
(2017) 04 BOM CK 0022

In the Bombay High Court

Case No : Criminal Application No. 5784 of 2016

Mohammad Hisham Osmani

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154

Citation : (2017) 2 AIRBomRCri 292 : (2017) 2 BomCR(Cri) 856

Hon'ble Judges : S.S. Shinde and K.K. Sonawane, JJ.

Bench : Division Bench

Advocate : Mr. S.S. Kazi, Advocate, for the Petitioner; Mr. D.R. Kale, AAP, for the Respondent/State; Mr. R.G. Joshi, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

K.K. Sonawane, J.—Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. The applicant has preferred the present application under Section 482 of the Cr.P.C. seeking to exercise the inherent jurisdiction of this court to quash and set aside the FIR bearing No. 321 of 2016 registered against the applicant and others at City Chowk police station, Aurangabad, for the offence punishable under sections 420, 425, 465, 468, 471, 204, 417, 120-B r/w. 34 of IPC. The applicant agitated the validity, legality and propriety of the impugned FIR being subsequent FIR of the same offence and the same set of allegations as contained in the earlier FIR bearing Crime NO. 271 of 2014 registered at City Chowk police Station, Aurangabad, following the directions of the learned Magistrate dated 3.11.2014 under Section 156(3) of the Cr.P.C. in private complaint proceeding vide Criminal M.A. No. 2247 of 2014 initiated at the behest of the respondent No. 2 - Rafik Ahmed s/o. Mohd. Usman.

3. The genesis of the application culled out in brief is as under :-

[a] That, the contentious land Gat No.11 admeasuring 2H 3R, located at village

Georai, Taluka Aurangabad was the ancestral property of respondent No.2 Rafik Ahmed s/o. Mohd. Usman. It has been alleged that the father of the respondent No.2 has executed the document of sale deed of contentious land in favour of one Yusuf Ali Kurban Hussain by way of security. After the death of Yusuf Ali, his son Mohd. Yusuf Ahmed persuaded the proceeding for mutation of his name in the revenue record. The concerned Tahsildar after appreciating the circumstances and objections raised on behalf of respondent No. 2 mutated the name of Mohd. Yusuf in the revenue record being the purchaser of property. The respondent No.2 approached to the higher authority against the mutation allowed by the concerned Tahsildar but the respondent No.2 did not succeed in his attempt. Eventually, he filed Civil proceeding bearing RCS No.1131 of 2001, for cancellation of sale deed executed by his father in favour of Yusuf Ali. In the meantime, Yusuf Ali's widow - Hussainabee alienated the contentious suit land Gat No.11 in favour of the applicant for consideration by executing a registered sale deed. Accordingly, the applicant approached to the revenue authority for mutation of his name in the revenue record but he came to know about the civil litigation initiated by the respondent No.2 for cancellation of original sale deed executed in favour of Yusuf Ali - husband of Hussainabee. The applicant intervened in the litigation and got the ex-parte decree passed in favour of respondent No.2 set aside and quashed.

[b] There was a chequered history of litigation relating to contentious suit land Gat No.11, but the respondent No.2 failed to obtain favourable order from the Court of law. Meantime, in the year 2008, after ex-parte decree in favour of respondent No.2, his name came to be mutated in the revenue record for the contentious land Gat No.11 of village Georai, Tahsil Aurangabad. But, after setting aside the ex-parte decree from the Court, the applicant approached to the revenue authority to get his name mutated in the revenue record. The concerned revenue authority, appreciated the circumstances and after obtaining opinion from the concerned DGP, mutated name of the applicant in the revenue record. Being dissatisfied with the mutation entry of the applicant in the revenue record by the concerned Tahsildar and Talathi, the respondent No.2 rushed to the City Chowk police station and ventilated the grievances against the revenue personnel and the applicant. But the allegations nurtured on behalf of respondent No.2 Rafik Ahmed were of civil in nature, the police authority found reluctant to act upon the complaint of the respondent No.2 Rafik Ahmed and advised him to take recourse of the Court of law. Therefore, the respondent No.2 approached to the Court of learned Magistrate and filed private criminal complaint u/sec. 200 of Cr.P.C. bearing Criminal Miscellaneous Application No. 2247 of 2014 alleging that the so called accused prepared and fabricated fake and bogus documents, to grab the land of the complainant. The accused also tampered with the Government record maintained and preserved in the office of the revenue personnel and committed the offence of forgery and cheating etc.

[c] The learned Magistrate considered the facts and circumstances as well as nature of allegations nurtured against the revenue personnel and applicant, and

proceeded to direct the police of City Chowk police station for investigation under Section 156(3) of the Cr.P.C. Pursuant to the directions of the learned Magistrate dated 03-11-2014 the police of City Chowk police station registered the FIR bearing No. I-271 of 2014 for the allegations of criminal conspiracy, forgery, cheating etc. and set the penal law in motion, The concerned IO recorded the statements of witnesses acquainted with the facts of the case and collected the relevant documents. Eventually, IO, arrived at the conclusion that there was no substance in the allegation for any sort of penal action against so called accused. Therefore, the concerned I.O. preferred "B" Summary Report under section 173 of Cr.P.C. before the learned Magistrate.

[d] Respondent No.2 raised the objection by his protest application to the "B Summary Report" on behalf of the concerned police of City Chowk Police Station. The learned Magistrate did not allow to close the proceeding by accepting "B" summary report and once again forwarded the complaint to ACP(Crime) with directions to appoint senior inspector for further investigation into the matter. Accordingly, the ACP (Crime) appointed the Senior Police Inspector of MIDC police station to carry out the investigation and to submit the report. The senior PI of MIDC police station conducted the investigation and found no substance in the allegation for criminal action. He preferred to close the proceeding by filing "B" Summary Report for want of concrete evidence. But, it was also not accepted by the learned Magistrate and again, the matter was referred to the Senior Police personnel for investigation afresh. At this juncture also, there was no change in the circumstances found available on record and the attending circumstances constrained the police authorities to once again prefer "B" Summary Report, as the charges against the applicant and revenue authorities were of civil in nature.

[e] However, the learned Magistrate came across with the circumstance that complainant - Rafik Ahmed had filed an application on 28.4.2014 and 29.4.2014 to the Tahsildar, Aurangabad pertaining to mutation of his name in the 7 x12 extract on the basis of ex-parte decree passed in his favour. But, the concerned revenue officer, in connivance with the applicant tampered with the Government record and took the entry of applicant's name in the 7/12 extract on the basis of forged documents. According to complainant, the applicant and other revenue personnel committed mischief of forgery and cheating etc. The learned Magistrate verified the allegations of tampering of Government documents, cheating, forgery etc, and proceeded to issue process against the applicant under section 204 of Cr.P.C. The learned Magistrate refused to initiate penal action against the revenue personnel for the allegations cast on behalf of complainant, for want of prosecution sanction.

[f] Being aggrieved by the impugned order of issuance of process, the applicant - Mohd. Hisham Osmani s/o. Yusuf Osmani, approached to the Sessions Court and filed Criminal Revision Application NO. 166 of 2016 to set aside the impugned order of issuance of process, interalia, the applicant also preferred an application for interim relief to stay the impugned order. The learned Sessions Judge, after

appreciating the circumstances on record was pleased to grant stay to the order of issuance of process against applicant vide his order dated 26.8.2016.

[g] Meanwhile, respondent No.2 procured the relevant documents from office of Tahsildar, Aurangabad and it was found that the applicant, hatched the conspiracy with the revenue personnel and prepared the fake and spurious documents and shown these documents were issued by the concerned Tahsildar, to deprive the complainant to mutate his name in the revenue record. Therefore, he once again rushed to the City Chowk police station and filed another FIR bearing No. 321 of 2016, under Section 420, 425, 465, 468, 471, 120-B, r/w. 34 of IPC. It has been alleged that the applicant hatched criminal conspiracy with revenue personnel and forged and tampered the revenue documents during the period 22.12.2014 to 16.5.2016, with an intention to cause loss to the first informant and to grab his ancestral property Gat No.11 of village Georai Taluka Aurangabad. Accordingly, the City Chowk police station registered the another crime and once again swung into action for collection of evidence against the applicant. The impugned FIR is the subject matter of the present application.

4. The learned counsel for the applicant vehemently submitted that the action of registration of subsequent FIR bearing Crime No. 321 of 2016 is illegal, unjust and not within the purview of law. The subsequent FIR is in respect of the same allegations as alleged in the earlier FIR bearing No. 271 of 2014. The impugned FIR is totally false, baseless and filed with oblique/ ulterior motive to harass the applicant. It is nothing but an abuse of process of law. The allegations nurtured in the subsequent FIR are one and the same which are contained in the earlier FIR filed on behalf of respondent No.2. In view of the provisions of law, there cannot be two FIRs of the same incident and on the same set of facts and circumstances, forming part of the same offence. The learned counsel for the applicant Mr. Kazi drawn attention towards the multiple "B" Summary Reports, filed on behalf of police authorities in the proceeding of private complaint bearing Criminal M.A. No. 2247 of 2014. The learned Magistrate, instead of accepting "B" Summary Report, repeatedly filed on behalf of police of City Chowk police station, ventured to issue process against the applicant, by registering Criminal proceeding bearing RCC No. 549 of 2016. The applicant agitated the propriety of the impugned order of issuance of process against the applicant by filing Criminal Revision Application NO. 166 of 2016, which is subjudice before the learned Sessions Judge at Aurangabad. Meanwhile, on the similar set of allegations, the respondent No.2 filed subsequent FIR which is illegal, improper and not sustainable in the eye of law. According to learned counsel, the respondent No.2 lost the legal battle since beginning for claiming the contentious land Gat No.11 of village Georai Taluka Aurangabad. Eventually, he resorted to criminal proceeding with a purported motivation to harass the applicant on same set of factual aspects. The applicant is innocent. He has not committed any crime. There was no forgery cheating or tampering with the Government record on the part of applicant. Hence, the learned counsel prayed to quash and set aside the subsequent FIR, which is not sustainable within the ambit of law, as the same is

abuse of process of law. Learned counsel, in support of his claim relied upon the legal guidelines delineated by the Hon''ble Apex Court, in the matter of T.T. Antony v. State of Kerala (2001)6 SCC 181, Upkar Singh v. Ved Prakash and others reported in (2004)13 SCC 292, Amitbhai Anil Chandra Shah v. CBI and another AIR 2013 SC 3794, Babubhai v. State of Gujarat, and Manoj Kumar Sharma v. Satish Chandra.

5. According to learned counsel Mr. Kazi, there cannot be subsequent FIR and no fresh investigation in respect of same cognisable offence for same occurrence is not permissible. He explained that the information which has been recorded at first point of time should be regarded as FIR under section 154 of Cr.P.C. Mr. Kazi vehemently contended that in case any additional information is received to the respondent No.2 herein, it would appropriate for him to furnish the said information to the learned Magistrate in the matter subjudice before him. But respondent No. 2 has no legal right to approach to the police of city Chowk police station, for registration of subsequent FIR on same set of facts and allegations, and it is not permissible at all within the purview of law. Therefore, he prayed to allow the application for quashing the impugned FIR bearing Crime No. 321 of 2016 being second FIR of the same cognisable offence.

6. Per contra, the learned counsel for the respondent No.2 raised the objection to the contentions put forth on behalf of applicant. The Respondent No. 2 also filed his affidavit-in-reply on record. According to learned counsel for the respondent No.2, there are circumstances on record to constitute a cognisable offence of cheating, forgery as well as tampering with the Government documents. But, due to influence of the applicant and revenue personnel, the police preferred the "B" Summary Reports into the matter. However, learned Magistrate has correctly appreciated the circumstances on record and issued process against the applicant for the allegations nurtured in the private complaint. According to learned counsel, even after registration of crime, the applicant and other revenue personnel continued their alleged activities of cheating, forgery etc. The applicant used the spurious and fake documents in the court proceeding to deceive and defraud the respondent No.2 in this case. Learned counsel for respondent No.2 gave much more emphasis on the forged letter dated 27-05-2014 which was shown and issued by the Tahsil office on 27.5.2014, having signature for Tahsildar. In fact, there was no such letter issued from the tahsil office on 27.5.2014 but the Tahsildar had put his signature on 3.6.2014, which demonstrate that there was no direction to the concerned Talathi on 27.5.2014 for mutation of the name of the applicant in the 7 x12 extract for the land Gat No.11 of village Georai Tahsil and District Aurangabad. There was no record available to show that the letter bearing signature for Tahsildar dated 27.5.2014 relating to mutation entry of land Gat no.11 was ever issued from the office of the Tahsildar. Therefore, the respondent No.2 on receipt of fresh information approached to the concerned City Chowk police station and filed the second FIR against the applicant and others for their mischief of preparation and fabrication of fake documents in between the period 22.12.2014 to 16.5.2016. The

impugned FIR is maintainable and sustainable for fresh investigation into the crime. The learned counsel explained the attending circumstances on record and requested that there is no illegality in registration of second FIR lodged on behalf of respondent No.2 against the applicant. Hence, he prayed not to nod in favour of the applicant and to dismiss the application.

7. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also perused the relevant documents produced on record. In view of factual aspects mentioned above and the allegations nurtured on behalf of respondent No.2 against the applicant and others, the pivotal issue, which is to be considered in this matter is that, since the first FIR bearing Crime No. I-271/2014 has already been registered and investigated by the police pursuant to which the learned Magistrate issued process against applicant, in such circumstances the second FIR could have been registered to initiate another penal proceeding on similar nature of allegations forming part of transaction of same offence against the applicant, which would be violative of the principle of double jeopardy.?

8. At this juncture, the scrutiny of allegations contained in the impugned FIR bearing Crime No. 321 of 2016 reflects that the Respondent No.2 procured the document of letter dated 28.10.2016 from the office of Tahsildar Aurangabad, in which it has been mentioned that there was no entry in the record maintained and preserved in the tahsil office in regard to the issuance of letter dated 27.5.2014, which was signed for the Tahsildar Aurangabad. The respondent No.2, on receipt of the said information, suspected about the foul play on the part of applicant and revenue personnel relating to letter dated 27.5.2014 issued to the concerned Talathi of Georai for the mutation entry of applicant's name in 7 x 12 extract. In fact, the letter was actually signed by the Tahsildar on 3.6.2014. The Respondent No.2 alleged that when the Tahsildar put his signature on 3.6.2014, how the mutation entry of the applicant in the revenue record, came to be effected on 28.5.2014 prior to direction from Tahsildar. Therefore, on discovery of these new facts, respondent No.2 rushed to the City Chowk police station and filed the impugned FIR bearing Crime No. 321 of 2016, the validity and propriety of which is agitated in this application.

9. It is a rule of law that the very purpose of registration of FIR is to set the criminal law in motion which would culminate in filing of police report by the concerned I.O. under Section 173 of the Cr.P.C. The law does not contemplate more than one FIR in relation to the same incident or different incident arising from same transaction and factual aspect. Undisputedly, Chapter XII of the Cr.P.C. deals with the information to the Police and their powers to investigate. Section 154 of the Cr.P.C. pertains to cognisable cases, whereas, Section 155 deals with the information as to non-cognisable cases and investigation of such cases. The provision of Section 154 of Cr.P.C. prescribes that there has to be a FIR about the incident which constitute a cognisable offence and every such information relating to commission of cognisable offence, whether given orally or

otherwise, to the Officer In-charge of the police station, has to be reduced into writing by or under his directions and be read over to the informant. The provisions of Section 156(3) contemplates that the learned Magistrate has a discretion for issuance of directions to the officer in-charge of a police station to conduct investigation and file report under Section 173 of the Cr.P.C. The section 190 of Cr.P.C. describes powers of the Magistrate to take cognizance of offence under certain circumstances. It is lucid that the scheme of Sections 154, 156 and 190 of the Cr.P.C. does not recognize more than one FIR about the allegations of one and the same cognisable offence.

10. In the matter of T.T. Antony v. State of Kerala and others referred supra, as relied upon by the learned counsel for the applicant, it has been held that the registration of another FIR in respect of the same incident, as FIR under Section 154 of Cr.P.C., was not valid, legal and required to be quashed and set aside. The earliest or the first information in regard to commission of cognisable offence only be treated as FIR under section 154 of Cr.P.C. Therefore, there can not be second FIR and consequently, no fresh investigation on receipt of subsequent information of the same cognisable offence.

11. In the case of Babubhai v. State of Gujarat referred supra, the Honourable Apex Court, had an occasion to consider various judicial pronouncements on the question of registration of subsequent FIR in connection with the same or connected offences, and elucidated the same in para. Nos. 16 to 19, which read thus :-

"16. In Upkar Singh v. Ved Prakash (2004) 13 SCC 292, this Court considered the judgment in T.T. Antony (2001) 6 SCC 181 and explained that the judgment in the said case does not exclude the registration of a complaint in the nature of counterclaim 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 counterclaim in respect of the same incident having a different version of events, is permissible.

17. In Rameshchandra Nandlal Parikh v. State of Gujarat (2006)1 SCC 732, this Court reconsidered the earlier judgment including T.T. Antony (2001) 6 SCC 181 and held that in case the FIRs are not in respect of the same cognisable offence or the same occurrence giving rise to one or more cognisable 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.

18. In *Nirmal Singh Kahlon v. State of Punjab* (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.

19. The Court held as under: (*Nirmal Singh Kahlon* case SCC pp.466-67, para 67)

67. "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).

12. In *Amitbhai Shah v. CBI*, referred supra it has been reiterated that second FIR, if in the nature of cross-complaint or counter complaint is permissible, which is an exception carved out in *Upkar Singh's* case (supra) to the effect that, when the second FIR consists of alleged offences which are in the nature of cross-case/ cross-complaint or counter-complaint, such cross-complaint would be permitted as a FIR.

13. In the case of *Anju Chaudhari v. State of UP* (2013)6 SCC 384, it has been held by the Honourable Supreme Court that the examination of in-built safeguards provided by the legislature in the very language of Section 154 of the Code is an significant aspect which can be deduced from the principle akin to the double-jeopardy, rule of fair investigation and to prevent the abuse of power by the Investigation Authority of the police. Therefore, the second FIR for the same incident can not be registered. 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 FIR recorded first, in such circumstances, the second FIR could be registered. The Hon"ble Supreme Court expressed the view that the court has to examine the facts and

circumstances giving rise to file FIRs and test of sameness is to be applied to find out whether both the FIRs relates to the same incident and same occurrence or in regard to incident which was two or more part of the same transactions. In case the answer is affirmative, the FIR is liable to be quashed. However, when the version is different in second FIR and it relates to different incident or crimes, the second FIR is permissible under law.

14. We would reiterate that there cannot be two FIRs registered in relation to the same occurrence or incidents or different incident forming part of the same transaction. Therefore, the act of registration of second FIR of same occurrence/ incident is contrary to law and against the very spirit of section 154 of the Cr.P.C. The ultimate object of registration of FIR is to find out whether there was commission of alleged cognisable offences and if so who are the culprits. No any aggrieved victim of the crime should be precluded from his legitimate right to lodge FIR to book the real culprits of the crime.

15. It is settled principle of law that issue of sustainability of two FIR has to be examined on merits of each case, whether a subsequently registered FIR is a second FIR about the same incident or offence or is based on distinct and different set of facts and whether its scope of inquiry is totally different and not identical one. There would not be any straight-jacket formula to be applied uniformly to all cases. It will always be a mixed question of law and facts depending on the merits of a given case (emphasis supplied on Anju Chudhary's case 2013(6) SCC 384).

16. In the present case, in view of the aforesaid legal guidelines delineated by the Honourable Supreme Court, it is imperative to evaluate the factual aspect leading to registration of subsequent FIR against the applicant, at the behest of respondent No.2 Rafik Ahmed. The intense scrutiny of the factual score and circumstances contained in both the FIRs, reflects that the allegations in both these FIRs are of similar in nature. The aspirations cast in both the FIRs are totally based on one and the same offence alleged to have been committed during the course of same transaction having identical spectrum. The scope of investigation of the subsequent FIR is indistinguishable in nature with the scope of inquiry in the trial to be conducted before the learned Magistrate in the proceeding of private criminal complaint filed by respondent No. 2. The charges are one and the same in regard to cheating, forgery, fraud, fabricating fake documents, tampering of Government record etc. In such circumstances, it would hazardous to construe that both the FIRs are in respect of different and distinct offences and not forming the part of same transaction.

17. At this juncture, it would be profitable to reproduce the allegations nurtured on behalf of the respondent no.2 against the applicant in para.13,14 and 15, of the first FIR bearing Crime No. I-271 of 2014, as below :-

13- vls dh] ftYgk ljdkjh odhykus fouk dKxni=kaps voyksdu d:u fnukad 26-05-2014 jksth vfHkizk; ek0 rglhynkj vkSjaxkckn ;kauk ikBohyk] R;kph lq)k

dks.krkgh vkod jftV~j e;/s uksan ukgh0 lnjhy vfHkiz;kpk xSjQk;nk ?ksmu vkjksih dza0 1 ;kfu fnukad 27-05-2014 tk0 dza0 2014@tek&2@dkoh&----rgfly dk;kZy; vkSajxkckn vls ueqn d:u fuxZfer fnukad 03-06-2014 jksth vkjksih dza0 4 eks0 fg"kke ;k ukokph 7@12 e;/s uksan ?ks.;kps csdk;ns"khj ys[kh vkns"k ikjhr dsyk0

14- vls dh] lnjhy vkns"kkps tkod jftLV~ke;/s dqByhgh uksan ukgh o vkns"k i=koj dqBykgh uacj ukgh0 ;ko:u vls fl) gksrs dh vkjksih dza0 4 "kh laxuer d:u fQ;kZnhph oMhyksikthZr tehu lqMcq)hus gM+i dj.;kP;k mn~ns"kkus ,dk vkBoM;kr >kysyh csdk;ns"khj d`R; dsyh vkgs0

15- vls dh] fQ;kZnh fouarh iwoZd ueqn djrks dh] loZ vkjksihauh laxuer d:u "kkldh; nLrk,sotkae;/s csdk;ns"khji.ks cny dsysyk vkgs rlsj ojhy ueqn csdk;ns"khj vkjksihaps d`R; y{kkr ?ksrk gs Li"V gksrs gh] vkjksih dz0 1 rs 3 ;kauh inkpk xSjokij d:u fQ;kZnhps uqdlku dj.;kps gsrqus fQ;kZnhph Qlo.kqd dsysy0 vkgs0 fQ;kZnhus fnu0 29-04-2014 jksth vkjksih dza0 1 rgflynkj ;kaP;k dMs xV ua0 11] ekSts xsojkbZ ;k "ksr tehu lanHkkZr QsjQkj ?ksm u;s rlsj fQ;kZnhus ek0 ftYgk U;k;ky;kr vihy dsys vkgs Eg.kqu ys[kh vtZ fn;k gksrk0 vkjksih dza0 1 o 3 ;kauh tkuhiqoZd lqMcq)hus fQ;kZnhyk uqdlku Ogkos Eg.kqu lnj pk ys[kh vtZ yioqu Bsoyk vkf.k rks tkuhiqoZd cktqyk Bsoqu y{kkr rj ?ksryk ukghp ijarq lnjpk vtZ gk dks.kkpsgh y{kkr ;s.kkj ukgh ;kph iq.kZ dkGth ?ksryh vkf.k ;ko:u Li"V gksrs dh vkjksihauh dye 417 o 418 izek.ks fQ;kZnhph Qlo.kqd d:u xqUgk dsyk vkgs0

18. Now, appreciating the circumstances which gave rise to the second FIR bearing crime No.321 of 2016 registered against the applicant, it transpired that the allegations nurtured in the second FIR on the part of respondent No.2 are almost same and identical with the allegations contained in the first FIR. In the second FIR, the respondent No.2 cast the allegations, which are extracted as below :-

XXXXXX XXXX XXXX

XXX ;krhy ble eksgean fg"kke o brj gs Lor%P;k cpkoklkBh laxuer d:u vfHkys[kkr cny fdaok ufou vfHkys[k r;kj d: "kdrkr ;k fHkrhus eh rgfly dk;kZy;kr ekSts xsojkbZ czqd cWM rk0ft0 vkSjaxkckn ;sFkhy vkod@tkod jftLV~j] QsjQkj jftLV~j o brj dkxni=kaph ekfgrh vf/kdkjkr ekx.kh dsyh o ekfxrysyh ekfgrh fnukad 22-12-2014 jksth o nql&;kank fnukad 16-05-2016 jksth feGkyh lnj jftLVjps voyksdu dsY;ko:u vls fnlwu ;srs dh] eh xV ua0 11 ;kckcr eglqy dkxni=k e;/s dks.krkgh Qsj cny d: u;s Eg.kwu laca/khrkauk izkIr >kysys vtkZph uksan u nk[kfo.;k djhrk R;kauh dV jpqu tk.kwu lqMcq)hu Bdckth d:u eyk uqdlku Ogkok ;k mn~sn"kkus laxuer d:u ufou [kksVs jftLV~j o brj dkxni= cufoys eksgean fg"kke o brjkauh Lor%ps Qk;nk vkf.k cpkok djhrk eksgean fg"kkeyk izfrfyih Eg.kwu [kksVs i= r;kj d:u rgflynkj dfjrk Lok{kjh dsysyk tk0dz0 2014@tek@dkoh fnukad 27-05-2014 jksthpk i= rikl vf/kdkjh ;kauk fnyk0 lnj i= fu"kkuh dz0 29] iku dz0 15@105 ek0 U;k;ky;kph eqG QkbZy e;/s miyC/k vkgs0 eh rgfly dk;kZy;kdMwu feGkysyh tk0dz0 2014@tek@2@dkoh fnukad 27-05-2014 Lok{kjh fnukad

03-06-2014 jksthps i=kph izek.khr izr vkf.k eks0 fg"kke o brjkauh laxue d:u ufou r;kj dsysY;k rgflynkj dfjrk Lok{kjh dsysyk tk0dz0 2014@tek@2@dkoh fnukad 27-05-2014 jksthps nksUgh i=kps voyksdu dsY;ko:u vls fnlwu ;srs dh] nksUgh i=k e/khy etdqj lkj[kkp vkgs0 ijUrQ osxosxG;k rkj[ksl] osxosxG;k O;Drhus vkf.k osxosxG;k Lok{kjhus eksgeen fg"kke ;kauh brjkalkscr laxuer d:u dV jpwu tk.kwu cwtqu gsrqijLdj lqM cq)hus Bdckty d:u uohu [kksVs dkxni= r;kj dsys0

19. Perusal of the allegations contained in both the FIRs demonstrate that the earlier complaint was filed by the respondent No.2 Rafik Ahmed, for the allegations of fabricating fake documents, forgery, fraud tampering with Government documents etc. and the edifice of second FIR also rests on the same allegation. There are common factors in both the proceedings of complaint filed u/sec. 200 of Cr.P.C. and the subsequent FIR impugned. The respondent No. 2 filed the second FIR on the basis of information received to him subsequently about the letter of Talhsil Office dated 27-05-2014, which was allegedly signed by Tahsildar on 03-06-2014. According to first informant, the alleged letter dated 27-05-2014 was forged and fake letter prepared with malafide intention to deprive respondent No. 2 from mutation in revenue record. But, if we verified the allegation in the first complaint made to learned Magistrate by respondent No. 2, it appears that there are reference of all these circumstances of alleged letter dated 27-05-2014 issued by the concerned Tahsil Office. Respondent No. 2 categorically alleged that the applicant and revenue personnel played fraud and mischief to deceive him for his land Gut No. 11. These circumstances indicate that both the proceedings are arisen out of the same transaction of mutation of applicant's name in revenue record for contentious land Gut No. 11. Obviously, the grievances of respondent No. 2 against applicant relate to the incidents of same offence and seems to be integral part of same transaction. The allegations in both the proceedings cannot be construed as occurrence of different and distinct offence independent of each other. Therefore, separate investigation is not required to be carried out to bring home guilt of the applicant as the trial of all these accusation is in the seine of the learned Magistrate of the trial court.

20. In such premises, in case, we allow to conduct the separate investigation on the basis of subsequent FIR, it would amount to abuse of process of law. It would also amount to an violation of principle of double jeopardy. Therefore, we are of the considered opinion that the subsequent FIR bearing Crime No. 321 of 2016 registered against the applicant at City Chowk police station at the instance of respondent No. 2 is contrary to law. It would fallacious to consider that there would be any larger conspiracy than the one already alleged in the earlier complaint filed under section 200 of Cr.P.C. The subsequent crime as alleged would not of such magnitude that it would fall beyond the ambit of trial of private complaint bearing RCC NO. 549 of 2016 filed by respondent No. 2. In the result, we have no any hesitation to quash and set aside the impugned FIR by allowing the application in the interest of justice.

21. With the above observations, application stands allowed in terms of prayer

clause "B". The Impugned FIR bearing Crime No. 321 of 2016 registered at City Chowk police station, Aurangabad on 23-07-2016 for the offence punishable under sections 420, 425, 465, 468, 471, 120B, 204, 417 read with section 34 of the IPC is hereby quashed and set aside. The rule is made absolute in above terms. No order as to costs.