

(2025) 03 AHC CK 0962
In the Allahabad High Court
Case No : Criminal Revision No.1965 Of 2024

Rajendra Singh

APPELLANT

Vs

State Of U.P. And 3 Others

RESPONDENT

Date of Decision : 11-03-2025

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh State University Act, 1973 — Section 2(19), 31(3)(c)

Citation : (2025) 03 AHC CK 0962

Hon'ble Judges : Saurabh Shyam Shamsheery, J

Bench : Single Bench

Advocate : Santosh Kumar Pandey, Shrawan Kumar Tripathi, Kunal Ravi Singh

Final Decision : Dismissed

Judgement

Manjive Shukla, J

1. Heard Sri Srijan Pandey and Sri Jitendra Kumar Singh, learned counsels appearing for the revisionist, learned Additional Government Advocate appearing for the State and Sri I.K. Chaturvedi, learned Senior Advocate assisted by Sri Saurabh Chaturvedi, learned counsel appearing for Opposite Parties No. 2 to 4.

2. The instant criminal revision has been filed under Section 397 Cr.P.C. read with Section 401 Cr.P.C. challenging therein, the order dated 11.03.2024 passed by the learned Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda in Criminal Misc. Case No. 71 of 2024 (Rajendra Singh Vs. Vinod Singh and Others) whereby, the application filed by the revisionist, under Section 156 (3) Cr.P.C. for a direction to the police to register the First Information Report, had been rejected.

3. Facts of the case, in brief, are that brother of the revisionist i.e. Virendra Singh and his wife were found dead in their house in the morning of 07.11.2023. The revisionist informed the police of the Police Station Pailani, District Banda that his sister, Krishna Devi, his cousin, Vinod Singh and one Sanjay Singh have

administered poison to his brother and wife of his brother, which had resulted into their death. The police did not register the First Information Report, however the police sent the dead-bodies for post-mortem. In the post-mortem report, it is mentioned that the cause of death could not be ascertained and therefore viscera had been preserved.

4. Since the police did not register the First Information Report, the revisionist went to the police station for lodging the F.I.R. but he was ousted from the police station by using force. Thereafter, the revisionist appeared before the Superintendent of Police, Banda on 21.12.2023 and he also sent his application for lodging F.I.R. to the Superintendent of Police, Banda through registered post on 22.12.2023.

5. Since, in-spite of the aforesaid efforts made by the revisionist, the police did not register F.I.R., he filed an application on 26.02.2024 in the court of learned Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda. In the said application, the revisionist had stated that his brother, Virendra Singh was sanctioned a house under Pradhan Mantri Housing Scheme and an amount of Rs. 1,20,000/- was credited in his account. The sister of the revisionist i.e. Krishna Devi, cousin of the revisionist i.e. Vinod Singh and Pradhan Pratinidhi, Sanjay Singh were pressurizing Virendra Singh to hand-over half-land of the house and Rs. 60,000/- from the amount received under the Pradhan Mantri Awas Scheme to them. In the application, it was further stated that the aforesaid Krishna Devi, Vinod Singh and Sanjay Singh extended threat to Virendra Singh to hand over the land and money to them within five to six days otherwise they will kill him. In the application, it had further been stated that the aforesaid Krishna Devi, Vinod Singh and Sanjay Singh on 6.11.2023, in the night, administered poison to Virendra Singh and his wife and killed them. The revisionist, through his application filed under Section 156(3) Cr.P.C., prayed that a direction be issued commanding the police station concerned to register an F.I.R. in the matter and take adequate penal proceedings against Vinod Singh, Krishna Devi and Sanjay Singh.

6. Learned Additional Sessions Judge on the aforesaid application filed by the revisionist under Section 156 (3) Cr.P.C. sought a report from the police station concerned. The Station House Officer, Police Station Pailani, District Banda submitted a report wherein, it was stated that after post-mortem of the dead-bodies, their viscera have been preserved and have been sent to Forensic Science Laboratory (F.S.L.) for the investigation. The other allegations levelled in the application were not found proved by the police.

7. Learned Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda, had rejected the application filed by the revisionist under Section 156 (3) Cr.P.C. vide impugned order dated 11.03.2024. The revisionist challenged the aforesaid order dated 11.03.2024 by filing the instant criminal revision before this Court on 14.04.2024. The instant revision was entertained by this Court vide order dated 29.04.2024 and notice was issued to Opposite Party No. 2 i.e. to

Vinod Singh thereafter, an application for correction in the order dated 29.04.2024 was filed by the revisionist and the said application was registered as Criminal Misc. Correction Application No. 1 of 2024. This Court allowed the correction application vide order dated 02.05.2024 and thereby, in place of notice to Opposite Party No. 2, notices to Opposite Parties No. 2 to 4 were issued. As per the service report available in the order-sheet of this revision, notice of this revision to Opposite Party No. 2 i.e. to Mr. Vinod Singh was served on 07.05.2024.

8. It appears that after service of notice of this criminal revision on Opposite Party No. 2 i.e. on Vinod Singh, an application under Section 156 (3) Cr.P.C. was filed by Smt. Krishna Devi who is Opposite Party No. 3 in this criminal revision wherein, she claimed that the present revisionist i.e. Mr. Rajendra Singh and few other persons have administered poison to her brother, Virendra Singh and his wife and therefore, the First Information Report be lodged against Mr. Rajendra Singh and other persons and they may be punished for the offence in question.

9. A very surprising fact which is note-worthy, at this stage, is that Smt. Krishna Devi i.e. Opposite Party No. 3, in her application filed under Section 156(3) Cr.P.C., has not stated as to on what date, she contacted the police of Police Station Pailani, District Banda for lodging of the F.I.R. and in the application, she has only said that when the F.I.R. was not lodged by the police, she has sent application to the Superintendent of Police, Banda through registered post on 16.04.2024. It is also noteworthy that the Virendra Singh and his wife were found dead in the morning of 7.11.2023 and Smt. Krishna Devi, for the first time, sent her application for lodging of the F.I.R. to the Superintendent of Police, Banda on 16.04.2024 i.e. after about five months. However, the learned Chief Judicial Magistrate, Banda on the application filed by Smt. Krishna Devi again sought a report from the police of the Police Station Pailani, District Banda and this time again, police submitted almost an identical report which was submitted at earlier point of time. Neither Smt. Krishna Devi nor the police of the Police Station concerned disclosed before the Chief Judicial Magistrate, Banda that earlier an application filed by the revisionist under Section 156(3) Cr.P.C. had been rejected and the order passed on his application is subject matter of the Criminal Revision No. 1965 of 2024.

10. Learned Chief Judicial Magistrate, without considering the fact of delay in filing the application under Section 156(3) Cr.P.C. and without even considering as to on what date, Smt. Krishna Devi for the first time tried to lodge the F.I.R. in respect of the crime in question, straightway passed an order on 03.07.2024 whereby, direction had been issued to the Station House Officer, Police Station Pailani, District Banda to register the First Information Report given by Smt. Krishna Devi. Pursuant to the order dated 03.07.2024, the F.I.R. No. 0150 of 2024 had been registered in the Police Station Pailani, District Banda under Sections 328 and 302 I.P.C. against the present revisionist i.e. Rajendra Singh, Braj Vilas Singh, Braj Kishore Singh and Manmohan Singh.

11. Sri I.K. Chaturvedi, learned Senior Advocate appearing for Opposite Parties No. 2 to 4 has raised a preliminary objection i.e. since one F.I.R., in respect of the crime in question, had already been registered as F.I.R. No. 0150 of 2024 wherein, the revisionist himself is an accused, the instant revision has lost its relevance, as there cannot be the second F.I.R. in respect of the same crime.

12. Sri Srijan Pandey, learned counsel appearing for the revisionist has argued that if an application is filed under Section 156(3) Cr.P.C. with a prayer that a direction be issued to the police station concerned to register the First Information Report, the court dealing with the application is under obligation to see that whether the contents of the application disclose any cognizable offence and if cognizable offence is disclosed, the court is under obligation to issue a direction to the police station concerned to register the F.I.R. in respect of the crime. It has further been argued that the contents of the application, filed by the revisionist under Section 156(3) Cr.P.C., in unequivocal terms, disclose a cognizable offence and further even the police report filed in the matter states that the viscera has been preserved and has been sent to F.S.L. and Smt. Krishna Devi also wants share in the property of the deceased, hence there was no occasion for the court to reject the revisionist's application filed under Section 156(3) Cr.P.C. but the learned Special Judge (Dacoity Affected Area Act)/ Additional Sessions Judge, Banda in absolutely arbitrary manner without assigning any cogent reason, had rejected the said application.

13. Learned counsel appearing for the revisionist has submitted that once the contents of the application filed under Section 156(3) Cr.P.C., in unequivocal terms, disclose commission of the cognizable offence, there is no necessity for the court to direct the police to submit its report and in the present case even in the report filed by the police, it had come that Opposite Party No. 3 i.e. Krishna Devi was also wanting a share in the property of the deceased therefore, there was no occasion for the court to rule out the possibility of the commission of the offence by Opposite Parties No. 2 to 4, as such the court could not have rejected the application filed by the revisionist under Section 156 (3) Cr.P.C.

14. Learned counsel appearing for the revisionist, to buttress his arguments, has relied on the judgement rendered by the Constitution Bench of the Hon'ble Supreme Court in the case of Lalita Kumari Vs. Government of Uttar Pradesh and Others 2014 (2) SCC 1 and has submitted that once contents of the application filed under Section 156 (3) Cr.P.C., in unequivocal terms, disclose commission of the cognizable offence, there is no need for the court to direct the police to submit its report and the court straightway should issue direction to the police station concerned to register F.I.R. and investigate the matter.

15. Learned counsel appearing for the revisionist has argued that the law in respect of the second F.I.R., regarding the same incident, had already been crystallized through series of judgements rendered by the Hon'ble Supreme Court and by this Court wherein, it had been categorically held that the second F.I.R., in respect of the same incident, can be lodged if the informant is a

different person to that of the informant of the first F.I.R., the version of the incident given by the informant is different to that of the version given by the informant in the first F.I.R. and the accused are different persons. It has further been submitted that in the case at hand, informant is the revisionist whereas the informant in the F.I.R. already lodged is Smt. Krishna Devi. The version in respect of the incident given in the application filed by the revisionist under Section 156(3) Cr.P.C. is altogether different to that of the version given by Smt. Krishna Devi in the F.I.R. already lodged and the accused of the crime in the application filed by the revisionist under Section 156(3) Cr.P.C. are different persons to that of the accused in the F.I.R. lodged by Smt. Krishna Devi.

16. Sri Srijan Pandey, learned counsel appearing for the revisionist has relied on the judgement rendered by the Hon'ble Supreme Court in the case of Upkar Singh Vs. Ved Prakash and Others (2004) 13 SCC 292, judgement rendered in the case of Surender Kaushik and Others Vs. State of U.P. and Others (2013) 5 SCC 148 and judgement and order dated 26.02.2020 rendered by the Division Bench of this Court in Criminal Misc. Writ Petition No. 24812 of 2019 (Deokali Vs. State of U.P. and 58 Others) and has submitted that in the said judgements, it had categorically been held that second F.I.R., regarding same incident, can be registered if the informants are different persons, the versions of the incident in both the cases are different and the persons accused for the crime are different.

17. Learned counsel appearing for the revisionist has vehemently argued that the peculiar facts of the case, in categorical terms, demonstrate that the F.I.R. lodged by Smt. Krishna Devi is nothing but a tactic to anyhow save her from the punishment of the offence in question, as it was the revisionist who on the date of incident itself started the proceedings for lodging of the F.I.R. and even he immediately filed application under Section 156 (3) Cr.P.C. therefore, it would be in the interest of justice that this Court may allow this revision and set-aside the impugned order dated 11.03.2024 with a direction to learned Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda to reconsider the application filed by the revisionist under Section 156(3) Cr.P.C., afresh and issue direction to the police station concerned to register the F.I.R.

18. Sri I.K. Chaturvedi, learned Senior Advocate appearing for Opposite Parties No. 2 to 4 has argued that once an F.I.R. had been registered in respect of one incident, the second F.I.R. for the same incident cannot be registered. Sri I.K. Chaturvedi, learned Senior Advocate has relied on the judgement rendered by the Hon'ble Supreme Court in the case of T.T. Antony v. State of Kerala, (2001) 6 SCC 181 and the judgement rendered in the case of Awadesh Kumar Jha v. State of Bihar, (2016) 3 SCC 8.

19. Sri I.K. Chaturvedi, learned counsel appearing for Opposite Parties No. 2 to 4 has also submitted that the revisionist himself, with the help of few other persons, had administered poison to Virendra Singh and his wife and therefore, just to save himself, he is trying to anyhow get his First Information Report lodged. He has further submitted that there is neither any illegality nor any

infirmity in the impugned order dated 11.03.2024 therefore, the instant criminal revision is liable to be dismissed by this Court.

20. I have considered the rival arguments advanced by the learned counsels appearing for the parties and have perused the documents on record of this criminal revision.

21. Before proceeding to decide the legal issues raised in this criminal revision, this Court finds it appropriate to take note of certain facts of the case which are as under:

22. The Virendra Singh and his wife were found dead in their home in the morning of 7.11.2023. The revisionist on the same day approached to the concerned police station for lodging of the F.I.R. against Opposite Parties No. 2 to 4 but the police ousted him from the police station. The revisionist, immediately on 21.12.2023 appeared before the Superintendent of Police, Banda and sent an application on 22.12.2023 through registered post for lodging of the F.I.R. Since the F.I.R. was not registered by the police, the revisionist immediately filed an application on 26.02.2024 under Section 156 (3) Cr.P.C. The application filed by the revisionist, under Section 156 (3) Cr.P.C., had been rejected vide order dated 11.03.2024. The revisionist challenged the order dated 11.03.2024 by filing the instant Criminal Revision No. 1965 of 2024 which was entertained by this Court and notice was issued to Opposite Party No. 2 vide order dated 29.04.2024. The notice of this revision was served upon Opposite Party No. 2 on 07.05.2024.

23. Till service of notice of this revision upon Opposite Party No. 2, there was absolute silence on the part of Opposite Parties No. 2 to 4 and after service of notice of this revision upon Opposite Party No. 2, the Opposite Party No. 3 filed an application on 10.05.2024 before the learned Chief Judicial Magistrate, Banda for lodging of an F.I.R. against the revisionist and three other persons for the same incident. The Opposite Party No. 3 did not disclose that the application filed by the revisionist under Section 156 (3) Cr.P.C. had already been rejected. Even otherwise, Opposite Party No. 3, in her application filed on 10.05.2024, did not disclose as to on what date, she actually approached to the concerned police station for lodging of the F.I.R. and in the application, it has been stated that she has given an application on 16.04.2024 to the Superintendent of Police, Banda for lodging of the F.I.R. i.e. after about five months from the date of incident.

24. The facts noted hereinabove, in categorical terms, demonstrate that Opposite Party No. 3 remained silent for about five months and when the application filed by the revisionist under Section 156(3) Cr.P.C. was rejected and the criminal revision against the rejection order was entertained by this Court, the Opposite Party No. 3 filed an application under Section 156(3) Cr.P.C. and the said application had been allowed and consequently an F.I.R. had been registered bearing F.I.R. No. 0150 of 2024 in Police Station Pailani, District Banda.

25. This Court does not have any occasion to make any comment on the order dated 03.07.2024 passed by the learned Chief Judicial Magistrate, Banda

whereby, the application filed by Opposite Party No. 3 under Section 156 (3) Cr.P.C. had been allowed and the F.I.R. had been registered but the aforesaid facts, prima-facie demonstrate that everything has not been done in accordance with law.

26. Now this Court proceeds to consider the issue, as to whether the contents of the application filed by the revisionist under Section 156 (3) Cr.P.C. disclose commission of a cognizable offence or not. The relevant paragraphs of the application, filed by the revisionist under Section 156 (3) Cr.P.C., are extracted as under:

27. The aforesaid contents of the application filed by the revisionist under Section 156 (3) Cr.P.C. categorically demonstrate commission of the cognizable offence and the motive for Opposite Parties No. 2 to 4 to kill Virendra Singh and his wife by administering them poison. The revisionist, in Paragraph No. 10 of his application, had categorically stated that Vinod Singh, Krishna Devi and Sanjay Singh have extended threat to him by saying that they will kill him by administering poison as they have done with Virendra Singh and his wife. Once this Court finds that the story of commission of the cognizable offence is there in the application along with motive and further there is an affirmative claim of the applicant that the accused have committed the cognizable offence, there cannot be any doubt that the contents of the application, filed under Section 156(3) Cr.P.C., disclose commission of the cognizable offence. Learned Special Judge (Dacoity Affected Area Act)/learned Additional Sessions Judge, Banda on the application, filed by the revisionist under Section 156 (3) Cr.P.C., called for a police report and the following police report was submitted by the Station House Officer of the Police Station, Pailani, District Banda:

28. The aforesaid police report submitted by the Station House Officer, Police Station Pailani, District Banda though states that the allegations levelled by the revisionist in his application, filed under Section 156 (3) Cr.P.C., have not been found proved but at the same time, it states that the deceased was owner of the nine bighas of agricultural land and both i.e. the revisionist and Opposite Party No. 2 i.e. Smt. Krishna Devi wanted to take that land in their possession. From the contents of the police report submitted in the matter, the complicity of Smt. Krishna Devi in the commission of the offence in question cannot be ruled out as she is also having motive.

29. The Hon'ble Supreme Court in its Constitution Bench judgement rendered in the case of Lalita Kumari (Supra) had held that the registration of F.I.R. is mandatory under Section 154 Cr.P.C., if the information discloses commission of a cognizable offence and no inquiry is permissible in such a situation. It has further been held that if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain as to whether cognizable offence is disclosed or not. For ready reference, paragraph 120 of the judgement rendered by the Hon'ble Supreme Court in the case of Lalita Kumari (Supra) is extracted as under:

"120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120. 2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120. 6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks' time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to

cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

30. This Court finds that the Constitution Bench of the Hon’ble Supreme Court in its judgement rendered in the case of Lalita Kumari (Supra) had created two categories; firstly where the contents of the information disclose commission of the cognizable offence and secondly where the contents, in categorical terms, do not disclose commission of the cognizable offence but indicates the necessity for an inquiry. In the first scenario, there is no necessity for any preliminary inquiry and registration of the F.I.R. is must but in second scenario, the direction for preliminary inquiry by the police can be given.

31. Now looking into the facts of the present case, it is quite apparent that the contents of the application, filed by the revisionist under Section 156 (3) Cr.P.C., in unequivocal terms demonstrate the commission of the cognizable offence therefore, in view of the judgement rendered by the Hon’ble Supreme Court in the case of Lalita Kumari (Supra), there was no necessity for the court to call for a police report. In the matter of the revisionist, though in the police report, it had been stated that the allegations levelled, in his application filed under Section 156(3) Cr.P.C., have not been found proved but at the same time, the motive to commit crime with the Opposite Party No. 3 has not been ruled out.

32. In the given facts and circumstances of the case, this Court is of the view that the learned Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda ought not to have accepted the police report as a gospel truth because the contents of the application filed under Section 156(3) Cr.P.C., disclose commission of a cognizable offence therefore, the court, while rejecting the application filed by the revisionist under Section 156 (3) Cr.P.C., had committed manifest error of law.

33. Now this Court proceeds to consider the second issue involved in this matter, as to whether for the same incident, direction can be issued for lodging of the second F.I.R. This Court finds that the law, in respect of lodging of the second F.I.R. for the same incident, had been crystallized by the Hon’ble Supreme Court in following chain of judgements:

34. The Division Bench of the Hon’ble Supreme Court in its judgement rendered in the case of T.T. Antony (Supra) had held that the only first information with regard to commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. therefore, that information has to be registered as First Information Report and there cannot be the second F.I.R. on the subsequent information in respect of the same cognizable offence or the same occurrence or the incident giving rise to one or more cognizable offences. For ready reference, Paragraphs No. 18 & 19 of the judgement rendered in the case of T.T. Antony (Supra) are extracted as under:

"18. An information given under sub-section (1) of Section 154 CrPC is commonly known as first information report (FIR) though this term is not used in the Code. It is a very important document. And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 CrPC. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the first information report — FIR postulated by Section 154 CrPC. All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 CrPC. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of CrPC. Take a case where an FIR mentions cognizable offence under Section 307 or 326 IPC and the investigating agency learns during the investigation or receives fresh information that the victim died, no fresh FIR under Section 302 IPC need be registered which will be irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H— the real offender — who can be arraigned in the report under Section 173(2) or 173(8) CrPC, as the case may be. It is of course permissible for the investigating officer to send up a report to the Magistrate concerned even earlier that investigation is being directed against the person suspected to be the accused.

19. The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR;

he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC.

35. Later on, the three judge Bench of the Hon'ble Supreme Court had considered the judgement of the Hon'ble Supreme Court rendered in the case of T.T. Antony (Supra) in its judgement rendered in the case of Upkar Singh (Supra) and it had been held that where, the informant is a different person to that of the informant of the first F.I.R., the version of the incident is different and the accused are different, the second F.I.R. in respect of the same incident can be registered and investigated by the police. For the ready reference, the relevant paragraphs of the judgement rendered in the case Upkar Singh (Supra) are being extracted as under:

"1. This Court while granting leave in this appeal doubted the correctness of the judgment of this Court in the case of T.T. Antony v. State of Kerala [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] hence referred this case to the Hon'ble Chief Justice of India for being heard by a larger Bench, in these circumstances this appeal is now before us for final disposal and to consider the correctness of law laid down in the case of T.T. Antony v. State of Kerala [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] .

16. Having carefully gone through the above judgment, we do not think that this Court in the said cases of T.T. Antony v. State of Kerala [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] has precluded an aggrieved person from filing a counter-case as in the present case. This is clear from the observations made by this Court in the abovesaid case of T.T. Antony v. State of Kerala [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] in para 27 of the judgment wherein while discussing the scope of Sections 154, 156 and 173(2) CrPC, this is what the Court observed: (SCC p. 200)

"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 supplied)

17. It is clear from the words emphasised hereinabove in the above quotation, this Court in the case of T.T. Antony v. State of Kerala [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] has not excluded the registration of a complaint in the nature of a counter-case from the purview of the Code. In our opinion, this Court in that case only held that any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited

under the Code because an investigation in this regard would have already started and further 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 of the Code. This prohibition noticed by this Court, in our opinion, does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident.

18. This Court in *Kari Choudhary v. Sita Devi* [(2002) 1 SCC 714 : 2002 SCC (Cri) 269] discussing this aspect of law held: (SCC p. 717, para 11)

"11. Learned counsel adopted an alternative contention that once the proceedings initiated under FIR No. 135 ended in a final report the police had no authority to register a second FIR and number it as FIR No. 208. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency. Even that apart, the report submitted to the court styling it as FIR No. 208 of 1998 need be considered as an information submitted to the court regarding the new discovery made by the police during investigation that persons not named in FIR No. 135 are the real culprits. To quash the said proceedings merely on the ground that final report had been laid in FIR No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it."

(emphasis supplied)

19. In *State of Bihar v. J.A.C. Saldanha* [(1980) 1 SCC 554 : 1980 SCC (Cri) 272 : AIR 1980 SC 326] this Court considering Section 3 of the Police Act and Section 173(8) of the Code held: (SCC p. 568, para 19)

"19. The power of the Magistrate under Section 156(3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out hereinbefore. The power conferred upon the Magistrate under Section 156(3) can be exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8). Therefore, the High Court was in error in holding that the State Government in exercise of the power of superintendence under Section 3 of the Act lacked the power to direct further investigation into the case. In reaching this conclusion we have kept out of consideration the provision contained in Section 156(2) that an investigation by an officer in charge of a police station, which expression includes police officer superior in rank to such officer, cannot be questioned on the ground

that such investigating officer had no jurisdiction to carry on the investigation; otherwise that provision would have been a short answer to the contention raised on behalf of Respondent 1.”

20. This clearly shows that if the police concerned refused to register a counter-complaint, it is open to the Magistrate at any stage to direct the police to register the complaint brought to his notice and investigate the same.

21. From the above it is clear that even in regard to a complaint arising out of a complaint on further investigation if it was found that there was a larger conspiracy than the one referred to in the previous complaint then a further investigation under the court culminating in another complaint is permissible.

22. A perusal of the judgment of this Court in *Ram Lal Narang v. State (Delhi Admn.)* [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] also shows that even in cases where a prior complaint is already registered, a counter-complaint is permissible but it goes further and holds that even in cases where a first complaint is registered and investigation initiated, it is possible to file a further complaint by the same complainant based on the material gathered during the course of investigation. Of course, this larger proposition of law laid down in *Ram Lal Narang* case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] is not necessary to be relied on by us in the present case. Suffice it to say that the discussion in *Ram Lal Narang* case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] is in the same line as found in the judgments in *Kari Choudhary* [(2002) 1 SCC 714 : 2002 SCC (Cri) 269] and *State of Bihar v. J.A.C. Saldanha* [(1980) 1 SCC 554 : 1980 SCC (Cri) 272 : AIR 1980 SC 326]. However, it must be noticed that in *T.T. Antony* case [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048], *Ram Lal Narang* case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] was noticed but the Court did not express any opinion either way.

23. Be that as it may, if the law laid down by this Court in *T.T. Antony* case [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.

24. We have already noticed that in *T.T. Antony* case [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] this Court did not consider the legal right of an aggrieved person to file counterclaim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter-complaint is permissible.”

36. The Hon’ble Supreme Court in its judgement rendered in the case of

Surender Kaushik (Supra) had held that the second F.I.R. regarding the same incident can be registered and investigated where, a different person to that of the informant of the first F.I.R. has given information in respect of commission of a cognizable offence, the version of the incident is different to that of the version of the incident in the first F.I.R. and the accused are different to that of the accused in the first F.I.R. For ready reference, the relevant paragraphs of the judgement rendered in the case of Surender Kaushik (Supra) are extracted as under:

"16. In Upkar Singh [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] a three- Judge Bench was addressing the issue pertaining to the correctness of law laid down in T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] . The larger Bench took note of the fact that a complaint was lodged by the first respondent therein with Sikhera Police Station in Village Fahimpur Kalan at 10.00 a.m. on 20-5-1995 making certain allegations against the appellant therein and some other persons. On the basis of the said complaint, the police had registered a crime under Sections 452 and 307 IPC. The appellant had lodged a complaint in regard to the very same incident against the respondents therein for having committed offences punishable under Sections 506 and 307 IPC as against him and his family members.

As the said complaint was not entertained by the police concerned, he, under compelling circumstances, filed a petition under Section 156(3) of the Code before the Judicial Magistrate, who having found a prima facie case, directed the police station concerned to register a crime against the accused persons in the said complaint and to investigate the same and submit a report. On the basis of the said direction, Crime No. 48-A of 1995 was registered for offences punishable under Sections 147, 148, 149 and 307 IPC.

17. Challenging the direction of the Magistrate, a revision was preferred before the learned Sessions Judge who set aside the said direction. Being aggrieved by the order passed by the learned Sessions Judge, a criminal miscellaneous petition was filed before the High Court of Judicature of Allahabad and the High Court, following its earlier decision in Ram Mohan Garg v. State of U.P. [(1990) 27 All Cri C 438] , dismissed the revision. While dealing with the issue, this Court referred to para 18 of T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] and noted how the same had been understood: (Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , SCC p. 296, para 11)

"11. This observation of the Supreme Court in T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] is understood by the learned counsel for the respondents as the Code prohibiting the filing of a second complaint arising from the same incident. It is on that basis and relying on the said judgment in T.T. Antony case [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] an argument is addressed before us that once an FIR is registered on the complaint of one party a second FIR in the nature of a

counter-case is not registerable and no investigation based on the said second complaint could be carried out.”

18. After so observing, the Court held that the judgment in T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] really does not lay down such a proposition of law as has been understood by the learned counsel for the respondent therein. The Bench referred to the factual score of T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] and explained thus: (Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , SCC p. 297, para 16)

“16. Having carefully gone through the above judgment, we do not think that this Court in T.T. Antony v. State of Kerala [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] has precluded an aggrieved person from filing a counter-case as in the present case.”

To arrive at such a conclusion, the Bench in Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] referred to para 27 of the decision in T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] wherein it has been stated that: (Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , SCC p. 297, para 16)

“16.... ‘27.... 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 [of the Code] or under Articles 226/227 of the Constitution.’ (T.T. Antony case [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] , SCC p. 200)”

(emphasis in original)

Thereafter, the three-Judge Bench [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] ruled thus: (Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , SCC pp. 297-98, para 17)

“17.... In our opinion, this Court in that case only held that any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further 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 of the Code. This prohibition noticed by this Court, in our opinion, does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident.”

19. Be it noted, in the said verdict in Upkar Singh case [Upkar Singh v. Ved

Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , reference was made to Kari Choudhary v. Sita Devi [Kari Choudhary v. Sita Devi, (2002) 1 SCC 714 : 2002 SCC (Cri) 269] wherein it has been opined that: (Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , SCC p. 298, para 18)

"18.... '11.... there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried [out] under both of them by the same investigating agency.' (Kari Choudhary case [Kari Choudhary v. Sita Devi, (2002) 1 SCC 714 : 2002 SCC (Cri) 269] , SCC p. 717, para 11)"

(emphasis in original)

Reference was made to the pronouncement in State of Bihar v. J.A.C. Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272] wherein it has been highlighted that the power of the Magistrate under Section 156(3) of the Code to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out under Section 3 of the Police Act.

20. It is worth noting that the Court also dealt with the view expressed in Ram Lal Narang [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479] and stated thus: (Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , SCC p. 299, para 22)

"22. A perusal of the judgment of this Court in Ram Lal Narang v. State (Delhi Admn.) [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479] also shows that even in cases where a prior complaint is already registered, a counter-complaint is permissible but it goes further and holds that even in cases where a first complaint is registered and investigation initiated, it is possible to file a further complaint by the same complainant based on the material gathered during the course of investigation. Of course, this larger proposition of law laid down in Ram Lal Narang case [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479] is not necessary to be relied on by us in the present case. Suffice it to say that the discussion in Ram Lal Narang case [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479] is in the same line as found in the judgments in Kari Choudhary [Kari Choudhary v. Sita Devi, (2002) 1 SCC 714 : 2002 SCC (Cri) 269] and State of Bihar v. J.A.C. Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272] . However, it must be noticed that in T.T. Antony case [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048], Ram Lal Narang case [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479] was noticed but the Court did not express any opinion either way."

Explaining further, the Court in Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] observed (in para 23) that if the law laid down by this Court in T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] is to be accepted to have held that a second

complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code, such conclusion would lead to serious consequences inasmuch as the real accused can take the first opportunity to lodge a false complaint and get it registered by the jurisdictional police and then that would preclude the victim to lodge a complaint.

21. In *Pandurang Chandrakant Mhatre* [*Pandurang Chandrakant Mhatre v. State of Maharashtra*, (2009) 10 SCC 773 : (2010) 1 SCC (Cri) 413] , the Court referred to *T.T. Antony* [*T.T. Antony v. State of Kerala*, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] , *Ramesh Baburao Devaskar v. State of Maharashtra* [(2007) 13 SCC 501 : (2009) 1 SCC (Cri) 212] and *Vikram v. State of Maharashtra* [(2007) 12 SCC 332 : (2008) 1 SCC (Cri) 362] and opined that the earliest information in regard to the commission of a cognizable offence is to be treated as the first information report and it sets the criminal law in motion and the investigation commences on that basis. Although the first information report is not expected to be an encyclopaedia of events, yet an information to the police in order to be first information report under Section 154(1) of the Code, must contain some essential and relevant details of the incident. A cryptic information about the commission of a cognizable offence irrespective of the nature and details of such information may not be treated as first information report. After so stating, the Bench posed the question whether the information regarding the incident therein entered into general diary given by PW 5 is the first information report within the meaning of Section 154 of the Code and, if so, would it be hit by Section 162 of the Code. It is worth noting that analysing the facts, the Court opined that information given to the police to rush to the place of the incident to control the situation need not necessarily amount to an FIR.

22. In *Babubhai* [*Babubhai v. State of Gujarat*, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336] this Court (in para 21), after surveying the earlier decisions, expressed the view that 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 in the 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 two different incidents/crimes, the second FIR is permissible. In case the accused in the first FIR comes forward with a different version or counterclaim in respect of the same incident, investigation on both the FIRs has to be conducted.

23. It is worth noting that in *Babubhai* case [*Babubhai v. State of Gujarat*, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336] , the Court expressed the view that the High Court had correctly reached the conclusion that the second FIR was liable to be quashed as in both the FIRs, the allegations related to the same incident that had occurred at the same place in close proximity of time and, therefore, they were two parts of the same transaction.

24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in Upkar Singh [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible.”

37. The Division Bench of this Court in its judgement dated 26.02.2020 rendered in the case of Deokali (Supra) had held that where, the different version of the incident is reported by a different complainant giving a different set of accused, then the said version would have to be investigated and the said version cannot be termed as second First Information Report of the same offence therefore, on the basis of the second version, second F.I.R. has to be lodged and investigated and further police report is to be filed before the competent court. For ready reference, the relevant paragraphs of the judgement rendered in the case of Deokali (Supra) are extracted as under:

“We have considered the rival submissions and have perused the record carefully. Before we deal with the factual aspect of the matter, it would be apposite to notice the law on the issue.

In Upkar Singh's case (supra), a three-judges bench of the apex court in paragraphs 23, 24 and 25 of its judgment, as reported, observed as follows:-

"23. Be that as it may, if the law laid down by this Court in T.T. Antony's case is to be accepted as holding a second complaint in regard to the same incident filed as a counter complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given herein below i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question consequently he will be deprived of his legitimate right to bring the real accused to books. This cannot be the purport of the Code.

24. We have already noticed that in the T.T. Antony's case this Court did not consider the legal right of an aggrieved person to file counter claim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter complaint is permissible.

25. In the instant case, it is seen in regard to the incident which took place on 20th May, 1995, the appellant and the 1st respondent herein have lodged separate complaints giving different versions but while the complaint of respondent was registered by the concerned police, the complaint of the appellant was not so registered, hence on his prayer the learned Magistrate was justified in directing the police concerned to register a case and investigate the same and report back. In our opinion, both the learned Additional Sessions Judge and the High Court erred in coming to the conclusion that the same is hit by Section 161 or 162 of the Code which, in our considered opinion, has absolutely no bearing on the question involved. Section 161 or 162 of the Code does not refer to registration of a case, it only speaks of a statement to be recorded by the police in the course of the investigation and its evidentiary value."

In P. Sreekumar's case (supra), after noticing the decision of the Apex Court in Upkar Singh's case (supra), in paragraphs 30, 31 and 32, as reported, the Apex Court held as follows:-

"30. Keeping the aforesaid principle of law in mind when we examine the facts of the case at hand, we find that the second FIR filed by the appellant against respondent No.3 though related to the same incident for which the first FIR was filed by respondent No.2 against the appellant, respondent No.3 and three Bank officials, yet the second FIR being in the nature of a counter-complaint against respondent No.3 was legally maintainable and could be entertained for being tried on its merits.

31. In other words, there is no prohibition in law to file the second FIR and once it is filed, such FIR is capable of being taken note of and tried on merits in accordance with law.

32. It is for the reasons that firstly, the second FIR was not filed by the same person, who had filed the first FIR. Had it been so, then the situation would have been somewhat different. Such was not the case here; Second, it was filed by the appellant as a counter-complaint against respondent No.3; Third, the first FIR was against five persons based on one set of allegations whereas the second FIR was based on the allegations different from the allegations made in the first FIR; and Lastly, the High Court while quashing the second FIR/charge-sheet did not examine the issue arising in the case in the light of law laid down by this Court in two aforementioned decisions of this Court in the cases of Upkar Singh (supra) and Surender Kaushik (supra) and simply referred three decisions of this Court mentioned above wherein this Court has laid down general principle of law relating to exercise of inherent powers under Section 482 of the Code."

From the decisions noticed above, it is clear that where a different version of the incident is reported by a different complainant giving a different set of accused then the said version would have to be investigated and the said version cannot be treated as a second first information report of the same offence. As a logical corollary thereof, separate police reports will also have to be submitted after

investigation, inasmuch as, in the event of a negative report, the informant would get a right to submit a protest petition.

In view of above noticed legal position, having found that two first information reports, namely, Case Crime No. 78 of 2019 and 133 of 2019, gave different versions of the incident, with different set of accused persons, we, by our order dated 04.02.2020, specifically required the learned A.G.A. to file a detailed affidavit of the state-respondents disclosing whether the statement of the witnesses, who have deposed about the incident in support of the version taken in Case Crime No. 133 of 2019, was recorded as witnesses in support of that case or their statement was recorded as that of accused persons conversant with the incident reported as case crime no.78 of 2019.

Pursuant to our direction, a compliance affidavit, dated 20.02.2020, of Sri Raj Kumar Tripathi, Circle Officer (City), District Sonbhadra has been filed today.

In paragraphs 4, 5 and 6 of the compliance affidavit, it has been stated as follows:-

"4. That so far as the query made by this Hon'ble Court, whether the statement of witnesses who have been deposed about the incident in support of version in case crime no. 133 of 2019 were recorded separately as witnesses of the prosecution or their statements were recorded as that of accused persons conversant with the incident, it is most humbly submitted that the statements of witnesses namely Nidhi Dutt, Dev Dutt, Pramod, Om Prakash, Asharfi, Rakesh and Dharmendra, were not recorded about the incident in support of version taken in case crime no. 133 of 2019 as witnesses separately, however their statements have been recorded as an accused persons conversant with the incident of case crime no. 78 of 2019 which is evident in parcha/CD No. 2 & 3 dated 18.07.2019.

5. That so far as the query made by this Hon'ble Court whether a separate site plan as per the narration of the incident in case crime no. 133 of 2019 was prepared or not, it is most humbly submitted that there was no separate site plan prepared with regard to the incident of case crime no. 133 of 2019, however, in fact, the site plan as per narration of the incident in case crime no. 78 of 2019 was prepared on 17.07.2019 which is evident in parcha/CD-1 dated 17.07.2019.

6. That it is humbly submitted that in fact, the statement of witnesses of case crime no. 133 of 2019 were not recorded separately because the date, time and place of both the incident were the same registered as case crime no. 133 of 2019 and case crime no. 78 of 2019, therefore, the investigating officer has not recorded the statement of witnesses in support of version taken in case crime no. 133 of 2019 separately and no site plan has been prepared in respect of narration of the incident in case crime no. 133 of 2019 separately."

From the stand taken in the compliance affidavit, it becomes clear that Case

Crime No. 133 of 2019, P.S. Ghorawal, District Sonbhadra has not been investigated separately as an independent case.

As a different version of the incident has been put forth in Case Crime No. 133 of 2019 with a different set of accused than what was put forth in Case Crime No. 78 of 2019, in view of the legal position noticed above, it ought to have been investigated as a separate case.

For the reasons recorded above, the petition succeeds and is allowed to the extent indicated below. The state-respondents 2 and 3, namely, Superintendent of Police and Circle Officer (City), Sonbhadra shall ensure that Case Crime No. 133 of 2019 is investigated as a separate case and a separate police report is submitted in that case, as per law, preferably, within a period of three months from today."

38. From the aforesaid law laid down by the Hon'ble Supreme Court and by the Division Bench of this Court, it had already been crystallized that where, the different version of the incident is reported by a different complainant giving a different set of accused, then the second First Information Report for the same incident is permissible under law.

39. Now applying the aforesaid law laid down by the Hon'ble Supreme Court as well as by this Court in the facts and circumstances of the present case, it is apparent that the informant in the First Information Report No. 0150 of 2024 is Smt. Krishna Devi whereas, the revisionist has filed another application under Section 156 (3) Cr.P.C. before the court. The version of the incident in question, in the F.I.R. lodged by Smt. Krishna Devi and in the application filed by the revisionist under Section 156 (3) Cr.P.C., is altogether different. The accused of the crime in the First Information Report lodged by Smt. Krishna Devi are different to that of the accused in the application filed by the revisionist under Section 156 (3) Cr.P.C. Therefore in view of the aforesaid law laid down by the Hon'ble Supreme Court, there is no prohibition/impediment in registering the F.I.R. on the basis of the application filed by the revisionist under Section 156 (3) Cr.P.C.

40. In view of the aforesaid reasons, this criminal revision is hereby allowed. The impugned order dated 11.03.2024 passed by the learned Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda, in Criminal Misc. Case No. 71 of 2024 (Rajendra Singh Vs. Vinod Singh and Others), is hereby set-aside.

41. The Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda is directed to consider and decide, the application filed by the revisionist under Section 156(3) Cr.P.C., afresh in light of the observations made in this order.

42. Since, the First Information Report of Opposite Party No. 3 i.e. Smt. Krishna Devi had already been registered and the investigation is in process, it is expected that the learned Special Judge (Dacoity Affected Area Act)/Additional

Sessions Judge, Banda shall hear and decide the application of the revisionist filed under Section 156 (3) Cr.P.C. within one month from the date of the presentation of the certified copy of this order.