



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 31.07.2018
DELIVERED ON : 02.08.2018

CORAM:

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THE HONOURABLE MR.JUSTICE C.T.SELVAM
&
THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

W.P.(MD) Nos.15421 and 15660 of 2018
and
W.M.P.(MD) Nos.13879 and 14056 of 2018

W.P. (MD) No.15421 of 2018:

A.John Vincent

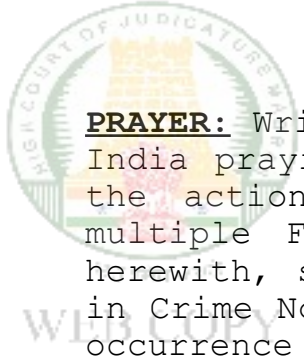
... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Home Secretary,
Secretariat, St. George Fort,
Chennai - 600 009.
- 2.The Director General of Police,
Dr. Radhakrishnan Road,
Mylapore, Chennai - 600 004.
- 3.The Additional Director General of Police,
Crime Branch Crime Investigation Department (C.B.C.I.D),
No.220, Pantheon Road, Egmore, Chennai - 8.
- 4.The Superintendent of Police,
Thoothukudi District, Thoothukudi.
- 5.The Inspector of Police,
SIPCOT Police Station, Thoothukudi.
- 6.The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi.
- 7.The Inspector of Police,
Thoothukudi North Police Station,
Thoothukudi.
- 8.The Inspector of Police,
Thoothukudi Central Police Station,
Thoothukudi.

<https://hcservices.hcma.gov.in/hcservices/>
9.The Inspector of Police,
Pudukkottai Police Station, Thoothukudi.

... Respondents



PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of declaration, declaring the action of the 5th to 9th Respondent Police in registering multiple First Information Reports listed in the Annexure filed herewith, subsequently after registering a First Information Report in Crime No.191 of 2018 by the 5th respondent police for the entire occurrence happened on 22.05.2018, during the Anti Stertile Protest at Thoothukudi, as illegal, null & void and consequently direct the 3rd Respondent to treat the same as statements under Section 161(3) of Cr.P.C. in Crime No.191 of 2018 transferred to their file from the file of 5th Respondent, in order to investigate under the monitoring of this Hon'ble Court.

For Petitioner : Mr.N.R.Elango, Senior Counsel
for Mr.P.Kanagavel
For Respondents : Mr.P.H.Arvind Pandian,
Additional Advocate General
and Mr.K.Chellapandian,
Additional Advocate General
assisted by Mr.R.Sethuraman,
Special Government Pleader

W.P. (MD) No.15660 of 2018:

D.Ponpandi ... Petitioner
Vs.

1. The Government of Tamil Nadu,
Rep. by its Home Secretary,
Secretariat, St. George Fort,
Chennai - 600 009.
- 2.The Director General of Police,
Dr. Radhakrishnan Road,
Mylapore, Chennai - 600 004.
- 3.The Additional Director General of Police,
Crime Branch Crime Investigation Department (C.B.C.I.D),
No.220, Pantheon Road, Egmore, Chennai - 8.
- 4.The Superintendent of Police,
Thoothukudi District, Thoothukudi.
- 5.The Inspector of Police,
SIPCOT Police Station, Thoothukudi.
- 6.The Inspector of Police,
Thoothukudi South Police Station, Thoothukudi.
- 7.The Inspector of Police,
Thoothukudi North Police Station,
Thoothukudi.



8.The Inspector of Police,
Thoothukudi Central Police Station,
Thoothukudi.

9.The Inspector of Police,
Pudukkottai Police Station,
Thoothukudi.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of declaration, declaring the action of the 5th Respondent Police in registering subsequent multiple First Information Reports listed in the Annexure filed herewith, after registering a First Information Report in Crime No.190 of 2018 by the 5th respondent police for the entire occurrence happened on 22.05.2018, during the Anti Sterlite Protest at Thoothukudi, as illegal, null & void and consequently direct the Respondents to treat the same as statements under Section 161(3) of Cr.P.C. in Crime No.190 of 2018 transferred to their file from the file of 5th Respondent, in order to investigate the same under the monitoring of this Hon'ble Court.

For Petitioner : Mr.M.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.P.H.Arvind Pandian,
Additional Advocate General
and Mr.K.Chellapandian,
Additional Advocate General
assisted by Mr.R.Sethuraman,
Special Government Pleader

COMMON ORDER

Since the prayer sought for in these writ petitions are similar in nature, these writ petitions are taken up together for disposal.

2.The writ petitioners sought for a declaration that the action of the Respondent Police in registering multiple First Information Reports subsequently after registering a First Information Report in Crime Nos.190 and 191 of 2018 by the 5th respondent police for the entire occurrence happened on 22.05.2018, during the Anti Sterile Protest at Thoothukudi, as illegal, null & void and consequently direct the 3rd Respondent to treat the same as statements under Section 161(3) of Cr.P.C. in Crime Nos.190 and 191 of 2018 transferred to their file from the file of 5th Respondent.

3.Heard Mr.N.R.Elango, learned Senior Counsel for petitioner in W.P.(MD) No.15421 of 2018, Mr.Ajmal Khan, learned Senior Counsel for petitioner in W.P.(MD) No.15660 of 2018, Mr.Henri Tiphagne, learned counsel, and Mr.P.H.Arvind Pandian, Additional Advocate General and Mr.K.Chellapandian, learned Additional Advocate General for respondents.



4.Learned Senior Counsel appearing for writ petitioners submitted that F.I.R. registered in Crime No.191 of 2018 on the file of SIPCOT Police Station for offences under Sections 147, 148, 188, 324, 332, 353, 448, 450, 307, 436, 506(ii) I.P.C. and Sections 3(1) and 4 of Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992, Section 3 of Explosive Substances Act, 1908 and Section 174 of Code of Criminal Procedure, 1973 related to the entire happenings in and around Tuticorin on 22.05.2018 and on which date as many as 13 persons lost their lives owing to police shooting. They contended that the State has resorted to filing of multiple F.I.Rs. which caused great prejudice not only to the accused but also caused great fear in the minds of local residents. In a particular case, an accused has been named in as many 100 cases and in another in 85 cases. Persons facing such position are numerous. Local residents, having suffered very painful loss of their loved ones, are being denied even the right to grieve and mourn their loss by being put in constant fear of the police midnight knock.

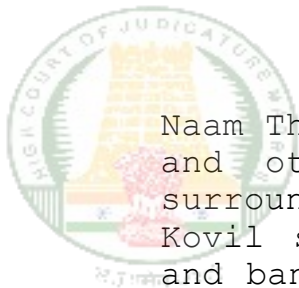
5.The response of learned counsel for respondents is not one of denial of a particular individual being arrayed as accused in very many cases. It is one pleading justification of the registration of the multiple F.I.Rs.

6.Counsel on either side have referred to various decisions of the Hon'ble Supreme Court. In fact counsel on either side frequently referred to decisions relied on by the other. While one would place reliance and inform application of particular paragraphs, the other would do likewise regards other paragraphs of the same judgment. We do not intend to enter upon a thread bare discussion of the various decisions relied upon. We would, after hereunder translating F.I.R. in Crime No.191 of 2018, refer to those judgments, which in our view lay down propositions of law applicable to the facts of the case as distinct from particular facts attending the particular judgment relied upon.

7.On translation, F.I.R. in Crime No.191 of 2018 reads thus:

"Humbly submitted. Today i.e., 22.05.2018 at 17.00 hours I M.Hariharan, Inspector of Police, Sipcot Police Station, Thoothukudi was on Station Duty, registered a case in Crime No.191 of 2018 U/s. 147, 148, 188, 324, 332, 353, 448, 450, 307, 436, 506(ii) I.P.C. & 3(1), 4 of TNPPDL Act & Sec.3 of ES Act, R/w 174 Cr.P.C. on the complaint lodged by Mr.Sekar, Special Deputy Thasildar (Election) of Thoothukudi Taluk Office by appearing before me. The details of which are follows: From P.Sekar, Special Deputy Thasildar (Election), Taluk Office, Thoothukudi. To The Inspector of Police, SIPCOT Police Station, Thoothukudi. Sir, I am working as Special Deputy Thasildar (Election) in Thoothukudi Taluk Office. In Thoothukudi District, for the past few months, the people belonging to Tuticorin Town and the surrounding villages viz., A.Rumarediapuram, Therku Veerapandiayapuram, Pandarampatti, Meelavittan, Madathur and Matha kovil area,

Mattakadai, Terespuram New Street, Fathima Nagar, Lions Town areas and other areas are continuously agitating to close the Sterlite Copper Factory at Thoothukudi. As part of the same today, 22.05.2018, notices were distributed to the public to agitate by assembling in the District Collector's Office and they should not quit till the factory is closed. Further, there is a secret information received that they intend to indulge in riot at that time of District Collectorate Siege Protest. In the meanwhile, Sterlite factory moved the Hon'ble Madurai Bench of Madras High Court to give police protection to the Sterlite Factory and the Staff Quarters of the said factory located adjacent to the District Collector's Office. In that case, the Hon'ble Madurai Bench of Madras High Court as regards the agitation to be held on today, 22.05.2018 has directed to consider the possibility of passing Order under Section 144 Cr.P.C. in the places around the factory by inspecting the same and taking action on or before 21.05.2018. Further, in the meanwhile, there was a Peace Committee Meeting held with the Agitating Groups on 20.05.2018 in the District Collector's Office, presided over by the Sub Collector, Thoothukudi in the presence of District Superintendent of Police. In that meeting on behalf of the agitating groups, 20 Associations including Thoothukudi Merchants Association, Veeranganai Association, Fishermen Associations and some other associations including social activists participated. In that peace meeting, it was informed that because of the District Collectorate Siege Protest there will be law and order problem and hindrance to public peace and hence there will be no permission for such protest. It was also informed that there was information that some of the groups, which are going to participate in the protest, are likely to indulge in violence. Thereafter, those who participated in the peace meeting informed that they would call off the District Collectorate Siege Protest and instead stage an attention inviting dharna at S.A.V. School Ground, near Thoothukudi old bus stand after obtaining appropriate permission from police department. After giving a petition for conducting such protest, they left the place. Thereafter, information was received that a few agitators belonging to the above said places, who did not accept the peace meeting, decided to conduct the District Collectorate Siege Protest as planned on 22.05.2018 and to disturb law and order and were gathering village people. Taking note thereof, prohibitory order was passed under Section 144 Cr.P.C. at the District Collectorate, Sterlite industry and Sterlite Staff Quarters Tamira 2 coming under SIPCOT Police Station limits and Matha Kovil, Fathima Nagar and the area surrounding coming under Thoothukudi South Police Station limits from 10.00 p.m. on 21.05.2018 to 08.00 a.m. on 23.05.2018 and the same was advertised to the public. In spite of the prohibitory order, from the morning of 22.05.2018 not only from those areas but also from surrounding areas, members belonging to



Naam Thamilar, Makkal Athikaram, Puratchikara Ilangar Munnani and other associations assembled at Tuticorin Town and surrounding areas. The protesting group started from Matha Kovil surrounding area in thousands and in spite of warning and ban, after destroying the barricades, causing damages to public properties, they came as a procession to District Collectorate. At about 11.00 hours about 10000 anti social elements with dangerous weapons came towards District Collectorate after destroying the barricades put up by police and the vehicles standing near the main road arch. The anti-social elements entered into the District Collectorate and started damaging and burning the Government vehicles and the two wheelers of public raising slogans that the District Collectorate which failed to close Sterlite Industry should be burnt and persons inside the Collectorate should also be burnt and by using petrol bombs, stones and dangerous weapons they tried to enter into the Collector's Office. On seeing this, the public who came to the Collectorate and the Collectorate staff fearing danger for life were running from one place to other. At that time, Police personnel who were deployed there gave a warning to the mob that they had gathered there as an unlawful assembly and they should disperse otherwise, tear gas would be used. Since they failed to disperse, he ordered to fire tear gas. Even after using tear gas, the mob continued their violence. Thereafter, police personnel tried to disperse the mob by warning them that they are still indulging in violence and they should disperse otherwise Lathi Charge would be resorted to. The mob attacked the police with the dangerous weapons and stones. Thereafter, the aggressive mob made a severe attack on the police personnel and the staff of Collectorate saying 'kill the Sterlite handmaids'. They set on fire Government vehicles. Police, in order to save life and limb of Government Staff and the public and to save public properties, warned the mob that they are indulging in riot as an unlawful assembly and they should disperse, otherwise the police would have to indulge in firing. Not heeding the same, the mob continued to indulge in violence and acted in a way which caused threat to the Government staff and public and public properties and attacked the police. So, in order to warn the mob, police fired towards the sky. Since this did not yield any result and the mob continued to indulge in violence causing threat to life and properties and show of patience would lead to great damage to the life of Collectorate's staff and Government properties, I ordered to disperse the mob by firing. Thereafter, the police opened fire to disperse the mob. Two persons, who were standing near the Aavin Booth situate on the eastern side of Collector's Office were injured. Immediately, they were shifted for treatment by the police in an ambulance, which was available there. But the members of the mob also waylaid the ambulance near the main road arch and caused head injury to the 108



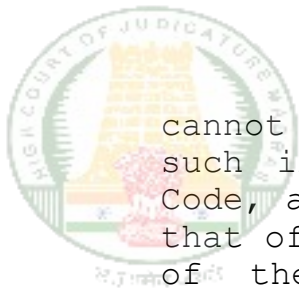
Ambulance Assistant. Thereafter, when the police attempted to take the injured to hospital to save him, the mob attacked the police and public. So, again the police opened fire, in which two persons were injured near the hospital and the police took them also to the hospital in the ambulance. But, before that, a part of the mob entered into Sterlite quarters area unauthorisedly and set on fire the quarters and properties. In order to save those in the quarters and to avoid damage by fire and having no option, the police once again opened fire and some persons were injured. They were also sent to hospital by the police for treatment. Thereafter, the mob scattered to Thoothukudi Town and various areas and on the way they set on fire public properties and vehicles. In such incident several policemen suffered bleeding injuries. Lot of public properties, police vehicles and vehicles belonging to commoners were damaged. It is learnt that four persons died in the firing on the mob. Further, some persons are taking treatment with the injuries. I request to enquire and take appropriate action. .. (s/d). P. Sekar, 22/05/18.. Sri, Received a petition and registered a case in SIPCOT. PS. Cr.No.191/18 U/s 147, 148, 188, 324, 332, 353, 443, 450, 307, 436, 506(ii) IPC. & 3(1), 4 OF TNPPDL Act. & Sec.3 of ES Act. R/w 174 Cr.P.C. On 22.05.2018 at 17.00 hrs. (S/d). M.Hariharan, Inspector of Police, SIPCOT. PS. 22.05.2018."

8.The complaint in Crime No.191 of 2018 was lodged by the Special Deputy Thasildar/Executive Magistrate. It is admitted position that very many seizure mahazars and recovery of vehicles etc., had been effected pursuant to investigation in Crime No.191 of 2018. Despite this, incidents relating to the very same properties have attracted registration of independent F.I.Rs. As many as 243 cases have been registered. Though counsel for petitioners stated that as many as 78 cases have been registered by the SIPCOT Police Station in respect of incidents that occurred in Collectorate Campus, 39 cases in respect of those at Sterlite staff Quarters and 31 cases in respect of incidents around Collectorate Campus. Tuticorin South Police Station has registered 24 cases, North Police Station has registered 15 cases, Central Police Station 15 cases and Pudukottai Police Station 6 cases, there is no dispute about the final tally being 243 cases. The damage of each and every vehicle, be it a car, motor cycle, bus or scooter, be they belonging to Government or private persons, other incidents of pelting stones, damage of compound walls, glass panes of Government Hospitals, burning of TASMAL shops, damage to CCTV Cameras, Plastic water tanks, stands, windows and doors of Amma Mess, Police Traffic Booths and Barricades, setting ablaze of Vermicompost, pelting of stones on the complainants, acts of threatening police officers with petrol bombs, alleged attempts of killing police personnel using deadly weapons and verbal abuse and spreading of unwanted messages worldwide through Whatsapp have each attracted registration of separate F.I.R.s Cases informing preventive arrest under Section 151

Cr.P.C. have also been registered. Many informing occurrences at one and the same time and some even within minutes of each other.

9. (i) In *Anju Chaudhary v. State of U.P.* [(2013) 6 SCC 384], the Hon'ble Supreme Court informed considering of a 'cardinal question of public importance and one that is likely to arise more often than not in relation to the lodging of the first information report (FIR) with the aid of Section 156(3) of the Code of Criminal Procedure (for short "the Code") or otherwise independently within the ambit of Section 154 of the Code is as to whether there can be more than one FIR in relation to the same incident or different incidents arising from the same occurrence'. It held:

"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, may be 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, reexamination 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. [Ref. Rita Nag v. State of West Bengal [(2009) 9 SCC 129] and Vinay Tyagi v. Irshad Ali @ Deepak & Ors. (SLP (Crl) No.9185-9186 of 2009 of the same date).

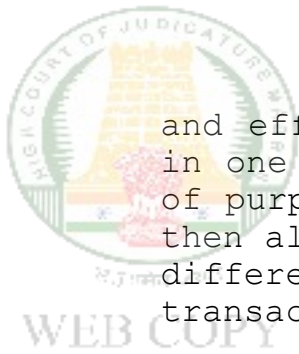
15. It has to be examined on the merits of each case whether a subsequently registered FIR is a second FIR about the same incident or offence or is based upon distinct and different facts and whether its scope of inquiry is entirely different or not. It will not be appropriate for the Court to lay down one straightjacket formula uniformly applicable to all cases. This will always be a mixed question of law and facts depending upon the merits of a given case.

...

43. It is true that law recognizes common trial or a common FIR being registered for one series of acts so connected together as to form the same transaction as contemplated under Section 220 of the Code. There cannot be any straight jacket formula, but this question has to be answered on the facts of each case. This Court in the case of Mohan Baitha v. State of Bihar [(2001) 4 SCC 350], held that the expression 'same transaction' from its very nature is incapable of exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense in the ordinary use of language must decide whether or not in the very facts of a case, it can be held to be one transaction.

44. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the Court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.

45. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause



and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction".

(ii) In *Amitbhai Anilchandra Shah v. CBI* [(2013) 6 SCC 348], the Hon'ble Supreme Court stated:

"51. In the case of *Nirmal Singh Kahlon v. State of Punjab* [(2009) 1 SCC 441] (supra), this Court has carved out an exception for filing a second FIR. As per the exception carved out in the said case, the second FIR lies in a case where the first FIR does not contain any allegations of criminal conspiracy. On the other hand, in the case on hand, the first FIR itself discloses an offence of alleged criminal conspiracy and it was this conspiracy which the CBI was directed to unearth in the judgment dated 12.01.2010 based on which the CBI filed its first FIR, hence, the CBI cannot place reliance on this judgment to justify the filing of the second FIR and a fresh charge sheet."

Referring to *Ram Lal Narang v. State (Delhi Admn.)* [(1979) 2 SCC 322], it was stated that in such decision it had been held that a second F.I.R. would lie in an event when pursuant to the investigation in the first F.I.R., a larger conspiracy is disclosed, which was not part of the first F.I.R. It was found that the decision in *Kari Choudhary v. Sita Devi* [(2002) 1 SCC 714] is to the effect that when there are two rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigation agency. We consider it useful to reproduce paragraph 58.4 to 58.6 of the said judgment:

"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 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 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 under way 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 The 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 paragraphs, in our opinion, the second FIR was nothing but a consequence of the event which had taken place on 25-11-2005/26-11-2005. 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."

In Mitbhai Anil Chandra Shah's case it was also stated that the only exception to the law declared in T.T. Antony v. State of Kerala [(2001) 6 SCC 181, which is carved out in Upkar Singh v. Ved Prakash [(2004) 13 SCC 292] is to the effect that when the second F.I.R. consists of alleged offences which are in the nature of the cross-case/cross-complaint or a counter complaint, such cross-complaint would be permissible as a second F.I.R.

10. We have reproduced the above since learned Additional Advocates General for respondents sought to distinguish on facts T.T. Antony's case, which has held the field for almost two decades now. In T.T. Antony's case it is held as follows:

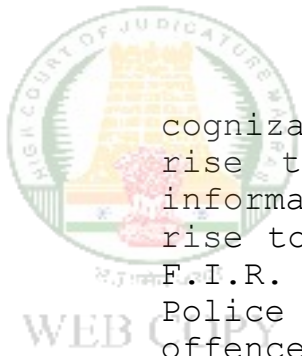
"18. An information given under sub-section (1) of Section 154 of Cr.P.C. is commonly known as First Information Report (F.I.R.) though this term is not used in the Code. It is a very important document. And as its nick name suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 of Cr.P.C., as the case may be, any forwarding of a police report under Section 173 of Cr.P.C. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 of Cr.P.C. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the First Information Report - F.I.R. postulated by Section 154 of Cr.P.C. All other informations made orally or in writing after the commencement of the investigation into the



cognizable offence disclosed from the facts mentioned in the First Information Report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 Cr.P.C. No such information/statement can properly be treated as an F.I.R. and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of Cr.P.C. Take a case where an FIR mentions cognizable offence under Section 307 or 326 I.P.C. and the investigating agency learns during the investigation or receives a fresh information that the victim died, no fresh FIR under Section 302 I.P.C. need be registered which will be irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H - the real offender-who can be arraigned in the report under Section 173(2) or 173(8) of Cr.P.C., as the case may be. It is of course permissible for the investigating officer to send up a report to the Magistrate concerned even earlier that investigation is being directed against the person suspected to be the accused.

19. The scheme of 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 the evidence collected he has to form an opinion under Section 169 or 170 of Cr.P.C., as the case may be, and forward his report to the Magistrate concerned 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 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

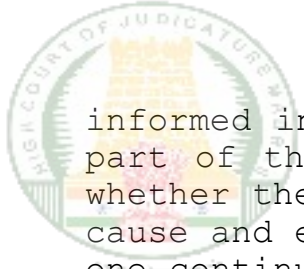


cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a Police 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."

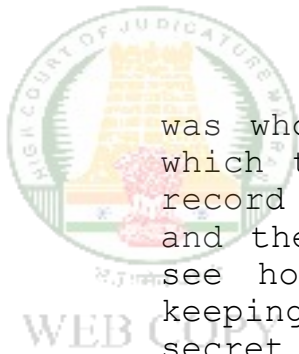
11.A bare reading of the F.I.R. above reproduced makes abundantly clear that the same related to all incidents that took place in and around Thoothukudi on 22.05.2018, the common underpinning being the protest against Sterlite Industries. The very action of the investigating agency in such case in preparing seizure mahazars and effecting recoveries of properties, for the most part, vehicles, in different areas would show that such was also the understanding of the investigating agency. Whiles, receipt of complaints from individual owners of vehicles and other properties which had been damaged and registering individual cases, and in sum total 243 cases can only be seen as abuse of statutory power, touched upon in T.T. Antony's case. We are of the view that the test



informed in Anju Chaudhary's case viz., 'for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction", does stand truly met.

12.As it has also been submitted on behalf of the respondents that the present petitions may not survive the test of public interest litigation, we would refer to decision of the Hon'ble Apex Court in State of H.P. v. Parent of a Student [(1985) 3 SCC 169], wherein in paragraph No.5, it has been observed as follows:

"5. There is also one other error into which the Division Bench of the High Court seems to have fallen. The Division Bench of the High Court treated the letter of the guardian of the student along with the letter addressed to the guardian by the student as constituting a memo of Writ Petition. This was certainly within the jurisdiction of the High Court to do, since it is now settled law that this Court under Article 32 of the Constitution and the High Courts under Article 226 of the Constitution can treat a letter as a Writ Petition and take action upon it. We may of course make it clear that it is not every letter which may be treated as a Writ Petition by the Supreme Court or the High Court. It is only there a letter is addressed by an aggrieved person or by a public spirited individual or a social action group for enforcement of the constitutional or legal rights of a person in custody or of a class or group of persons who by reason of poverty, disability or sociality or economically disadvantaged position find it difficult to approach the court for redress that the Supreme Court or the High Court would be justified, nay bound, to treat the letter as a Writ Petition. There may also be cases where even letter addressed for redressal of a wrong done to an individual may be treated as a Writ Petition where the Supreme Court or the High Court considers it expedient to do so in the interests of justice. This is an innovative strategy which has been evolved by the Supreme Court for the purpose of providing easy access to justice to the weaker sections of Indian humanity and it is a powerful tool in the hands of public spirited individuals and social action groups for combating exploitation and injustice and securing for the under-privileged segments of society their social and economic entitlements. It is a highly effective weapon in the Armour of the law for reaching social justice.: to the common man. The Division Bench was, therefore, certainly right in entertaining the two letters as a Writ Petition and no exception can be taken to it, but it

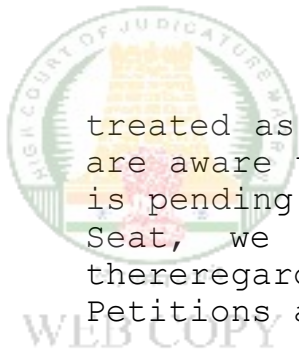


was wholly in error in directing that these two letters on which the Division Bench acted should not be placed on the record of the proceedings and the identity of the guardian and the student should not be disclosed. It is difficult to see how any proceedings can be entertained by the Court keeping the petitioner before it anonymous or his identity secret. If the identity of the petitioner is not disclosed, how would the respondent against whom relief is sought ever be able to verify the authenticity of the petitioner and the credibility of the case brought by him. It would be contrary to all canons of fair play and violative of all principles of judicial propriety and administration to entertain a Writ Petition without disclosing the identity of the petitioner, though the court knows who the petitioner is. We are, therefore, of the opinion that the procedure adopted by the Division Bench was wrong and the Division Bench was not justified in directing that the two letters on which action was initiated by the Division Bench should not be kept in the record of the proceedings and that the identity of the guardian and the student should not be disclosed."

13. A hundred F.I.Rs, eighty five F.I.Rs. against particular individuals? Is one to obtain bail in one case only to be told that he is detained in another? Is this a message to the protestors of Thoothukudi - 'Don't you dare'? How brazen and insensitive can the State be? Is the State oblivious or uncaring of the position that by conducting itself in the manner informed, it is putting every person, even if he has played an ever so small part in the protests in fear of the midnight knock and arrest? Are family members, who have lost their near and dear ones, constantly to fear their arrest or that of their loved ones? Is the State being oblivious or is it the intent? Given the sadness of the Thoothukudi incident of 22.05.2018 why is the State, when it should be looking for the balm that heals, be raising the police palm that threatens?

14. Though the petitioner in W.P.(MD) No.15660 of 2018 has sought F.I.R. in other crime numbers be treated as 161(3) Cr.P.C. statement in Crime No.190 of 2018, this Court considers it appropriate to partly accede to the prayer in W.P.(MD) No.15660 of 2018 and direct that all F.I.Rs. registered in connection with happenings of 22.05.2018 and related in any manner to the Anti-Sterlite protests at Thoothukudi be treated as 161(3) Cr.P.C. statements in Crime No.191 of 2018, originally registered by the fifth respondent and presently on the file of third respondent.

15. Accordingly, these Writ Petitions are partly allowed. This Court directs that complaints in all F.I.Rs. registered in connection with the happenings of 22.05.2018 and related in any manner to the Anti-Sterlite protests in and around Thoothukudi be



treated as 161(3) Cr.P.C. statements in Crime No.191 of 2018. As we are aware that a decision on the manner of investigation in the case is pending consideration of the Hon'ble First Bench at the Principal Seat, we would leave it to petitioners to later move afresh thereregards, if need be. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

- 1.The Home Secretary, Government of Tamil Nadu,
Secretariat, St. George Fort, Chennai - 600 009.
- 2.The Director General of Police,
Dr. Radhakrishnan Road, Mylapore, Chennai - 600 004.
- 3.The Additional Director General of Police,
Crime Branch Crime Investigation Department (C.B.C.I.D),
No.220, Pantheon Road, Egmore, Chennai - 8.
- 4.The Superintendent of Police, Thoothukudi District, Thoothukudi.
- 5.The Inspector of Police, SIPCOT Police Station, Thoothukudi.
- 6.The Inspector of Police,
Thoothukudi South Police Station, Thoothukudi.
- 7.The Inspector of Police,
Thoothukudi North Police Station, Thoothukudi.
- 8.The Inspector of Police,
Thoothukudi Central Police Station, Thoothukudi.
- 9.The Inspector of Police,
Pudukkottai Police Station, Thoothukudi.

+2CC to Mr.P.KANAGAVEL, Advocate, SR.No. 96497

+1CC to M/S.AJMAL ASSOCIATES, Advocate, SR.No. 76816

+1CC to the Special Government Pleader SR.Nos. 76639,76640

W.P. (MD) Nos.15421 and 15660 of 2018

02.08.2018