor will not demand a second FIR rather a supplementary charge sheet under section 173(8) of the Code will serve the purpose.

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

58.9. Administering criminal justice is a two-end process, where guarding the ensured rights of the accused under Constitution is as imperative as ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the court of law to protect and shield the rights of both. Thus, a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. Accordingly, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences. As a consequence, in our view this is a fit case for quashing the second F.I.R to meet the ends of justice.

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

On the facts of the said case, the Supreme Court held that filing of second FIR and fresh charge sheet is violative of fundamental rights under

Articles 14, 20 and 21 of the Constitution since the same related to alleged offence in respect of which an FIR had already been filed and the Court had taken cognizance. Accordingly, the second FIR was quashed, but the charge sheet filed on 04.09.2012 was directed to be treated as supplementary charge sheet in the first FIR.

The above decision was considered in Awadesh Kumar Jha's case (supra) and para 58.3 of the above summary was extracted. The facts of the said case are that originally FIR No.111 of 2008 (first FIR) was registered on 04.05.2008 against both the appellants along with other persons for the offences punishable under Sections 3 to 7 of the Immoral Traffic (Prevention) Act, 1956. After investigation, a report was filed under Section 173 Cr.P.C before the concerned Magistrate and the same was taken cognizance on 06.08.2008. In the meantime, when the appellants moved applications for grant of bail, they furnished wrong information regarding their names, father's name and address and on the complaint of the Inspector of Police another FIR No.183 of 2008 was registered on 03.07.2008 for the offences punishable under Sections 419 and 420 IPC. The charge sheet was filed before the concerned Magistrate and he took cognizance of the same on 11.09.2008. It appears that the criminal proceedings arising out of first FIR were already set aside, but when the trial was to take place consequent to the second FIR, the same was challenged on the ground that the second FIR was absolutely untenable in law and liable to be quashed. The Supreme Court did not agree for quashing the second FIR and upheld the order of the High Court with the following observations.

“26. However, this principle of law is not applicable to the fact situation in the instant case as the substance of the allegations in the said two FIRs is different. The first FIR

deals with offences punishable under Sections 3, 4, 5, 6 and 7 of the Act, whereas, the second FIR deals with the offences punishable under Sections 419 and 420 of IPC which are alleged to have committed during the course of investigation of the case in the first FIR. This Court is of the view that the alleged offences under the second FIR in substance are distinct from the offences under the first FIR and they cannot, in any case, said to be in the form of the part of same transaction with the alleged offences under the first FIR. Therefore, no question of further investigation could be made by the investigating agency on the alleged offences arisen as the term “further investigation” occurred under sub-Section (8) to Section 173 of Cr.P.C. connotes the investigation of the case in continuation of the earlier investigation with respect to which the charge sheet has already been filed. The reliance is placed on the judgment of this Court in the case of Rama Chaudhary v. State of Bihar ((2009) 6 SCC 346), the relevant para 17 reads thus: (SCC p.349)

“17. From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of the police report under sub-section (2) on completion of the investigation, the police has a right to “further” investigation under sub-section (8) of Section 173 but not “fresh investigation” or “reinvestigation”. *The meaning of “further” is additional, more, or supplemental. “Further” investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether.*” (emphasis supplied)”

In Pooja Pal v. Union of India²⁵, the Supreme Court was considering the scope of fresh investigation/reinvestigation or further investigation by the same or different agency. In the said case, the Supreme Court was considering the case of a widow of slain Raju Pal, who was a sitting MLA of Uttar Pradesh State Assembly seeking investigation by the CBI into the murder of her husband. Her plea for CBI investigation before the High Court failed. By the time the Supreme Court took up the case, the case of murder was investigated and a charge sheet was filed against the accused. It was committed to the Court of Sessions and the

²⁵ (2016) 3 SCC 135

trial had begun, but it was stayed by the Supreme Court. On the facts of that case, the case was entrusted to CBI with a direction to undertake *de novo* investigation in the incident of murder of Raju Pal.

The other decisions cited by the learned counsel for the petitioners are not directly on the point and are not relevant for the purpose of consideration of the present point of law.

However, the case in *Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar*²⁶, is required to be considered in the facts of the present case. In the said case, a complaint was lodged on 17.03.1954 against the appellants before the Supreme Court and two others and the same was dismissed under Section 203 of the Code by the then Chief Presidency Magistrate on 06.08.1954. He preferred a revision to the High Court of Calcutta and the same was dismissed on 08.07.1955 by a learned single Judge. Thereafter, he lodged another complaint before the Chief Judicial Magistrate, Calcutta on 03.04.1959 on more or less identical allegations. In the second complaint certain other allegations were also made. The learned Chief Presidency Magistrate thought it fit to proceed further and issued processes against the appellants before the Supreme Court. Before going to the Supreme Court, the appellants filed revision petitions before the Division Bench and in view of the importance of the matter, the matter was placed before the Full Bench and in view of the difference in the Full Bench, it was referred to a Special Bench of three judges. One of the questions considered by the Special Bench was with regard to entertainment of the second complaint on the same allegations when his predecessors had dismissed the first complaint. The Special Bench held the complaint maintainable. When the matter came up before the

²⁶ (1962) Supp 2 SCR 297 : AIR 1962 SC 876

Supreme Court, it was considered by three judges and all the learned Judges were of the view that dismissal of an earlier complaint is not a bar for entertainment of a second complaint on the same facts, but it will be entertained only in exceptional circumstances, e.g., where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings have been adduced. However, on facts, Justice J.L. Kapur and Justice M. Hidayatullah held that bringing of the fresh complaint is a gross abuse of the process of the Court and is not with the object of furthering the interests of justice, whereas Justice S.K. Das held that the order of the learned Chief Presidency Magistrate as affirmed by the High Court was correct. Thus, the law laid down by the Supreme Court is to the effect that the second complaint is maintainable.

In Mahesh Chand v. B. Janardhan Reddy²⁷, which went from this Court to the Supreme Court, a three Judge Bench of the Supreme Court examined the maintainability of the second complaint. The appellant before the Supreme Court was a complainant who lodged the First Information Report against the respondent on 19.07.1997. Having been not satisfied with the investigation carried out by the police authorities, he filed a criminal complaint in the Court of the Additional Judicial Magistrate of First Class, Saroornagar in the district of Ranga Reddy against the respondent. The Investigating Officer came to the conclusion that the dispute between the parties was a civil dispute and accordingly a final report was filed before the learned Magistrate. The

²⁷ AIR 2003 SC 702

complainant filed a protest petition on 02.09.1998. The final report was accepted by the learned Magistrate. The complaint case filed by the appellant was also closed and it has become final. On 08.11.2002, a third complaint was filed by the appellant under Section 200 of Cr.P.C whereupon summons were issued to the respondent. Challenging the same, the respondent filed an application under Section 482 Cr.P.C and a learned single Judge of this Court, having regard to the police report in Crime No.206 of 1997 dated 29.07.1997 holding that the dispute between the parties was of civil in nature and further having regard to dismissal of the protest petition filed by the appellant on 02.09.1998, held that a fresh complaint on the self same allegations was barred. In the back drop of the above facts, the Supreme Court was considering the maintainability of the fresh complaint. Before the Supreme Court the learned counsel for the respondent placed an authenticated copy of the complaint with a petition to show that the same was almost a verbatim reproduction of the earlier complaint petition. The Supreme Court placed reliance on Pramatha Nath Taluqdar's case (supra), In re: Koyassan Kutty²⁸, Kumaraiah v. Chinna Naicker²⁹, Hansabai Sayaji v. Ananda Ganuji³⁰, Ram Narain Choubey v. Panachand Jain; Ramanand v. Sheri³¹ and Allah Ditta v. Karam Baksh³² and held that the second complaint was not barred and the relevant observations are as follows.

“19. Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous

²⁸ AIR 1918 Mad 494

²⁹ AIR 1946 Mad 167

³⁰ AIR 1949 Bom 384

³¹ AIR 1949 Pat 256

³² AIR 1930 Lahore 879

complaint is dismissed without assigning any reasons, the Magistrate under Sec. 204 Cr.P.C. may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in *Pramatha Nath Taluqdar's case* (supra) second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. In the facts and circumstances of this case, the matter, therefore, should have been remitted back to the learned Magistrate for the purpose of arriving at a finding as to whether any case for cognizance of the alleged offence had been made out or not.”

Accordingly, it set aside the order of the learned single Judge of this Court and remanded the matter to the learned Magistrate. This judgment was rendered by three Judge Bench of the Supreme Court, but unfortunately this judgment was not brought to the notice of the Supreme Court when it rendered the opinion in *Amitbhai Anilchandra Shah's case* (supra) which led to rely on *T.T. Antony's case* (supra) and make an observation that the declaration of law made therein was never diluted in any subsequent judicial pronouncements even while carving out exceptions. The decision in *Pramatha Nath Taluqdar's case* (supra) was followed in *Poonam Chand Jain v. Fazru*³³.

In the instant case, as stated above, one K. Ratnakar initially lodged a complaint which was registered as FIR No.350 of 2012 on 24.08.2012 and a final report was filed treating the said case as lack of evidence. The said case was referred on a private complaint filed before the learned Metropolitan Magistrate, Medchal, R.R. District. As per the averments in the counter affidavit of the fifth respondent herein, the

³³ AIR 2005 SC 38

complainant therein could not take up the matter any further as his wife was suffering from abdominal Cancer. Added to that, he was implicated as accused in Crime No.50 of 2012, wherein he was ultimately acquitted by the competent Criminal Court. Thereafter, though efforts were made to seek further investigation in the year 2013, it did not fructify. As could be seen from the final report filed in FIR No.350 of 2012, no books of accounts of the first petitioner organization were verified nor the witnesses in support of the complaint were examined. A reading of the final report shows that it was perfunctory. The crucial witness in the said complaint, who was shown as second witness, lodged the present complaint adding three more allegations and during the process of investigation so far done by the Investigating Officer a *prima facie* case is established. Hence, I am of the opinion that this case falls squarely within the parameters laid down by the Supreme Court in Pramatha Nath Taluqdar's case (supra), which is a three Judge Bench decision, followed in Mahesh Chand's case (supra) which is also another three Judge Bench case and the ratio laid down therein is applicable to the facts of the present case. Accordingly, I hold that the second complaint is maintainable and the investigation should proceed, as finding the truth is the ultimate aim of any criminal investigation. It is not out of place to quote the observations of the Supreme Court in Pooja Pal's case (supra) in this connection.

“89. Prior thereto, in the same vein, it was ruled in Samaj Parivartan Samudaya and others vs. State of Karnataka and others ((2012) 7 SCC 407) that the basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation, in accordance with law and to ensure that the guilty are punished. It held further that the jurisdiction of a court to ensure fair and proper investigation in an adversarial system of criminal administration is of a higher degree than in an inquisitorial

system and it has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders, escaping the punitive course of law. Any lapse, it was proclaimed, would result in error of jurisdiction.

.....

92. That the pre-eminence of truth is the guiding star in a judicial process forming the foundation of justice had been aptly propounded by this Court in Maria Margarida Sequeira Fernandes and others vs. Erasmo Jack De Sequeira (dead) through L.Rs ((2012) 5 SCC 370). It was ruled that the entire judicial system had been created only to discern and find out the real truth and that the Judges at all levels have to seriously engage themselves in the journey of discovering the same. Emphasizing that the quest for truth is the mandate of law and indeed the bounden duty of the courts, it was observed that the justice system will acquire credibility only when the people will be convinced that justice is based on the foundation of the truth. While referring with approval, the revealing observation made in Ritesh Tewari and another vs. State of U.P. and others ((2010)10SCC 677) that every trial is voyage of discovery in which truth is the quest, the following passage of Lord Denning scripted in Jones vs. National Coal Board ((1957) 2 All ER 155(CA) was extracted in affirmation: (Maria Margarida case (supra), SCC p.384, para 39)

“39.....It’s all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth. (Jones case (supra), QB p.64)”

.....

95. Adverting to the role of the police to be one for protection of life, liberty and property of citizens, with investigation of offences being one of its foremost duties, it was underscored in Manohar Lal Sharma vs. Principal Secretary and others ((2014) 2 SCC 532) that the aim of investigation is ultimately to search for truth and to bring the offender to book. The observations of Lord Denning in his rendering in “The Due Process of Law”, First Indian Reprint 1993, page 102 were alluded to as under: (SCC p.553, para 25)

“25.....’In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of police whom it can trust; and enough of them to be able to

prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.

The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants.' "

96. The avowed purpose of a criminal investigation and its efficacious prospects with the advent of scientific and technical advancements have been candidly synopsisized in the prefatory chapter dealing with the history of criminal investigation in the treatise on Criminal Investigation – Basic Perspectives by Paul B. Weston and Renneth M. Wells:

"Criminal investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission and the mental state accompanying it. It is probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum inquiry.

Successful investigations are based on fidelity, accuracy, and sincerity in lawfully searching for the true facts of an event under investigation and on an equal faithfulness, exactness, and probity in reporting the results of an investigation. Modern investigators are persons who stick to the truth and are absolutely clear about the time and place of an event and the measurable aspects of evidence. They work throughout their investigation fully recognizing that even a minor contradiction or error may destroy confidence in their investigation.

The joining of science with traditional criminal investigation techniques offers new horizons of efficiency in criminal investigation. New perspectives in investigation bypass reliance upon informers and custodial interrogation and concentrate upon a skilled scanning of the crime scene for physical evidence and a search for as many witnesses as possible. *Mute evidence tells its own story in court, either by its own demonstrativeness or through the testimony of an expert witness involved in its scientific testing.* Such evidence may serve in lieu of, or as corroboration of, testimonial evidence of witnesses found and interviewed by police in an extension of their responsibility to seek out the truth of all the circumstances of crime happening. *An increasing certainty in solving crimes is possible and will contribute to the major deterrent of crime – the*

certainty that a criminal will be discovered, arrested and convicted.

(emphasis supplied)

.....

101.....We take this view, conscious about the parameters precedentially formulated, as in our comprehension in the unique facts and circumstances of the case any contrary view would leave the completed process of crime detection in the case wholly inconsequential and the judicial process impotent. A court of law, to reiterate has to be an involved participant in the quest for truth and justice and is not expected only to officiate a formal ritual in a proceeding farseeing an inevitable end signaling travesty of justice. Mission justice so expectantly and reverently entrusted to the judiciary would then be reduced to a teasing illusion and a sovereign and premier constitutional institution would be rendered a suspect for its existence in public estimation. Considering the live purpose for which judiciary exists, this would indeed be a price which it cannot afford to bear under any circumstance.”

The Writ Petition is, accordingly, dismissed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 03rd April, 2017
Nsr