IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 21ST DAY OF MAY 2024 / 31ST VAISAKHA, 1946

CRL.REV.PET NO. 989 OF 2016

[AGAINST THE ORDER DATED 03.06.2016 IN S.C.NO.1473/2001 ON THE FILE OF THE ADDITIONAL SESSIONS JUDGE-IV, THIRUVANANTHAPURAM (CRIME NO.148/1997 OF THAMPANOOR POLICE STATION]

REVISION PETITIONERS/ACCUSED NOS.1 AND 3:

1 K.SUDHAKARAN (A1)
AGED 67 YEARS
S/O. RAMUNNI MESTHIRI, KUMBAKUDY HOUSE, NADAL, EDAKKAD.

2 RAJEEVAN (A3)
S/O. ACHUTHAN VAIDYAR,AYURVEDA SADANAM,
ILLATHUTHAZHE,THALASSERY.

BY ADVS.
S.SREEKUMAR (SR.)
M.MEENA JOHN
VIJU THOMAS

RESPONDENTS/COMPLAINANT, ACCUSED NO.5 AND DEFACTO COMPLAINANT:

1 STATE OF KERALA
CHARGE SHEETED BY THE ASSISTANT COMMISSIONER OF POLICE,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OFKERALA, ERNAKULAM-682031

2 P.K. DINESAN, S/O. KUNJURAMAN,
KOYAMBURAM HOUSE,KOTTHUPARAMBU, KANNUR.

3 E.P. JAYARAJAN
S/O. KRISHNAN NAMBIAR,KEECHERI EDAMAL
PUTHIYAVEETIL,PAPPINISSERY, KANNUR.

BY ADVS.
FOR R1 BY SRI.S.U.NAZAR,SENIOR GOVT.PLEADER(SPECIAL
GOVT. PLEADER (CRIMINAL)
FOR R3 BY SRI.C.P.UDAYABHANU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20.05.2024, THE COURT ON 21.05.2024 PASSED THE FOLLOWING:

# O R D E R

This Criminal Revision Petition was submitted by the accused Nos. 1 and 3 in S.C No 1473/2001 on the files of Additional Sessions Judge-IV, Thiruvananthapuram, which arises from Crime No. 148/1997 of Thampanoor Police station. The offence alleged against the petitioners and the other accused is under section 120B of the Indian Penal Code (IPC). The said crime was registered on the basis of a private complaint submitted by the 3rd respondent herein before the Judicial First Class Magistrate-III, Thiruvananthapuram, alleging offences punishable under section 120B and section 307 of the Indian Penal Code. The challenge in this case is against the order dated 03.06.2016, passed by the learned Sessions Judge, rejecting prayer sought by the petitioners to discharge from the case.

2. The facts which led to the filing of this Crl.R.P are as follows:

2.1. The defacto complainant, the 3rd respondent herein, is one of the prominent leaders of the political party named Communist

Party of India (Marxist) (CPI(M)). The 1st petitioner is the leader of the Indian National Congress, which is a rival political party and the 2nd petitioner is alleged to be a close associate of the 1st petitioner. It is alleged that, the 1st and 2nd accused (another political leader, who was earlier a leader of the CPI(M) and later left the said party to form a separate political party), entered into a criminal conspiracy on various dates between 28.03.1995 to 31.03.1995 at Thycaud Guest House, Thiruvananthapuram, with the accused Nos. 3 to 5, to do away with CW1 to CW3, due to their political enmity. In furtherance of their criminal conspiracy, the accused Nos. 1 and 2 procured four revolvers and entrusted the same to A4 and A5. Later, on knowing that the 3rd respondent herein (CW1), was travelling from Delhi on 11.04.1995 by the train named Rajadhani Express, A4 and A5 managed to enter the said train and when the train was passing through Chirala in Andhra Pradesh, on 12.04.1995 at about 10.a.m, A4 and A5 approached the 3rd respondent and A4 fired at him. In the said incident, the 3rd respondent sustained injuries.

2.2. In connection with the said incident, Chirala Railway Police Station registered Crime No. 14/1995 under section 307 of the IPC and later the investigation was handed over to the Inspector of

Police, CID, Special team, Hyderabad, who conducted an investigation. In the said crime, apart from A4 and A5, the investigation was conducted against the petitioners also. The 1st petitioner was granted anticipatory bail by the High Court of Andhra Pradesh. The 2nd petitioner surrendered in the said crime and was arrested accordingly. Later he was granted bail. However, after the investigation, the Special Investigation Team, submitted a charge sheet against the 4th and 5th accused in the present crime (accused nos. 1 and 2 in Crime No 14/1995), before the Special Judicial First Class Magistrate Court, Railways, Nellooor, for the offences punishable under section 120B, 307 of the IPC and under section 25 (1) (b) and section 27 of the Arms Act. It was mentioned in the said charge sheet that, the investigation against the associates of the accused Nos. 4 and 5 including the petitioners herein, is in progress and a separate requisition under section 173(8) of the Cr.P.C is being made.

2.3. The said case was taken on file by the Special Judicial First Class Magistrate (Railways), Nelloor and the same was committed to the Sessions Court, Ongole. In the meantime, the 1st accused therein (4th accused herein) died and the charges were

framed against the 2nd accused therein (5th accused herein), for the offences punishable under sections 120B,307 r/w 34 of the IPC and section 7 read with section 27 of the Arms Act. After the trial, the Principal Assistant Sessions Court, Ongole, vide judgment dated 01.02.2011 in S.C No.383/1998 (Annexure A4), found the 2nd accused therein (5th accused herein) guilty of the offences under sections 307 r/w 34 and 120 B of IPC and section 7 read with section 27 of the Arms Act. Crl.A.No.24/2011 was filed by the convicted accused against the same and the appellate court found him not guilty for the offences under sections 120B, 307 read with section 34 of the IPC, but found him guilty for the offence under section 7 read with section 25(1) A of the Arms Act.

2.4. During the period when the trial of SC.No. 383/1998 was going on, after examination of CW1 as PW1 (the 3rd respondent herein), the prosecution submitted an application under section 319 of the Cr.P.C, for arraigning the petitioners herein as the accused person, which was allowed by the trial court. Challenging the same, the petitioners filed a Crl R.C No 1255/2006 before the High Court of Andhra Pradesh, and it culminated in Annexure A1 order, by which the order permitting the inclusion of the petitioners as accused, was

set aside. However, it was observed that the order of dismissal would not preclude the investigation officer to file a fresh application under section 319 of the Cr.P.C, for implicating the petitioners as accused, during the course of the trial. The judgment passed by the High Court of Andhra Pradesh was confirmed by the Honourable Supreme Court as per Annexure A2 judgment.

2.5. Later, the 3rd respondent submitted an application before the trial court under section 193 of the Cr.P.C, after the evidence in the said case was over, to take cognizance against the petitioners herein and one Biju. The same was dismissed by the Assistant Sessions Court, as per order dated 12.07.2010 in Crl M.P No 14 of 2010 in S.C.No.383/1998. Even though the said order was challenged by the 3rd respondent by filing Crl.R.C. No 1410/2010 before the High Court of Andhra Pradesh, the same was dismissed by taking note of the fact that, by this time, the 3rd respondent filed a a private complaint before the Judicial First Class Magistrate Court -III, Thiruvananthapuram, Crime No. 148/1997 was registered against the petitioners, and after investigation, a final report was also filed.

2.6. As mentioned above, in the meanwhile, the 3rd respondent,

filed a private complaint which was referred for investigation to Thampanoor Police under section 156(3) Cr.P.C and after investigation, a final report has been submitted against the said accused persons for the offence under section 120B of the IPC, which is now pending as S.C. No.1473/2001 before the Additional Sessions Judge -IV, Thiruvananthapuram.

2.7. While so, the 5th accused, who faced the trial before the Assistant Sessions Court, Ongole and was ultimately acquitted of the offences under sections 120B and 307 read with 34 of the IPC, filed an application seeking discharge in S.C.No.1473/2001. When the said application came up for consideration, the petitioners also sought for discharge (though no separate application was submitted in this regard), which ultimately resulted in the order impugned in this case, by which the 5th accused was discharged, as he already faced the trial which culminated in acquittal, and the prayer for discharge made by the petitioners were dismissed. It is to be noted that, in the meantime, the 2nd and 4th accused passed away and therefore, at the moment, the trial proposed to be conducted is against the petitioners and the 2nd respondent only. This Crl.R.P is submitted by the petitioners in such circumstances.

3. Heard Sri.S.Sreekumar, the learned Senior Counsel, assisted by Adv. Viju Thomas, the learned Counsel for the petitioners, Sri S.U. Nazar, the Senior Public Prosecutor [Special Government Pleader (Criminal)] for the State and Sri. C.P.Udayabhanu, the learned counsel for the 3rd respondent.

4. The main contention raised by the learned Senior Counsel for the petitioners is that, the present proceedings are not legally sustainable, since the FIR registered in Crime No.148/1997 by the Thampannor police, is the second FIR, as there was already an FIR in respect of the very same incident and offences, registered as Crime No 14/1995 by Chirala Railway Police. The second FIR is not permissible in law. It was also pointed out that, in the trial conducted by the Assistant Sessions Court, Ongole, against the 5th accused herein, the materials relating to the allegation of the Criminal Conspiracy involving the petitioners herein and the other accused including the 5th accused (the 2nd accused in Crime No 14/1995) were specifically examined and it was found that, the prosecution could not establish any conspiracy between the petitioners and the accused. The said finding was confirmed in the appeal also. Therefore, filing a second FIR in respect of the very same

transactions is not legally sustainable, contends the learned Senior counsel for the petitioners. Reliance was placed on the decisions in **Amitbhai Anilchandra Shah v. Central Bureau of Investigation and another [ (2013) 6 SCC 348],** and **T.T Antony v. State of Kerala and Another [ (2001) 6 SCC 181],** in support of the said contention.

5. On the other hand, the learned Public Prosecutor, and the learned counsel for the 3rd respondent, oppose the said contentions by pointing out that, the petitioners were never charge sheeted and faced the trial in earlier crime. In response to the contention regarding the second FIR, it was contended by the respondents that, criminal conspiracy was committed by the accused persons at Thycaud Guest House, Thiruvananthapuram, which is within the jurisdiction of the Thampanoor Police Station and the offence of section 120B is a distinct offence, which can be independently tried. As the petitioners were not even charge sheeted in the prosecution before the Andhra Court, there cannot be any prohibition in instituting a separate prosecution by registering another FIR, before the investigating agency which is having territorial jurisdiction. It was contended by placing reliance upon the decision rendered by the Honourable Supreme Court in **Nirmal Singh Kahlon v. State of**

**Punjab and others [ (2009) 1 SCC 441]** that, when the police authorities did not make a fair investigation, left out conspiracy aspect from the purview of the investigation, and when it surfaced, it was open for the State to conduct fresh investigation. The learned Public Prosecutor also brought the attention of this Court to the observation made by the Andhra Pradesh High Court in the order passed in Crl. R.C No.1410/2010 filed by the 3rd respondent, wherein the challenge made by the 3rd respondent, against the order dismissing the application submitted by him under section 193 of the Cr.P.C, was considered. It was pointed out that, the High Court of Andhra Pradesh did not interfere in the impugned order, mainly because of the reason that, the crime registered on the basis of the private complaint submitted by the 3rd respondent was pending trial in Kerala and hence it may not be possible for the accused to face the trial at two places for the same transactions and the offences. Therefore, allowing the prayer of the petitioners would cause serious prejudice to the 3rd respondent and this is the only remedy available to him as of now, to redress his grievances, as the victim of the crime. The learned Public Prosecutor also relied on the observations made by the Honourable Supreme Court in **Amar Nath Chaubey v.**

**Union of India and others [AIR 2021 SC 109]**, where the rights of victims are discussed. The learned counsel for the 3rd respondent also highlighted the limited scope in considering the contentions raised in this petition, while exercising the revisional powers of this court under section 397 and 401 of the Cr.P.C, particularly while challenging an order refusing to discharge the accused. Reliance was placed on the decisions rendered in **Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke and others [(2015) 3 SCC 123],** and **State through Deputy Superintendent of Police v. R. Soundirarasu [AIR 2022 SC 4218].**

6. The learned counsel for the 3rd respondent also highlighted the matters that can be considered by the court at the time of framing the charges and contended that, once a prima facie case is made out, charge has to be framed, for which a meticulous examination of the materials placed by the prosecution is not necessary. It was also pointed out that while doing the said exercise, the court can consider only the prosecution documents and not the documents produced by the accused. However, in this case, the petitioners rely upon the documents produced by them and their contentions are not confined to the prosecution records. Reliance

was placed on the decision of this court in **Peter K.C. v. State of Kerala (2011 (2) KLT 68)**, which was rendered after referring to a large number of decisions. The decision of the Honourable Supreme Court in **State of Orissa v Debendra Nath Padhi (2005 (1) KLT 80 (SC)** was also relied on.

7. Thus, the first contention to be considered is whether the FIR submitted in the present crime, namely Crime No.148/1997, can be treated as a second FIR, for which the prohibition is applicable. One of the objections raised by the respondents is that, since this revision petition was filed challenging the order passed by the trial court refusing the prayer for discharge, the adjudication of the contentions can be made based on the prosecution records only and it was pointed out that the contention of the petitioners cannot be considered without examining the contents of the judgments passed by the courts at Andhra Pradesh in Crime No. 14/1995 of Chirala Railway Police station. As the consideration of this objection is absolutely necessary before adjudicating the contentions raised by the petitioners as to the legal validity of the FIR, I deem it appropriate to consider the same at first. In this regard, the State and the 3rd respondent relied on the observations made by the Honourable

Supreme Court in **Debenthra Nath Padhi's case (supra),** wherein it was held that, the accused has no right to produce any documents at the time of framing the charges. However, as an answer to the said contention, the learned Senior Counsel for the petitioners relies on the decision in **Rukmini Narvekar v. Vijaya Satardekar and others [(2008) 14 SCC 1].** In the said decision, after referring to **Debentha Nath Padhi's case (supra)**, it was observed by the Honourable Supreme Court as follows:

> *"28. ……. Thus in our opinion while it is true that ordinarily defence materials cannot be looked into by the Court while framing the charge in view of D.N Padhi's case (supra), there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the court at the time of framing the charges or taking cognizance."*

8. Still further, in para 29 of the said decision, it was further observed that, the court is justified in looking into such materials, if the same convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted. Thus, it is evident that in some exceptional circumstances, the documents relied on by the accused can be taken into consideration, while framing the charge. Therefore, the question to be considered whether this case falls within the "rare cases" as referred to in the

above decision and materials would *"convincingly establish that the whole prosecution version is totally absurd, preposterous or concocted".* In this regard, it is to be noted that, the documents sought to be relied on by the petitioners-accused, relate to the previous prosecution of the case by another investigating agency, in respect of the very same incident and the judgments pronounced by the competent courts in such proceedings. As far as the FIR and the charge sheet filed in the previous case are concerned, the same were already produced along with the final report in the present crime and therefore the same form part of the prosecution records. The other documents sought to be relied on by the accused, are the judgment passed by the trial court in the said case after the trial, and the judgment of the appellate court passed therein. The orders passed by the Andhra Pradesh High and the Honourable Supreme Court which were passed in connection with the said prosecution were also sought to be relied on. Since the said judgments and orders are the culmination of the FIR and final report in Crime No 14/1995 of Chirala Railway Police Station, or arising from the prosecution in the said crime, such judgments and orders are crucially relevant documents, as far as the rights of the

petitioners/accused are concerned. The fact that the FIR and final report in Crime No.14/1995 form part of the prosecution records in the present crime, fortifies the same. In this regard, the specific case of the petitioners/accused is with regard to the registration of the second FIR and also the findings entered by the courts concerned, after appreciating the materials produced by another prosecution agency in the previous crime registered with respect to the very same transactions, which formed the basis of the present prosecution. Therefore, I am convinced that this case comes within the criteria referred to by the Honourable Supreme Court in **Rukmini Narvekar's case (supra)** and hence, all the documents relied on the by the petitioners have to be taken into account. Another aspect which justifies the said finding is that, the trial court in the impugned order, has already taken note of the said judgment passed by the appellate court in the previous crime, and discharged the 5th accused, on the ground that he had already faced the trial, was found not guilty of the offences alleged in this case and, thus, the stipulations in section 300 of the Cr.P.C. apply.

9. Since I have already overruled the objections raised by the respondents as referred to above, the next question to be

considered is whether the FIR filed in the present case amounts to the second FIR to which, the prohibition as per the scheme of the Cr.P.C applies. Before considering the said question in the facts and circumstances of this case, it is profitable to examine the legal position about the said question.

10. In **T.T Antony's case (supra),** The Honourable Supreme Court considered the said question elaborately, after referring to a large number of decisions in this regard, and in paras 18, 19 and 20, the following observations were made

> *"18. An information given under sub-section (1) of Section 154 CrPC is commonly known as first information report (FIR) though this term is not used in the Code. It is a very important document. And as its nickname 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 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. 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 CrPC. 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 — FIR postulated by Section 154 CrPC. 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 CrPC. No such information/statement can properly be treated as an FIR 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 CrPC. Take a*

*case where an FIR mentions cognizable offence under Section 307 or 326 IPC and the investigating agency learns during the investigation or receives fresh information that the victim died, no fresh FIR under Section 302 IPC 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) CrPC, 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 CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC 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 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. 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 CrPC.*

*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 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. 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. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the 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 CrPC."*

After making the said observations, the Honourable Supreme Court proceeded to consider the observations made by the Honourable

Supreme Court in **Ram Lal Narang v State (Delhi Administration) [(1979) 2 SCC 322)]** and later at para 27 of **T.T Antony's case (supra),** the following observations were made.

> *"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 CrPC 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 Narang case[(1979) 2 SCC 322 : 1979 SCC (Cri) 479] 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) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, 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 under way 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 CrPC or under Articles 226/227 of the Constitution."*

11. The said question was again considered by the Honourable Supreme Court in **Amitbhai Anilchandra Shah's case (supra).** That was a case in which the question of the registration of second FIR came up in connection with an FIR registered in respect of an alleged fake encounter of one Tulsiram Prajapati, who allegedly witnessed another alleged fake encounter of Sohrabuddin and Kausarbi, in respect of which, another FIR was registered. In the

said case, after elaborately considering the statutory scheme of the Cr.P.C. and various decisions rendered in this regard, it was observed that, the second FIR and charge sheet are violative of fundamental rights under Articles 14, 20 and 21 of the Constitution of India, since the same relate to alleged offence in respect of which an FIR had already been filed and the court has taken cognizance. While arriving at the said finding, the Honourable Supreme Court followed the observation made in **C. Muniappan v. State of Tamil Nadu [(2010) 9 SCC 567**], where the Honourable Supreme Court explained "consequence test" i.e, if an offence forming part of the second FIR arises as a consequence of the offence in the first FIR, then offences covered by both the FIRs are the same and accordingly, the second FIR will be impermissible in law.

12. Thus, it can be seen that, the question of second FIR and the prohibition in connection with the same, would arise not only in a case where the FIRs are in relation to the same incident or same transactions, but it can also be extended to an incident which occurred as a consequence of the offence in the first FIR.

13. In **Ram Lal Narang's case (supra)**, an exception was carved out by the Honourable Supreme Court to the general

proposition that no second FIR can be registered, which was to the effect that, during the course of investigation of the first FIR, if a larger conspiracy is disclosed which was not part of the first FIR, a second FIR can be registered.

14. Similarly, in **Nirmal Singh Kahlon's case (supra)** , which was relied on by the learned Public prosecutor, it was observed that a second FIR would lie, in a case where the first FIR does not contain any allegation of criminal conspiracy.

15. In **Anju Chaudhary v. State of U.P and others (MANU/SC/1129/2012=2013 (1) KLT 549)**, it was held that, 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 first FIR, then second FIR can be registered. However in the said decision also, the general proposition of law as to the prohibition of second FIR was upheld through the following observations in para 15 which reads as follows:

> *15. 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 F.I.R. about an occurrence. However, the opening words of S.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 F.I.R. is to set the machinery of criminal investigation into motion, which culminates with filing of*

*the police report in terms of S.173(2) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two F.I.R.s 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 F.I.R. recorded first, then a second F.I.R. could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of S.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 F.I.R. 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 F.I.R. 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 S.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 S.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).*

16. Thus, the legal principles that can be deduced from the above decisions are that, the second FIR in respect of the very same incident and forming part of the same transactions, cannot be registered under normal circumstances except when the second FIR is a counter case. As held in **Amitbhai Anilchandra Shah's case**

**(supra)** and **C.Muniappan's case (supra),** even in cases where the second FIR is in respect of the incident which occurred as a consequence of the incident which is the subject matter of the 1st incident, the second FIR cannot be registered. However, the second FIR pertains to a conspiracy can be registered, in a case where the conspiracy was not part of the first FIR. The second FIR can be registered if the incident in the subsequent crime is beyond the scope and ambit of the first FIR.

17. Now when coming to the facts of the case at hand, the crucial aspect to be noticed is that, in Crime No.14/1995 registered by Chirala Railway Police Station, the final report was filed against the accused Nos. 4 and 5 herein, for the offences punishable under sections 120B, and 307 of IPC and under section 25(1) (b) (a) and section 27 of the Arms Act, which fact is clearly mentioned in paragraph 2(m) of the Annexure A4 judgment passed by the Assistant Sessions Court. The crime was registered against the accused including the petitioners and the final report was filed against the accused Nos. 1 and 2 therein (accused Nos. 4 and 5 herein), by keeping open the right of the investigation agency to continue the investigation under section 173(8) Cr.P.C, as against

the petitioners. The trial court framed the charges against the accused therein, for the offences punishable under sections 120B and 307 read with 34 of the IPC and section 7 read with section 27 of the Arms Act. In Annexure A4 judgment, among the points formulated by the learned Assistant Sessions Judge, the 3rd point was related to the conspiracy. The specific case of the prosecution in the said case was that, the accused therein (accused Nos. 4 and 5 herein) stayed at Sridevi Tourist Home at Thiruvananthapuram between 28.03.1995 to 31.03.1995. Thereafter they contacted the 1st petitioner by phone, who was in Government Guest House, Thycaud, and occupying room numbers 103 and 107 along with the 2nd petitioner herein. Accused Nos.1 and 2 therein visited the petitioners at the Guest House and entered into a conspiracy to murder the leaders of CPI(M) including the 3rd respondent. It was also alleged that, in pursuance to that conspiracy, the accused therein and their associates (including the petitioners herein), have procured a revolver from one P.K. Saleem, a resident of Kannur, which was used for firing shots at the 3rd respondent. In the first charge sheet, witnesses were cited by the prosecution to establish the conspiracy as mentioned above, though the petitioners herein were not

implicated in the said charge sheet. The trial court, after evaluating the materials, came to a definite finding that, the prosecution failed to establish the meeting of A1 and A2 with the other members (which include the petitioners) whom the prosecution alleged that they are part of conspiracy. However, the trial court found a criminal conspiracy between accused Nos.1 and 2 therein and convicted the 2nd accused therein, for the offences including under section 120B of IPC. In the appeal, the said conviction of the 2nd accused (the 5th accused herein) was set aside and the conviction was confined to the offences under the Arms Act alone.

18. The FIR in Crime No. 148/1997 of the Thampanoor Police Station was registered on the basis of a private complaint filed by the 3rd respondent herein. The instances of criminal conspiracies are the same, but the only difference is that, as per the allegations in the present FIR, in addition to the 3rd respondent herein the said conspiracy was intended to do away with the CWs. 2 and 3 therein as well, who were the leaders of CPI(M). In addition to the witnesses cited by the prosecution in the charge sheet in Crime No. 14/1995 of Chirala Railway Police Station to prove the stay of the accused in Sridevi Tourist Home and Thycaud Guest house, their meeting at the

Guest house and the procurement of weapon by the petitioners, some additional witnesses were also cited in the present charge sheet.

19. Thus, on a careful examination of the contents of both the FIRs, it can be seen that the basic allegation of conspiracy is centered around the meeting of the accused at Thycaud Guest house, which was specifically referred to in the charge sheet submitted in the final report submitted therein. The materials to prove the said conspiracy were already examined by the Assistant Sessions Court and found to be not satisfactory. Of course, the said finding of the Assistant Sessions Court as such, cannot be a decisive factor, as the trial therein was conducted against the 5th accused herein alone and the petitioners herein were not implicated as the accused in the said final report. However, it is a fact that, the investigation was conducted against the petitioners also in the first FIR and the final report therein against the 1st and 2nd accused therein (4th and 5th accused herein) was filed, by keeping the right of the police to conduct the further investigation against the petitioners open. The said factor assumes importance when it comes to the question of prohibition in registering the second FIR, in the light of

the legal position in this regard as discussed above.

20. As mentioned above, the basic allegation against the petitioners is with respect to the conspiracy allegedly entered into by the petitioners with the other accused including accused Nos.1 and 2 in Crime No. 14/1995 of Chirala Railway Police Station, which took place at Thycaud Guest house, Thiruvananthapuram. The said allegation was the subject matter of the first Crime, which was investigated in detail, final report filed and the accused Nos.1 and 2 were found not guilty of the said conspiracy, as the prosecution failed to establish the meeting of the said accused with the petitioners herein. Even if the findings of the trial court and the appellate court which dealt with the first FIR and final report are kept aside, the fact that, the basic allegations in the second FIR, were in connection with the very same issues in the first Crime and the final report, i.e, the conspiracy by the accused at Thycaud Guest House, cannot be ignored. In other words, even though, some additional witnesses were cited by the prosecution in the second charge sheet, the point to be established by the prosecution remains the same, i.e the conspiracy at Thycaud Guest House, which was already a subject matter in the first Crime. Thus, the irresistible conclusion

possible is that, both said FIRs are in relation to the very same transactions and, therefore, the FIR in crime No.148/1997 of Thampanoor Police station is the second FIR on the very same transactions which were already investigated into as against the persons including the petitioners.

21. Of course, it is true that, in the present crime, there is also an allegation that, in addition to the 3rd respondent herein, the accused also entered into a conspiracy to do away with CWs 2 and 3 herein, who are other leaders of the CPI(M). However, that allegation by itself would not authorize the registration of the second FIR. First of all, in the first Crime itself the prosecution case was to the effect that the conspiracy was to do away with the leaders of the CPI(M) including the 3rd respondent. This would mean that, the prosecution story relating to the conspiracy was not confined to the 3rd respondent alone, even as per the first FIR and charge sheet.

22. Even if it is assumed for argument's sake that the conspiracy alleged in the first Crime was confined to the 3rd respondent herein alone, that by itself cannot be a ground to treat the same as different transaction altogether. This is particularly because, in both the Crimes and final reports, the instances and place of conspiracy are the

same. The circumstances under which a second FIR can be registered are well settled by the decisions of the Honourable Supreme Court referred to above. As per the same, if the offences are distinct or it is of such a magnitude and is beyond the scope and ambit of the first FIR, registration of the second FIR would be permissible. In **Nirmal Singh Kahlon's case (supra),** it was also observed that second FIR can be registered in cases where it was lodged in wider canvass involving conspiracy of large number of persons. Here the facts of the case do not indicate the existence of any such circumstances. In this regard, the observations made by the Honourable Supreme Court in **S.Swamirathnam v. State of Madras (AIR 1957 SC 340)** at paragraph 7, which were specifically referred to and followed in **Amitbhai Anilchandra Shah's case (surpa)** are relevant and the same read as follows:

> *"7. On behalf of the appellant Abu Bucker it was contended that there has been misjoinder of charges on the ground that several conspiracies, distinct from each other, had been lumped together and tried at one trial. The advocate for Swamirathnam, however, did not put forward this submission. We have examined the charge carefully and find no ground for accepting the contention raised. The charge, as framed, discloses one single conspiracy, although spread over several years. There was only one object of the conspiracy and that was to cheat members of the public. The fact that in the course of years others joined the conspiracy or that several incidents of cheating took place in pursuance of the conspiracy did not change the conspiracy and did not split up a single conspiracy*

> *into several conspiracies. It was suggested that although the modus operandi may have been the same, the several instances of cheating were not part of the same transaction. Reliance was placed on the case of Sharpurji Sorabji v. Emperor [AIR 1936 Bom 154], and on the case of Choragudi Venkatadri v. Emperor [ILR (1910) 33 Mad 502] . These cases are not in point. In the Bombay case, no charge of conspiracy had been framed and the decision in the Madras case was given before Section 120-B was introduced into the Penal Code. In the present case, the instances of cheating were in pursuance of the conspiracy and were therefore parts of the same transaction."*

23. Thus, it can be safely concluded that, merely because, in the second FIR and final report, there is an allegation of conspiracy to do away with some more persons, that by itself cannot be a reason to treat the same as a completely distinct offence warranting or justifying the registration of a second FIR. The additional witnesses cited in the second final report also cannot be treated as a justification for the registration of the second FIR. This is particularly because, the prohibition is against the registration of FIR itself and the additional witnesses usually comes during the investigation. Moreover, as mentioned above, the basic allegation in both Crimes remains the same, i.e the accused persons met at Thycaud Guest House and conspired to do away with the leaders of the CPI(M), in furtherance of the same, revolvers were procured, in execution of the common design, accused Nos.4 and 5, followed the 3rd respondent

and the 4th accused shot at him using one of revolvers so procured, thereby attempted to committed the murder of the 3rd respondent. So long as the prosecution stories in both cases share a single platform, the allegations are against the very same persons, the FIR in Crime No.148/1997 of Thampanoor Police station has to be treated as the second FIR to which the prohibition, as contemplated as per the scheme of the Cr.P.C as discernible from sections 154, 155, 156, 157, 162 169, 170 and 173 thereof, is applicable. Therefore, it has to be held that, the registration of FIR in Crime No. 148/1997 was not at all justifiable and consequently all further proceedings pursuant to the same are also not legally sustainable.

24. While making the above observations, I am conscious of the fact that, what is being considered is a Criminal Revision Petition challenging the order passed by the learned Sessions Judge, rejecting the prayer sought by the petitioners for discharge under section 227 of the Cr.P.C. The learned Public prosecutor as well as the learned Counsel for the 3rd respondent, vehemently argued about the limitations in considering the Revision petition at the stage of charge. However, in **State through Superintend of Police v. R. Soundirarasu (AIR 2022 SC 4218==2022 (5) KLT SN 36 (C.No.34),** the

Honourable Supreme Court specifically considered the question regarding the manner in which the revisional powers are to be exercised at the time of Charge. After referring to **Munna Devi v. State of Rajasthan and another [(2001) 9 SCC 631]**, it was observed that, the Revisional Powers cannot be exercised in casual or mechanical manner. It was further observed that, a Revisional Court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court, and the said power can be exercised only if there is any legal bar in continuing the proceedings or if the facts as stated in the charge sheet are taken to be true on their face value and accepted in their entirety do not constitute the offences.

25. In this case, I have already found that, there is a legal bar in proceeding against the petitioners herein, in view of the fact that, the FIR based on which the entire prosecution case is built, amounts to a second FIR in respect of the very same transactions covered by the FIR and final report in Crime No.14/1995 of Chirala Railway Police Station.. Hence the invocation of the Revisional Powers of this Court is justified.

26. Even if it is assumed for argument's sake that, the

questions to be considered in this case, are beyond the revisional powers of this Court, nothing would preclude this Court from exercising the inherent powers of this Court under section 482 Cr.P.C or supervisory powers under Article 227 of the Constitution of India, to avoid miscarriage of justice. In this regard, it is to be noted that, in **State of Haryana v. Bhajan Lal and Others [(1992) Supp 1 SCC 335),** the Honourable Supreme Court at paragraph 102, was pleased to enumerate the seven situations under which, the inherent or extra ordinary powers of this Court has to be exercised in the matter of criminal prosecution. One of the said situations, namely serial No (6), is to the effect that, where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned, to the institution and continuance of the proceedings. In this case, there is a specific bar in instituting the second FIR and, therefore, the prosecution against the petitioners are vitiated, as it violates the rights of the petitioners including their fundamental right under Article 21 of the Constitution of India. Therefore, this is a fit case in which invocation of the inherent/extra ordinary powers of this Court is justified, if necessary.

27. It is also to be noted that, the State as well as the 3rd

respondent have a case that, 3rd respondent's rights as a victim of crime are also to be protected. The attention of this Court was brought to the observations made by the Honourable Supreme Court in **Amar Nath Chaubey v. Union of India and others [AIR 2021 SC 109,]** wherein it was observed that, a fair investigation is but a necessary concomitant of Article 14 and 21 of the Constitution of India. The observation made in **Nirmal Singh Kahlon's case (supra)**, to the effect that, a victim of crime is equally entitled to a fair investigation, was also relied on. The efforts taken to ensure the prosecution against the petitioners were highlighted by the State and the 3rd respondent. The attempt made by the prosecution to implicate the petitioners as accused in Crime No.14/1995 of Chirala Railway Police Station, invoking powers under section 319 Cr.P.C and the steps taken by the 3rd respondent under section 193 of the Cr.P.C to take cognizance against the petitioners in the said crime were also highlighted. It was also pointed out that the challenge made by the 3rd respondent against his application under section 193 Cr.P.C was declined by the High Court of Andhra Pradesh in Crl.R.C.No. 1410/2010, mainly on the ground that the prosecution was pending against the petitioners before the court in Kerala, i.e., the

proceedings which are the subject matter of this petition.

28. However, even while upholding the right of the 3rd respondent/victim to have a fair investigation, the contentions of the respondents cannot be accepted as such. This is because, the redressal of the grievances of the victim can only be made by invoking the remedies available to him under law and such redressal cannot be by adopting a procedure which is expressly prohibited by law. As far as the observations made by the High Court of Andhra Pradesh in Crl.R.C No.1410/2010 are concerned, the same cannot be understood to be meant to give legal validity to a proceeding, which is expressly prohibited by the provisions and scheme of the Cr.P.C. Moreover, while making the said observations, legal infirmities in the proceedings pending before the court in Kerala were also not brought to the notice of the said court and the same was not a subject matter before the said court. In such circumstances, I am not inclined to accept the contentions of the State as well as the 3rd respondent in this regard.

29. It is also to be noted in this regard that, in the private complaint submitted by the 3rd respondent, based on which Crime No.148/1997 was registered by the Thampanoor Police, the main

grievance highlighted by the 3rd respondent was with respect to lack of proper investigation by the Andhra Pradesh Police in Crime No 14/1995 as to the conspiracy. However, it is evident from the records that, an investigation was indeed conducted in respect of the conspiracy. Of course it is true that, even though further investigation was proposed against the petitioners herein, they were never charge sheeted. However, even if the same is treated as an instance of lack of proper investigation, still, the same would not justify the registration of a second FIR, but on the other hand, at the most, it could be a case where, orders for further investigation in Crime 14/1995 of Chirala Railway Police Station should have been sought. Therefore, I am not inclined to accept the contentions of the State and the 3rd respondent in this regard.

In such circumstances, on the reasons mentioned above, this Crl.R.P is allowed by setting aside the order dated 03.06.2016 in S.C No.1473/2001 passed by the Additional Sessions Court-IV, Thiruvananthapuram, to the extent it declined the prayer to discharge petitioners. It is ordered that, the petitioners herein i.e the accused Nos. 1 and 3 in Crime No. 148/1997 of Thampanoor Police Station, which is now pending as the Sessions Case referred to

above, are hereby discharged from the offences alleged against them in the said crime.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

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