REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1599 of 2010
(Arising out of SLP(Crl.) No. 2077 of 2010)

Babubhai ...Appellant

Versus

State of Gujarat & Ors. ...Respondents

WITH

CRIMINAL APPEAL NOS. 1600-1605 of 2010
(Arising out of SLP(Crl.) Nos. 3235-3240 of 2010)

State of Gujarat & Ors. ...Appellants

Versus

Ganeshbhai Jakshibhai Bharwad & Ors. ...Respondents

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. Leave granted.

2. These appeals and other connected appeals have been preferred against the judgment and order dated 22.12.2009 of the High Court of Gujarat at Ahmedabad, passed in Special Criminal Application Nos. 1675/2008, 1679/2008 with Crl. Misc. Application Nos. 8249/2009, 8361/2009, 8363/2009 and 7687/2009.

3. Facts and circumstances giving rise to the present cases are that on 7.7.2008, some altercation took place between members of the Bharwad and the Koli Patel communities over the plying of rickshaws in the area surrounding Dhedhal village of Distt. Ahmedabad, Gujarat. The Bharwad community had been preventing the Koli Patels from running their rickshaws in the said area.

On the next day, i.e. on 8.7.2008, case No. C.R.No.I-154/2008, was registered at 17:30 hours in the Bavla Police Station under Sections 147, 148, 149, 302, 307, 332, 333, 436 and 427 of the Indian Penal Code, 1860 (hereinafter called as "IPC") read with Section 135 of the Bombay Police Act, 1951 (for short "BP Act") and Sections 3, 7 of Prevention of Damages of Public Property Act, 1984 (for short "1984 Act") for an

incident which occurred at Village Dhedhal, wherein Mr. M.N. Pandya, Sub-Inspector of Police, Bavla Police Station has stated that while he was patrolling in Bavla Town, he received a message from H.C. Kanaiyalal, Police Station Officer, at 10.00 a.m. that some altercation/incident had taken place between the two communities at Dhedhal Cross Roads. On receiving the said information, he along with other police personnel, rushed to the place of incident, however, by that time the crowd had already dispersed. Thereafter, he received information that a clash was going on between the said two communities in Dhedhal village. Immediately, he contacted the Control Room, as well as the Deputy Superintendent of Police of Dholka, for further police support and rushed to the spot where he found about 2000-3000 persons from both the communities, all with sticks, dhariyas, swords etc., attacking each other. The police resorted to teargas shells as well as to lathi charges to disperse the crowd. Several rounds of firing were resorted to in order to disperse the mob. In the incident, more than 20 persons were injured and three houses of members of the Bharwad community were set on fire. One

person, namely Ajitbhai Prahladbhai, also died. Several police personnel were also injured. No person was named in the said FIR.

4. Another FIR, being Case No. C.R.No. I-155 of 2008, was registered at Bavla Police Station on the same date i.e. 8.7.2008 at 22:35 hrs by Babubhai Popatbhai Koli Patel (appellant in SLP (Crl.) No.2077/2010 and respondent in SLP (Crl.) Nos. 3235-3240/2010) (hereinafter called as complainant), resident of village Vasna, Taluka Bavla, wherein he alleged that an incident took place on the same day at 9:15 hours near Dhedhal village in which he named 18 persons as accused. As per this FIR, an incident occurred on 7.7.2008 in the evening at about 6.30 p.m. His cousin Jayantibhai Gordhanbhai told him that when Budhabhai of their village and two rickshaw-walas were taking passengers at Dhedhal Chokdi, the Bharwads of Dhedhal village who were also plying rickshaws, chhakdas etc. told the Koli Patels not to take passengers from there and they took away the keys of the jeep, beat up the Koli Patel boys, abused and threatened them and told them not to bring jeeps and rickshaws to Dhedhal Chokdi.

Babubhai Popatbhai Koli Patel, complainant reached Dhedhal Chokdi and met Budhabhai Laljibhai Koli Patel of his village and his brother Jayantibhai Laljibhai and enquired about the incident. They complained about browbeating and threatening by the Bharwads as the Bharwads wanted that no one else should bring jeeps and chhakdas to Dhedhal Chokdi. The informant/complainant stated that Kantibhai Ratanbhai Bharwad and other persons standing nearby told them to stop and threats were made by the Bharwads. On the date of the incident, when the informant was coming towards Dhedhal village from Vasna, his cousin Vadibhai Pakhabhai's tractor and one chhakda rickshaw were passing through the road. When they reached near Dhedhal village pond, the rickshaw and tractor were halted, his car was also stopped and he got down from the car and saw that 10 to 12 persons belonging to the Bharwad community were assaulting his cousin Vadibhai Pakhabhai and Amubhai Pakhabhai with sticks. They were also assaulting the chhakda rickshaw-walas. He saw Ganesh Jaksi of the Bharwad community of Dhedhal village having tamancha-like weapon in his hand and instigating the other

persons to indulge in violence. He also saw Sanjay Chela Bharwad, Dhiru Matam Bharwad, Sura Raiji Bharwad of Dhedhal intercepting people going on the road and Karshan Chako Bharwad, Moman Natha Bharwad, Kalu Sedhu Bharwad, Kalu Hari Bharwad, Chinu Bhikhu Bharwad assaulting Vadibhai Pakhabhai and Amubhai as well as the chhakda rickshaw-wala saying that the road was not for them and thus, they should not pass through it. The complainant and Manubhai went to rescue Vadibhai. At that time, Jayantibhai Laljibhai Patel of their village and Matambhai Vadibhai Patel came on a motor cycle. They were also stopped and all the persons jumped on them and started assaulting and abusing them. He saw that Surabhai Raijibhai Bharwad had inflicted stick blows on Manubhai due to which he was injured and became unconscious. When the mob beat up Manubhai, at that time, other Bharwads from Dhedhal village had also arrived.

5. The Bharwads started beating passersby on vehicles, who had worn clothes like Koli Patels and causing injuries to them. The Bharwads made calls on mobile phones to call other

Bharwads. The Bharwads assaulted and killed Manubhai Koli Patel and Ajitbhai Prahladbhai Koli Patel by assaulting them with deadly weapons like revolver, dhariyas and sticks and also caused serious injuries to Babubhai Popatbhai Koli Patel, informant/complainant on his head and hand. They also caused minor and major injuries to other persons.

6. On 9.7.2008, the inquest panchnama was carried out and three dead bodies were sent for post mortem. The report of the autopsy revealed a large number of injuries inflicted on the deceased persons. Statements of injured witnesses, who were admitted in Long Life Hospital, namely Dashratbhai Popatbhai Patel (PW.26), Hemubhai Babubhai Patel (PW.12), Jayantibhai Laljibhai (PW.14), Vadibhai Pakhabhai (PW.27) were recorded on 10.07.2008. Statements of injured witness Matambhai Vadibhai (PW.18) were recorded on 10.7.2008 and 21.7.2008.

7. The accused in both the cases filed Special Criminal Application No. 1675/2008 praying for investigation of CR No.I-154/2008 registered with Bavla Police Station by an independent agency like the CBI, Special Criminal Application

No. 1679/2008 for quashing of C.R. No.I-154/2008 and C.R. No.I-155/2008 registered with Bavla Police Station. Three applications being Criminal Misc. Application Nos. 8249/2009, 8361/2009 and 8363/2009 to quash and set aside the proceedings undertaken by Sessions Court during the pendency of the applications filed earlier were made. Twenty two persons were arrested. On completion of investigation, the charge sheet was filed on 10.10.2008 against 12 accused persons and the case was committed to Sessions Court.

8. By judgment and final order dated 22.12.2009, the High Court quashed the FIR registered as CR No.I-155/2008 and clubbed the investigation of the FIR along with the investigation of the other FIR bearing CR No.I-154/2008 to the extent it was feasible. The court transferred the investigation to the State CID Crime Branch and directed the new Investigating Officer to investigate the Bavla Police Station C.R.No.I-154/2008 as it stood earlier prior to the deletion of Section 302 IPC with a further clarification that quashing of the FIR registered by Bavla Police Station i.e. C.R.No.I-155 of

2008 could not mean that accused in respect of the said FIR has been discharged of the offences as they would face the charges in C.R. No.I-154/2008 and the accused who stood arrested in connection with C.R.No.I-155 of 2008 would stand arrested in connection with case C.R. No.I-154/2008. Hence, these appeals.

9. Shri R.K. Abichandani, learned senior counsel appearing for the appellant/complainant in C.R. No.I-155/2008, and Shri Tushar Mehta, learned Additional Advocate General have submitted that the High Court quashed the FIR without appreciating that there are no common factors in both the FIRs so as to indicate that both FIRs had arisen out of the same transaction. Thus, the FIRs could not be clubbed; the incident recorded in CR No. I-155/08 occurred prior in point of time and facts recorded in both the FIRs make it evident that there had been two separate incidents at two different places and for distinct offences. In CR No. I-155/08, three persons belonging to Koli Patel community had died and 26 persons of the same community were injured at the hands of Bharwads, whereas no person from the Bharwad community

suffered any injury. Both the FIRs had been lodged specifying that the FIR in CR No.I-155/08 has been in respect of the incident occurred at 9.15 am while the incident involved in CR No. I-154/08 has been in respect of incident occurred at 9.30 am. The incident first in time took place at Dhedhal Chokdi (Cross Roads) while the other incident occurred in village Dhedhal near the pond. The Court further erred in granting the relief to persons/applicants before it who had been absconding according to the Investigating Agency. Thus, their applications could not have been entertained. The appeals deserve to be allowed and the judgment and order of the High Court is liable to be set aside.

10. On the contrary, Shri U.U. Lalit, Shri C.A. Sundaram, Shri Rajeev Dhavan, and Shri P.S. Narsimha, learned senior counsel appearing for the respondents-accused in C.R. No.I-155/2008, have opposed the appeals contending that the High Court reached the correct conclusion that both the crimes were two parts of the same transaction. They occurred at the same place and the version given by Babubhai Popatbhai Koli Patel in C.R. No.I-155/2008 cannot be considered a counter

version giving rise to a cross case. Thus, no interference with the impugned judgment and order of the High Court is required.

11. We have considered the rival submissions made by learned counsel for the parties and perused the record.

Two FIRs.

12. In **Ram Lal Narang Vs. Om Prakash Narang & Anr. AIR 1979 SC 1791,** this Court considered a case wherein two FIRs had been lodged. The first one formed part of a subsequent larger conspiracy which came to the light on receipt of fresh information. Some of the conspirators were common in both the FIRs and the object of conspiracy in both the cases was not the same. This Court while considering the question as to whether investigation and further proceedings on the basis of both the FIRs was permissible held that no straitjacket formula can be laid down in this regard. The only test whether two FIRs can be permitted to exist was whether the two conspiracies were **identical** or not. After considering the facts of the said case, the Court came to the conclusion that

both conspiracies were not identical. Therefore, lodging of two FIRs was held to be permissible.

13. In **T.T. Antony Vs. State of Kerala & Ors. (2001) 6 SCC 181,** this Court dealt with a case wherein in respect of the same cognizable offence and same occurrence two FIRs had been lodged and the Court held that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the **same cognizable offence or same occurrence giving rise to one or more cognizable offences**. The investigating agency has to proceed only on the information about commission of a cognizable offence which is first entered in the Police Station diary by the Officer In-charge under Section 158 of the Code of Criminal Procedure, 1973 (hereinafter called the Cr.P.C.) and all other subsequent information would be covered by Section 162 Cr.P.C. for the reason that it is the duty of the Investigating Officer not merely to investigate the cognizable offence report in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and the Investigating Officer has to file one or more reports under

Section 173 Cr.P.C. Even after submission of the report under Section 173(2) Cr.P.C., if the Investigating Officer comes across any further information pertaining to the same incident, he can make further investigation, but it is desirable that he must take the leave of the court and forward the further evidence, if any, with further report or reports under Section 173(8) Cr.P.C. In case the officer receives more than one piece of information in respect of the same incident involving one or more than one cognizable offences such information cannot properly be treated as an FIR as it would, in effect, be a second FIR and the same is not in conformity with the scheme of the Cr.P.C. The Court further observed as under:

> *"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……. 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.*" (Emphasis added).

14. In **Upkar Singh Vs. Ved Prakash & Ors. (2004) 13 SCC 292,** this Court considered the judgment in **T.T. Antony** (supra) and explained that the judgment in the said case does not exclude the registration of a complaint in the nature of **counter claim** from the purview of the court. What had been laid down by this Court in the aforesaid case is that any further complaint by the same complainant against the same accused, subsequent to the registration of a case, is prohibited under the Cr.P.C. because an investigation in this regard

would have already started and further the complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence, will be prohibited under section 162 Cr.P.C. However, this rule will not apply to a counter claim by the accused in the first complaint or on his behalf alleging a different version of the said incident. Thus, in case, there are rival versions in respect of the same episode, the Investigating Agency would take the same on two different FIRs and investigation can be carried under both of them by the same investigating agency and thus, **filing an FIR pertaining to a counter claim in respect of the same incident having a different version of events, is permissible.**

15. In **Rameshchandra Nandlal Parikh Vs. State of Gujarat & Anr. (2006) 1 SCC 732,** this Court reconsidered the earlier judgment including **T.T. Antony** (supra) and held that in case the FIRs are not in respect of the same cognizable offence or the same occurrence giving rise to one or more cognizable offences nor are they alleged to have been committed in the course of the same transaction or the same occurrence as the

one alleged in the First FIR, there is no prohibition in accepting the second FIR.

16. In **Nirmal Singh Kahlon Vs. State of Punjab & Ors. (2009) 1 SCC 441,** this Court considered a case where an FIR had already been lodged on 14.6.2002 in respect of the offences committed by individuals. Subsequently, the matter was handed over to the Central Bureau of Investigation (CBI), which during investigation collected huge amount of material and also recorded statements of large number of persons and the CBI came to the conclusion that a scam was involved in the selection process of Panchayat Secretaries. The second FIR was lodged by the CBI. This Court after appreciating the evidence, came to the conclusion that matter investigated by the CBI dealt with a larger conspiracy. Therefore, this investigation has been on a much wider canvass and held that second FIR was permissible and required to be investigated. The Court held as under:

> *"The second FIR, in our opinion, would be maintainable not only because there* ***were different versions but when new discovery is made on factual foundations****. Discoveries may be made by the police authorities at a*

subsequent stage. Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature. If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, in our opinion, as and when the same surfaced, it was open to the State and/or the High Court to direct investigation in respect of an offence which is ***distinct and separate from the one for which the FIR had already been lodged."*** (Emphasis added).

17. Thus, in view of the above, the law on the subject emerges to the effect that an FIR under Section 154 Cr.P.C. is a very important document. It is the first information of a cognizable offence recorded by the Officer In-Charge of the Police Station. It sets the machinery of criminal law in motion and marks the commencement of the investigation which ends with the formation of an opinion under Section 169 or 170 Cr.P.C., as the case may be, and forwarding of a police report under Section 173 Cr.P.C. Thus, it is quite possible that more than one piece of information be given to the Police Officer In-charge of the Police Station in respect of the same incident involving one or more than one cognizable offences. In such a case, he need not enter each piece of information in the Diary.

All other information given orally or in writing after the commencement of the investigation into the facts mentioned in the First Information Report will be statements falling under Section 162 Cr.P.C.

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

18. The instant case is required to be examined in the light of the aforesaid settled legal propositions. If the two FIRs are read together, it becomes clear that the incident started in the

morning as per both the FIRs. C.R. No.I-154/2008, lodged by Mr. M.N. Pandya, Sub Inspector of Police stated that he reached the place of occurrence after receiving the information from the police station and found that mob had already dispersed. The case of the prosecution is that when the police reached the place of occurrence of the first incident, the mob had already dispersed, could not be correct for the reason that some of the witnesses have stated that the clash was going on when the police arrived and police resorted to force to disperse the mob. In fact, it was the police who summoned the ambulances which took the injured persons to hospitals. In the first incident as per the said FIR the place of occurrence had been village Dhedhal near the pond. In the pond, the damaged tractor, motor cycle and chhakda were found. Mr. M.N. Pandya called the extra police force and went inside the village. He found 2000-4000 persons and witnessed a free fight between them. The Koli Patels had surrounded some of the houses of the Bharwads. Some persons had been locked inside their houses and they had also put their houses at fire. The superior officers also came there. Police has used force to

disperse the mob in the said incident and there were heavy casualties and there was loss of lives also. If we examine minutely the FIR in C.R. No.I-155/2008, the incident also occurred near the pond in the village Dhedhal. The damaged tractor, motor cycle and chhakda were there in the pond. One person Ajitbhai Prahladbhai was killed in the incident. Babubhai Popatbhai Koli Patel also got injured. While comparing both the FIRs there is no doubt that both the incidents had occurred at the same place in close proximity of time, therefore, they are two parts of the same transaction. More so, the death of Ajitbhai Prahladbhai has been mentioned in both the FIRs. From the report for deletion of Section 302 IPC, it is apparent that it is not the case of the Investigating Officer that the death of Ajitbhai Prahladbhai had not occurred during the course of the incident in connection with which C.R. No.I-154 of 2008 came to be registered.

19. It is also evident that houses of the Bharwads were inside the village in contiguous areas and the offence had spread over the entire area as is evident from the panchnama of the

scene of offence drawn in C.R. No.I-155 of 2008 as well as from the contents of the said FIR. Same situation regarding the place of occurrence appears from the panchnama of the scene of incident in C.R. No. I-154/2008. Panchnama of the scene of incident of C.R. No.I-154/2008 includes the scene of occurrence of C.R. No.I-155/2008 which makes it clear that both the FIRs pertain to the two crimes committed in the same transaction. The scene of offence panchnamas establish clearly that the incidents in both the cases could not be distinct and independent of each other. In fact, it is nobody's case that incident relating to CR No.I-155/08 occurred at Dhedhal Chokdi (Cross-Roads).

20. In view of the above, we are of the considered opinion that the High Court reached the correct conclusion and second FIR C.R. I-155/2008 was liable to be quashed.

Tainted Investigation

21. In some of the applications before the High Court, allegations of bias malafide against the investigating agency had been made submitting that investigation had not been fair and impartial and therefore, it stood vitiated because of

material irregularities and therefore, investigation be handed over to some independent agency like CBI. The Court examined the grievance of those applicants and recorded the following findings:-

(i) In spite of the fact that serious allegations had been made as regards the manner in which investigation had been made in the affidavit in reply, such allegations had not been denied;

(ii) The investigation has been one-sided. Statements of witnesses belonging to only one community had been recorded, and the members of the other community had been totally excluded from recording their statements, indicating bias in favour of one community and against the other;

(iii) In CR No.I-154/2008 several Koli Patels had been arraigned as accused, many of them are not named by any witness in their statements annexed with the charge-sheet. Thus, it was not clear as to how the said persons have been implicated in the offences in question. Such accused would certainly go scot-free, which clearly indicates the nature of investigation which has been carried out in respect of one of the FIRs;

(iv) Not a single witness named in the charge sheet belongs to the Bharwad community and despite the

fact that statements of witnesses reveal that persons belonging to both the communities have sustained injures, in the charge sheet, as well as the statements placed on record by the prosecution, not a single person belonging to the Bharwad community is shown to have sustained injuries;

(v) Though the witnesses refer to names of the Bharwads whose houses were set on fire after shutting them in, none of the persons belonging to the Bharwad community are cited as witnesses nor are their statements recorded. This is the nature of the investigation carried out in respect of C.R.No. I-154 of 2008;

(vi) When in respect of the second FIR pertaining to the alleged first incident, the informant was in a position to name all the accused belonging to the Bharwad community along with their father's name and surname, it is surprising that in the investigation carried out by the Investigating Officer no statement of any person belonging to the Bharwad community naming any person belonging to the Koli Patel community as having taken part in the incident has been recorded;

(vii) The offence has been bifurcated into two parts and one serious in nature and the other a much diluted one. Even in the diluted offence, some persons

belonging to one community have been named as accused though no material has been collected to connect most of them with the offence in question. There is nothing to indicate as to how the said names came to be revealed. All the accused belonging to the same community, i.e., Koli Patels have been shown to be absconding accused in the charge-sheet filed against some of the accused belonging to the Bharwad community despite the fact that they are shown as witnesses in another FIR and their statements had been recorded by the Investigating Officer;

(viii) Accused of one case have been shown by the prosecution in the charge sheet as absconding accused but they had been attending court proceedings in the company of the Investigating Officer in another case;

(ix) There is over-action in relation to one FIR and complete inaction in so far as the another FIR is concerned. The resultant effect of the poor investigation carried out in connection with one FIR would be that all the accused of the said FIR would be acquitted and only the accused of another FIR which belongs to one community would have to face the prosecution;

(x) In such a fact-situation, persons who would otherwise be co-accused, would be witness against

them in the case arising out of the another FIR which would cause immense prejudice to them;

(xi) Deletion of offence under section 302 IPC from the FIR CR No.I-154/2008 was totally unwarranted; and

(xii) Charge-sheet against same set of 12 persons had been filed in relation to both the FIRs. However, there was no evidence against the said persons in connection with some of the offences and the prosecution was ready and preparing to get them discharged under section 169 Cr.P.C.

On appreciation/consideration of the material available on record, the High Court recorded the aforesaid findings of fact and came to the following conclusion:

> *"The manner in which the investigation has been carried out as well as the manner in which these cases have been conducted before this Court, clearly indicate that the investigation is not fair and impartial and as such the investigating agency cannot be permitted to continue."*

Thus, it is evident from the above that not only investigation in respect of both the FIRs had not been fair and has caused serious prejudice to one party but even before the High Court

conduct of the party and investigating agency has not been fair.

22. None of the learned counsel appearing for the parties has raised any doubt about the correctness of those findings, rather all of them have fairly conceded that investigation was not conducted properly.

23. The High Court, in view of the fact that there has not been a fair investigation, transferred the case to State CBCID, however, it issued the following directions:

> *"The investigation in respect of the first information report registered vide Bavla Police Station I-C.R. No.154 of 2008 is transferred to the State CID Crime Branch. Both the Investigating Officers of the aforesaid FIRs shall hand over the investigation papers to the new investigating agency. The Investigating Officer who is entrusted with the investigation shall carry out further investigation in Bavla Police Station I-C.R. No.154 of 2008 as it stood earlier prior to the report for deletion of section 302 IPC. It is clarified that quashing of the first information report registered vide Bavla Police Station I-C.R. No.155 of 2008 does not mean that the accused in respect of the said FIR shall stand discharged of the offences. They shall now face the said charges in the first information report registered vide Bavla Police Station I-C.R. No.154 of 2008. The accused who are arrested in connection with Bavla Police Station I-C.R. No.155 of 2008 shall stand*

arrested in connection with Bavla Police Station I-C.R. No.154 of 2008."

24. We fail to understand that if the High Court has quashed the FIR in C.R.No. I-155/2008, how the charge sheet, which was filed after investigation of allegations made therein, could survive and be directed to be read in another case and other consequential orders be also read in another case.

Further in case the High Court came to the conclusion that investigation was totally biased, unfair and tainted, the investigation had to be held to have stood vitiated and as a consequence thereof charge sheets filed in both the cases could have become inconsequential.

25. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The Investigating Officer should be fair and conscious so as to rule out any possibility

of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer "is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth". (Vide **R.P. Kapur Vs. State of Punjab AIR 1960 SC 866; Jamuna Chaudhary & Ors. Vs. State of Bihar AIR 1974 SC 1822;** and **Mahmood Vs. State of U.P. AIR 1976 SC 69**).

26. In **State of Bihar Vs. P.P. Sharma AIR 1991 SC 1260,** this Court has held as under:

> *"Investigation is a delicate painstaking and dextrous process. Ethical conduct is absolutely essential for investigative professionalism. ….Therefore, before countenancing such allegations of mala fides or bias it is salutary and an onerous duty and responsibility of the court, not only to insist upon making specific and definite allegations of personal animosity against the Investigating Officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the court. ….Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power….The word 'personal liberty' (under Article 21 of the Constitution) is of the widest amplitude*

covering variety of rights which goes to constitute personal liberty of a citizen. Its deprivation shall be only as per procedure prescribed in the Code and the Evidence Act conformable to the mandate of the Supreme Law, the Constitution. The investigator must be alive to the mandate of Article 21 and is not empowered to trample upon the personal liberty arbitrarily….. An Investigating Officer who is not sensitive to the constitutional mandates may be prone to trample upon the personal liberty of a person when he is actuated by mala fides."

27. In **Navinchandra N. Majithia Vs. State of Meghalaya & Ors. AIR 2000 SC 3275**, this Court considered a large number of its earlier judgments to the effect that investigating agencies are guardians of the liberty of innocent citizens. Therefore, a heavy responsibility devolves on them of seeing that innocent persons are not charged on an irresponsible and false implication. There cannot be any kind of interference or influence on the investigating agency and no one should be put through the harassment of a criminal trial unless there are good and substantial reasons for holding it. Cr.P.C. does not recognize private investigating agency, though there is no bar for any person to hire a private agency and get the matter

investigated at his own risk and cost. But such an investigation cannot be treated as investigation made under law, nor can the evidence collected in such private investigation be presented by Public Prosecutor in any criminal trial. Therefore, the court emphasised on independence of the investigating agency and deprecated any kind of interference observing as under:

> *"The above discussion was made for emphasising the need for official investigation to be totally extricated from any extraneous influence….. All complaints shall be investigated with equal alacrity and with equal fairness irrespective of the financial capacity of the person lodging the complaint. ….**A vitiated investigation is the precursor for miscarriage of criminal justice.**"*
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> (Emphasis added)

28. In **Nirmal Singh Kahlon** (supra), this Court held that a concept of fair investigation and fair trial are concomitant to preservation of the fundamental right of the accused under Article 21 of the Constitution of India.

29. In **Manu Sharma Vs. State (NCT of Delhi)** (2010) 6 SCC 1, one of us (Hon'ble P. Sathasivam, J.) has elaborately dealt with the requirement of fair investigation observing as under:-

"…… The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation .and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.…

It is not only the responsibility of the investigating agency but as well as that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally enforceable canon of the criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law dehors his position and influence in the society.…

The Court is not to accept the report which is contra legem (sic) to conduct judicious and fair investigation.…

The investigation should be conducted in a manner so as to draw a just balance between citizen's right under Articles 19 and 21 and expansive power of the police to make investigation.....".

30. This Court in **K. Chandrasekhar Vs. State of Kerala & Ors. (1998) 5 SCC 223**; **Ramachandran Vs. R. Udhayakumar & Ors. (2008) 5 SCC 413**; and **Nirmal Singh Kahlon** (supra); **Mithabhai Pashabhai Patel & Ors. Vs**. **State of Gujarat** (2009) 6 SCC 332; and **Kishan Lal Vs**. **Dharmendra Bafna** (2009) 7 SCC 685 has emphasised that where the court comes to the conclusion that there was a serious irregularity in the investigation that had taken place, the court may direct a further investigation under Section 173(8) Cr.P.C., even transferring the investigation to an independent agency, rather than directing a re-investigation. "Direction of a re-investigation, however, being forbidden in law, no superior court would **ordinarily** issue such a direction."

31. Unless an extra ordinary case of gross abuse of power is made out by those in charge of the investigation, the court

should be quite loathe to interfere with the investigation, a field of activity reserved for the police and the executive. Thus, in case of a mala fide exercise of power by a police officer the court may interfere. (vide: **S.N. Sharma Vs**. **Bipen Kumar Tiwari & Ors.** AIR 1970 SC 786).

32. In **Kashmeri Devi Vs. Delhi Administration & Anr. AIR 1988 SC 1323,** this Court held that where the investigation has not been conducted in a proper and objective manner it may be necessary for the court to order for fresh investigation with the help of an independent agency for the ends of justice so that real truth may be revealed. In the said case, this court transferred the investigation to the CBI, after coming to the conclusion that investigation conducted earlier was not fair.

33. The above referred to judgments of this Court make it clear that scheme of investigation, particularly, Section 173(8) Cr.P.C. provides for further investigation and not of re-investigation. Therefore, if the Court, comes to the conclusion that the investigation has been done in a manner with an object of helping a party, the court may direct for further investigation and **ordinarily** not for re-investigation.

The expression **ordinarily** means normally and it is used where there can be an exception. It means in the large majority of cases but not invariably. "Ordinarily" excludes "extra-ordinary" or "special circumstances". (vide: **Kailash Chandra Vs. Union of India** AIR 1961 SC 1346; **Eicher Tractors Ltd.**, **Haryana** Vs. **Commissioner of Customs, Bombay** AIR 2001 SC 196; and **State of A.P. Vs**. **Sarma Rao & Ors.** AIR 2007 SC 137).

Thus, it is evident that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, if considers necessary, it may direct for investigation *de novo* wherein the case presents exceptional circumstances.

34. In the instant case, admittedly, the High Court has given detailed reasons for coming to the conclusion that the investigation has been totally one-sided, biased and mala fide. One party has been favoured by the investigating agency. The natural corollary to this finding is that the other party has been harassed in an unwarranted manner. Thus, the cause of the other party has been prejudiced. The charge sheets filed by the investigating agency in both the cases are against the

same set of accused. A charge sheet is the outcome of an investigation. If the investigation has not been conducted fairly, we are of the view that such vitiated investigation cannot give rise to a valid charge sheet. Such investigation would ultimately prove to be precursor of miscarriage of criminal justice. In such a case the court would simply try to decipher the truth only on the basis of guess or conjunctures as the whole truth would not come before it. It will be difficult for the court to determine how the incident took place wherein three persons died and so many persons including the complainant and accused got injured. Not only the fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. Investigating agency cannot be permitted to conduct an investigation in tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere.

In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation. Thus, the order of the High Court requires modification to the extent that the charge sheets in both the cases and any order consequent thereto stand quashed. In case, any of the accused could not get bail because of the pendency of these appeals before this Court, it shall be open to him to apply for bail or any other relief before the appropriate forum. In case, such an application is filed, we request the appropriate court to decide the same expeditiously and in accordance with law. It is further clarified that those persons who were arrested in connection with CR No. I-155/08 would not stand arrested in connection with CR No. I-154/08. However, if during the fresh investigation, any incriminating material against any person is discovered, the Investigating Authority may proceed in accordance with law. It shall be open to the accused to approach the appropriate forum for any interim relief as per law.

35. In view of the above, the appeals are disposed of with the modification of the order of the High Court to the extent explained hereinabove.

.....J.
(P. SATHASIVAM)

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.....J.

(Dr. B.S. CHAUHAN)

New Delhi,
August 26, 2010.