

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

CRIMINAL APPLICATION NO.2544 OF 2015

1. Pravin s/o Narsingrao Jethewad,
Age 32 years, Occu. Business,
R/o Naik Nagar, Behind Mayur Talkies,
Nanded, Tq. And District Nanded
2. Narayan s/o Tulshiram Madhavwad,
Age 44 years, Occu. Business,
R/o Samarth Nagar, Nanded,
Taluka and District Nanded
3. Babu s/o Ganpat Salwe,
Age 45 years, Occu. Private Service,
R/o Plot No.A 30, 31, 32
Mayur Biocoal Industries, Malawata
Taluka Basmat, Dist. Hingoli .. Applicants

Versus

1. The State of Maharashtra,
through Police Inspector,
Shivaji Nagar Police Station,
Nanded, District Nanded
2. Umesh s/o Kamlakarrao Kasture,
Age 38 years, Occu. Business
R/o 'Aai', Lokmitra Nagar,
Purna road, Nanded, Dist. Nanded .. Respondents

Mr S.M. Vibhute, Advocate for applicants
Mr M.M. Nerlikar, A.P.P. for respondent no.1
Mr S.S. Bora, Advocate for respondent no.2

CRIMINAL APPLICATION NO. 2741 OF 2015

1. Sanjeev Tukaram Kulkarni,
Age 50 years, Occu. Journalist,
R/o 59, Aayodhya Nagari,
Nanded
2. Umesh Kamlakarrao Kasture,
Age 37 years, Occu. Business,
R/o Lokmitra Nagar, Purna road,
Nanded
3. Ganesh Kamlakarrao Kasture,
Age 41 years, Occu. Teacher/
Journalist,
R/o As above

4. Anand Sudhakar Kulkarni,
Age 40 years, Occu. Journalist,
R/o Purna road, Nanded .. Applicants

Versus

1. State of Maharashtra,
Vasmatnagar Gramin Police Station,
Vasmat, District Hingoli
2. Baburao Ganpat Salve,
Age 45 years, Occu. Service,
R/o C/o Mayura Bio coal Industries,
Plot No.A-30, 31, 32, Malvata MIDC,
Vasmat Taluka Vasmat,
District Hingoli ..Respondents

Mr S.S. Bora, Advocate for applicants
Mr M.M. Nerlikar, A.P.P. for respondent no.1
Mr S.M. Vibhute, Advocate for respondent no.2

- WITH -

CRIMINAL APPLICATION NO.808 OF 2016

1. Sanjeev Tukaram Kulkarni,
Age 50 years, Occu. Journalist,
R/o 59, Ayodhyanagari, Nanded
2. Umesh Kamlakarrao Kasture,
Age 37 years, Occu. Business
R/o Lokmitra Nagar, Purna road,
Nanded ..Applicants

Versus

1. The State of Maharashtra,
through Vasmat Gram Police Station,
Vasmat, District Hingoli
2. Narayan Tulshiram Madhavwad,
Age 42 years, Occu. Business,
R/o Samarth Nagar, Nanded ..Respondents

Mr S.S. Bora, Advocate for applicants
Mr M.M. Nerlikar, A.P.P. for respondent no.1
Mr S.M.Vibhute, Advocate for respondent no.2

**CORAM : S.S. SHINDE AND
A.M. DHAVALA, JJ**

**DATE OF RESERVING
THE JUDGMENT :18.12.2017**

**DATE OF PRONOUNING
THE JUDGMENT :05.02.2018**

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

1. All these matters are interconnected and involve common question of law.
2. Rule. Rule made returnable forthwith and with the consent of parties, the matters are heard finally at admission stage.
3. All these matters are filed under Section 482 of Cr.P.C. and Articles 226 and 227 of Constitution for quashing of F.I.R. filed by the parties against each other.
4. The facts relevant for deciding these matters may be stated as follows:
5. On 19.10.2011, Sanjeev Kulkarni, Umesh Kasture and Pravin Jethewad formed a partnership firm to carry on business of Bio Coal in the name of Abhang Industries. It is registered on 24.4.2014. Each partner was having 1/3rd share.
6. On 14.11.2012, M/s Abhang Industries entered into agreement with Narayan Madhavwad, Proprietor of Mayura Bio Coal Industries, whereby his plots No.30, 31-A and A-32 at Malwata MIDC Area, Vasmat, District Hingoli were taken over on rent of Rs.25,000/- per month for carrying on the business.

7. On 8.12.2012, as per documents on record Abhang Industries purchased a tractor from Rainbow Tractors for Rs.2,65,000/- as down payment and balance by incurring loan. The down payment was made from the Bank account of Abhang Industries. The receipt is in the name of Umesh Kasture but payments were made by cheques of Abhang Industries. The payment receipt is in the name of Abhang Industries. The income tax returns disclose that the tractor was fixed asset of the firm and the firm had incurred tractor loan.

8. The dispute arose on account of sale of tractor on 25.1.2015. It was sold by Pravin Jethewad on behalf of Abhang Industries in favour of Narayan Madhavwad for sum for Rs.7,50,000/-. Cheque dated 6.2.2015 was issued in the name of firm and the said cheque was encashed on 11.2.2015. Baburao Salve working with Narayan Madhavwad was witness to the transaction. The receipt was issued on behalf of Abhang Industries. The payment of Rs.7,50,000/- was credited in the account of Abhang Industries.

9. The R.C. Book and insurance policy of the tractor were in the name of Umesh Kasture. The loan account was also in his name. But the installments were paid from account of Abhang Industries.

10. On 11.2.2015, Umesh Kasture lodged report at Vasmat Police Station reporting that his R.C. Book and tax book were missing.

11. On 1.3.2015, Baburao Salve, employee of Narayan Madhavwad lodged a report at the M.I.D.C. Vasmat Police Station that Sanjeev Kulkarni, Umesh Kasture and two others had been to his factory and demanded possession of the tractor and assaulted him with fist and kick blows and threatened to kill him. It was registered as N.C. case

under Section 323, 506 of Indian Penal Code.

12. Babu Salve filed application under Section 156 (3) of Cr.P.C. on 10.3.2015 in the Court of Judicial Magistrate, First Class, Vasmat making allegations against Sanjeev Kulkarni, Umesh Kasture and two others Ganesh Kasture and Sanjay Kandhare. In this report, he alleged that they had abused him in the name of his caste and committed offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'Atrocities Act'). He alleged that when he had been to the Police Station, the Police Station Officer had talk with accused nos.1 and 3 and due to their relations, his F.I.R. was not properly recorded and only N.C. case was registered and he was advised not to take quarrel with the accused persons, who were influential. In spite of his repeated requests, his report about offence under Atrocities Act was not recorded.

13. On the application dated 10.3.2015, learned Judicial Magistrate, First Class, Vasmat passed order dated 8.4.2015. He felt that there was no necessity to issue directions under Section 156 (3) Cr.P.C. and it was fit case for taking cognizance. He directed the complainant to remain present for examination under Section 200 Cr.P.C. and examination of witnesses under Section 202 Cr.P.C. It seems that Babu Salve did not prosecute this F.I.R. and he somehow managed to persuade the police to record the F.I.R. and accordingly, F.I.R. dated 25.5.2015 came to be recorded at C.R.No.3009/2015 at Vasmat police station for offences punishable under Sections 323, 504, 506 read with Sec.34 of Indian Penal Code and offence under Atrocities Act against four accused persons.

14. Criminal Application No.2741/2015 is filed by four accused persons for quashing of the said F.I.R.

15. Umesh Kasture filed F.I.R. at C.R.65/2015 dated 13.4.2015 against Pravin Jethewad, Narayan Madhavwad and Babu Salve at Shivajinagar police station, Nanded. In this F.I.R., it is alleged that he (Umesh) was owner of the tractor MH-26-V-8096. Pravin being his partner, used to visit regularly to his shop by name Abhang Pustakalay. On 10.2.2015, he noticed that his R.C. Book and insurance papers and other documents about the tractor were missing. Accordingly, he lodged missing report at the police station on 11.2.2015. When he brought the tractor to his home, Pravin instigated Baburao Salve to lodge F.I.R. against him at Vasmat police station. He alleged that Pravin has stolen his R.C. Book and other documents of the tractor and had sold tractor to accused no.2 Narayan Madhavwad in presence of accused no.3 Baburao Salve on 6.2.2015. He thereby caused him financial loss to the tune of Rs.10,50,000/-. On the basis of the F.I.R., crime was registered under Section 379, 420, 468, 471, 34 of Indian Penal Code. Criminal Application No.2544 of 2015 is filed by Accused persons named therein to quash the said F.I.R.

16. On 26.1.2016, Narayan Madhavwad has lodged F.I.R. at Vasmat police station which was registered at C.R.No.2/2016 under Sections 406, 420, 392 read with Sec.34 of Indian Penal Code. It is against Sanjeev Kulkarni, Umesh Kasture, Ganesh Kasture and Anand Kulkarni. It is based on the incident reported by Baburao Salve on 1.3.2015 (N.C.Case) and dated 10.3.2015 before Judicial Magistrate, First Class, Vasmat and

22.5.2015 before Vasmata police). After narrating the previous transaction between the parties, it was claimed in this F.I.R. that Pravin on behalf of Abhang Industries sold the tractor to him on payment of Rs.7,50,000/-. The amount was credited to the account of Abhang Industries. The possession of tractor was received by him. Baburao Salve was his Manager and was looking after his business. On 1.3.2015, above named four accused persons forcibly took away the tractor and abused him in the name of his caste. When the tractor was sold and the amount was received by the accused persons, still they have forcibly taken away the tractor and have committed offences punishable under Sections 392, 406, 420 of Indian Penal Code. This F.I.R. has been challenged by the accused persons named therein by filing Criminal Application No.808 of 2016.

17. The respondent no.2 in all the applications are the complainants in the crimes. They have filed affidavit-in-reply in tune with their case as disclosed in their F.I.R.s.

18. Heard learned Advocate Mr S.S. Bora for the applicants in Criminal Applications no.2741 of 2015 and 808 of 2016, Learned A.G.P. Mr Nerlikar for the State. Learned Advocate Mr Vibhute for the applicants in Criminal Application no.2544 of 2015. Mr Bora and Mr Vibhute have also advanced arguments for respondents in counter proceedings.

19. Mr S.S. Bora, appearing for the group of Sanjeev Kulkarni and others has argued that there was a partnership firm of Sanjeev Kulkarni, Umesh Kasture and Pravin Jethewad. The tractor was belonging to Umesh Kasture. The said tractor was sold by Pravin

Jethewad to Narayan Madhavwad by claiming it to be property of the firm. Thereafter, Baburao Salve has filed false complaint on behalf of Narayan Madhavwad. He also argued that the allegations of offences under the Atrocities Act made by Baburao Salve are clearly after thought. Besides, Baburao has filed N.C. case dated 1.3.2015 and application under Section 156 (3) Cr.P.C. before the Judicial Magistrate, First Class, Vasmat. The Magistrate has taken cognizance and, therefore, the police have no authority to record F.I.R. in respect of the same incident. Besides, lodging of F.I.R. by Narayan at C.R.No.2/2016 in respect of earlier incident for which F.I.R. was already registered is bad in law. He argued that commission of sale of tractor and theft of R.C. book and tax book and other documents of the tractor were criminal acts and, therefore, the F.I.R. lodged by Umesh Kasture cannot be quashed.

20. Per contra, learned Advocate Mr Vibhute argued that when Babu Salve had gone to the police station, the police did not record his F.I.R. properly and recorded only N.C. case. Accused Sanjeev Kulkarni, Umesh Kasture, Ganesh Kasture and Anand Kulkarni assaulted Babu, abused him in the name of his caste and have forcibly taken away tractor which was sold by Pravin on behalf of the partnership firm to Narayan Madhavwad. Therefore, Baburao Salve has immediately filed application on 10.3.2015 under Section 156(3) of Cr.P.C. before the Judicial Magistrate, First Class, Vasmat and has disclosed the material facts. Later on, the police have taken cognizance of his F.I.R. The said F.I.R. cannot be said to be second F.I.R. Hence, it cannot be quashed. He argued that F.I.R. of Narayan is in respect of robbery of tractor, which was not included in the F.I.R. of Baburao Salve. Hence,

there is no reason to quash the F.I.R.s filed by Baburao Salve and Narayan Madhavwad.

21. Learned A.P.P. has produced the case diaries of all the three crimes and has argued that there are specific allegations and the matters are under investigation. Therefore, these F.I.R.s cannot be quashed.

22. The points for our consideration with our findings are as follows:

(A) Criminal Application No.2544 of 2015

1. Whether the F.i.R. at C.R.No.65/2015 at Shivajinagar Police Station, Nanded against three applicants deserves to be quashed ?

.. In the affirmative

(B) Criminal Application No.2741 of 2015

2. Whether the F.I.R. at C.R.No.3009/2015 lodged at Vasmat Police Station (Rural) against the applicants deserves to be quashed ?

.. In the affirmative
against Accused
No.4 Anand
Kulkarni only

(C) Criminal Application No.808 of 2016

3. Whether the F.I.R. No.2/2016 lodged by Narayan Madhavwad against the applicants deserves to be quashed ?

.. In the affirmative

4. What order ?

..Cri.Application No.
2544/2015 and
808/2016 are
allowed. Cri.Appln.
No.2741/2015 is
allowed only against
Accused no.4

- REASONS -

Point No.1:

23. After carefully considering the arguments advanced and the statements and documents collected in the investigation, we find that the tractor was belonging to Abhang Industries. It was purchased in the name of Abhang Industries. Funds were advanced from Abhang Industries though the R.C. book and insurance policy and loan account are in the name of Umesh Kasture, the installments are also paid from the account of Abhang Industries, a partnership firm of Sanjeev Kulkarni, Umesh Kasture and Pravin Jethewad. The documents on record disclose that Pravin sold the tractor on 6.2.2015 to Narayan Madhavwad. The said tractor was also recorded in the income tax returns and profit and loss account and balance sheets in the name of the firm. The loan account was also shown in the name of the firm. Therefore, there is strong prima facie material. We, therefore, hold that the tractor was belonging to the firm and the R.C. book and insurance policy though standing in the name of Umesh Kasture, were the properties of the firm. The documents on record disclose that on 6.2.2015, Pravin Jethewad, on behalf of Abhang Industries sold the tractor to Narayan Madhavwad. The entire consideration of Rs.7,50,000/- was paid by Narayan in favour of Abhang Industries. Its receipt was issued by Pravin in the name of Abhang Industries. The said cheque was credited in the account of Abhang Industries on 7.2.2015. Pertinently, on 11.2.2015, Umesh Kasture has withdrawn the said amount and credited it to the account of Abhang Pustakalay, which is a partnership firm of himself and some other persons. In spite of the sale of the tractor by the firm to Narayan and receiving

the entire amount, Umesh and Sanjeev had taken away the tractor from the custody of Babu Salve, who was employee of Narayan Madhavwad. Presently, the tractor is in possession of Umesh. Besides, he is also holding the entire amount of consideration and still he has filed F.I.R. dated 13.4.2015 alleging that his R.C. book and other documents of the tractor were stolen and the tractor was illegally sold by Pravin in favour of Narayan Madhavwad in presence of Babu Salve. The said F.I.R. is registered at C.R.No.65/2015 under Section 379, 420, 468, 471 read with Sec.34 of Indian Penal Code at Shivajinagar police station, Nanded.

24. Mr S.S. Bora, learned Advocate for the applicants in Criminal Applications No.2741 of 2015 and 808 of 2016 has rightly relied on **Arjun Kanoji Tankar Vs. 1969 (3) SCC 555 and Debi Prasad Vs. Jairam Dass AIR 1952 P.H. 284.** In Arjun's case, the property was belonging to the plaintiff while entering into partnership with the defendant. He had not surrendered his interest in the assets brought by him in the business. Nor he had admitted that the defendant was joint owner with him in all the assets brought in the partnership. It was held that the property was belonging to the individual and not to the firm. This rule is not applicable to the present case, as the tractor was purchased from the funds of the firm. If any presumption arises in view of registration of the vehicle in the name of Umesh Kasture, the said presumption stands rebutted by the documentary evidence produced on record. In Devi Prasad's case, land was brought in the name of one partner and was paid from out of the profit of the business. It is held that it is a partnership property unless the contrary intention appears.

25. Mr Vibhute relied on **Velji Patel Vs. The State of Maharashtra, AIR 1965 SC 1433** in which it is held that if a partner uses a partnership assets for his own use, he cannot be prosecuted or misappropriation of property. It is held that a partner has undefined ownership over the assets of the partnership. If he chooses to use any of them for his own purposes he may be accountable civilly to the other partners. But he does not thereby commit any misappropriation. Similar view is taken in **Bhuban Mohan Das Vs. Surendra Mohan Das AIR (38) 1951 Calcutta 69**. It is held that

“(62) It is quite clear, therefore, that unless there is an agreement between the partners that a particular property would be the separate property of a partner, there cannot be an entrustment of it to the other partner or partners. In the absence of such an agreement, each partner is interested in the whole of the partnership assets and there cannot be an entrustment of 'a partner's property' as such by one partner to another, because there is no 'property' which can be entrusted.”

26. In the light of the facts of the present case and the rulings cited hereinabove, we find that there is absolutely no substance in the F.I.R. lodged by Umesh Kasture against Pravin Jethewad, Narayan Madhavwad and Baburao Salve. Even if the facts in the F.I.R. are taken on face value, in the light of the facts, no offence is made out. Chances of conviction are bleak. It is abuse of process of Court. We rely on **Amit Kapoor Vs. Rameshchandra 2012 (9) SCC 460** and hold that this is a fit case for exercising powers under Section 482 of

Cr.P.C. for quashing the F.I.R. registered at C.R.No.65/2015 dated 13.4.2015. Thus, Criminal Application No.2544 of 2015 deserves to be allowed.

27. As far as the incident dated 1.3.2015 is concerned, there are following four reports :

(I) N.C. case lodged on 1.3.2015. It is against Sanjeev Kulkarni, Umesh Kasture and two unknown persons. It discloses that they came and demanded keys of the tractor and when Baburao Salve told them to talk to Pravin and Narayan, he was assaulted with slaps and fist blows and was threatened that if he would come behind the tractor, he would be killed. Incident was witnessed by Pravin Kharode, Santosh Korbanwad, Pramod Deshmukh and Bablu Gine. The police registered it as N.C. case.

(II) Baburao Salve filed application under Section 156(3) Cr.P.C. in the Court of Judicial Magistrate, First Class, Vasmat in which the allegations are made against Sanjeev Kulkarni, Umesh Kasture and two others by name Ganesh Kasture and Sanjay Kandhare (The applicants in Criminal Application No.2741/2015). Besides, there are allegations that he was abused by the accused in the name of his caste and they thereby committed offences under Atrocities Act. It is alleged that when he had gone to the police station, he was referred for medical examination and after returning from medical examination, the police did not record his report as per his say and only N.C. was registered. The statement with regard to abuse in the name of his caste was deleted and the police Officer was talking to

accused no.1 Sanjeev Kulkarni and accused no.2 Umesh Kasture on phone and under the political influence wrong report was recorded and he was advised not to take up quarrel with those persons. He had repeatedly made requests for recording his F.I.R. in respect of offence under Atrocities Act, but no heed was paid. Hence, he lodged report dated 10.3.2015. The learned Judicial Magistrate, First Class, Vasmat has taken cognizance on 8.4.2015 holding that investigation under Section 156(3) Cr.P.C. was not necessary and he called upon the complainant to examine himself under Section 200 Cr.P.C. and bring the witnesses.

(III) Thereafter, the police have recorded F.I.R. of Babu Salve on 22.5.2015 at C.R.No.3009/2015 (Vasmat police station). It is somewhat different. In this F.I.R., the allegations are made against Sanjeev Kulkarni, Umesh Kasture, Ganesh Kasture and Anand Kulkarni. There were no allegations against Sanjay Kandhare, whereas Anand Kulkarni has been newly added. There are similar allegations about abusing in the name of caste. It is also alleged that he was kicked by the accused persons on his chest and abdomen and all the accused had abused him in the name of his caste. However, contrary to his report before Judicial Magistrate, he stated that as the accused persons were press reporters and having political background, he had not disclosed the facts regarding abusing in the name of caste before police and, therefore, the police had recorded N.C. case only against Sanjeev Kulkarni, Umesh Kasture and two others unknown persons. Thereafter, he was unhappy that he did not disclose material facts before the police. Therefore, he has again lodged the F.I.R.

(IV) It is obvious that this F.I.R. came to be lodged out of the incident of sale of tractor. The facts clearly indicate that the tractor was belonging to the firm of Sanjeev Kulkarni, Umesh Kasture and Pravin Jethewad. It was purchased from the funds of the firm and it was shown in the record as the property of the firm, but R.C. book and other documents were in the name of Umesh Kasture. The loan account was also in his name, but the installments were paid from the funds of partnership firm. The record shows that Pravin had sold the said tractor on behalf of the firm to Narayan Madhavwad and the consideration for the same was received and credited in the account of the firm. The said amount was transferred by Umesh Kasture in the name of his own separate firm Abhang Pustakalaya. In the situation, Sanjeev and Umesh had no right over the tractor, still they went to Babu Salve and used force to assault him and took away the tractor. Prima facie, they have committed offence punishable under Sections 394, 323 read with Sec.34 of Indian Penal Code. It was wrong on the part of police to record it as only N.C. case. Within nine days thereafter, Babu Salve has approached the Judicial Magistrate, First Class, Vasmat and reported the incident.

28. It is true that before the Judicial Magistrate, he has reported that police did not record his F.I.R. as per his say and the material allegations regarding abusing in the name of his caste were deleted. The learned Judicial Magistrate has taken cognizance and directed him to remain present for examination under Section 200 Cr.P.C., but Babu Salve did not remain present. He did not prosecute the case and it was dismissed.

29. On 22.5.2015, he lodged F.I.R. at Vasmat police station at C.R.No.3009/2015. When the police were not ready to record the F.I.R. from 1.3.2015, it is surprising that after 82 days, the police showed willingness to record the F.I.R. In the application filed before the Judicial Magistrate, besides accused no.1 Sanjeev, accused no.2 Umesh, accused no.3 Ganesh and accused no.4 Sanjay Kandhare were shown, whereas, in the N.C. case, it was stated that there were two unknown persons along with Sanjeev and Umesh. In the F.I.R. registered at C.R.No.3009/2015 dated 22.5.2015, name of Anand Kulkarni is shown as accused no.4 instead of Sanjay Kandhare. In the application before the Magistrate dated 10.3.2015 it was alleged that Babu Salve had repeatedly requested the police to record his complaint regarding the offence under Atrocities Act, but the police due to political interference and due to status of the accused persons as press reporters, did not take any cognizance. In F.I.R. dated 22.5.2015, Babu Salve took a summons and noted that as the accused were press reporters and political persons, he had not disclosed their names in respect of offences punishable under Atrocities Act.

30. The F.I.R. under challenge in Criminal Application No.808 of 2016 is in respect of the same incident dated 1.3.2015. This F.I.R. dated 26.1.2016 registered at Vasmat police station, C.R. No.2/2016 is for offences punishable under Sections 406, 420, 392 read with Sec.34 of Indian Penal Code. It highlights the act of the accused Sanjeev Kulkarni, Umesh Kasture, Ganesh Kasture and Anand Kulkarni of taking away the tractor by assaulting Manager Babu Salve.

31. We assume that on 1.3.2015, the police might not have properly recorded the F.I.R. of Babu Salve and, therefore, he might have been constrained to file application under Section 156(3) Cr.P.C. before the Judicial Magistrate, First Class, Vasmat on 10.3.2015. However, while filing such application, he was not under any constraint He could have stated the true and correct facts in his application and he should have prosecuted the said application. The said application shows that the police have declined to record his F.I.R. as per his say. Therefore, the learned trial Judge has taken cognizance of the crime.

32. This complaint was not prosecuted by Babu Salve. He did not appear before the Judge for making his statement under Section 200 Cr.P.C., but on 22.5.2015, he filed F.I.R.at the police station, which was registered as C.R.No.3009/2015.

33. In similar facts, in **Rajtanu Bhattacharya Vs. State of West Bengal, 2013 (5) CHN (CAL) 468**, it is observed :

“18. In view of the above discussion, I decide the first issue against the petitioners and hold that the mere rejection of an application under section 156(3) of the Code and taking the cognizance of the complaint under section 200 of the Code will not debar the complainant to approach the police under section 154 of the Code until and unless the Court while declining the application under section 156(3) commented on the merits of the allegations in the complaint to deny the relief to the complainant.

19. The second issue which arises for the consideration of this Court is whether the dismissal of

the first complaint as withdrawn will operate as a bar to the second complaint/F.I.R. on the same set of allegations. This issue has been fairly well settled by a long line of precedents wherein it has been held time and again that a second complaint on the same facts and circumstances is maintainable provided that the first complaint has not been adjudicated on the merits of the case. For the purposes of brevity reference is made to one decision of the Supreme Court in the case of *Jatinder Singh Vs. Ranjit Kaur* Manu/SC/0753/2001 : 2001 (2) SCC 570 wherein it was held as under :

“There is no provision in the Code or in any statute which debars a complainant from preferring a second complaint on the same allegations if the first complaint did not result in a conviction or acquittal or even discharge. Section 300 of the Code, which debars a second trial, has taken care to explain that “the dismissal of a complaint or the discharge of an accused is not an acquittal for the purpose of this section”. However, when a Magistrate conducts an inquiry under section 202 of the Code and dismisses the complaint on merits, a second complaint on the same facts cannot be made unless there are very exceptional circumstances. Even so, a second complaint is permissible depending upon how the complaint happened to be dismissed at the first instance.”

We, therefore, hold that the F.I.R. dated 22.5.2015 cannot be quashed as a second F.I.R. The complaint filed in the Court is already dismissed not on merits. Therefore, the F.I.R. dated 22.5.2015 can be prosecuted.

34. However, we find that name of accused no.4 Anand Kulkarni is appearing for the first time in F.I.R.dated 22.5.2015. It was not there

in the N.C. case dated 1.3.2015 and the application under Section 156(3) of Cr.P.C. dated 10.3.2015. We, therefore, find that the F.I.R. at C.R.No.3009/2015 dated 22.5.2015 deserves to be quashed as against accused no.4 Anand Kulkarni.

35. We find that the charges under the Atrocities Act made in this crime against the accused were very much there in application dated 10.3.2015 lodged before the Judicial Magistrate, First Class. Those were not there in the report in N.C. case dated 1.3.2015, but it is possible that the police did not properly record the report of Babu Salve on 1.3.2015. Therefore, The charge under the Atrocities Act in this crime cannot be quashed. It will be open for the accused persons to apply for discharge in case the material on record is not sufficient.

36. The F.I.R. registered at C.R.No.2/2016 at Shivajinagar police station, Nanded on 26.1.2016 is in respect of the same incident for which Babu Salve has already filed N.C. case dated 1.3.2015 and application under Section 156(3) Cr.P.C. before the Judicial Magistrate, First Class, Vasmat and F.I.R. dated 22.5.2015. The new allegation regarding taking away the tractor is also part of the same transaction though it has not been specifically mentioned in the F.I.R. In **T.T. Antony Vs. State of Kerala AIR 2001 SC 2637**, in respect of second F.I.R., it is held :

“ Thus there can be no second F.I.R. and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a Police Station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same

transaction or the same occurrence and file one or more reports as provided in [Section 173](#) of the Cr.P.C. “

37. We, therefore, find that Criminal Applications No.2544/2015 and 808/2016 deserve to be allowed, whereas Criminal Application No.2741/2015 deserves to be allowed to the extent of accused no.4 – Anand Kulkarni. Hence, we pass the following order :

- ORDER -

- (I) Criminal Application No.2544 of 2015 is allowed.
- (II) The F.I.R. at C.R.No.65/2015 dated 13.4.2015 lodged by Umesh Kasture at Shivajinagar police station, Nanded is hereby quashed and set aside.
- (III) Criminal Application no.2741 of 2015 is allowed to the extent of accused no.4 Anand Kulkarni. The F.I.R. dated 22.5.2015 at C.R.No.3009/2015 registered at Vasmat police station is hereby quashed against accused no.4 – Anand Kulkarni only.
- (IV) Criminal Application no.808 of 2016 is allowed. The F.I.R. at C.R.No.2/2016 dated 26.1.2016 is hereby quashed. However, the statements recorded and documents collected during the investigation of the said F.I.R. can be filed in C.R. No.3009/2015 of Vasmat police station and the same can be investigated with regard to any other offences if those offences form part of the same transaction.
- (V) Rule made absolute in above terms.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)