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ABC 2017 (I) 117 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT
(A.J. Shastri, J.)
Criminal Misc.Application No. 14624 of 2007
Decided on 27 January, 2017

VIJAYCHANDRA PRAKASH SHUKLA & ORS. - Applicant(s).
Versus
STATE OF GUJARAT & ANR. - Respondent(s).

Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 154 & 482 – Second complaint – Quashing – Test of 'sameness' – applied – Held, direct co-relation between second complaint & the original offence – to continue with the fresh investigation of the second complaint may turn out to be a mischief, coercion or harassment – Grievance of second complaint already ceased by the investigating machinery – there is no reason to allow subsequent complaint being investigated separately – Allegations are centering around the very same act of petitioner – subsequent acts, alleged in the second complaint are part of the very same transaction – Held, second complaint lodged appears to be a step impermissible in law – steps alleged in the second complaint are consequences of the act alleged – same is not acceptable as maintainable in law – Quashed. (Para 20, 21 & 24)

(B) Code of Criminal Procedure, 1973 – Section 154 – FIR – Value of – FIR is a very important piece of document – which sets the machinery of criminal law in motion and marks the commencement of investigation – which ends with the formation of opinion u/s 169 or 170 – and forwarding of a police report u/s 173 – Code of Criminal Procedure, 1973 – Sections 169, 170 & 173. (Para 13)

(C) Code of Criminal Procedure, 1973 – Section 154 – FIR – is not a substantive piece of evidence – Its only use is to contradict or corroborate the matter thereof. (Para 13)

(D) Code of Criminal Procedure, 1973 – Section 154 – FIR – Essential ingredients of – The FIR must at least contain some information about crime being committed – as also some information about the manner in which the cognizable offence has been committed. (Para 13)

(E) Code of Criminal Procedure, 1973 – Sections 154 & 157 – Procedure for investigation – Scope – also postulated the place of inquiry ordinarily and therefore, the complaint need not contain every details about commission of offence and the detection thereof along with all information and inquiry is the bounden duty of investigating machinery. (Para 13) a

(F) Investigating Agency – Powers of – Held, if during the course of investigation any incriminating further material against any person is discovered, the authority has got the power to proceed in accordance with law. (Para 13) b

(G) Code of Criminal Procedure, 1973 – Section 173 – Completion of investigation by the investigating agency – Final Report – Submission of – Even if after conclusion of investigation in response to the filing of FIR and submission of report under section 173(2) – the Officer in charge of Police Station comes across any further information pertaining to centring around the main issue – he can make further investigation normally with the leave of the Court – & forward further evidence, if collected, with further report or reports u/s 173(8). (Para 13) c d

(H) Code of Criminal Procedure, 1973 – Power to Investing Agency under – Held, ample power is invested under Cr.P.C. in the investigating machinery to look into in detail, inquire and investigate all the circumstances encircling the main offence which is alleged to have been committed. (Para 13) e

(I) Code of Criminal Procedure, 1973 – Sections 154 – FIR – Second complaint – Tenability of – Held, the concept of 'sameness' is required to be pressed into service – to find out whether both the FIRs relate to the same incident in respect of same occurrence – or are in regard to altogether different incident – under the normal circumstance – there can be no second FIR – and no fresh investigation on receipt of every subsequent information in respect of same cognizable offence – or same occurrence giving rise to one or more cognizable offence. (Para 13) f g

(J) Code of Criminal Procedure, 1973 – Section 172 – Investigation – Subsequent information – receipt of – Duty of Investigating Agency – Officer in charge of Police Station has to investigate not merely the cognizable offence reported in FIR – but also all other connected offences found to have been committed in the course of same transaction – or same occurrence and file one or more h

reports as provided u/s 173 – there can be no second FIR and no fresh investigation. (Para 13)

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(K) Constitution of India – Article 19 & 21 – Fundamental Rights vis-à-vis Administration of Criminal Justice – Held, administering criminal justice is a two end process where guarding the ensured rights of the accused under the Constitution is as imperative as ensuring justice to the victim – A just balance between fundamental rights of the accused guaranteed under the Constitution and expansive power of police to investigate a cognizable offence has to be struck by the Court. (Para 14)

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(L) Investigation of crime – Fresh Investigation – Sweeping powers of investigation – Scope – Held, sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of same incident giving rise to one or more cognizable offences. (Para 14)

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(M) Investigation – Investigating Officers – Duty of – Duel duties – (i) investigating the matter extensively and – (ii) subsequently collect the reliable evidence to establish the same. (Para 14)

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(N) Code of Criminal Procedure, 1973 – Investigation – Discovery of subsequent material – Investigating Machinery – Power of – Held, the investigating machinery has been empowered that even after filing a report, if the investigating officer comes to possession of further information or material – there is no need to register a fresh FIR – as the investigating officer is empowered to make further investigation of course with the leave of the Court and can form and submit further report. (Para 14)

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(O) Code of Criminal Procedure, 1973 – Section 154 – Second FIR – there can be no need to entertain the second FIR almost on a similar set of circumstance. (Para 14)

(P) Code of Criminal Procedure, 1973 – Section 154 – Second complaint – Permitting of – The Court cannot presume that investigating machinery will not conduct free and fair investigation in response to the complaint which is very much before it in the form of first complaint. (Para 20)

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(Q) Code of Criminal Procedure, 1973 – Section 154 – Second FIR – Addition of more accused – Held, merely because some more accused persons are added in the second complaint and some

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subsequent information is said to have been executed would not alter the situation – second complaint is not maintainable. (Para 20)

(R) Investigation – Investigating Officers – Duty of – Held, It is the duty of Investigating Officer to conduct the investigation and avoid any kind of mischief or harassment even to the accused persons as well. (Para 20)

(S) Investigation – Basic requirements – Investigation must be transparent and judicious – as it is the minimum requirement of rule of law. (Para 20)

(T) Code of Criminal Procedure, 1973 – Section 154 – Second complaint – Maintainability of – The second complaint would be maintainable only in case where there are altogether different versions – different discovery of factual foundations and altogether new offence is said to have been committed – which has no nexus with the main offence contained in the first complaint. (Para 21)

Facts:- A company was established by the brother of petitioner No.1. In the said company, petitioner No.1 and four other persons were appointed as Directors. Said brother passed away and Respondent No.2, who claiming herself to be his second wife stated that she was appointed as Managing Director of the company by passing a resolution on the day before his passing away. A complaint came to be filed by respondent No.2 against petitioner No.1, alleging that petitioner No.1 was appointed as Joint Managing Director with the help of bogus documents and in fact, she is the Managing Director. Petitioner No.1 also filed criminal case alleging commission offences punishable u/ss 406, 420, 467, 468, 471 r/w 120B, IPC against three persons including respondent No.2 alleging that appointment of respondent No.2 as Managing Director is based on fraud and concocted documents. Said complaint was sent for inquiry and was pending for consideration.

As a counterblast, respondent no.2 filed a complaint implicating other members including petitioner No.1 making almost same grievance which was made in her earlier complaint. The present petition was filed for quashing of the same. The honourable Gujarat High Court quashed the second complaint holding as not maintainable.

Law of relief:- (i) It is the duty of Investigating Officer to conduct the investigation and avoid any kind of mischief or harassment even to the accused persons as well.

a (ii) *Second complaint is not maintainable merely on the ground that some more accused persons are added and some subsequent information is executed.*

b (iii) *Under the normal circumstance there can be no second FIR & no fresh investigation on receipt of every subsequent information in respect of same cognizable offence or same occurrence giving rise to one or more cognizable offence.*

Held:- Under the scheme of Cr.P.C., if FIR under section 154 of Cr.P.C. is seen, it is a very important piece of document which sets the machinery of criminal law in motion and marks the commencement of investigation which ends with the formation of opinion under section 169 or section 170 of Cr.P.C., as the case may be, and forwarding of a police report under section 173 of Cr.P.C. Further, an FIR which is recorded under section 154 of the Cr.P.C. is not a substantive piece of evidence. Its only use is to contradict or corroborate the matter thereof. The FIR need not contain the minutest details as to how the offence had taken place nor it is required to contain the names of offenders or witnesses. But it must at least contain some information about crime being committed as also some information about the manner in which the cognizable offence has been committed. The reading of the provisions of section 154 Cr.P.C. therefore postulates that it is an information about the manner in which cognizable offence has been committed which, after registration, sets the machinery of criminal law in motion. Similarly, if other provisions are to be looked into, the detailed procedure for investigation is spelt out in section 157 and how the report is to be submitted upon an investigation is also enumerated in later provisions of Chapter XII of Cr.P.C. Chapter XIII of Cr.P.C. which has also postulated the place of inquiry ordinarily and therefore, the complaint need not contain every details about commission of offence and the detection thereof along with all information and inquiry is the bounden duty of investigating machinery. The investigating machinery is also couched with the power specifically that if during the course of investigation any incriminating further material against any person is discovered, the authority has got the power to proceed in accordance with law and therefore, every information connected with the main offence including every person connected with it found by investigating machinery can form the part and subject matter of report being supplied and submitted by the authority. Even if after conclusion of investigation in response to the filing of FIR and

submission of report under section 173(2) of Cr.P.C. the Officer in charge of Police Station comes across any further information pertaining to centering around the main issue, he can make further investigation normally with the leave of the Court and forward further evidence, if collected, with further report or reports under section 173(8) of Cr.P.C. and therefore, ample power is invested under Cr.P.C. in the investigating machinery to look into in detail, inquire and investigate all the circumstances encircling the main offence which is alleged to have been committed and therefore, in view of aforesaid circumstances, if we look at the tenability of the second complaint, the concept of 'sameness' is required to be pressed into service. The test of 'sameness' is to be applied to find out whether both the FIRs relate to the same incident in respect of same occurrence or are in regard to altogether different incident and therefore, under the normal circumstance, there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of same cognizable offence or same occurrence giving rise to one or more cognizable offence and all subsequent information will be covered by section 172 of Cr.P.C. and Officer in charge of Police Station has to investigate not merely the cognizable offence reported in FIR but also all other connected offences found to have been committed in the course of same transaction or same occurrence and file one or more reports as provided under section 173 of Cr.P.C. and therefore, in the light of the scheme of sections 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C., the normal analysis which is emerging is that there can be no second FIR and no fresh investigation. (Para 13)

A further fact also to be considered is that administering criminal justice is a two end process where guarding the ensured rights of the accused under the Constitution is as imperative as ensuring justice to the victim. Thus, a just balance between fundamental rights of the accused guaranteed under the Constitution and expansive power of police to investigate a cognizable offence has to be struck by the Court. Accordingly, this sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of same incident giving rise to one or more cognizable offences and therefore, the investigating officers are bestowed with dual duties i.e. investigating the matter extensively and subsequently collect the reliable evidence to establish the same and therefore, the scheme of the Act has empowered the investigating machinery that even after filing a report, if the

investigating officer comes to possession of further information or material, there is no need to register a fresh FIR as he is empowered to
a make further investigation of course with the leave of the Court and can form and submit further report and therefore, under the scheme of the provisions contained under section 154 onwards of Cr.P.C., the earliest or the first information in regard to commission of cognizable offence satisfies the requirement of section 154 of Cr.P.C. and
b therefore, there can be no need to entertain the second FIR almost on a similar set of circumstance. (Para 14)

In the light of aforesaid circumstances, if the test of 'sameness' is applied to find out whether both the FIRs relate to the
c same incident in respect to same occurrence or are in regard to the incidents which are in two or more parts of the very same transaction, it would be seen that the answer is clearly in affirmative as the consequential steps which are alleged in the second complaint are having a direct co-relation and connection with the original
d offence which has been alleged against petitioner No.1 having fraudulently secured the position as Managing Director of the Company and therefore, it appears that merely because some more accused persons are added in the second complaint and some subsequent information is said to have been executed would not alter the situation as it is well within the competence of investigating
e machinery to consider during the course of investigation of the original complaint while submitting the report and therefore, considering this set of circumstances, this Court is of the opinion that second complaint is not maintainable and this is because of the
f fact that not only a fair trial is envisaged under the constitutional rights of a citizen, but a fair investigation is also a part and parcel of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India and therefore, investigation also must be in
g fair, transparent and judicious manner as it is the minimum requirement of rule of law. It is the duty of Investigating Officer to conduct the investigation and avoid any kind of mischief or harassment even to the accused persons as well. As appearing from the record, to continue with the fresh investigation of the second
h complaint may turn out to be a mischief, coercion or harassment as well since substantially the first complaint is covering almost every part of grievance consequently voiced out in the second complaint. The Court cannot presume that investigating machinery will not conduct free and fair investigation in response to the complaint

which is very much before it in the form of first complaint. Of course, either side has not projected as to what has happened to the proceedings of the first complaint which has already been lodged. Nevertheless, it appears that the second complaint by virtue of the order of this Court has not been processed any further as the interim relief is already operative in the present proceeding. Be that as it may, the Court is of the clear opinion that looking to the factual situation prevailing on record, the second complaint is not maintainable. Even additional charge of conspiracy which is part and parcel of the act of petitioner No.1 which is alleged in the first complaint can also be gone into by the authority and therefore, the second complaint is not possible to be held as maintainable in law and if it is allowed to be maintainable, the same would frustrate the very scheme for which the statutory provisions have been enacted under Cr.P.C. (Para 20)

The second complaint would be maintainable only in case where there are altogether different versions, different discovery of factual foundations and altogether new offence is said to have been committed which has no nexus with the main offence contained in the first complaint. The Court has to maintain a just balance between the fundamental rights of the accused guaranteed under the Constitution of India and the expansive power of the police to investigate the cognizable offence has to be struck and this sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of same incident giving rise to one or more cognizable offences and therefore, it appears to this Court that this is a fit case in which the second complaint deserves to be quashed which could meet the ends of justice. (Para 21)

The Court is of the considered opinion that the second complaint which has been filed by the very same complainant before the very same Police Station has got the direct effect on the first complaint and the allegations are forming part of the main act and allegation levelled in the first complaint and the steps alleged in the second complaint are consequences of the act alleged in the first FIR and therefore, the same is not acceptable as maintainable in law and therefore, to permit such complaint to be processed any further would be travesty of justice. (Para 24)

Counsel:- For Applicant(s): Mr. Ashish M. Dagli, Advocate.
For Respondent(s): Mr. M.M. Saiyed, Advocate.

February 2017

Cases Referred:-

- a 1. *T.T.Antony Vs. State of Kerala and Others; (2001)6 SCC page 181. (Para 3) (Para 22.1)*
2. *Babubhai Vs. State of Gujarat and others; (2010)12 SCC 254. (Para 3) (Para 22.2)*
3. *Amitabhai Anilchandra Shah Vs. Central Bureau of Investigation and another; (2013)6 SCC page 348, 2013 = ABC 2013(II) 44 SC. (Para 3) (Para 4.1) (Para 22.3) (Para 23.6)*
- b 4. *Nirmal Singh Kahlon Vs. State of Punjab and Ors.; AIR 2009 SC page 984. (Para 3) (Para 4.1)*
5. *Ram Lal Narang Vs. State (Delhi Administration); AIR 1979 SC 1791. (Para 4.1) (Para 23.1)*
- c 6. *Upkar Singh Vs. Ved Prakash and others; AIR 2004 SC 4320. (Para 4.1) (Para 23.4)*
7. *Anju Chaudhary Vs. State of U.P. And Anr.; AIR 2013 SCW page 245. (Para 4.1) (Para 23.5)*
8. *Kari Chaudhary Vs. Most. Sita Devi and others; AIR 2002 SC 441. (Para 4.1) (Para 23.2)*
- d 9. *Kamla Kant Dubey Vs. State of Uttar Pradesh and Others; (2015)11 SCC page 145. (Para 25)*
10. *D.P. Gulati, Manager Accounts, Jetking Infotrain Limited Vs. State of Uttar Pradesh and Another; (2015)11 SCC page 730. (Para 26)*
- e 11. *Rajiv Thapar and others v. Madan Lal Kapoor; (2014) 7 SCC 215= ABC 2013 (I) 298 SC . (Para 26)*
12. *Rishipal Singh v. State of Uttar Pradesh and another; (AIR 2014 SC 2567). (Para 26)*

JUDGMENT

f **A.J. SHASTRI, J.:** - 1. The petitioners have filed this petition for the purpose of quashing of the complaint filed by respondent No.2 being Crime Register No.I-284 of 2007 before J.P. Road Police Station, Vadodara, and also the proceedings arising out of the said complaint.

g 2. The brief facts leading to the rise of present petition are as under:

h 2.1 M/s SCI International Securities Ltd. was established by one Sureshchandra Shukla, brother of petitioner No.1. In the said company, petitioner No.1 and four other persons were appointed as Directors. Marriage of Sureshchandra Shukla was solemnized at Uttar Pradesh on 10.3.1977 with one Hira Rani and a child named Vilaspati (Pinki) was born out of said wedlock. Said Sureshchandra Shukla

passed away on 12.5.2004. Respondent No.2, who claiming herself to be the second wife of Sureshchandra Shukla, stated that she was appointed as Managing Director in M/s SCI International Securities Ltd. by passing a resolution on the day before passing away of Sureshchandra Shukla. a

2.2 On 9.3.2005, a complaint came to be filed by respondent No.2 against petitioner No.1 being C.R.No.I-89 of 2005 before J.P. Road Police Station, Vadodara, alleging that petitioner No.1 was appointed as Joint Managing Director with the help of bogus documents and in fact, she is the Managing Director. b

2.3 Petitioner No.1 also filed criminal case being Criminal Inquiry Case No.9 of 2006 before the learned Metropolitan Magistrate, Ahmedabad, alleging commission offences punishable under sections 406, 420, 467, 468, 471 read with section 120B of Indian Penal Code against three persons including respondent No.2 alleging that appointment of respondent No.2 as Managing Director is based on fraud and concocted documents. It was alleged that Form Nos.22, 32 and 25C were created by respondent No.2 by putting signature on behalf of the person who was in ICCU ward of the hospital and it was sent to Registrar of Companies. Said complaint was sent for inquiry under section 202 of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C." for short) and it is pending for consideration. c
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2.4 As a counterblast, respondent no.2 filed a complaint being C.R.No.I-284 of 2007 before J.P. Police Station implicating other members including petitioner No.1 making almost same grievance which was made in her earlier complaint. e

2.5 It is this complaint which is made the subject of present petition filed under section 482 of Cr.P.C. for seeking quashment of the complaint. f

2.6 The petition originally came up for hearing before the Court on 6th December, 2007 whereupon the Court issued notice and granted ad-interim relief in terms of paragraph 7(C). Thereafter, the matter was being listed from time to time. The Court vide order dated 10.7.2015 admitted the matter by issuing rule and confirmed the interim relief granted vide order dated 6.12.2007. Resultantly, the proceedings of the complaint do not appear to have been processed any further. In the light of aforesaid situation, the petition has now come up for final hearing before this Court. g
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3. Mr. Ashish Dagli, appearing for the petitioners, has contended that the complaint ex-facie is not maintainable and the same is nothing but a clear example of abuse of the process of law. He has further contended that before filing of the present complaint, there was one another complaint lodged on 9th of March, 2005 being C.R.No.I-89 of 2005 against petitioner No.1 alleging that with the help of bogus documents, petitioner No.1 got himself appointed as Director and the complainant is running Security Services as Managing Director and the date of her appointment was shown as 10th May, 2004 and therefore, the documents appear to have been concocted. He has further contended that petitioner No.1 simultaneously has filed criminal case against three persons including respondent No.2 for the offences punishable under sections 46,420, 467, 468, 471 read with section 120B of IPC alleging that appointment of respondent No.2 as Managing Director is based upon fraud and concocted documents created by respondent No.2 and Form Nos.23, 32 and 25 C were got signed on behalf of the person, who was in ICCU ward at the hospital. Based upon which, the said complaint was processed and when the case was investigated before the very same Police Station, this second complaint came to be filed by respondent No.2 implicating other members as accused including petitioner No.1 making almost similar grievance for which, an appropriate remedy before the civil forum is very much available. He has drawn the attention of this Court that before filing the complaint by respondent No.2, petitioner No.1 had filed detailed representations before the authority including police, Home Department and Police Commissioner and by referring to these representations, it has been contended that the apprehension which was voiced out against respondent No.2 has come true and this complaint is an outburst of the proceedings initiated by petitioner No.1 and therefore, apparently, the complaint in question is nothing but a clear example of the abuse of the process of law. He has further contended that way back in the year 2005, even a legal notice was also given to State Bank of Saurashtra, Baroda, whereby petitioner No.1 has requested his pleader to intimate not to permit respondent No.2 and his associates to operate the bank account of SCI International Securities Limited and therefore, entire chronology of events and the grievance which is voiced out is nothing but a clear example of civil dispute and without resorting to appropriate forum, with a view to put pressure upon petitioner No.1, this complaint came to be filed. Mr. Dagli has further

contended that it is seriously in dispute how the signature of brother of petitioner No.1 of a meeting dated 10th May, 2004 was secured particularly when his brother was suffering from the disease and was actually admitted in ICCU Ward of Medi Surge Hospital and passed away on 12th of May, 2004. He has further contended that, in fact, the sister-in-law of the petitioner i.e. wife of Sureshchandra Shukla was residing at Uttar Pradesh and number of documentary evidences were produced before the investigating agency when the earlier complaint was made that she is the legally wedded wife and Vilaspati is the daughter out of wedlock of the deceased with Hira Rani and therefore, the situation is such where respondent No.2 found herself in helpless condition and when she is not likely to succeed as per her wishes in the first complaint and therefore, this present complaint in question is filed as a counterblast to the complaint filed by petitioner No.1 which is with a view to divert the attention from the core issue. According to him, second complaint ought not to have been registered at all as substantially the allegations are part and parcel of the earlier complaint and grievance in which, father of the petitioner has also been implicated and arraigned as an accused person which indicates the sole purpose of respondent No.2 in filing such false and frivolous complaint and therefore, by referring to this factual data, he has contended that background of facts are such wherein the entire second complaint is required to be held as not maintainable and therefore, requested the Court to grant the relief as prayed for in the petition. To substantiate his contentions, he has referred to following decisions which are to be dealt with in this judgment at an appropriate stage:

i. (2001)6 SCC page 181 reported in T.T.Antony Vs. State of Kerala and Others.

ii. (2009)1 SCC 441 in the case of Nirmal Singh Kahlon Vs. State of Punjab and Others.

iii. (2010)12 SCC 254 in the case of Babubhai Vs. State of Gujarat and others.

iv. (2013)6 SCC 348 in the case of Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and another.

4. To oppose the stand taken by Mr. Dagli in the present proceedings, Mr. M.M. Saiyed, learned advocate for the original complainant i.e. respondent No.2, has contended that the complaint in substantive form is very much maintainable and no hyper-

a technical view be taken. He has further contended that when in the first complaint the documents have been surfaced, there arose the need for filing the complaint by respondent No.2 and therefore, he has denied that it is not a counterblast of the first complaint filed by petitioner No.1. In fact, Mr. Saiyed has contended that respondent No.2 is very much appointed as Managing Director and her appointment is not based upon any concoction or fraudulent act. In fact, the allegations, which are levelled in the complaint which is sought to be quashed, are requiring a thorough investigation and therefore, just because the petitioner has filed the first complaint, it cannot be said that subsequent complaint is not maintainable. A proper resolution came to be passed in the company and complete procedural formalities have been completed and only thereafter, appointment has taken place and therefore, it cannot be said in any way that simply because the appointment has taken place prior to couple of days of the death of the deceased, the same is questionable. In fact, no inference can be drawn more particularly when a specific process is undertaken on 10th May, 2004. There is no concoction or fraud and nothing of that nature which would permit the authority to raise any question with respect to her complaint being maintainable. He has further contended that simply because the suit is pending, it cannot be said that no criminal act is ever done by the petitioner and in fact, civil proceedings have got its own different impact and therefore, simply because civil suit can lie, it cannot be said that present complaint is not maintainable. In fact, there are series of decisions whereby it has been held by the Hon'ble Supreme Court that both can go on parallel and therefore, simply because civil proceedings are pending, the petitioners cannot avoid criminal liability which is likely to generate out of the complaint filed by her. Ultimately, Mr. Saiyed has contended and requested the Court that instead of taking a hyper- technical view of the matter, the complaint filed by respondent No.2 deserves to be thoroughly investigated and therefore, ultimately requested the Court to dismiss the petition.

4.1 To substantiate aforesaid contentions, Mr. Saiyed has relied upon following decisions of the Hon'ble Apex Court on the issue whether second complaint is maintainable or not:

h *i) Ram Lal Narang Vs. State (Delhi Administration) reported in AIR 1979 SC 1791.*

ii) Kari Chaudhary Vs. Most. Sita Devi and others reported in AIR 2002 SC 441.

iii) Upkar Singh Vs. Ved Prakash and others reported in AIR 2004 SC 4320.

iv) Nirmal Singh Kahlon Vs. State of Punjab and Ors. reported in AIR 2009 SC page 984.

v) Amitabhai Anilchandra Shah Vs. Central Bureau of Investigation and another reported in (2013)6 SCC page 348, 2013= ABC 2013(II) 44 SC.

vi) Anju Chaudhary Vs. State of U.P. And Anr. reported in AIR 2013 SCW page 245.

These decisions would be discussed in the present judgment at an appropriate stage hereinafter.

5. Having heard the learned advocates appearing for the respective parties and having gone through the contents of the materials produced before the Court, to understand the controversy whether second complaint is maintainable or not, first of all, the gist of first complaint is required to be analysed.

6. A perusal of the first complaint being C.R.No.I-89 of 2005 filed by one Varshaben against Vijaychandra Shukla indicates that it was filed on 9.3.2005 for the offences alleged to have committed any time prior to 7.7.2004 punishable under sections 429, 467, 468 and 471 of IPC. The assertion of the said complaint indicates that Varshaben, widow of Sureshkumar Shukla residing with son Vikrant, is alleged to have conducted the affairs of International Securities Limited which company is essentially dealing in security services since the last 11 years and she is a Managing Director of the Company with effect from 10th of May, 2004. She has also asserted in the complaint that the said company was floated in 1994 from where she was acting as a Director till she was appointed as Managing Director. Her husband has expired on 12th of May, 2004, but during the process, unanimously on 10th of May, 2004, she was nominated as Managing Director of SCI International Securities Limited. She has further asserted that due process of passing resolution in the Board meeting like filling up necessary forms before the Registrar of Companies (ROC) was also duly completed and said to have been sent through their Chartered Accountant, Shri K.G.Agrawal. It has also been stated in the complaint that while filling up the forms in ROC, it was learnt

that somebody else has also filled in the form for being the Director. However, she has emphatically stated in the complaint that prior to passing of resolution unanimously appointing herself as Managing Director, no such resolution has ever been passed. Subsequently, it has also been learnt that through the Branch Manager of State Bank of Saurashtra that Director's position is altered which is being informed to them with respect to SCI International Securities Limited and therefore, informing the Company of the said bank that there must be a signature of Managing Director, Vijaychandra Shukla to conduct the affairs of the bank. At that point of time, it has been learnt by the complainant that some fictitious documents have been prepared, concocted and utilised for the purpose of acting as Managing Director of the Company and thereby an attempt has been made to thwart the dealings of the Company and these averments have been alleged specifically in the complaint filed on 9th of March, 2005.

7. The record of the case further indicates that Vijaychandra Shukla, i.e. the petitioner has filed one proceeding on 13th March, 2006 in the Court of learned Metropolitan Magistrate, Ahmedabad, being Criminal Misc. Application numbered as Inquiry Case No.9 of 2006 for the offence punishable under sections 406, 420, 467, 468, 471 and 120B of IPC alleging against respondent No.2 that there was absolutely no incident which took place in the Company to nominate respondent No.2 as its Managing Director. On the contrary, it has been alleged that brother, who was the Managing Director, has never resigned as he was in the hospital and was not in a position to put any signature and the factum of passing of a resolution on 10th May, 2004 was never happened in the Company. In fact, a collusion was alleged in the complaint being Inquiry Case No.9 of 2006 amongst the accused persons of that case, which is at page 23 of the petition compilation and therefore, from the record, it appears that allegations and counter allegations are levelled in the complaints interse between petitioner No.1 and respondent No.2 with respect to passing of resolution dated 10th May, 2004 whereby respondent No.2 is said to have emerged as Managing Director of the Company in question. Now this complaint was put to motion and section 202 of Cr.P.C. Process was also ordered as is reflecting from the Inquiry Case No.9 of 2006 on page 28 of the petition compilation.

8. The first complaint, which is filed by the respondent No.2 as well as by the petitioner with respect to very same crucial question, is centering around the appointment/nomination of respondent No.2 as

Managing Director in the Company and Joint Managing Director of petitioner No.1. This center of controversy between the parties was sent by the respective authorities for further inquiry. Pending this, on 1st September, 2007, another complaint came to be filed by the very respondent No.2 before the very same Police Station i.e. J.P. Road Police Station, Vadodara, essentially against the present petitioner No.1 by joining other persons as accused and this complaint appears to have been filed for the incident which is alleged to have taken place any time after 12th May 2004 and therefore, question arose whether in the background of aforesaid circumstances, this subsequent complaint with this slight modification is maintainable or not and to make scrutiny on this legal issue, the averments of the subsequent second complaint are required to be analysed.

9. A bare look at the said complaint prima facie gives an impression that this is a substantive second complaint in which not only the attempt of the alleged incident is figuring differently but some more accused persons are added with a specific role alleged against them and this complaint also came to be filed for the offence punishable under sections 419, 420, 467, 468, 471,472 and 474 read with section 120B of IPC. In this complaint, it is alleged and stated in paragraph No.4 that on 24/11/2006, one bogus and fraudulent document came to be prepared in collusion with each other by the accused persons and though the Company's office actually is situated at 501 Windsor Plaza, R.C.Dutt Road, Vadodara, the same was shown wrongly at 18, Vijas Park Society, Navrangpura, Ahmedabad, and thereby the office address has been shifted at Ghodasar, Ahmedabad and for that purpose, accused Nos.6 and 8 have played role for preparation of said bogus documents. As per the complaint, accused No.6 has signed as authorised officer of the Company whereas accused No.8 has certified and put the signature and thereby knowing fully well that this bogus document is forged one, the same is filed along with ROC Form No.18. This complaint is further alleging that accused Nos.2 and 4, though not Directors of the Company, have been appointed as Directors on 24th November, 2006 and for that purpose, the Company's documents have been prepared. It is also alleged in this complaint that though accused No.7 was never the Director in the Company, still however, he has been shown as Director and has resigned on 23rd November, 2006 and accused No.6 though was never authorised by the Company has certified and therefore, in collusion with each other, this resignation of accused

a No.7 as Director was got prepared, concocted and filed along with
ROC office in Form No.32. It has also been alleged in this second
complaint that similarly accused Nos.1 and 5 were never appointed as
Directors but were acting as Directors of the Company and their
resignation documents have also been prepared and in turn, the
Company has accepted and thereby created a fabricated record in the
b Company itself and this has also been certified by accused Nos.6 and
8 as well and it has also been submitted before ROC in Form No.32
(addendum). So much so that it is also alleged in the second
complaint that accused No.2 who was never appointed as Managing
Director but solely with a view to grab funds of the Company got
himself appointed as Managing Director on 23/11/2006 and for that
c purpose, again accused Nos.6 and 8 have respectively and the same
were filled in before ROC with the signature of accused Nos.6 and 8.
This indicates that if the Board of Directors meeting was convened on
23/11/2006, then, how Hira Rani can act as Managing Director on
22/10/2006. This itself is a clear example of fraudulent act on the part
d of respondents accused of this complaint. It is further specifically
alleged in the complaint that accused No.3 is not a Director of the
Company at any point of time. Still, his resignation as a Director came
to be created and again accused Nos.6 and 7 have certified the same
i.e. later on resignation dated 24/11/2006 was again submitted before
ROC vide Form No.32. It has also been specifically alleged that
e accused No.6, who is said to be authorised signatory of the Company,
the document of electronic signature came to be created for the
purpose of certification and all these documents have been certified
by accused No.8, which is nothing but a clear case of conspiracy and
by alleging this, this second complaint came to be filed on 1st
f September, 2007.

g 10. The record of the case further indicates that this second
complaint came to be filed during which the first complaint was
appeared to have been processed to some extent in which statements
of present petitioner have been recorded and thereafter, it appears
that before various authorities including Chief Minister, the present
petitioner has filed detailed representations to independently inquire.
In this representative form of grievance raised by the petitioner, there
appears to be a reference to a notice given to the bank dated 14.3.2005
h submitted by the petitioner and there also appears to be a reference to
the police complaint filed by the respondent No.2. Now these
disputed versions of both the sides are pending before appropriate

authorities and upon an inquiry by the Court, both the learned advocates have stated that the issues are pending before appropriate authorities and in the meantime, in the month of October, 2007, the petitioner i.e. Vijaychandra Shukla has come up with this petition for quashing the second complaint filed by the respondent No.2 being C.R.No.284 of 2007 before J.P. Road Police Station, Baroda, and essentially the contention is raised that this second complaint in the background of these facts is not maintainable and therefore, the jurisdiction of this Court under section 482 of Cr.P.C. is invoked.

11. In the background of aforesaid analysis of three complaints, one filed by respondent No.2 on 9/3/2005 before J.P. Road Police Station, Baroda, another filed in the form of Inquiry Application No.9 of 2006 filed by petitioner No.1 and the impugned complaint which has been filed on 1/9/2007 by respondent No.2 again before very same J.P. Road Police Station being C.R.No.I-284 of 2007, it appears that in the complaint in question which has been filed by the respondent No.2, there appears to be a time difference of alleged commission of crime. It also transpires from the said complaint filed by respondent No.2 that there are some other accused persons added whereas in the first complaint, it was filed only against petitioner No.1 i.e. Vijaychandra Shukla. In addition thereto, from the averments of the complaint, there appears to be a crucial date of reference of 10/5/2004 and also appears to be an allegation of conspiracy, collusion and role of each accused person asserted.

12. If averments of first complaint are to be looked into on page 18, there appears to be a reference of offences punishable under sections 429 and 467 i.e. forging of valuable security, will etc., section 468 i.e. forgery for the purpose of cheating and section 472 i.e. using as a genuine a forged document or electronic record. If the second complaint is to be looked into, the same is filed under sections 419 and 420 and also under section 120B of IPC which has the allegation of criminal conspiracy amongst eight accused persons including present petitioner No.1 which element was not there in the first complaint. The grievance which has been voiced out in the first complaint and which has been mentioned in the second complaint has a little different version and how conspiracy has been hatched is narrated in detail and therefore, a bare look at the said complaint appears to be little different. Of course, it may have different averments and allegations but the same are to be viewed in the context of main allegations levelled in the first complaint. Thus, prima

facie, the issue whether the second complaint is to be held maintainable or not is to be judged in the context of the scheme of the Act. Therefore, considering this peculiar set of circumstances, now if the law on the subject is to be viewed and analyzed, following circumstances and propositions are worth to be taken care of before coming to any conclusion in this regard and hence, the same as such are hereinafter referred to and considered.

13. Under the scheme of Cr.P.C., if FIR under section 154 of Cr.P.C. is seen, it is a very important piece of document which sets the machinery of criminal law in motion and marks the commencement of investigation which ends with the formation of opinion under section 169 or section 170 of Cr.P.C., as the case may be, and forwarding of a police report under section 173 of Cr.P.C. Further, an FIR which is recorded under section 154 of the Cr.P.C. is not a substantive piece of evidence. Its only use is to contradict or corroborate the matter thereof. The FIR need not contain the minutest details as to how the offence had taken place nor it is required to contain the names of offenders or witnesses. But it must at least contain some information about crime being committed as also some information about the manner in which the cognizable offence has been committed. The reading of the provisions of section 154 Cr.P.C. therefore postulates that it is an information about the manner in which cognizable offence has been committed which, after registration, sets the machinery of criminal law in motion. Similarly, if other provisions are to be looked into, the detailed procedure for investigation is spelt out in section 157 and how the report is to be submitted upon an investigation is also enumerated in later provisions of Chapter XII of Cr.P.C. Chapter XIII of Cr.P.C. which has also postulated the place of inquiry ordinarily and therefore, the complaint need not contain every details about commission of offence and the detection thereof along with all information and inquiry is the bounden duty of investigating machinery. The investigating machinery is also couched with the power specifically that if during the course of investigation any incriminating further material against any person is discovered, the authority has got the power to proceed in accordance with law and therefore, every information connected with the main offence including every person connected with it found by investigating machinery can form the part and subject matter of report being supplied and submitted by the authority. Even if after conclusion of investigation in response to the filing of FIR and

submission of report under section 173(2) of Cr.P.C. the Officer in charge of Police Station comes across any further information pertaining to centering around the main issue, he can make further investigation normally with the leave of the Court and forward further evidence, if collected, with further report or reports under section 173(8) of Cr.P.C. and therefore, ample power is invested under Cr.P.C. in the investigating machinery to look into in detail, inquire and investigate all the circumstances encircling the main offence which is alleged to have been committed and therefore, in view of aforesaid circumstances, if we look at the tenability of the second complaint, the concept of 'sameness' is required to be pressed into service. The test of 'sameness' is to be applied to find out whether both the FIRs relate to the same incident in respect of same occurrence or are in regard to altogether different incident and therefore, under the normal circumstance, there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of same cognizable offence or same occurrence giving rise to one or more cognizable offence and all subsequent information will be covered by section 172 of Cr.P.C. and Officer in charge of Police Station has to investigate not merely the cognizable offence reported in FIR but also all other connected offences found to have been committed in the course of same transaction or same occurrence and file one or more reports as provided under section 173 of Cr.P.C. and therefore, in the light of the scheme of sections 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C., the normal analysis which is emerging is that there can be no second FIR and no fresh investigation.

14. A further fact also to be considered is that administering criminal justice is a two end process where guarding the ensured rights of the accused under the Constitution is as imperative as ensuring justice to the victim. Thus, a just balance between fundamental rights of the accused guaranteed under the Constitution and expansive power of police to investigate a cognizable offence has to be struck by the Court. Accordingly, this sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of same incident giving rise to one or more cognizable offences and therefore, the investigating officers are bestowed with dual duties i.e. investigating the matter extensively and subsequently collect the reliable evidence to establish the same and therefore, the scheme of the Act has empowered the investigating machinery that even after filing a report, if the

investigating officer comes to possession of further information or material, there is no need to register a fresh FIR as he is empowered to
a make further investigation of course with the leave of the Court and can form and submit further report and therefore, under the scheme of the provisions contained under section 154 onwards of Cr.P.C., the earliest or the first information in regard to commission of cognizable offence satisfies the requirement of section 154 of Cr.P.C. and
b therefore, there can be no need to entertain the second FIR almost on a similar set of circumstance.

15. Now in the light of aforesaid position prevailing under Cr.P.C., the Court has to evaluate both the FIRs whether it contains and satisfies the test of 'sameness' or not. Thus, if we look at the first
c complaint which is lodged on 9/3/2005 and the second complaint which is lodged on 1/9/2007, the following are the circumstances which are the yardsticks to take a just decision whether subsequent FIR is tenable or not.

16. As stated earlier, in the first complaint which has been
d filed by respondent No.2 before J.P. Road Police Station in the month of March, 2005, the main allegation is centering around the controversy about appointment of respondent No.2 as Managing Director on 10.5.2004 in the Company known as SCI International Securities Limited. It is also specifically averred in the said complaint
e that necessary forms for sending to Registrar of Companies are filled in through Chartered Accountant, Shri K.G.Agrawal. In the later portion of the complaint, it is mentioned that State Bank of Saurashtra has informed about new Directors, who are altered in the Company and further it has been informed by the bank that Joint Managing
f Director, Shri Vijaychandra Shukla is said to have been in charge and therefore, compulsorily his signature is to be taken. In the last paragraph of the said complaint, it is clearly emerging that this petitioner No.1 Shri Vijaychandra Shukla has fabricated the signature of respondent No.2's husband, Shri Sureshchandra Shukla and got his
g name joined as Managing Director of the Company and therefore, in the last line of the said complaint, it is specifically averred that against all responsible persons including petitioner No.1, old Directors and Officers of the Company as well as Officers of State Bank of Saurashtra, the complaint appears to have been lodged and therefore,
h essentially the dispute is centering around the placement of Managing Director and in furtherance, every step found to have been taken in connivance may surface during the course of investigation

and therefore, attributed against all Directors, Officers of the Company as well as State Bank of Saurashtra. Now this complaint is set to motion by lodging before J.P. Road Police Station, Vadodara. a

17. Now comparing with this, if the second complaint which is the subject matter of present proceeding is to be looked into which is lodged on 1.9.2007, the controversy reflects around the main dispute of the placement of Managing Director on 10.5.2004. What has been additionally asserted is that as a consequence of that appointment as Managing Director, petitioner No.1 in connivance with other Directors, has changed the place of registration office of the Company and has altered the Directors in the Company and therefore, these are the additional conduct alleged in the complaint which took place pursuant to petitioner No.1 being in charge of the Company as Managing Director which is seriously opposed by respondent No.2 and therefore, the grievances voiced out in both the complaints appear to be almost similar and the additional information and the accused persons who are added by alleging specifically are forming part of investigation of the very first complaint which was already put to motion by respondent No.2. This subsequent complaint which has been filed before the very same Police Station is merely an additional information which can be gone into during the course of process of first complaint. Had there been any substantive distinct offence being made out, possibly the second complaint could have a different connotation altogether. But, it appears that these allegations, which are levelled in the second complaint, are centering around the grievance of the main first complaint and all the persons, who took part in the commission of this main complaint, can be dealt with by the investigating machinery while conducting investigation of the original complaint. In light of this factual data available on record, it transpires that the subsequent complaint has got only an additional figure of collusion and conspiracy between petitioner No.1 and other Directors and officers of the Company which is incidental and consequential to the commission of main offence alleged in the first complaint. In light of this circumstance, if the Court analyses the position of law prevailing at present, it appears that the second complaint would not be maintainable and fact remains that it is not a cross case but additional entries which are alleged in response to the first complaint and therefore, in the background of this factual scenario, the Court has to deal with the points which have been raised by b
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learned advocates representing the parties on the issue of maintainability of second complaint under the law.

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18. As stated earlier, it emerges that under the Scheme of the provisions contained under Cr.P.C. more particularly sections 154, 155, 156, 157, 162, 169, 170 and 173, there can be no second FIR to be entertained at the instance of respondent No.2 and every subsequent information in respect of the main offence or occurrence even if raising one or more cognizable offence, no fresh investigation deserves to be undertaken. All such subsequent information, which are contained in the second complaint, will be covered by section 162 of Cr.P.C. and officer in charge of Police Station is under a legal obligation to investigate not merely the cognizable complaint reported in the FIR, but has also to consider other connected offences found to have been committed in the course of same transaction or the same occurrence and has to file one or more reports as provided under section 173 of Cr.P.C. Since the main offence which has been alleged on 10.5.2004 by virtue of which petitioner No.1 is said to have controlled the Company in the capacity as Managing Director, all consequential steps taken by him can form a part of investigation of the first complaint which is substantially alleging and as we have analysed the factual data of both the complaints, every subsequent information can be covered by investigating machinery while submitting the report.

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19. The law has amply entrusted power with the investigating agency that even if after conclusion of investigation pursuant to filing of the first FIR and even after submission of report under section 173 (2) of Cr.P.C., the officer in charge of Police Station comes across any further information pertaining to the same incident, he can make further investigation normally with the leave of the Court and forward further evidence, if collected, and therefore, for the allegation made in the second complaint filed by respondent No.2 before the very same Police Station, there need not be any fresh investigation or registering of a second FIR.

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20. In the light of aforesaid circumstances, if the test of 'sameness' is applied to find out whether both the FIRs relate to the same incident in respect to same occurrence or are in regard to the incidents which are in two or more parts of the very same transaction, it would be seen that the answer is clearly in affirmative as the consequential steps which are alleged in the second complaint are

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having a direct co-relation and connection with the original offence which has been alleged against petitioner No.1 having fraudulently secured the position as Managing Director of the Company and therefore, it appears that merely because some more accused persons are added in the second complaint and some subsequent information is said to have been executed would not alter the situation as it is well within the competence of investigating machinery to consider during the course of investigation of the original complaint while submitting the report and therefore, considering this set of circumstances, this Court is of the opinion that second complaint is not maintainable and this is because of the fact that not only a fair trial is envisaged under the constitutional rights of a citizen, but a fair investigation is also a part and parcel of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India and therefore, investigation also must be in fair, transparent and judicious manner as it is the minimum requirement of rule of law. It is the duty of Investigating Officer to conduct the investigation and avoid any kind of mischief or harassment even to the accused persons as well. As appearing from the record, to continue with the fresh investigation of the second complaint may turn out to be a mischief, coercion or harassment as well since substantially the first complaint is covering almost every part of grievance consequently voiced out in the second complaint. On the contrary, petitioner No.1 has also tried to ventilate his grievance by lodging Criminal Inquiry Case No.9 of 2006 before learned Metropolitan Magistrate, Ahmedabad, and therefore, when substantially the grievance of second complaint is already ceased by the investigating machinery, there is no reason to allow subsequent complaint being investigated separately. The Court cannot presume that investigating machinery will not conduct free and fair investigation in response to the complaint which is very much before it in the form of first complaint. Of course, either side has not projected as to what has happened to the proceedings of the first complaint which has already been lodged. Nevertheless, it appears that the second complaint by virtue of the order of this Court has not been processed any further as the interim relief is already operative in the present proceeding. Be that as it may, the Court is of the clear opinion that looking to the factual situation prevailing on record, the second complaint is not maintainable. Even additional charge of conspiracy which is part and parcel of the act of petitioner No.1 which is alleged in the first complaint can also be gone into by the authority

a and therefore, the second complaint is not possible to be held as maintainable in law and if it is allowed to be maintainable, the same would frustrate the very scheme for which the statutory provisions have been enacted under Cr.P.C.

b 21. The second complaint would be maintainable only in case where there are altogether different versions, different discovery of factual foundations and altogether new offence is said to have been committed which has no nexus with the main offence contained in the first complaint. A perusal of both the FIRs indicate that allegations are centering around the very same act of petitioner No.1 of becoming Managing Director fraudulently in the Company and therefore, subsequent acts which are alleged in the second complaint are part of the very same transaction of becoming Managing Director by petitioner No.1 fraudulently in the Company. Therefore, looking to the close proximity of the act and the time centering around the main grievance of the first complaint, the second complaint lodged appears to be a step impermissible in law. The Court has to maintain a just balance between the fundamental rights of the accused guaranteed under the Constitution of India and the expansive power of the police to investigate the cognizable offence has to be struck and this sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of same incident giving rise to one or more cognizable offences and therefore, it appears to this Court that this is a fit case in which the second complaint deserves to be quashed which could meet the ends of justice.

f 22. Aforesaid conclusion is substantiated and backed by series of pronouncements of the Hon'ble Apex Court on the issue and the same are as such referred to for the purpose of consideration. The Court has considered the aforesaid aspect in light of the proposition of law laid down by series of decisions right from T.T.Antony's (supra) case and the following decisions which are supporting the conclusion arrived at by this Court. The said decisions are, therefore, taken in aid for the purpose of arriving at the present decision:

g 22.1 In the case of *T.T.Antony Vs. State of Kerala and Others reported in (2001)6 SCC* page 181, the relevant extracts of propositions are contained in paragraph Nos.18, 19, 22, 25, 27 and 35, which are not being reproduced here to avoid burden of the judgment. However, the same has been taken in assistance while coming to the aforesaid conclusion.

22.2 Similarly, the case of *Babubhai Vs. State of Gujarat and others reported in (2010)12 SCC 254* is also taken in assistance by the Court more particularly the relevant extract of the said decision contained in paragraph No.21 on the issue of test of 'sameness' and also on the issue of free and fair investigation envisaged under Articles 20 and 21 of the Constitution of India. Paragraph No.21 reads thus: a

"In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the accused in the first FIR comes forward with a different version or counter claim, investigation on both the FIRs has to be conducted." b
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22.3 Likewise, another decision on the issue is delivered by the Hon'ble Apex Court in the case of *Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and another reported in (2013)6 SCC 348* in which, upon an analysis, the Hon'ble Apex Court has held the second complaint as being not maintainable and the relevant extracts of the said decision contained in paragraph Nos.58.2, 58.3, 58.4, 58.5, 58.9 and 5.10 are worth to be taken note of and hence are reproduced hereunder: e

"58.2 The various provisions of the Code of Criminal Procedure clearly show that an officer- in-charge of a police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the First Information Report, on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of evidence collected, Investigating Officer has to form an opinion under Section 169 or 170 of the Code and forward his report to the concerned Magistrate under Section 173(2) of the Code. f
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58.3 Even after filing of such a report, if he comes into possession of further information or material, there is no need h

a to 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 which is evident from sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. Thus, there can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.

d 58.4 Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering FIR in the Station House Diary, the officer-in-charge of the police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Code. Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report(s) to the Magistrate. A case of fresh investigation based on the second or successive FIRs not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution.

h 58.5 First Information Report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the

investigating agency, it is always in furtherance of the first FIR.

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58.9. Administering criminal justice is a two-end process, where guarding the ensured rights of the accused under Constitution is as imperative as ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the court of law to protect and shield the rights of both. Thus, a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. Accordingly, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences. As a consequence, in our view this is a fit case for quashing the second F.I.R to meet the ends of justice.

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

23. The contrary decisions, which are pressed into service by learned advocate, Mr. M.M. Saiyed, learned advocate for respondent No.2 and which are referred, if are to be considered in light of factual data prevailing on the record, it appears to the Court that since the factual background of those cases are altogether different, the principle cannot be applied as a strait-jacket formula as covering different set of circumstances and therefore, are not possible to be applied in the background of present facts and circumstances. However, the Court being duty bound to consider the same are dealt with hereafter.

23.1 The first judgment which has been tried to be relied upon by learned advocate, Mr. Saiyed, is the case of *Ram Lal Narang Vs.*

a *State (Delhi Administration) reported in AIR 1979 SC 1791.* The proposition laid down by the Hon'ble Apex Court in the said case is not possible to be adopted here as the situation is altogether different since in that case, the second case was filed of conspiracy initiated in a different Court altogether and the earlier conspiracy case was already withdrawn. The situation over here is not comparable to that of aforesaid decision and therefore, the citation pressed into service is of no avail.

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f 23.2 Another decision which is tried to be pressed into service by Mr. Saiyed is the case of *Kari Chaudhary Vs. Most. Sita Devi and others reported in AIR 2002 SC 441.* In the said case, the complaint about the murder of deceased was filed by her mother-in-law and pursuant to registration of FIR, the investigation was undertaken. The police during investigation found that FIR lodged by mother-in-law was false and on the contrary found that mother-in-law might have conspired to the murder and in the background of that fact, the final report was already submitted by the police in response to which, the complaint lodged by mother-in-law was quashed and therefore, in the background of that fact, the second complaint was filed and the Hon'ble Apex Court in paragraph No.11 of the said decision found that the final report cannot be filed by the police albeit against other accused or that once the proceedings initiated under FIR lodged by mother-in-law ended in a final report, the police had no authority to register a second FDIR and therefore, in light of aforesaid circumstances, the Hon'ble Apex Court found that it was too technical a ground to quash the charge whereas the background of present facts on hand is altogether different and therefore, it is not possible for this Court to adopt such course of action as has been held by the Hon'ble Apex Court in the above referred case.

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h 23.3 Mr. Saiyed has then cited a decision of the Hon'ble Apex Court in the case of *Upkar Singh Vs. Ved Prakash and others reported in AIR 2004 SC 4320* in which also, the situation was that concerned police at the relevant point of time was not accepting to register a counter complaint and therefore, the Hon'ble Apex Court found that the decision delivered in the case of T.T.Antony(supra) would not ipso facto be made applicable to hold that a second complaint in regard to the same incident filed as a counter complaint is prohibited and the said conclusion would lead to serious consequences. Now if the background of that case is co-related to the present case on hand,

here, there is no question of any counter complaint, but on the contrary, the first complaint has the direct bearing on the allegations which are already levelled in the second complaint and therefore, it was well within the power of investigating officer to go into the aspects in continuance of investigation of first complaint and therefore, this judgment is of no avail to respondent No.2 though an attempt is made by their learned advocate Mr.Saiyed.

23.4 Similarly is the case of *Nirmal Singh Kahlon Vs. State of Punjab and Ors. reported in AIR 2009 SC* page 984. In this case also, the facts are again quite distinct and on the contrary, in that case, the High Court in writ petition by candidates against scam in recruitment has held that there can be an investigation to be made by Central Bureau of Investigation and thereupon Central Bureau of Investigation lodged the second FIR and therefore, the canvass of two FIRs in that case was altogether different and therefore, in the background of that case, the Hon'ble Apex Court held that second FIR would be maintainable. We are afraid to adopt such course of action when the facts of the present case are totally different and therefore, the said judgment cannot be applied as a strait-jacket formula in respectful consideration of the same.

23.5 Mr. Saiyed has further drawn the attention to another decision of the Hon'ble Apex Court in case of *Anju Chaudhary Vs. State of U.P. and Anr. reported in AIR 2013 SCW* page 245 wherein also, the facts are altogether different. The said case was pertaining to FIR related to incident of burning of shop which was lodged against unknown persons and the subsequent FIR related to meeting but after the incident of shop burning and therefore, the FIR was lodged by different persons, related to distinct occurrences at a different place and against different persons and therefore, in the absence of proximity of time, unity, proximity of place, continuity of action, commonality of purpose or design, it cannot be held that second complaint is maintainable and therefore, this case is also not in any way helpful to Mr.Saiyed. At this stage, at pains, we have to mention that there is a tendency of citing judgments in numbers without examining whether the facts are identically situated or not and ratio can be applied or not and therefore, the Courts are unduly burdened with dealing with the cases where there appears to be no applicability. However, since it has already been cited, the Court has to deal with the same.

23.6 The last judgment cited by Mr. Saiyed is the case of *Amitabhai Anilchandra Shah Vs. Central Bureau of Investigation and another reported in (2013)6 SCC page 348, 2013 = ABC 2013(II) 44* SC wherein also, relying upon the facts, the Hon'ble Apex Court has propounded a proposition that second FIR in case of offence relating to same transaction is impermissible as laid down in T.T. Antony's case. The said ratio is to be understood in the context of situation prevailing on record and therefore, by analysing, the Hon'ble Apex Court has propounded that the situations are not covered whether a second FIR is permissible in cross case if the offences disclosed are not part of first FIR nor can they be said to form part of same transaction nor can they be said to be arising as a consequence of the offences covered by the first FIR. In that background only, the second FIR can be examined. However, in the present case on hand, the facts are such which clearly indicate that there is no question of any cross case contained in the second complaint nor it has got a different transaction altogether which has no nexus with main act as, what has been alleged in the second FIR is not only forming part of first FIR but the same are as a consequence of first FIR in which allegations are levelled and therefore, this proposition is laid down. However, it is difficult for this Court to straightaway apply said proposition to the present background and therefore, since the judgments cited by Mr. Saiyed have no applicability in view of present peculiar set of circumstances, the same cannot be resorted to for the purpose of arriving at a conclusion and therefore, considering this set of circumstances, the Court is of the opinion that subsequent complaint is not possible to be held as maintainable in view of the Scheme of the Act.

24. In view of the aforesaid situation prevailing on record and in view of the proposition of law laid down by series of decisions which have been dealt with by this Court, now the further question posed before the Court is whether background of these facts warrants interference by the Court in exercise of inherent jurisdiction under section 482 of Cr.P.C. considering the well defined proposition on exercise of such jurisdiction or not. The Court is of the considered opinion that the second complaint which has been filed by the very same complainant before the very same Police Station has got the direct effect on the first complaint and the allegations are forming part of the main act and allegation levelled in the first complaint and the steps alleged in the second complaint are consequences of the act

alleged in the first FIR and therefore, the same is not acceptable as maintainable in law and therefore, to permit such complaint to be processed any further would be travesty of justice. Thus, this is a fit case in which the Court deems it proper to exercise inherent jurisdiction as steps against the accused cannot be allowed to squeeze them again and again almost on similar situation and same is also not conceptually permitted in the fundamental rights guaranteed under the the Constitution of India even to the accused as stated above.

25. While coming to this conclusion, even the recent law laid down by the Hon'ble Apex Court can also be taken for assistance which is reported in *(2015)11 SCC page 145 in the case of Kamla Kant Dubey Vs. State of Uttar Pradesh and Others* wherein it has been specifically laid down that FIR need not contain every single detail and every part of the prosecution case and therefore, when main substratum is forming part of the FIR, it is left to the investigating authority to investigate in detail and therefore, stray observations made in paragraph No.18 would definitely lead to a situation that basic substratum of the matter is already contained in the FIR. In the present case on hand, simply because further information are not contained as part of first FIR thereof would not permit respondent No.2 to lodge the second complaint with respect to very same controversy. Consequential steps generated by petitioner No.1 can well be examined during the course of investigation and therefore, it seems that this second complaint tantamount to have been used as a lever to pressurise the petitioners which in no circumstances can be permitted by this Court. The Court is sufficiently empowered under section 482 of Cr.P.C. to embark upon such an attempt if made to misuse the process of law. Therefore, the background of fact is sufficient enough to hold that second complaint is required to be quashed in the interest of justice.

26. Yet in another case of *D.P. Gulati, Manager Accounts, Jetking Infotrain Limited Vs. State of Uttar Pradesh and Another reported in (2015)11 SCC page 730*, the Hon'ble Apex Court while dealing with an issue of exercise of power under section 482 of Cr.P.C. has specifically held that object of exercise of power under section 482 of Cr.P.C. is to prevent abuse of process of law and to secure the ends of justice. If at any point of time, the Court feels that there are all possible chances that the complainant has resorted to abuse of the process of law, the Court can intervene in exercise of power under section 482 of Cr.P.C. The relevant extracts contained in

paragraph Nos.7 and 8 of the said decision deserve to be reproduced hereinafter to substantiate the conclusion:

a

"We have carefully considered the rival submissions made before us. From bare perusal of Section 482 of the Code, it is clear that the object of exercise of power under the Section is to prevent abuse of process of law, and to secure ends of justice. In *Rajiv Thapar and others v. Madan Lal Kapoor; (2014) 7 SCC 215= ABC 2013 (I) 298 SC*, this Court has enumerated the steps required to be followed before invoking inherent jurisdiction by the High Court under Section 482 of the Code as under:-(2013) 3 SCC 330 : (AIR 2013 SC (Supp) 1056).

b

c

d

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482, Cr P C:

30.1. Step one : whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

e

30.2. Step two : whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

f

30.4. Step four whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

g

30.4. Step four whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

h

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482. CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time,

which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused." a

8. In *Rishipal Singh v. State of Uttar Pradesh and another*; (AIR 2014 SC 2567), explaining the law in the similar circumstances, as in the present case, this Court observed, in paragraph 17, as under:- b

"It is no doubt true that the courts have to be very careful while exercising the power under Section 482, CrPC. At the same time we should not allow a litigant to file vexatious complaints to otherwise settle their scores by setting the criminal law into motion, which is a pure abuse of process of law and it has to be interdicted at the threshold." c

In *Rishipal Singh* (supra), the complainant, who was an accused in connection with an offence punishable under Section 138 of the Act, had filed a criminal complaint relating to offences punishable under Sections 34, 379, 411, 417, 418, 467, 468, 471 and 477, IPC." d

27. In view of the aforesaid proposition of law, which is well defined by catena of decisions, the background of these facts require the Court to intervene and exercise inherent jurisdiction and accordingly, the second complaint is not only non-maintainable but has the colour of abuse of process of law at the instance of respondent No.2 and therefore, the Court deems it proper to quash the same. e

28. Thus, complaint filed by respondent No.2 being Crime Register No.I-284 of 2007 before J.P. Road Police Station, Vadodara, against the petitioners and also the proceedings arising out of the said complaint are quashed and set aside. Rule is made absolute. While coming to this conclusion, the word of caution to be maintained is that in view of aforesaid position prevailing on record, the Court has deemed it proper to quash the second complaint. However, quashing of this complaint would not preclude or relieve the Investigating Officer from examining the first complaint in detail and taking every step to bring home the crime which is alleged in the said complaint. With these observations, the petition is allowed in aforesaid terms. f g

Result:- Petition allowed. h
