



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

CRIMINAL WRIT PETITION NO.677 OF 2025

Bhaurao S/o Diwan Bhaisare, Subhash Ward, Bela, Bhandara
vs.

State of Maharashtra, Thr. PSO, Bhandara, Tah. And Dist. Bhandara and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Aradhya Vinayak Pande, Advocate for petitioner.
Shri A. B. Badar, Addl. Public Prosecutor for respondent Nos.1 to 4 and 6.
Shri S. K. Sabahatullah, Advocate with Shri Syed Salman Ali, Advocate for
respondent No.5.

CORAM : ANIL L. PANSARE AND RAJ D. WAKODE, JJ.

DATED : 12th November, 2025

Heard.

2. The argument of petitioner is that same Investigating Officer should have investigated both crimes. The argument is so made because there occurred incidence on 21/01/2024 in which the petitioner and respondent No.5 indulged into allegation and counter allegation. The respondent No.5 alleged outraging modesty by the petitioner, as against petitioner alleged assault by respondent No.5 and unknown persons. Both parties approached police on different dates.

3. The respondent No.5 lodged report on the same date i.e. 21/01/2024 which was registered as Crime No.70/2024 for the offence punishable under Section 354, 354A and 506 of IPC.

The petitioner lodged report on 23/24-01-2024 which was registered as Crime No.76/2024 for the offence punishable

under Sections 353, 323, 504, 506 r/w Section 34 of IPC.

4. Two different Investigating Officers were given responsibility to investigate the crime. The Investigating Officer who investigated Crime No.70/2024 filed charge-sheet against the petitioner. We are informed that the trial has commenced. The Investigating Officer in Crime No.76/2024 carried investigation and filed N.C. Final Report No.06/2025 before the Chief Judicial Magistrate, Bhandara stating that there is no evidence to file charge-sheet against respondent No.5. We are informed that report has been not yet accepted by the Chief Judicial Magistrate.

5. The argument is that filing of closure report will vitiate on the count that it was not investigated by the same Investigating Officer.

6. On the point of investigation by same Investigating Officer for one and the same incidence, the counsel for the petitioner has relied upon the judgment of Karnataka High court in Criminal Petition No.6248/2024 (*Sri Gajendra K. M. and ors. vs. State by Police Sub Inspector, Masthi, Police Station and anr.*) The relevant finding finds place in paragraph 10, which reads as under :

“ 10. The Apex Court in the case of State of M. P v. Mishrilal (Dead) and others, has held as follows:

“ 6. For the sake of convenience we have devised to

categorize the case under the following headings: (1) Cross cases be tried together; (2) Genesis of occurrence; (3) Presence of Accused Ashok Kumar at the place of incident; (4) Common object; (5) Right of private defence; and (6) Non- explanation of the injuries, sustained by the accused, by the prosecution....

.....

8. In the instant case, it is undisputed, that the investigating officer submitted the challan on the basis of the complaint lodged by the accused Mishrilal in respect of the same incident. It would have been just fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in Nathi Lal case (1990 Supp SCC 145). The cross-cases should be tried together by the same court irrespective of the nature of the offence involved. The rational behind this is to avoid the conflicting judgments over the same incident because if cross cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments. In the instant case, the investigating officer submitted the challan against both the parties. Both the complaints cannot be said to be right. Either one of them must be false. In such a situation, legal obligation is cast upon the investigating officer to make an endeavour to find out the truth and to cull out the truth from the falsehood. Unfortunately, the investigating officer has failed to discharge the obligation, resulting in grave miscarriage of justice.”

(Emphasis supplied)

The Apex Court observes that the Investigating Officer submits challan on the basis of the complaint lodged by two persons on the same incident. Two challans are registered. The Apex Court observes that both the incidents cannot be true. One of them must be false. Therefore, the Apex Court observes that a same Investigating Officer must investigate into a case and a counter case. The Apex Court was following the judgment earlier rendered in the case of Nathi Lal v. State of U.P (supra). In between the judgment so rendered by the Apex Court in Nathi Lal and Mishrilal

(supra), the learned Judge of this Court had in the case of *Abdul Majid Sab and others vs. State of Karnataka by Ripponpete Police*, (**ILR 2010 Kar 1719**), had held as follows:

“26. In case and counter, in the final report of both the cases, the I. O., has to necessarily furnish all the documents pertaining to the other case and should explain the genesis of the incident explaining whether it is a free fight between two persons/groups and that both are aggressors. The I. O. should state whether one of the persons/groups is an aggressor and that whether the other has caused injuries in exercise of the right of private defence. It is necessary that the I. O. should explain the injuries on the accused. The final report should necessarily contain the above material to enable the prosecutors to lead evidence correctly and for the Judge to understand the incident in a proper legal perspective to understand the guilt of the accused.

27. It is well-settled principle in a case and a counter the same I.O. should investigate both the cases and should file final report. The different prosecutors should conduct prosecution; the same Judge should try the cases simultaneously and render separate judgments. It is a judicial dicta that the court should not read/get influenced by the evidence recorded in the other case, unless the said material in the other case is marked as an evidence in the case in question. To say that the court should not read/influenced by the evidence recorded in the other case under all circumstances would be a perverse view and runs counter to the logic of holding simultaneous investigation by the same I.O. and trial by the same Judge. Otherwise, it is impossible for the Judge to appreciate the guilt of the accused to find out whether both are aggressors and both are guilty of indulging in free fight or one of them is an aggressor and the other caused injuries on the accused in exercise of right of private defence.

28. In this regard for useful benefit, the provisions of Madras Police Standing Orders pertaining to investigation of a case and a counter in Rule-588A are extracted hereunder:

588A : Charge sheets in cases and counter cases: In a complaint and counter complaint obviously arising out of a same transaction, the Investigation Officer should enquire into both of them and adopt one or the other of the two courses, namely, (1) to charge the case whether the accused were the aggressors or (2) to refer both the cases if he should find them untrue. When the Investigating Officer proceeds

on the basis of the complaint it is his duty to exhibit the counter complaint in the Court and also to prove medical certificates of persons wounded on the opposite sides. He should place before the Court a definite case which he asks it to accept. The Investigating Officer in such cases should not accept in to one complaint and examine only witnesses who support it and give no explanations all for the injuries caused to the other side. The truth in these cases is invariably not in strict conformity with either complaint and it is quite necessary that all the facts are placed before the Court to enable it to arrive at the truth and a just decision.

If the Investigation Officer finds that choice of either of the course is difficult viz. to charge one of the two cases or to throw out both, he should seek the opinion of the Public Prosecutor of the district and act accordingly. A final report should be sent in respect of the case referred as mistake of law and the complainant or the counter-complainant, as the case may be, should be advised about the disposal by a notice in Form 96 and to seek remedy before the specified Magistrate if he is aggrieved by the disposal of the case by the Police.

29. We place on record that we have not come across any single case so far where the final reports in case and counter are filed in the manner indicated above. The imprudent and casual practice of submitting final reports without reference to the relevant material of the connected case would only result in improper prosecution and many a time the truth of the incident is not projected before the Court, which ultimately result in unjust conviction or unjust acquittal. The Karnataka Police Manual does not lay down any guidelines for the I.O. regarding the procedures to be followed in the investigation of a case and counter and for filing the final report. It is high time that the necessary amendments have to be effected to the Karnataka Police Manual in this regard.

30. In the instant case, the I.O. has suppressed truthful facts. It is in evidence that PW-1, A-2 and A-8 were admitted to Me.Gann Hospital. The complains of PW.1 and A.2 have been recorded at Me. Gann Hospital, why then the wound certificates of A-2 and A-8 are issued by PHC, Anandapur and not by Me. Gann Hospital. The I.O. does not explain the injuries on the A-2 and A-8. It is the duty on the part of the prosecution to explain the injuries on the accused.

The A.2 and A.8 have produced their wound certificates and copy of the private complaints in their defence. The I.O. has not produced the final report in Crime No. 91/2001 to explain the genesis of the incident and to show which party is an aggressor. In the absence of complete material relating to incident, it will be difficult for the Court to adjudge the guilt of the accused.

31. The FIR lodged by A-2 probabilises the fact that, PW-1, PW-3 to PW.5, PW.9 and PW.12 along with the deceased have also indulged in the acts of assault on A-2 and A-8 who were also admitted to Me Gann Hospital simultaneously along with the deceased and PW-1. In the circumstances, it can be inferred that in a state of quarrel between the two groups the assault takes place and injuries are inflicted on the members of both the group. The case of the prosecution discloses that in the second phase of attack, it was only A.1 and A.6 who deal blows on the deceased. The others said to have fisted and kicked the deceased. But there are no corresponding injuries to corroborate the overt acts of fisting and kicking. The Trial Court has committed a grave error in acquitting A-6 for an offence under Section 302 IPC. The Trial Court has convicted only A.1 under Section 302 IPC. Since there is no appeal by the State against the acquittal of A.6, it may not be proper to reconsider the order of acquittal.

32. The evidence of the witnesses implicate A-1, A-2, A-6, A-17 to A-20 and A-24 with overt acts of assaulting PW-1, PW-5, PW-12 and the deceased. There is no reference to the overt acts of A.3, to A.5, A.7 to A.16 and A.21 to A.23. The conviction of A.1, A.2, A.6, A.17 to A.20 and A.24 for offence under Section 324 r/w Sec, 149 IPC is confirmed.

33. The conviction of A.3 to A.5 A.7 to A.16 and A.21 to A.23 under Sections 143, 147, 323, 324 r/w Sec. 149 IPC is set aside.

34. The conviction of A.1, A.2 and A.6 under section 148 IPC is confirmed, although improper to the extent in acquitting the other accused who are guilty under Section 148 IPC.

35. The conviction of A.1 under Section 302 IPC is confirmed.

The Registry is directed to send a copy of the Judgment to the Home Secretary, Director General of Police

and Hon'ble Law Minister to give effect to the observations made in paras 26, 27 and 28 regarding the procedure to be followed by the I.O. in a 'case and counter' and for effecting necessary amendments to the Karnataka Police Manual." (Emphasis supplied)

This Court, set aside the conviction of the accused inter alia on the said ground and directed the Deputy General of Police to strictly follow the observation and bring in necessary amendments to the Karnataka Police Manual.

7. The subsequent paragraph speaks of circular issued by the Director-General of Police and Inspector-General of Police, stating therein that in a case of single incidence if there are two FIRs, same Investigating Officer should investigate both the FIRs. Further directions were also given.

8. What is relevant for us in the present case is that the Karnataka High Court has referred to the judgment of Supreme Court in case of *State of M.P. vs. Mishrilal (Dead) and ors. (2003) 9 SCC 426* and *Nathi Lal vs. State of U.P. (1990 Supp SCC 145)* and another judgment of Karnataka High Court to render a finding that same Investigating Officer must investigate into a case and counter case arising out of same incidence.

9. In the light of above, the petitioner's counsel submits that since the trial has commenced in the crime registered by respondent No.5, the same Investigating Officer should investigate the crime registered at the instance of petitioner.

The prayer appears to us to be in tune with the judgment passed by the Karnataka High Court. For the time being, we do not find any reason to take a different view in the matter. Accordingly, we proceed to pass the following order :

- (a) The petition is partly allowed.
- (b) The order of N.C. Closure Report No.06/2025 dated 23/01/2025 filed by the respondent No.1 in Crime No.76/2024 is quashed and set aside.
- (c) The Superintendent of Police, Bhandara shall appoint the same Investigating Officer to investigate the aforesaid crime, who has investigated Crime No.70/2024.
- (d) The Investigating Officer shall re-investigate the crime and complete the same in accordance with law and file appropriate report.
- (e) Writ Petition is disposed of in above terms.
- (f) Parties to act upon uploaded copy of the order.

(Raj D. Wakode, J.)

(Anil L. Pansare, J.)