

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 28.02.2017
Judgment Pronounced on : 27.06.2018

CORAM

THE HONOURABLE MR. JUSTICE S.BASKARAN

Crl.O.P.Nos.409, 410, 560, 561, 1621 and 1622 of 2017
and
Crl.M.P.Nos.289, 290, 413, 414, 1170 and 1171 of 2017

Crl.O.P.No.409 of 2017

J.Shekar Reddy ... Petitioner/1st Accused

Vs.

State represented by
Inspector of Police,
Central Bureau of Inviestigation,
Anti-Corruption Branch (ACB)
Shastri Bhavan, Nungambakkam,
Chennai-600 006. Respondent/Complainant
(Crime No.RC MA1 2016 A0051)

Crl.O.P.No.410 of 2017

K.Srinivasulu Petitioner/3rd Accused

Vs.

State represented by
Inspector of Police,
Central Bureau of Inviestigation,
Anti-Corruption Branch (ACB)
Shastri Bhavan, Nungambakkam,
Chennai-600 006. Respondent/Complainant
(Crime No.RC MA1 2016 A0051)

Crl.O.P.No.560 of 2017

K.Rethinam ... Petitioner/4th Accused

Vs.

State represented by
Inspector of Police,
Central Bureau of Inviestigation,
Anti-Corruption Branch (ACB)
Shastri Bhavan, Nungambakkam,
Chennai-600 006. ... Respondent/Complainant
(Crime No.RC MA1 2016 A0051)

Crl.O.P.No.561 of 2017
S.Ramachandran

... Petitioner/5th Accused

Vs.

State represented by
Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch (ACB)
Shastri Bhavan, Nungambakkam,
Chennai-600 006.
(Crime No.RC MA1 2016 A0051)
Crl.O.P.No.1621 of 2017
J.Sekar

... Respondent/Complainant

... Petitioner/Ist Accused

Vs.

State represented by
Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch (ACB)
Shastri Bhavan, Nungambakkam,
Chennai-600 006.
(Crime No.RC MA1 2016 A0052)

... Respondent/Complainant

Crl.O.P.No.1622 of 2017
K.Srinivasulu

... Petitioner/3rd Accused

Vs.

State represented by
Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch (ACB)
Shastri Bhavan, Nungambakkam,
Chennai-600 006.
(Crime No.RC MA1 2016 A0052)

... Respondent/Complainant

PRAYER IN CRL.O.P.NO.409 OF 2017:

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in Crime No.RC MA1 2016 A0051 dated 30.12.2016 on the file of the respondent and quash the same as against the petitioner.

PRAYER IN CRL.O.P.NO.410 OF 2017:

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in Crime No.RC MA1 2016 A0051 dated 30.12.2016 on the file of the respondent and quash the same as against the petitioner.

PRAYER IN CRL.O.P.NO.560 OF 2017:

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in Crime No.RC MA1 2016 A0051 dated 30.12.2016 on the file of the respondent and quash the same as against the petitioner.

PRAYER IN CRL.O.P.NO.561 OF 2017:

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in Crime No.RC MA1 2016 A0051 dated 30.12.2016 on the file of the respondent and quash the same as against the petitioner.

PRAYER IN CRL.O.P.NO.1621 OF 2017:

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in Crime No.RC MA1 2016 A0052 dated 30.12.2016 on the file of the respondent and quash the same as against the petitioner.

PRAYER IN CRL.O.P.NO.1622 OF 2017:

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in Crime No.RC MA1 2016 A0052 dated 30.12.2016 on the file of the respondent and quash the same as against the petitioner.

For Petitioner : Mr.V.Raghavachari
(in Crl.O.P.No.409/2017 and
Crl.O.P.No.1621 of 2017)
Mr.B.Kumar, Senior Counsel,
for Mr.B.Praveen
(in Crl.O.P.No.410/2017 and
Crl.O.P.No.1622 of 2017)
Mr.I.Subramanian, Senior Counsel
for Mr.S.Elambharathi
(in Crl.O.P.No.560/2017)
Mr.A.R.L.Sundaresan,
Senior Counsel
for Mr.Abdul Saleem
(in Crl.O.P.No.561 of 2017)

For Respondent : Mr.K.Srinivasan
Spl.P.P for CBI Cases

COMMON ORDER

The petitioners/Accused have come forward with the above said petitions to quash the FIR registered in Crime Nos.RC MA1 2016 A0051 and Crime No.RC MA1 2016 A0052.

2. The first accused has filed CrI.O.P.No.409 of 2017 seeking to quash the FIR in Crime No.RC MA1 2016 A0051 registered by the Respondent Agency for the offence under Sections 409, 420, and 120-B IPC r/w 13(2) r/w 13(1)(d) of PC Act,1988. The same accused(A-1) filed CrI.O.P.No.1621 of 2017 seeking to quash the FIR in Crime No.RC MA1 2016 A0052 registered by the Respondent Agency for the offence under Sections 409, 420, and 120-B IPC r/w 13(2) r/w 13(1)(d) of PC Act,1988. The 3rd accused has filed CrI.O.P.No.410 of 2017 seeking to quash the FIR in Crime No.RC MA1 2016 A0051 registered by the Respondent Agency for the offence under Sections 409, 420, and 120-B IPC r/w 13(2) r/w 13(1)(d) of PC Act,1988. The same accused (A-3) filed CrI.O.P.No.1622 of 2017 seeking to quash the FIR in Crime No.RC MA1 2016 A0052 registered by the Respondent Agency for the offence under Sections 409, 420, and 120-B IPC r/w 13(2) r/w 13(1)(d) of PC Act,1988. The 4th accused filed CrI.O.P.No.560 of 2017 seeking to quash the FIR in Crime No.RC MA1 2016 A0051 registered by the Respondent Agency for the offence under Sections 409, 420, and 120-B IPC r/w 13(2) r/w 13(1)(d) of PC Act,1988. The 5th accused filed CrI.O.P.No.561 of 2017 seeking to quash the FIR in Crime No.RC MA1 2016 A0051 registered by the Respondent Agency for the offence under Sections 409, 420, and 120-B IPC r/w 13(2) r/w 13(1)(d) of PC Act,1988.

3. According to the petitioners, the Income Tax Authorities conducted search operations on 08.12.2016 and seized Rs.24 Crores of new currencies of M/s.SRS Mining from a Tata Ace load vehicle belonging to one Shri Rishi Kumar in Vellore on 09.12.2016, following the searches and seizure effected at the premises of M/s.SRS Mining and other accused at Chennai.

3.1. Seizure of Rs.8 Crores of new currencies in Rs.2000/-denomination from the premises of M/s.SRS Mining at No.36, Sudhama Building, Flat No.1, 1st Floor, Rear Block, Vijayaraghava Road, T.Nagar, Chennai-17.

3.2. Seizure of 1.63 Crores of new currencies in Rs.2000/-denomination from the premises of M/s.SRS Mining at No.26, Old No.14, Yogambal Street, T.Nagar, Chennai.

4. According to the petitioner, initially the case was registered in FIR No.RC MA1 2016 A 0040 for the offence under Section 409, 420, and 120-B IPC r/w 13(2) r/w 13(1)(c) and 13(1)(d) of PC Act,1988 by the respondent agency on 19.12.2016. The FIR was registered against the first accused J.Sekar Reddy, A-2 M.Premkumar and A-3 Srinivasulu. In the said FIR, it is alleged that information was received by CBI, ACB, Chennai from Authorities of Investigation, Department of Income Tax, Chennai regarding seizure of Rs.24 Crores of new currencies from a Tata Ace load vehicle belonging to one Shri Rishi Kumar in Vellore on

09.12.2016. It is further alleged that the aforesaid recovery was effected, following the searches and seizures at the premises of Accused 1 to 3 at Chennai. It is further stated in the said FIR that the first accused Sekar Reddy, Partner of M/s.SRS Mining, Chennai operates majority of Government run sand quarries in Vellore and neighbouring District, while the accused 2 and 3, namely, M.Premkumar(A-2) and K.Srinivasulu(A-3) are his business associates. On the allegation that A-1 to A-3 with the help of unknown public servants of different Banks, converted the unauthorised cash held by them in old currency notes, it was concluded that the said accused 1 to 3 in conspiracy with the unknown Bank Officials and public servants converted the unaccounted cash held by them in the form of old currency notes to new 2000 rupees currency notes and thereby committed the offence punishable under Sections 409, 420, and 120-B IPC r/w 13 (2) r/w 13(1)(c) and 13(1)(d) of PC Act,1988.

5. According to the petitioners, A-1 Sekar Reddy and A-3 Srinivasulu were initially arrested by the respondent agency on 21.12.2016 and remanded to Judicial custody. Subsequently, on the same date, the other accused A-2, A-4 and A-5 were also arrested. On 21.12.2016, the respondent agency sought for police custody of A-2, A-4 and A-5, but the said application was returned by the learned Principal Special Judge for CBI Cases, (VIII Additional City Civil Court), Chennai for rectifying certain defects. The Court also did not remand A-2 on that day. Subsequently, on 23.12.2016, the respondent agency filed another application seeking police custody of all the accused(A1 to A5) in RC MA1 2016 A0040 of CBI ACB, Chennai, but the same was dismissed by the concerned Court on 30.12.2016. After the concerned trial Court rejected the prayer for police custody on 30.12.2016, the respondent agency registered two FIRs namely, FIR No.RC MA1 2016 A0051 and FIR No. RC MA1 2016 A0052 on the same day viz., 30.12.2016 at 15.00 and 15.10 hours respectively to circumvent the rejection order passed by the Special Judge for CBI Cases and to secure police custody.

6. The petitioner further contended that while the investigation was going on in the above said FIR No. RC MA1 2016 A0040, the respondent agency registered another FIR No. RC MA1 2016 A0051 on information received from the authorities of the investigation wing of the Income Tax Department, Chennai regarding the seizure of Rs.8 Crores of new currency in 2000 rupees denomination from the premises of M/s.SRS Mining at No.36, Sudhama Buildig, Flat No.1, 1st Floor, Rear Block, Vijayaraghava Road, T.Nagar, Chennai-17 on 09.12.2016. Likewise, the case in Crime No.RC MA1 2016 A0052 was registered by the respondent agency on information received by CBI, ACB Chennai from the authorities of investigation wing of Income Tax Department, Chennai regarding seizure of Rs.1.63 Crores of new currencies in Rs.2000/- denomination from the premises of M/s

SRS Mining at No.26, Old No.14, Yogambal Street, T. Nagar, Chennai-17 on 09.12.2016. These two subsequent FIRs were registered on the same series of search and seizure conducted by the Income Tax Department on different locations belonging to the first accused Sekar Reddy and his associates, who are the other accused herein. The respondent agency without proceeding with the investigation in the first FIR dated 19.12.2016 registered the two subsequent FIR alleging commission of identical offences arising from same facts and circumstances under one single transaction. These two subsequent FIRs are now the subject matter of adjudication in these petitions filed by the Accused No.1 and 3 to 5 seeking to quash the same.

7. According to the petitioners, both the impugned FIRs Nos.RC MA1 2016 A0051 and RC MA1 2016 A0052) virtually shows similar contents and allegations with the only difference being the amount and place of seizure of currency by the Income Tax Department Authorities. Thus, the petitioners contends that the offences alleged in FIR No.RC MA1 2016 A0040 and the subsequent two FIRs in RC MA1 2016 A0051 and RC MA1 2016 A0052 are one and the same and FIRs were registered based on the information from the Income Tax Department authorities and search operations conducted. As such registering of two subsequent FIRs is not permissible. It is further stated by the petitioners that they have explained the source of income to the Income Tax Department and also accounted for the cash held by them. As such, it is wrong on the part of the respondent agency to register the two subsequent FIRs against the petitioners on the very same grounds alleging the petitioners converted unaccounted cash into new currency with the help of public servants. Thus, the petitioners seek to entertain the petitions filed by them and to quash the above said two FIRs in RC MA1 2016 A0051 and RC MA1 2016 A0052 registered by the respondent agency.

8. On the other hand, opposing the claim of the petitioners, the learned Special Public Prosecutor for CBI Cases contended that the first accused was actively involved in converting unaccounted cash held by him and his partners, namely, accused 4 and 5 into Gold bars through the second accused with the assistance of third accused. Further, the Income Tax Department conducted searches on 8/9.12.2016 in the premises of the second accused and seized 30 Kg gold bars worth about Rs.9 Crores and a sum of Rs.2 Crores in demonetized currency belonging to A-1, A-4 and A-5. The unaccounted cash of Rs.11 Crores in demonetized currency was provided by A-1 to A-2 through A-3 for purchase of gold bars. Accordingly, A-2 Premkumar converted Rs.9 Crores into 30 Kg of gold bars and another Rs.2 Crores in demonetized currency was kept ready for conversion into gold bars. Thus, the accused persons in collusion with the unknown Bank Officials purchased gold bars to the tune of 30 Kgs by using unaccounted demonetized currency

belonging to A-1, A-4 and A-5. Thus, the respondent contends that the accused were involved in converting old demonetized currency into new 2000 rupees currency. Further, in para 11 of the Memorandum of objection filed in CrI.O.P.No.409 of 2017, relating to FIR No.RC MA1 2016 A0051, the respondent has stated as follows:-

"11. The averments made in Para Nos.5 and 7 are denied . It is submitted that the petitioner/Accused-1 was arrested on 21.12.2016 at 12.30 hours only in RC.MA1 2016 A0040 and not as alleged. It is further submitted that the subject case in Crime No. RC.MA1 2016 A0051 was registered on 30.12.2016 in which unaccounted cash of Rs.8 Crores in new Rs.2000/- denomination currency was seized on 09.12.2016 by the IT Department between 10.30 AM on 18.12.2016 to 01.35 AM on 09.12.2016 a team of IT Officials headed by Shri M.Karthik Manickam, Dy. Director of IT(Inv.), Chennai at Chennai along with Rs.80.55 crores demonetized unaccounted currency at the premises of A-1 at No.36, Sudhama Building, Flat No.1, 1st Floor, rear Block, Vijayaraghava Road, T.Nagar, Chennai-17 pertaining to M/.SRS Mining in which the A-4 and A-5 are partners. The other CBI case, RC.MA1 2016 A0040 was registered on 19.12.2016 on different allegations i.e., seizure of unaccounted cash of Rs.24 crores in new Rs.2000/ denomination currency from Tata Ace Vehicle of one Shri Rishi Kumar, aged 39 years, R/o. No.6, 7th East Cross Street, No.186, A-Sector, V.G.Rao Nager, Katpadi at Vellore pertaining to A-1, A-4 and A-5 by the It Department between 07.15 AM on 09.12.2016 to 03.45 AM on 10.12.2016 a team of IT Official headed by Shri D.Dhanasekaran, Income Tax Officer, Vellore. Further, the petitioner/Accused-1 along with other accused person were formally arrested on 02.01.2017 and on production on 03.01.2017. the learned trial Judge remanded the accused persons to Judicial Custody till 17.01.2017 in this case and thereafter further remand extended upto 14.02.2017.

Likewise, in para 12 of the said Memorandum of Objection, the respondent stated as follows:-

"12. The averments made in Para Nos.1 and 2 of the grounds of petition filed by the

petitioner/Accused-1 are incorrect and denied. It is submitted that the subject case Crime No. RC.MA1 2016 A0051 was registered on 30.12.2016 on the allegation of seizure of Rs.8 crores in new Rs.2000/- denomination currency seized at Chennai and the other CBI case RC.MA1 2016 A0040 was registered on 19.12.2016 on the seizure of Rs.24 crores in new Rs.2000/- denomination currency at Vellore. Thus, the allegations in both the cases are different and different transactions and place of seizure is also different i.e., one at Chennai and other at Vellore. Further, the IT Department also made seizures in different place and under different panchanamas. Hence, there is no abuse of process of the Court and Crime No.RC.MA1 2016 A0051 is not liable to be quashed and there is no violation of any right envisaged under the Constitution of India in remanding the accused persons in this case. Contrary to the claim of the petitioner, the allegations mentioned in the FIRs are not one and the same if the Test of 'Sameness' is applied to the case as laid down in "Babubhai Vs. State of Gujarat and other". The cases are distinct and separate transactions and connected only by the common accused.

9. The learned Special Public Prosecutor for CBI Cases further contended that the allegations against the accused is not mere holding of demonetized currency notes, but about the method adopted by them to process the same in huge quantities as the result of conspiracy with public servants. Merely because, the petitioners have explained their source of income to the Income Tax Department, they cannot be absolved from the crime. The petitioners entered into a criminal conspiracy including unknown Bank Officials to convert demonetized unaccounted currency in the new currency and gold bars with an intention to cheat the Government of India. The role of public servants involved in the act is under investigation. As such, the two FIRs registered in FIR Nos.RC MA1 2016 A0051 and RC MA1 2016 A0052 are in order and there is no illegality in filing these FIRs. Thus, the respondent sought for dismissal of the petitions.

10. I have heard the rival submissions and perused the materials available on record.

11. It is clear from the admitted stand of the respondent as stated in Para-11 of the memorandum of objection in FIR No.RC

MA1 2016 A0051, that the seizure forming the basis for filing the FIR No.RC MA1 2016 A0051, was carried out between 10.30 a.m., on 08.12.2016 to 1.35 a.m., on 09.12.2016 by the Income Tax Department, whereas, the seizure forming the basis of FIR No.RC MA1 2016 A0040, which was the first case registered way back on 19.12.2016, was carried out by the Income Tax Department between 7.15 p.m., on 09.12.2016 to 03.45 a.m., on 10.12.2016. Thus, seizure in the impugned FIR No.RC MA1 2016 A0051 is prior in time than the one alleged in FIR No.RC MA1 2016 A0040. Like wise in Para 8 of the Memorandum of Objection filed by the respondent in FIR No.RC MA1 2016 A0052 in CrI.O.P.No.1621 of 2017 it is stated that the subject case in FIR No.RC MA1 2016 A0052 was registered on 30.12.2016, in which unaccounted cash of Rs.1,63 crores in new Rs.2000/- denomination currency was seized on 09.12.2016 by the Income Tax Department in Chennai at the premises of A-1 pertaining to M/s. SRS Mining, in which A4 and A5 were also partners. Thus, the search and seizure of the currency which is subject matter of FIR No.RC MA1 2016 A0052 was prior in time to the search and seizure of the currency which is subject matter of FIR No.RC MA1 2016 A0040 which took place from 09.12.2016 to 10.12.2016. Pointing it out, the learned counsel appearing for the petitioners contended that the registration of two subsequent FIRs Nos.RC MA1 2016 A0051 and RC MA1 2016 A0052 on the same date, after rejection of the prayer for police custody of the petitioners in FIR No.RC MA1 2016 A0040 on 30.12.2016 is not proper and the same amounts to abuse of process of law. It is further contended that the entire allegations rests upon the search and seizure carried out by Income Tax Department and the said operation is comprised in singular and common assessment file. The learned counsel for the petitioners further pointed out that in the first FIR registered in RC MA1 2016 A0040, it is averred that the seizure of Rs.24 Crores in new currency from the vehicle in Vellore on 09.12.2016 was effected pursuant to the search and seizure carried out at the premises of A-1 to A-3. As such, the petitioners contended that the first FIR registered in RC MA1 2016 A0040 is comprehensive in nature and covers the seizures, which have been subsequently made part of two separate FIRs RC MA1 2016 A0051 and RC MA1 2016 A0052. Thus, the petitioners contends that the registration of two subsequent FIRs in RC MA1 2016 A0051 and RC MA1 2016 A0052 is improper, illegal and without jurisdiction.

12. Further, pointing out the admission of the respondent in the Memorandum of objection filed in the above said CrI.OPs, the learned counsel for the petitioners contended that the search and seizure forming the basis for registering the two subsequent FIRs in RC MA1 2016 A0051 and RC MA1 2016 A0052 were earlier in point of time, than the FIR No.RC MA1 2016 A0040 registered on 19.12.2016 and therefore there was no need or reason for the respondent to wait till 30.12.2016 to register

the two subsequent FIRs in RC MA1 2016 A0051 and RC MA1 2016 A0052. Thus, the petitioners contends that the Subsequent FIRs were registered only to over come the order passed by the learned Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai in FIR No.RC MA1 2016 A0040 on 30.12.2016 rejecting the prayer for police custody of the petitioners and as such the subsequent FIRs were registered with mala fide intention and the same are not permissible.

13. On the other hand, as stated earlier, it is contended by the learned counsel for the respondent that the amount involved in each case is different and the place of seizure also is different. The learned Special Public Prosecutor for CBI cases pointed out that the Income Tax Department seized different amounts at different places under various panchanamas. Thus, the respondent contends that the seizures forming part of two subsequent FIRs cannot be treated as part of the same transaction and the allegations mentioned in the FIRs are not one and the same, if the test of sameness is applied to the case on hand as laid down in BABUBHAI Vs. STATE OF GUJARAT AND OTHERS reported in 2010(12) SCC 254. As such the respondent contends that the offence forming part of subsequent FIR cannot be considered as part of the same transaction.

14. Thus, the learned Special Public Prosecutor for CBI Cases contends that the recovery of currency and gold involved in the above said FIRs in RC MA1 2016 A0040, RC MA1 2016 A0051 and RC MA1 2016 A0052 are distinct, different and separate transaction and the only connection between them is the common accused. As such, the respondent contends that the claim of the petitioner is totally unsustainable.

15. In the light of the above said discussion, it is to be seen whether the two subsequent FIRs pertains to the same incident or different incidents and to decide the same, this Court has to go through the contents of FIR particularly place of occurrence, alleged offence committed by the accused, date of receipt of information, provision under which the accused are charged, the name of the accused and other relevant things.

16. On perusal of the contents of the FIR, if it is made out that the subsequent FIRs relates to same offence or connected offence, then the Court has to interfere so as to uphold the provision of Section 154 Cr.P.C. and quash the subsequent FIR giving liberty to add the allegation as supplementary to the first FIR.

17. Admittedly, in the case on hand, the accused involved are one and the same. The first FIR No.RC MA1 2016 A0040 dated 19.12.2016 was lodged in Chennai for the offence under Sections 409, 420, and 120-B IPC r/w 13(2) r/w 13(1)(d) of PC Act, 1988 and subsequent two FIRs in RC MA1 2016 A0051 and RC MA1 2016

A0052 dated 30.12.2016 was lodged in Chennai for the offence under Sections 409, 420, and 120-B IPC r/w 13(2) r/w 13(1)(d) of PC Act, 1988. In FIR No.RC MA1 2016 A0040 the suspected offence has been shown as criminal conspiracy, cheating and criminal breach of trust. The date of suspected offence is 08.12.2016 and entry taken on 19.12.2016. The place of occurrence is alleged to be Chennai and Vellore. The first para of information shows that the information was received by CBI, ACB, Chennai from the authorities of Investigation Department of Income Tax, Chennai regarding seizure of Rs.24 crores of new currency from the Tata Ace load vehicle belonging to one Rishi Kumar at Vellore on 09.12.2016 following the search and seizure at the premises of A1 to A3. The second FIR No.RC MA1 2016 A0051 is also registered under the same provisions and the place of occurrence is stated as Chennai and Vellore. The information received was on 09.12.2016 i.e., the same date from the same agency, i.e., the Income Tax Department, Chennai and Rs.8 crores is alleged to have been recovered from the premises of A-1 Sekar Reddy on the same date i.e., 09.12.2016. In the third FIR No.RC MA1 2016 A0052 also the accused are charged under the provisions of law mentioned as above and it is clear that suspected offence is same as mentioned in the earlier two FIR. The place of occurrence is also the same viz., Chennai and Vellore. It is alleged in the subject FIR No.RC MA1 2016 A0052 that Rs.1.6 crores has been recovered on 09.12.2016 i.e., the same day as alleged in the earlier FIR from the premises of A-1 Sekar Reddy at Chennai. In FIR No.RC MA1 2016 A0052 also it is stated that the information was received from the same department, i.e., the Income Tax Department.

18. A reading of the above said three FIRs shows that the search and seizure was conducted by Income Tax Department in the premises of A-1 Sekar Reddy, at Chennai on 8/9/12.2016 and on consecutive days the amount was recovered. Further, it is also clear that the cases have been registered on purported information received from Income Tax Department regarding search and seizure of currency in new denomination concerning the same accused. Further, the averments in two subsequent FIRs makes it clear that the allegations in them is connected to the offence alleged in the first FIR in RC MA1 2016 A0040. As such the learned counsel appearing for the petitioners pointed out that the respondent agency instead of proceeding with the investigation in the first case registered in FIR in RC MA1 2016 A0040 dated 19.12.2016, have registered two subsequent FIRs in RC MA1 2016 A0051 and RC MA1 2016 A0052 alleging the commission of identical offences arising from the same set of facts and circumstances under singular transaction. Thus the petitioners contended that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of same cognizable offence. This according to the petitioner is not permissible as the same is violative of

Article 21 of the Constitution. In support of the said contention, the learned counsel for the petitioners relied upon the ruling of the Apex Court reported in 2001 (6) SCC 181 in T.T. ANTONY Vs. STATE OF KERALA AND OTHERS, wherein it has held as follows:-

19. The scheme of the Cr.P.C. is that an officer in charge of a Police Station has to commence investigation as provided in Section 156 or 157 of Cr.P.C. on the basis of entry of the First Information Report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of evidence collected he has to form opinion under Section 169 or 170 of Cr.P.C., as the case may be, and forward his report to the concerned Magistrate under Section 173(2) of 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, he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 Cr.P.C.

20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. 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.

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21

of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court. There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narangs' case (supra) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C. or under Article 226/227 of the Constitution.

19. Similarly, the petitioners also relied upon the Apex Court Ruling reported in 2013 (6) SCC 348 in AMITBHAI ANILCHANDRA SHAH Vs. CENTRAL BUREAU OF INVESTIGATION AND ANOTHER, wherein it has held as follows:-

37. This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T. Anthony (supra), this Court has categorically held that registration of second FIR (which is not a cross case) is violative of Article 21 of the Constitution.

58.3 Even after filing of such a report,

if he comes into possession of further information or material, there is no 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 17 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.

20. Similarly, the learned counsel for the petitioners relying upon the ruling reported in 2010 (12) SCC in BABUBHAI Vs. STATE OF GUJARAT AND OTHERS contended that subsequent to the registration of an FIR, any further complaint in connection with the same offences or connected offences relating to the same incident or incidence which form part of the same transaction is not permissible. In the said Ruling it is held as follows:-

"14. In T.T. Antony Vs. State of Kerala & Ors. (2001) 6 SCC 181, this Court dealt with a case wherein in respect of the same cognizable offence and same occurrence two FIRs had been lodged and the Court held that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. The investigating agency has to proceed only on the information about commission of a cognizable offence which is first entered in the Police Station diary by the Officer In-charge under Section 158 of the Code of Criminal Procedure, 1973 (hereinafter called the Cr.P.C.) and all other subsequent information would be covered by Section 162 Cr.P.C. for the reason that it is the duty of the Investigating Officer not merely to investigate the cognizable offence report 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 the Investigating Officer has to file one or more reports under Section 173 Cr.P.C. Even after submission of the report under Section 173(2) Cr.P.C., if the Investigating Officer comes across any further information pertaining to the same incident, he can make further investigation, but it is desirable that he must take the leave of the court and forward the further evidence, if any, with further report or reports under Section 173(8) Cr.P.C. In case the officer receives more than one piece of information in respect of the same incident involving one or more than one cognizable offences such information cannot properly be treated as an FIR as it would, in

effect, be a second FIR and the same is not in conformity with the scheme of the Cr.P.C.

21. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the accused in the first FIR comes forward with a different version or counter claim, investigation on both the FIRs has to be conducted.

21. The learned counsel appearing for the petitioners relying upon the ruling reported in 2013(6) SCC 384 in ANJU CHAUDHARY Vs. STATE OF UTTAR PRADESH AND ANOTHER, contended that the registration of the second FIRs in respect of the same offences or in part of the same transaction as contained in the first FIR by the investigating agency or its own accord is not permissible. In the said ruling, it is held as follows:-

"13. A copy of the information so recorded under Section 154(1) has to be given to the informant free of cost. In the event of refusal to record such information, the complainant can take recourse to the remedy available to him under Section 154(3). Thus, there is an obligation on the part of a police officer to register the information received by him of commission of a cognizable offence. The two-fold obligation upon such officer is that (a) he should receive such information and (b) record the same as prescribed. The language of the section imposes such imperative obligation upon the officer. An investigating officer, an officer-in-charge of a police station can be directed to conduct an investigation in the area under his jurisdiction by the order of a Magistrate under Section 156(3) of the Code who is competent to take cognizance under Section 190. Upon such order, the investigating

officer shall conduct investigation in accordance with the provisions of Section 156 of the Code. The specified Magistrate, in terms of Section 190 of the Code, is entitled to take cognizance upon receiving a complaint of facts which constitute such offence; upon a police report of such facts; upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

14. On the plain construction of the language and scheme of Sections 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognizable offence shall be reduced to writing by the officer in-charge of a Police Station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of Section 154 of the Code. These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police. Therefore, second FIR for the same incident cannot be registered. Of course, the Investigating Agency has no determinative right. It is only a right to investigate in accordance with the provisions of the Code. The filing of report upon completion of investigation, either for cancellation or alleging commission of an

offence, is a matter which once filed before the court of competent jurisdiction attains a kind of finality as far as police is concerned, maybe in a given case, subject to the right of further investigation but wherever the investigation has been completed and a person is found to be prima facie guilty of committing an offence or otherwise, re-examination by the investigating agency on its own should not be permitted merely by registering another FIR with regard to the same offence. If such protection is not given to a suspect, then possibility of abuse of investigating powers by the Police cannot be ruled out. It is with this intention in mind that such interpretation should be given to Section 154 of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, re-investigation or de novo investigation is beyond the competence of not only the investigating agency but even that of the learned Magistrate. The courts have taken this view primarily for the reason that it would be opposed to the scheme of the Code and more particularly Section 167(2) of the Code."

22. Applying the principles laid down in the above said rulings, it is to be seen in the present case as to whether the occurrence alleged in the subsequent FIRs are one and the same incident as stated in first FIR or continuous one or part of the same transaction. A cumulative and conjoint reading of the two impugned FIRs with FIR No.RC MA1 2016 A0040 would leave no manner of doubt that they arise out of a common substratum as they have been registered on purported information received from the Income Tax Department regarding the search and seizure of currency in new denomination concerning the same set of accused. On the face of it, the first FIR in RC MA1 2016 A0040 itself refers to all the search and seizure carried out by the Income Tax Department, which now form the basis for registering the impugned FIRs in RC MA1 2016 A0051 and RC MA1 2016 A0052. It is evident from the materials available on record that the seizures effected by Income Tax Department have been made in the course of same occurrence and composite transaction which are linked together by a common thread. As such this Court is of the view that this case will clearly fall within the parameters laid down in T.T.ANTONY's case(supra) as well as AMITBHAI ANILCHANDRA SHAH's case (supra).

23. Further, as rightly pointed out by the learned counsel appearing for the petitioners that assuming that the seizures effected from the premises of the petitioners by the investigating agency is to be treated as three separate transactions as claimed by the respondent before this Court, there is no acceptable reason given by the respondent for registering the subsequent FIRs after waiting for long time and registering the case only after cause of action accrued in favour of the accused and against the investigating agency, as the trial court rejected the prayer of the respondent seeking police custody of the accused in the first FIR. This, according to the petitioners will clearly prove the improper and illegal action of the respondent in registering the subsequent FIRs. The said contention of the petitioners appears to be just and proper and the same is acceptable.

24. The learned counsel appearing for the petitioners further contended that so far neither any public servant or any Bank Official or any particular Bank who have been involved in exchange of currency in collusion with the accused has been identified by the respondent. It is further pointed out that there is no material available on record to show specifically any time, date or specific amount of any old currency being exchanged with new one. Likewise no particular Bank Branch or Bank Account number through which the transaction took place is alleged. As such, the petitioners contended that there is lack of any incriminating material with the respondent to satisfy the basic ingredients necessary for invoking of the offence pertaining to cheating, criminal breach of trust or criminal conspiracy, as the respondent has not identified any public servant or Bank involved in the offence is fatal to the case of the respondent and the same itself is sufficient to quash the impugned proceeding. Thus, the petitioners contends that the registration of case under Sections 13(2) r/w 13(1)(d) of PC Act, 1988 as well as Sections 409, 420, and 120-B IPC is redundant in the eye of law. The said contention, in the light of available materials on record is to be accepted.

25. The learned counsel appearing for the petitioners relying upon the ruling reported in 2010 (10) SCC 660 in ASOKE BASAK Vs. STATE OF MAHARASTRA, contended that to constitute the offence of criminal breach of trust, the following ingredients must be satisfied. (a) a person should have been entrusted with property, or entrusted with dominion over property; (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so; and (c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract

which the person has made, touching the discharge of such trust. However, going through the materials on record, it is apparent that no such ingredient is available in the present case.

26. Likewise, the learned counsel appearing for the petitioner relying upon the ruling reported in 1970 (1) SCC 696 in NOORMOHAMMED MOHD. YUSUF MOMIN Vs. STATE OF MAHARASTRA, contended that there is nothing on record to make out any offence under Section 120 IPC and that any conspiracy is generally hatched in secrecy and admittedly it can be proved only by circumstantial evidence. Though proof of conspiracy may be largely be inferential but the inference must be found on solid facts. Thus, the contention of the petitioners that in the case on hand, there is no such thing alleged or available to link the accused with any conspiracy is not rebutted by the respondent with any material.

27. The learned counsel appearing for the petitioners further contended that to make out an offence under Section 420 IPC, essential ingredients are i) Cheating, ii) Dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into valuable security, and iii) mens rea of the accused at the time of making the inducement, but the same are not available in the case on hand. Thus, the petitioners contends that no material is available on record to show that the petitioners entered into conspiracy with any public servants including the Bank Officials. As such, it is contended that none of the offences alleged in the two FIRs will get attracted. The said contention is acceptable, as the respondent has not placed any materials like name of any public servant or any Bank Branch involved in the alleged transaction or details of any Bank Account used for the purpose of transaction before the Court to sustain the allegation against the accused.

28. However, as stated earlier, the respondent contends that the allegation against the accused is not only mere holding of demonetized currency notes, but the method adopted to process the same in huge quantities as a result of conspiracy with public servant. The learned Special Public Prosecutor for CBI Cases also contended that even if the petitioners have explained the source of income to the Income Tax Department, they cannot be absolved from the crime. The respondent further contended that even though the petitioners are not public servants, they hatched the conspiracy along with unknown public servants and the role of unknown public servants involved in the conspiracy is under investigation. Thus, the learned Special Public Prosecutor for CBI Cases contends that the subsequent FIRs is in order and there is no illegality in registering them.

29. However, a careful perusal of the stand taken by CBI would have no manner of doubt that the reliance has solely been placed on the searches/seizures carried out by the Income Tax Department on 8/9.12.2016. Therefore, to contend that the allegations mentioned in FIR are different and constitute distinct and separate transaction, is absolutely untenable. Pertinently, no independent or separate materials have been gathered by the respondent apart from the proceedings carried out by the Income Tax Department. Further the averments made by the respondent that the petitioners have hatched a conspiracy with unknown public servants also cannot be countenanced in the absence of any public servant or Bank being identified so far. The learned counsel for the petitioner relying upon the ruling reported in 1982 (1) SCC 561 in STATE OF WEST BENGAL AND OTHERS Vs. SWAPAN KUMAR GUHA AND OTHERS, contended that general, vague allegation cannot be made the basis for initiating legitimate investigation. In the said Ruling it is held as follows:-

21. The position which emerges from these decisions and the other decisions which are discussed by Brother A.N. Sen is that the condition precedent to the commencement of investigation under section 157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under section 157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in Khwaja Nazir Ahmed (supra) will apply. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the F.I.R. does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received.

22. There is no such thing like unfettered discretion in the realm of powers defined by statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of

personal freedom. The power to investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code. I may, in this behalf, usefully draw attention to the warning uttered by Mathew J. in his majority judgment in *Prabhu Dayal Deorah v. The District Magistrate, Kamrup* to the following effect:

"We say, and we think it is necessary to repeat, that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of procedure. Observance of procedure has been the bastion against wanton assaults on personal liberty over the years. Under our Constitution, the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by Law."

30. The above dictum of law laid in *SWAPAN KUMAR GUHA'S CASE* (supra) has subsequently been followed by the Apex Court in 2003 (3) SCC 11 IN *AJAY MITRA Vs. STATE OF M.P. AND OTHERS*. As stated earlier in the case on hand there is no acceptable materials on record to show that the offence alleged in the subsequent FIRs are distinct and different from the one alleged in the first FIR. As such the dictum laid down in the above said ruling will squarely apply to the facts of the case on hand.

31. Thus, it is clear that in the present case on hand, the source of information is one and the same. The accused are also same persons. It is also apparent that the offence alleged in the first FIR and offences covered in the subsequent FIRs are connected and arising out of the same transaction and as such registering of subsequent FIRs is not proper. Thus, the claim of the petitioners that lodging of two subsequent FIRs in connection with the same and connected offences as mentioned in first FIR in Crime No.RC MA1 2016 A0040 is not permissible as Section 154 of Cr.P.C. do not permit the registration of subsequent FIRs for the same offence or connected offence. In the light of the above said discussion, the plea of the petitioner is to be entertained.

32. In the result, these petitions are allowed. The FIRs in RC MA1 2016 A0051 and RC MA1 2016 A0052 are quashed as against these petitioners. However, the respondent is at liberty to treat the allegations made in them as supplementary allegations or to merge the same to the first FIR in RC MA1 2016 A0040. Consequently, connected CMPs. are closed.

-s/d
Deputy Registrar

True Copy

Sub-Assistant Registrar

To

1.The Inspector of Police,
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Anti-Corruption Branch(ACB)
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2.The Special Public Prosecutor(CBI Cases)
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+1 CC to Abdul Saleem, Advocate sr 40842.

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+1 CC to Mr.K. Srinivasan, Advocate sr 40633.

Cr1.O.P.Nos. 409, 410, 560, 561,
1621 and 1622 of 2017

GSP(04/07/2018)

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