



2024:DHC:9409



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 26th NOVEMBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 4654/2022 & CRL.M.A. 18837/2022**

MOHD. TAHIR HUSSAIN

.....Petitioner

Through: Ms. Tara Narula, Ms. Shivangi
Sharma, Mr. Anirudh Ramanathan,
Mr. Rishabh Bhati, Mr. Harshvardhan
Jain, Advocates.

versus

STATE OF NCT DELHI & ANR.

.....Respondents

Through: Mr. Madhukar Pandey, SPP with Mr.
Aviral Bansal, Advocate.
SI Vijay Kumar, PS Khajuri Khas,
Crime Branch.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court seeking quashing of FIR No.116/2020, dated 27.02.2020, registered at Police Station Khajuri Khas for offences under Sections 109, 114, 147, 148, 149, 392, 427, 436, 454, 34 IPC and Sections 3 and 4 Prevention of Damage to Public Property Act, 1984.

2. It is the case of the Petitioner that apart from the present FIR, another FIR, being FIR No. 101/2020, dated 25.02.2020, registered at PS Khajuri Khas under sections 109, 114, 147 148, 149, 186, 353, 427, 435, 436, 454, 34 IPC and 3 and 4 PDPP Act, pertaining to the same incident which occurred on 24.02.2020 on the same premises, i.e. E-98/2, Khajuri Khas, Main Karawal Nagar Road, New Delhi, 110094 (*hereinafter referred to as*



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'the building in question') has been registered against the Petitioner herein. It is stated that FIR No. 101/2020 has been registered on the complaint of Constable Sangram Singh in relation to the incident occurred on 24.02.2020 at the parking situated on the ground floor of the building in question, whereas FIR No. 116/2020 has been registered at the behest of one Tejveer Singh @ Tejpal Singh in respect of the incident occurred on 24.02.2020 at "Bharat Vatika" situated on the first floor of the building in question. It is stated that FIR No.101/2020 was registered on 25.02.2020 whereas FIR No.116/2020 was registered on 27.02.2020.

3. Material on record discloses that FIR No. 101/2020 has been registered on the complaint of Constable Sangram Singh. The Statement of Constable Sangram Singh, on the basis of which FIR No.101/2020 dated 25.02.2020 has been registered, is incorporated in the FIR and the same reads as under:

"Statement of Sangram Singh (No. 2800/NE, PIS No. 28091636) S/o Shri Ram Kumar Singh R/o VPO Mitli, Distt. Bagpat, UP age 31 years, M.No. 8010578581 stated that I am posted on the post of Sepoy at police Station Khajuri Khas and deputed at Beat No. 07F Block, of this Police Station Main Khajuri Khas, Delhi. On 24.02.20 keeping in view the protest of CAA NRC I and HC Vikram No.825/NE, HC Virender No. 759/NE were deputed at Chand Bagh Puliya, E Block, Khajuri Khas Near Pradeep Ki Parking. That I parked my motorcycle No. DL 5SBW 3316 Hero Honda Hunk in the Pardeep's Parking and was performing my duty. A huge mob gathered on the passage going towards Sherpur Chowk and in the nearby streets and the rioters were pelting stones and arson/ putting fire there and causing harm to the private and government properties. Some people out of that mob were instigating the crowd for pelting stones and to put fire. At about 02.15 pm from the side of Chandbagh a



huge mob including more number of people came there and started pelting stones and putting fire. That we all three at our level best were trying to make understand the mob and to stop them from doing this. But they were not agreed to follow our instructions. As the rioters were in huge numbers therefore it was impossible for us to control them, as the people in the mob were pelting stones and the people in the mob became more aggressive and they started throwing stones on us, we ran here and there to save our life. To save my life, I entered in the Pradeep's Parking. HC Vikram and HC Virender also ran from there and entered into the streets. General public also started running from here and there to save their lives. I with the help of other persons put down the shutter of the Pradeep's parking and went inside the parking hall and from there I went upside on 1st floor. In the meanwhile the mob became violent and they broken the shutter of Pradeep's parking and put fire on the vehicles parked there, in which my motor cycle No. DL 5SBW3316 also burnt very badly. On the terrace of the Pradeep's Parking food was cooking for a marriage program. Near Pradeep's parking on the terrace of Tahir Hussain's House huge number of violators were gathered, they were pelting stones and flammable articles from his terrace towards the Pradeep's Parking, due to which the articles belonging to marriage were damaged. The mob has also caused damage to the nearby shops and they also put on fire the vehicles parked in the streets. I with great difficulty could save my life from that mob and by informing the other staff could save myself from there. I can identify lot of people amongst them, if they come before me."

4. A perusal of the statement of Constable Sangram Singh shows that the entire incident has happened at Pradeep Parking, situated at the ground floor of the building in question. The statement further shows that at that point of time, when the incident was taking place, food was being prepared on the



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terrace of the Pradeep Parking for a marriage ceremony.

5. Two days later, i.e. on 27.02.2020, another FIR, being FIR No. 116/2020 was registered at Police Station Khajuri Khas. The said FIR was registered at the behest of one Tejveer Singh @ Tejpal Singh regarding the incident which happened on the first floor of the building in question. The statement on which FIR No.116/2020 has been registered is being reproduced herein and the same reads as under:

“To, The S.H.O. P.S. Khajuri Khas, Delhi Subject: Complaint regarding loot, riot and causing fire by the Municipal Councilor Tahir Hussain and his goons. Sir, It is submitted that the applicant Tejveer Singh @ Tejpal Singh S/o Mathan Singh is resident of R/o E-386, Gali No.16, Khajuri Khas. Marriage of my younger brother Lokendra's daughter was to be solemnized on 25.02.2020. We had arranged for getting cooked food in Bharat Vatika E-Block, Khajuri Khas, there we had get prepared food for about 1200 persons. On 24.02.2020 riots happened in our vicinity. Near Bharat Vatika there is building of Municipal Councilor Tahir, on 24.02.2020 on the terrace of Tahir Hussain he himself and along with him about 200-300 persons were gathered and they all were standing on the terrace of Tahir Hussain and were creating nuisance from there, they were pelting stones from there, they were also throwing petrol bombs. There is a parking below the Bharat Vatika, Tahir Hussain and some of his associates came down from the building and some more people were present on the road, all of them together broken the shutter of the parking and put fire on the vehicles parked there. They had also broken with bricks and stones my motor cycle Bajaj CT 100 No. DL5C AT 9654 parked outside the gate of Bharat Vatika. Some of the rioters came up on the first floor of Bharat Vatika where we were getting cooked food for the marriage and there they destroyed everything and put fire on the goods. The above rioters



have also snatched Rs. 62,000/- from my brother Rajveer Yadav, who was looking over and supervising the food. Tahir Hussain was instigating the rioters. Some people were pelting stones and throwing petrol bombs on the Bharat Vatika from the terrace of Tahir Hussain. Legal action be taken against the above rioters, we can identify some of the persons amongst those persons. because of above rioters we have suffered this loss at about 2 p.m. in the noon on 24.02.2020. As I was busy in the marriage therefore I have lodged the report today. On my this complaint, appropriate legal action be taken against the above rioters”

6. The allegation in the above statement is that on 24.02.2020, at about 02:00 PM, a mob constituting of the Petitioner herein and his associates, attacked the building in question and broke the shutter of Pradeep Parking, which is situated on the ground floor of the building in question, set fire to the vehicles parked in the parking lot. It is stated that after setting fire to the vehicles parked in the Pradeep Parking, the rioters moved to the first floor of the building in question where food was being prepared for the marriage ceremony of the niece of one Tejveer Singh @ Tejpal Singh. It is stated that the rioters destroyed everything and set fire to the goods and ran away.

7. A perusal of the further investigation, which was conducted after registration of FIR No.101/2020, shows reference to the complaint made by the said Tejveer Singh @ Tejpal Singh which has been registered vide DD No.75A. The said portion of the diary entry is being reproduced and the same reads as under:

“To, The Duty Officer, Sir, it is humbly submitted that in this Police Station so many PCR calls regarding incidents of riots, quarrel, fire and damage are received from different areas under this police station. On this subject, already taking action on the subject



riots. That on this subject the police staff available at the Police Staff has already doing every possible efforts to control this situation but despite sever efforts the position could not be controlled because the rioters are in huge number than the police staff. That on this subject since 12.00 of 24.02.20 till now in different areas under this police station the rioters have created huge nuisance. That since morning so many rioters in huge numbers are creating nuisance at Khajuri Chowk, Bhajanpura Chowk, Sherpur Chowk, Main Karawal Nagar Road and at other places, they were beating the passersby and pelting stones and are also damaging the private property of public and government properties and the vehicles passing through from there. Several repeated directions were given to them and done all possible efforts to control them but the above mob refused to obey the directions of the administration and kept on creating nuisance and damaging the properties as it is. That on this subject several PCR Calls were received from Khajuri Posta Road. That in this regard a PCR DD No.75A was received by me SI. On which I SI along with accomplish constable reached at the spot E Block, Khajuri Khas where so many people were gathered. Mob of so many people was gathered at Main Karawal Nagar Road, Sherpur Chowk, Bhajanpura Chowk, Main Khajuri Khas, Delhi and were creating nuisance and some people were prompting them to cause damages and to riots and they were beating the persons passing through from there, they were pelting stones on the vehicles passing through from there, and they had also put various vehicles on fire, they had also put on fire various shops. So many vehicles and shops were burning there. Huge loss was caused to the private properties of public and government properties. The above mob could be controlled or dismantled with great difficulties. That after controlling the situation Ct. Sangram Singh No. 2800 / NE get recorded his statement to me SI. In this regard DD No. 75A has also been received from the Police



Station. That the complainant Tejveer Singh has stated that the rioters by putting fire and pelting stones have destroyed the articles belonging to marriage of his brother Lokender's daughter. I SI recorded the statement of Ct. Sangram No. 2800/NE. That from the statement of complainant and from the facts and circumstances of the case offence u/s 109/ 114/ 147/148/ 149/ 186 / 353 / 427 / 435 / 436 / 454/34 IPC & 03/04 PDPP Act have been found committed. Therefore, the tehrir is prepared and submitted for registration of the case. Case be registered and its number be informed to me.” (emphasis supplied)

8. It is the case of the Petitioner that since both the FIRs arise out of the same transaction which has taken place on the same day in the same building, two FIRs could not have been registered. The Petitioner has approached this Court praying that FIR No.116/2020 dated 27.02.2020, registered at Police Station Khajuri Khas for offences under Sections 109, 114, 147, 148, 149, 392, 427, 436, 454, 34 IPC and Sections 3 and 4 Prevention of Damage to Public Property Act, 1984, be quashed.

9. Learned Counsel for the Petitioner states that since the incident has taken place at the same time, in the same building – one incident has happened on the ground floor whereas another incident has happened on the first floor of the building in question, and, therefore, the incident is a part of the same transaction and, therefore, two different FIRs could not have been registered against the Petitioner as the same is contrary to the law laid down by the Apex Court in Amitbhai Anilchandra Shah v. CBI, (2013) 6 SCC 348, T.T. Antony v. State of Kerala, (2001) 6 SCC 181.

10. Per contra, learned SPP for the State contends that after investigation charge-sheet has been filed in both the FIRs, cognizance has been taken, charges have been framed and the cases have been sent to the Sessions Court



for trial. He states that SC No.212/2021 arising out of FIR No.101/2020 and SC No.169/2021, arising out of FIR No.116/2020 are pending in the Court of learned Additional Sessions Judge – 03, Karkardooma Courts. He states that a comparative perusal of Order on charge dated 17.12.2023 for commission of substantive offences in SC No. 212/2021 arising out of FIR No. 101/2020 and Order on charge dated 17.12.2023 for commission of substantive offences in SC No. 169/2021 arising out of FIR No. 116/2020 shows that only 3 counts of charge are common in both the cases, remaining 5 counts of charges in SC No. 169/2021 arising out of FIR No. 116/2020 are not part of Order on charge in SC No. 212/2021 arising out of FIR No. 101/2020. He states that even the Charges are not similar in the abovementioned cases and hence separate trial in both the cases on the basis of different charges has ensured that no prejudice is caused to the Petitioner by continuance of trial in SC No. 169/2021 arising out of FIR No. 116/2020, which is admittedly for commission of separate offences involving different victims. He also states that the Petitioner is well aware of Order on Charge dated 17.12.2023 in SC No. 169/2021 arising out of FIR No. 116/2020 and has extensively cross examined 21 witnesses and, therefore, no prejudice would be caused to the Petitioner by examining & cross examining the witnesses in SC No. 169/2021 arising out of FIR No. 116/2020. The Learned SPP for the State, therefore, states that even though the incidents alleged in the abovementioned FIRs relate to the same date and the premises in both the cases is also same, the two FIRs should be tried separately as the nature of offence is different.

11. Heard the learned Counsel for the Petitioner and the learned SPP for the State and perused the material on record.

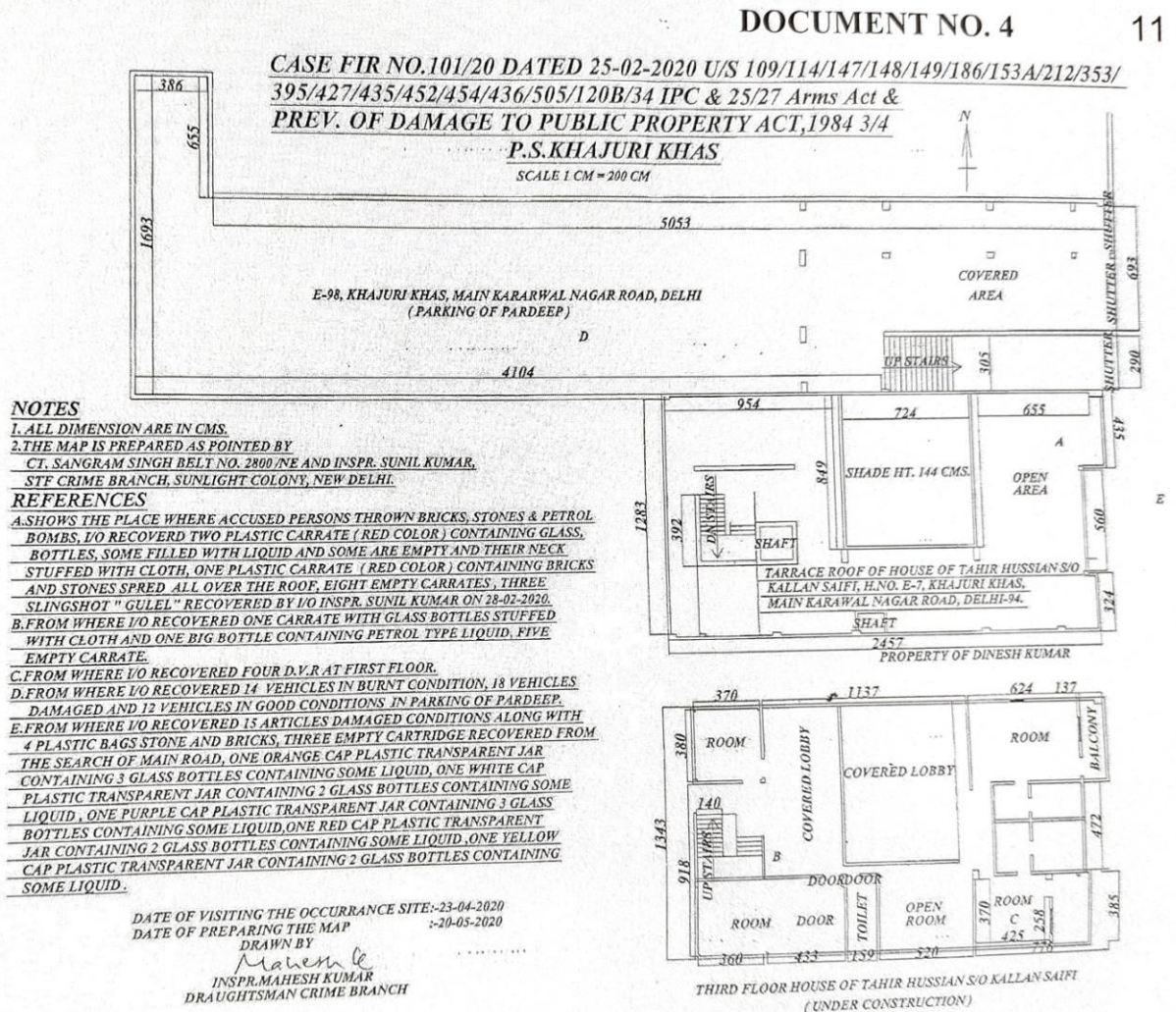
12. At this juncture, it is relevant to mention the site plan in both the



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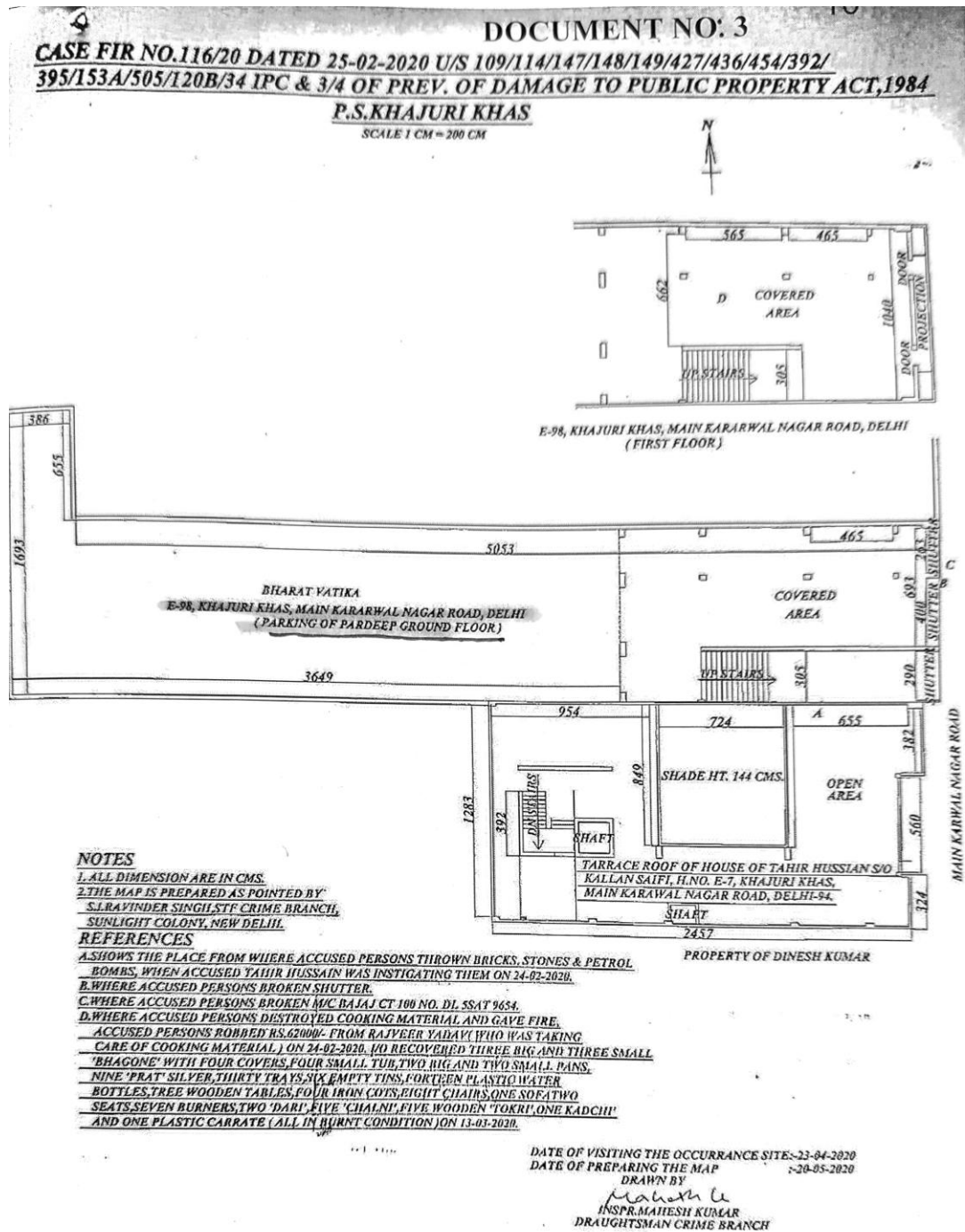


FIRs, i.e. FIR No. 101/2020 & FIR No.116/2020, and the same are as under:





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13. A perusal of the site plan shows that Pradeep Parking, which is the subject matter of FIR No.101/2020, is on the ground floor of the building in question and Bharat Vatika, which is the subject matter of FIR No.116/2020, is on the first floor of the building in question.

14. A perusal of the two FIRs show that the rioters first broke open the



shutters of Pradeep Parking and set fire to the vehicles parked there and then they went to the first floor of the building in question where food was being prepared for the marriage ceremony. It is stated that the rioters set fire to the goods and destroyed the items which were present on the first floor of the building in question. In the considered opinion of this Court, both the incidents are a part of the same incident.

15. In T.T. Antony v. State of Kerala, 2001 6 SCC 181, the Supreme Court has held –

*“27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court. There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narangs' case (supra) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court. **However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C.** It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. **In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the***



Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C. or under Article 226/227 of the Constitution.” (emphasis supplied)

16. In Babubhai V. State of Gujarat, (2010) 12 SCC 254, the Supreme Court held as under:

“ 14. The investigating agency has to proceed only on the information about the 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 and all other subsequent information would be covered by Section 162 would be covered by Section 162 CrPC for the reason that it is the duty of the investigating officer is not merely to investigate 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 the investigating officer has to file one or more reports under Section 173 CrPC. Even after submission the report under Section 173(2) CrPC, 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 leave of the court and forward further evidence, if any, with further report or reports under Section 173(8) CrPC. 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 CrPC.” (emphasis supplied)



17. In Anju Chaudhary V. State of U.P., (2013) 6 SCC 384, the Supreme Court held as under:

*“14. On a plain construction of the language and scheme of Sections 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognizable offence shall be reduced into writing by the officer-in-charge of a police station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. **The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. It will thus be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are different, or even where subsequent crime is of the magnitude that it does not fall within the ambit and scope of the FIR first recorded, then a second FIR could be registered.** The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of Section 154 of the Code. These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by investigating authority of the Police. Therefore, second FIR for the same incident cannot be registered. Ofcourse, 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 the police is concerned, maybe in a given case, subject to the right of further investigation, but wherever the investigation has been completed and a person is found to be prima facie guilty of committing the offence or otherwise, re-examination by the investigation agency on its own should not be permitted merely by registering another FIR with regard to the same offence. If such protection is not given to a suspect, then possibility of abuse of investigating powers by the police cannot be ruled out. It is with this intention in mind that such interpretation should be given to Section 154 of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, reinvestigation or de novo investigation is beyond the competence of only the investigating agency but even that of the learned Magistrate. The Courts have taken this view primarily for the reason that it would be opposed to the scheme of the Code and more particularly Section 167(2) of the Code.

45. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating unity or proximity of time, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge out of different circumstances, it would not be



possible for the court to take a view that they form a part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be a common trial.” (emphasis supplied)

18. This Court in Atir v. State (NCT of Delhi), **2021 SCC OnLine Del 4241**, after relying on the abovementioned Judgments passed by the Apex Court, has observed as under:

“19. The law on the subject has been settled keeping in line with the principles enunciated by the Supreme Court of India. There can be no second FIR and no fresh investigation in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences.”

19. Applying the law laid down by the Apex court to the facts of the present case, this Court is of the opinion that FIR No.116/2020 has to be quashed. However, this court cannot ignore the fact that trial has started in both the cases and the victims in both the cases are different and quashing FIR No.116/2020 will cause injustice to the victims in the said FIR. The mistake of the Prosecution in filing two FIRs for an incident which has occurred in the same building cannot result in injustice to the victims in FIR No.116/2020, who will have no remedy in law if FIR No.116/2020 is quashed.

20. The Apex Court in Amitbhai Anilchandra Shah v. CBI, **(2013) 6 SCC 348**, where two trials had started in two separate FIRs pertaining to the same incident, the Apex Court has observed as under:

“58.9. Administering criminal justice is a two-end process, where guarding the ensured rights of the accused under the Constitution is as imperative as



ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the court of law to protect and shield the rights of both. Thus, a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. Accordingly, 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. As a consequence, in our view this is a fit case for quashing the second FIR to meet the ends of justice.

58.10. *The investigating officers are the kingpins in the criminal justice system. Their reliable investigation is the leading step towards affirming complete justice to the victims of the case. Hence they are bestowed with dual duties i.e. to investigate the matter exhaustively and subsequently collect reliable evidences to establish the same.”*

In the said case, the Apex Court has ultimately concluded as under:

“59. *In the light of the specific stand taken by CBI before this Court in the earlier proceedings by way of assertion in the form of counter-affidavit, status reports, etc. we are of the view that filing of the second FIR and fresh charge-sheet is violative of fundamental rights under Articles 14, 20 and 21 of the Constitution since the same relate to alleged offence in respect of which an FIR had already been filed and the court has taken cognizance. This Court categorically accepted CBI's plea that killing of Tulsiram Prajapati is a part of the same series of cognizable offence forming part of the first FIR and in spite of the fact that this Court directed CBI to “take over” the investigation and did not grant the relief as prayed, namely, registration of*



fresh FIR, the present action of CBI filing fresh FIR is contrary to various judicial pronouncements which is demonstrated in the earlier part of our judgment.

*60. In view of the above discussion and conclusion, the second FIR dated 29-4-2011 being RC No. 3(S)/2011/Mumbai filed by CBI is contrary to the directions issued in judgment and order dated 8-4-2011 by this Court in Narmada Bai v. State of Gujarat [(2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526] and accordingly the same is quashed. **As a consequence, the charge-sheet filed on 4-9-2012, in pursuance of the second FIR, be treated as a supplementary charge-sheet in the first FIR.** It is made clear that we have not gone into the merits of the claim of both the parties and it is for the trial court to decide the same in accordance with law. Consequently, Writ Petition (Crl.) No. 149 of 2012 is allowed. Since the said relief is applicable to all the persons arrayed as accused in the second FIR, no further direction is required in Writ Petition (Crl.) No. 5 of 2013.” (emphasis supplied)*

21. Applying the law laid down by the Apex Court to the facts of the present case, this Court deems it fit to direct that the charge-sheet in FIR No.116/2020 be treated as a supplementary charge-sheet in FIR No.101/2020. A perusal of the material on record shows that there are about 9 common eye-witnesses in both the FIRs and 23 witnesses are common in both the FIRs and, therefore, no prejudice would be caused to the witnesses/victims if charge-sheet in FIR No.116/2020 is taken as a supplementary charge-sheet in FIR No.101/2020 and the trial can proceed accordingly.

22. In view of the above, this Court is inclined to quash FIR No.116/2020, dated 27.02.2020, registered at Police Station Khajuri Khas for offences under Sections 109, 114, 147, 148, 149, 392, 427, 436, 454, 34



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IPC and Sections 3 and 4 Prevention of Damage to Public Property Act, 1984, with a direction that the charge-sheet in FIR No.116/2020 be treated as a supplementary charge-sheet in FIR No.101/2020.

23. With these directions, the Petition is disposed of along with the pending application(s), if any.

24. It is made clear that this Court has not made any observations on the merits of the case and it is for the Trial Court to decide the same in accordance with law.

SUBRAMONIUM PRASAD, J

NOVEMBER 26, 2024

Rahul