

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF SEPTEMBER, 2021

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.3171/2018

BETWEEN:

B. V. BYRE GOWDA
S/O VENKATE GOWDA
AGED ABOUT 53 YEARS,
RESIDING AT NO.243
K.R.LAYOUT,
HOSAKOTE TOWN
BENGALURU RURAL DISTRICT – 562 114.

... PETITIONER

(BY SRI SANDESH J.CHOJTA, SR. ADVOCATE FOR
SRI KARTHIK V., ADVOCATE (VIDEO
CONFERENCING))

AND:

1. NISAR AHMED
S/O NAZEER AHMED
AGED ABOUT 55 YEARS,
MUNICIPAL COMMISSIONER AND
HEAD OF FLYING SQUAD FOR ELECTION,
HOSAKOTE LEGISLATIVE ASSEMBLY
178, BENGALURU RURAL DISTRICT – 562 114.
2. STATE OF KARNATAKA
BY HOSAKOTE POLICE STATION,
HOSAKOTE,
BENGALURU RURAL DISTRICT

REPRESENTED BY STATE
PUBLIC PROSECUTOR
DR AMBEDKAR VEEDHI
BENGALURU – 560 001.

... RESPONDENTS

(BY SRI S.BALAN, ADVOCATE FOR R1 (PHYSICAL
HEARING);
SMT.NAMITHA MAHESH B.G., HCGP FOR R2
(PHYSICAL HEARING))

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CODE OF CRIMINAL PROCEDURE PRAYING TO QUASH THE FIR UNDER INVESTIGATION VIDE ANNEXURE-A IN CR.NO.224/2018 REGISTERED BY HOSAKOTE P.S., FOR THE OFFENCE 504, 332, 353 OF IPC ON THE FILE OF THE PRINCIPAL CIVIL JUDGE (Sr. Dn.) AND CJM, HOSAKOTE, BANGALORE RURAL DISTRICT IN THE INTEREST OF JUSTICE AND ETC.,

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 02.09.2021, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING :-

ORDER

Petitioner in this criminal petition calls in question proceedings instituted before the Principal Civil Judge (Senior Division) & Chief Judicial Magistrate, Hosakote, Bengaluru Rural District in crime No.224 of 2018, registered at Hoskote Police Station for offences punishable under Sections 504, 332 and 353 of the Indian Penal Code, 1860.

2. The case projected by the prosecution is as follows:-

In the year 2018, at the time when elections to the Karnataka Legislative Assembly were notified, the activities of election were at large. On 18-04-2018, the complainant/1st respondent registered a complaint before the Hosakote Police Station alleging that he was appointed as the Head of a Flying Squad of the election duty and on the morning of that day, Bharathiya Janatha Party had put up lot of buntings on the occasion of the arrival of Sri Amit Shah. This according to the complainant was without authorization. It is his further case that, buntings so put up unauthorisedly were ordered to be removed by a Health Inspector of the Municipality at Hosakote by name, Miss Nusrat Banu. The Health Inspector alleged that she along with her staff viz., Mr. V. Nagaraj, Mr. Chennakeshava, Mr. Ramesh and Mr. Ashok went to J.C.Circle at 6.45 a.m. and removed few buntings. At that point of time, the allegation is that, the petitioner who is the leader of the

BJP in the locality obstructed for removal of buntings. This was informed by Miss Nusrat Banu to the complainant on telephone being made at 7.45 a.m.

3. On such information, it is the case of the complainant that he went to J.C. Circle along with other staff for removing unauthorized buntings and it is at that point of time, the petitioner along with others abused the Officers with filthy words and the further allegation is that, one Ashok, a resident of Kammavaripete assaulted the complainant with hand.

4. On the basis of the incident which took place between 6 a.m. and 9 a.m., a complaint came to be registered by the complainant Mr.Nisar Ahmed at 9 a.m. in Crime No.223 of 2018 alleging offences punishable under Section 127A of the Representation of People Act, 1951 and 1988, Section 3 of the Karnataka Open Place Disfigurement Act, 1951 and 1981 (for short 'the Disfigurement Act') and Section 171H of the Indian Penal

Code, 1860. The accused in the complaint were workers of BJP to be known.

5. On the same incident of the same time, the very same complainant registers another complaint which became Crime No.224 of 2018. The allegation is for the offences punishable under Section 504, 332 and 353 of the IPC. The time of the incident was at 7.45 a.m. to 7.50 a.m. and the complaint is registered at 9.15 a.m. Therefore, for an incident that took place between 6 a.m. and 9 a.m. two separate complaints are registered on the very same incident of removal of buntings by the very same complainant. It is these proceedings instituted by registration of FIR in Crime No.224 of 2018 that is called in question in the subject criminal petition. Insofar as Crime No.223 of 2018, it is submitted that there is substantial progress in the case and is at the stage of evidence.

6. Heard Sri Sandesh J. Chouta learned senior Advocate for Sri Karthik V., learned counsel for the petitioner; Sri S.Balan, learned counsel for respondent No.1

and Smt. Namitha Mahesh B.G., learned High Court Government Pleader for respondent No.2.

7. The learned senior Advocate, Sri Sandesh J.Chouta, would submit that the time of offence, place of offence and the incident which has triggered in registering the complaints, all of them happened between 6 a.m. and 9 a.m. Therefore, there can be only one complaint on this incident and there cannot be multiple complaints for a solitary incident. The complaint against the petitioner was for obstruction while removing buntings. This complaint was registered at 9 a.m. which became Crime No.223 of 2018. Another complaint is registered at 9.15 a.m. which became Crime No.224 of 2018, on the very same incident. Learned senior counsel would submit that it is not permissible in law as in terms of Section 154 Cr.P.C., which deals with registration of a complaint and an FIR, there can be only one FIR against one incident and he would place reliance upon the judgments in the cases of

- (i) **T.T.ANTONY v. STATE OF KERALA AND OTHERS** – (2001) 6 SCC 181;
- (ii) **UPKAR SINGH v. VED PRAKASH AND OTHERS** – (2004) 13 SCC 292;
- (iii) **BABUBHAI v. STATE OF GUJARAT AND OTHERS** – (2010) 12 SCC 254;
- (iv) **SURENDER KAUSHIK AND OTHERS v. STATE OF UTTAR PRADESH AND OTHERS** – (2013) 5 SCC 148;
- (v) **ANJU CHAUDHARY v. STATE OF UTTARPRADESH AND ANOTHER** – (2013) 6 SCC 384;
- (vi) **P.SREE KUMAR v. STATE OF KERALA AND OTHERS** – (2018) 4 SCC 579;
- (vii) **ARNAB RANJAN GOSWAMI v. UNION OF INDIA AND OTHERS** – (2020) 14 SCC 12;
and
- (viii) **KRISHNA LAL CHAWLA v. STATE OF U.P** – (2021) 5 SCC 435.

8. On the other hand, the learned counsel appearing for the complainant/respondent No.1 would submit that two FIRs are permissible on 2 incidents as they are for different allegations – one which happened when the buntings were sought to be unauthorizedly put up

incurring offences under the Representation of People Act or the Disfigurement Act. Staff/Officers were assaulted which was at 7.45 a.m. and this became a second FIR. That the period of incident is the same, place of incident is the same and the complainant is the same but two complaints can be registered, is the emphatic submission of the learned counsel and would further submit that this is a matter for trial and this Court should not interfere at this stage of trial. The learned counsel would place reliance upon the judgments in the cases of:

- (i) **MAJOJ KUMAR v. STATE OF UTTARAKHAND** –
(2019) 5 SCC 663;
- (ii) **RAM LAL NARANG v. STATE (DELHI ADMIN)**
– (1979) 2 SCC 322;
- (iii) **ANJU CHAUDHARY v. STATE OF U.P.** –
(2013) 6 SCC 384;
- (iv) **SURENDAR KAUSHIK AND OTHERS v. STATE OF U.P.** – (2013) 5 SCC 148;
- (v) **UPKAR SINGH v. VED PRAKASH AND OTHERS**
– (2002) 13 SCC 292;

- (vi) **WAZIR KHAN v. STATE OF KARNATAKA**
(Criminal Petition No.227 of 2020 decided on 2.06.2020 by this Court);
- (vii) **ISMAIL SHAFI AND OTHERS v. STATE**
(Criminal Petition No.9284 of 2017 decided on 20.06.2018 by this Court) and
- (viii) **AMITBHAI ANILCHANDRA v. CBI AND ANOTHER – (2013) 6 SCC 348.**

9. Learned High Court Government Pleader, Smt. Namitha Mahesh B.G., would submit only with regard to interference by this Court at the present stage of proceedings as investigation is yet to take place.

10. I have given my anxious consideration to the respective submissions made by the learned senior counsel and the learned counsel appearing for the respondents and in furtherance whereof, the only issue that falls for my consideration is, *whether the second complaint which results in second FIR being registered is permissible in the facts of the case?*

11. Before embarking upon the journey of considering the facts obtaining in the case at hand, I deem it appropriate to notice the flow of law as laid down by the Apex Court with regard to registration of second complaint on the very same incident. The Apex Court right from the judgment in the case of **T.T. ANTONY** (supra) has held as follows:

"15. On these contentions, four points arise for determination:

(i) whether registration of a fresh case, Crime No. 268 of 1997, Kuthuparamba Police Station on the basis of the letter of the DGP dated 2-7-1997 which is in the nature of the second FIR under Section 154 CrPC, is valid and it can form the basis of a fresh investigation;

(ii) whether the appellants in Appeals Nos. 689 and 4066 of 2001 [arising out of SLPs (Crl.) Nos. 1522 and 8840 of 2000] and the respondent in Appeals Nos. 690-91 of 2001 [arising out of SLPs (Crl.) Nos. 2724-25 of 2000] have otherwise made out a case for quashing of proceedings in Crime No. 268 of 1997, Kuthuparamba Police Station;

(iii) what is the effect of the report of Shri K. Padmanabhan Commission of Inquiry; and

(iv) whether the facts and the circumstances of the case justify a fresh investigation by CBI.

... ..

18. An information given under subsection (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.

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case [(1979) 2 SCC 322:

1979 SCC (Cri) 479] it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution.

35. For the aforementioned reasons, the registration of the second FIR under Section 154 CrPC on the basis of the letter of the Director General of Police as Crime No. 268 of 1997 of Kuthuparamba Police Station is not valid and consequently the investigation made pursuant thereto is of no legal consequence, they are accordingly quashed. We hasten to add that this does not preclude the investigating agency from seeking leave of the Court in Crimes Nos. 353 and 354 of 1994 for making further investigations and filing a further report or reports under Section 173(8) CrPC before the competent Magistrate in

the said cases. In this view of the matter, we are not inclined to interfere with the judgment of the High Court under challenge insofar as it relates to quashing of Crime No. 268 of 1997 of Kuthuparamba Police Station against the ASP (R.A. Chandrasekhar); in all other aspects the impugned judgment of the High Court shall stand set aside."

(emphasis supplied)

Again the Apex Court in the case of **Babubhai** (*supra*)

holds as follows:-

"23. If the two FIRs are read together, it becomes clear that the incident started in the morning as per both the FIRs CR No. I-154 of 2008, lodged by Mr M.N. Pandya, Sub-Inspector of Police, stated that he reached the place of occurrence after receiving the information from the police station and found that the mob had already dispersed. The case of the prosecution is that when the police reached the place of occurrence of the first incident, the mob had already dispersed, could not be correct for the reason that some of the witnesses have stated that the clash was going on when the police arrived and police resorted to force to disperse the mob. In fact, it was the police who summoned the ambulances which took the injured persons to hospitals."

(emphasis supplied)

In the case of **SURENDER KAUSHIK** (*supra*), the Apex

Court holds as follows:

"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."

(emphasis supplied)

In the case of **ANJU CHAUDHARY** (*supra*), the Apex Court holds as follows:

"14. On the plain construction of the language and scheme of Sections 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR

about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognizable offence shall be reduced into writing by the officer-in-charge of a police station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. **It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of Section 154 of the Code. These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police. Therefore, second FIR for the same incident cannot be registered.** Of course, the investigating agency has no determinative right. It is only a right to investigate in accordance with the provisions of the Code. The filing of report upon completion of investigation, either for cancellation or alleging commission of an offence, is a matter which once filed before the court of competent jurisdiction attains a kind of finality as far as police is concerned, may be in a given case,

subject to the right of further investigation but wherever the investigation has been completed and a person is found to be prima facie guilty of committing an offence or otherwise, re-examination by the investigating agency on its own should not be permitted merely by registering another FIR with regard to the same offence. If such protection is not given to a suspect, then possibility of abuse of investigating powers by the police cannot be ruled out. It is with this intention in mind that such interpretation should be given to Section 154 of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, reinvestigation or de novo investigation is beyond the competence of not only the investigating agency but even that of the learned Magistrate. The courts have taken this view primarily for the reason that it would be opposed to the scheme of the Code and more particularly Section 167(2) of the Code. (Ref. Reeta Nag v. State of W.B. [(2009) 9 SCC 129; (2009) 3 SCC (Cri) 1051] and Vinay Tyagi v. Irshad Ali [(2013) 5 SCC 762] of the same date.)

(emphasis supplied)

In the case of **P. SREEKUMAR** (supra) the Apex Court holds 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 3 though related to the same

incident for which the first FIR was filed by Respondent 2 against the appellant-Respondent 3 and three bank officials, yet the second FIR being in the nature of a counter-complaint against Respondent 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 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 the two aforementioned decisions of this Court in *Upkar Singh* [*Upkar Singh v. Ved Prakash*, (2004) 13 SCC 292; 2005 SCC (Cri) 211] and *Surender Kaushik* [*Surender Kaushik v. State of U.P.*, (2013) 5 SCC 148; (2013) 2 SCC (Cri) 953] and simply referred the 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.”

(emphasis supplied)

In the case of **ARNAB RANJAN GOSWAMI** (*supra*), the Apex Court holds as follows:

"37. In the present case, all the FIRs or complaints which have been lodged in diverse jurisdictions arise out of one and the same incident — the broadcast by the petitioner on 21-4-2020 on R. Bharat. The broadcast is the foundation of the allegation that offences have been committed under the provisions of Sections 153, 153-A, 153-B, 295-A, 298, 500, 504 and 506 IPC. During the course of the hearing, this Court has had the occasion, with the assistance of the learned Senior Counsel, to peruse the several complaints that were filed in relation to the incident dated 21-4-2020. They are worded in identical terms and leave no manner of doubt that an identity of cause of action underlies the allegations levelled against the petitioner on the basis of the programme which was broadcast on 21-4-2020. Moreover, the language, content and sequencing of paragraphs and their numbering is identical. It was in this backdrop that Mr Kapil Sibal, learned Senior Counsel fairly submitted (in our view correctly) that this Court may proceed to quash all the other FIRs and complaints lodged in diverse jurisdictions in the States, leaving open, however, the investigation in respect of FIR No. 238 of 2020 dated 22-4-2020 transferred from Police Station Sadar, District Nagpur City to N.M. Joshi Marg Police Station in Mumbai.

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39. A litany of our decisions – to refer to them individually would be a parade of the familiar – has firmly established that any reasonable restriction on fundamental rights must comport with the proportionality standard, of which one component is that the measure adopted must be the least restrictive measure to effectively achieve the legitimate State aim. Subjecting an individual to numerous proceedings arising in different jurisdictions on the basis of the same cause of action cannot be accepted as the least restrictive and effective method of achieving the legitimate State aim in prosecuting crime. The manner in which the petitioner has been subjected to numerous FIRs in several States, besides the Union Territories of Jammu and Kashmir on the basis of identical allegations arising out of the same television show would leave no manner of doubt that the intervention of this Court is necessary to protect the rights of the petitioner as a citizen and as a journalist to fair treatment (guaranteed by Article 14) and the liberty to conduct an independent portrayal of views. In such a situation to require the petitioner to approach the respective High Courts having jurisdiction for quashing would result into a multiplicity of proceedings and unnecessary harassment to the petitioner, who is a journalist.”

(emphasis supplied)

The law in this regard as laid down in the aforesaid cases is followed in the latest judgment of the Apex Court in the

case of **KRISHNA LAL CHAWLA** (*supra*) wherein, it is held as follows:

"6. Indeed, a closer look at the decision in Upkar Singh [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292: 2005 SCC (Cri) 211] takes us to the contrary conclusion. In regard to the question of material improvements made in a subsequent private complaint by the same complainant against the same accused with regard to the same incident, it may be useful to refer to the following excerpt from Upkar Singh [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292: 2005 SCC (Cri) 211], which further clarifies the holding in T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181: 2001 SCC (Cri) 1048]: (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."

(emphasis supplied in the original)

It is the aforementioned part of the holding in Upkar Singh [Upkar Singh v. Ved

Prakash, (2004) 13 SCC 292: 2005 SCC (Cri) 211] that bears directly and strongly upon the present case.

(emphasis supplied)

If the law that is laid down by the Apex Court in the afore-extracted judgments is considered, what would unmistakably emerge is, registration of second FIR on the same incident would be hit by the “doctrine of sameness” and will have to be annihilated as it would amount to improving the facts and the case in the subsequent complaint on the same incident. On the bedrock of the principles laid down in the afore-extracted judgments of the Apex Court, the case at hand will have to be considered.

12. The incident had occurred on 18.04.2018. It was concerning putting up of buntings and their removal on account of being declaration of elections to the Legislative Assembly of Karnataka State. The buntings were put up on the occasion of arrival of Sri Amit Shah, for an election rally. The Code of Conduct was also in place having been

issued by the Election Commission and the Election Commission of India has been issuing orders from time whenever elections take place. The order dated 7th October, 2008 is followed even on 13th March, 2021 for General Elections. The order insofar as it is relevant for the purpose of this *lis* is extracted herein for the purpose of quick reference:

"DEFAACEMENT OF PUBLIC PLACES

4(a) No wall writing, pasting of posters/papers or defacement in any other form, or erecting/displaying of cutout, hoardings, banners, flags etc. shall be permitted on any Government premises (including civil structures therein). For this purpose a Government premise would include any Govt. office and the campus wherein the office building is situated.

(b) If the local law expressly permits or provides for writing of slogans, displaying posters, etc., or erecting cut-outs, hoardings, banners, political advertisement, etc., in any public place, (as against a Government premise) on payment or otherwise, this may be allowed strictly in accordance with the relevant provisions of the law and subject to Court orders, if any on this subject. It should be ensured that any such place is not dominated/monopolized by any particular party(ies) or candidate(s). All parties and

candidates should be provided equal opportunity in this regard.

(c) If there is a specifically earmarked place provided for displaying advertisements in a public place e.g. bill boards, hoardings etc. and if such space is already let out to any agency for further allocation to individual clients, the District Election Officer through the municipal authority concerned, if any, should ensure that all political parties and candidates get equitable opportunity to have access to such advertisement space for election related advertisements during the election period."

The defacement of property in terms of Election Commission would be in violation of Disfigurement Act as could be seen from the Annexure appended to the said order. Clause 10 of the order, reads as follows:

Sl.No.	10.
Name of State/UT	Karnataka
Name of Act/Rule	The Karnataka Open Places (Prevention of Disfigurement) Act, 1981 as amended vide Act of 1983.
Extent of Applicability	It extends to Bangalore, Mysore, Hubli, Dharwar, Mangalore and Belgaum

constituted or continued under the Karnataka Municipal Corporation Act, 1976, or under any other law on 5-05-1981 and come into force in the Municipalities, notified areas, sanitary Boards, constituted or continued under the Karnataka Municipalities act, 1964, or under any other law, or in any other local area, on such date as the State Govt. may by notification appoint."

(emphasis added)

The action of putting up buntings and their removal took place between 6 a.m. and 9 a.m., resulting in registration of complaint by Mr.Nisar Ahmed, an Official of the Municipality. The allegation was violation of Section 3 of the Disfigurement Act. Section 3 of the Disfigurement Act, 1981 reads as follows:

"3. Penalty for unauthorized disfigurement by advertisement. – *Whoever by himself or through another person affixes to, or erects, inscribes or exhibits on, any place open to public view any advertisement without the written permission of the local authority having jurisdiction over such area, shall be punished with imprisonment of either description*

for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both:

Provided that nothing in this section shall apply to any advertisement which, -

(i) is exhibited within the window of any building if the advertisement relates to the trade, profession or business carried on in that building; or

(ii) relates to the trade, profession or business carried on within the land or building upon or over which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein or to any sale, entertainment or meeting to be held on or upon or in the same; or

(iii) relates to the name of the land or building upon or over which the advertisement is exhibited, or to name of the owner or occupier of such land or building; or

(iv) relates to the business of a railway administration and is exhibited within any railway station or upon any wall or other property of a railway administration.

(v) is affixed to or exhibited on any ancient and historical monument declared to be of national importance under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (Central Act XXIV of 1958)."

The violation or contravention of the afore-quoted law forms the basis of the complaint registered at 9 a.m. by Sri Nisar Ahmed. The violations alleged in the said complaint which became an FIR in Crime No.223 of 2018, are in terms of Representation of Peoples Act, Disfigurement Act and Section 171H of the IPC. The relevant portion of the FIR reads as follows:

"2. ಢಾಯ್ಲೆ ಏುತ್ತು ಕಲಂಗಳು: REPRESENTATION OF PEOPLE ACT, 1951 & 1988 (U/S- 127A); KARNATKA OPEN PLACE DISFIGUREMENT ACT 1951 & 1981 (U/S- 3); IPC 1860 (U/S- 171 H)

3. (a) ಕೃತ್ಯ ನಡೆದ ದಿನ: Wednesday ದಿನಾಂಕ ದಿಂದ: 18/04/2018

ದಿನಾಂಕ ವರೆಗೆ: 18/04/2018

ವೇಲೆಯಿಂದ:06:00:00 ವೇಲೆಯವರೆಗೆ:06:10:00

(b) ಠಾಣೆಯಲ್ಲಿ ವರ್ತಮಾನ ಸ್ವೀಕರಿಸಿದ ದಿನಾಂಕ:18/04/2018

09:00:00

ಬರವಣಿಗೆಯಲ್ಲಿ / ಹೇಳಿಕೆ : Written

(c) ಪಿಯಾರ್ದುದಾರ / ಬಾತ್ಮೀದಾರ ತಡವಾಗಿ ವರದಿ ಮಾಡಿದಕ್ಕೆ ಕಾರಣಗಳು:

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(d) ಜನರಲ್ ಡೈರಿ ಉಲ್ಲೇಖ ಸಂಖ್ಯೆ ಮತ್ತು ಸಮಯ: 2, 09:00:00

4(a) ಕೃತ್ಯ ನಡೆದ ಸ್ಥಳ: J C Circle, Hosakote Town,
Bengaluru Dist, Karnataka.

(b) ಪೊಲೀಸ್ ಠಾಣೆಯಿಂದ ಇರುವ ದಿಕ್ಕು ಮತ್ತು ದೂರ: Towards
East 1

(c) ಗ್ರಾಮ: HOSAKOTE ಗಸ್ತಿನ ಹೆಸರು: BEAT NO.1

(d) ಸ್ಥಳವು ಬೇರೆ ಪೊಲೀಸ್ ಠಾಣೆ ವ್ಯಾಪ್ತಿಗೆ ಬರುವಂತಹದ್ದು ಆದರೆ ಆ
ಪೊಲೀಸ್ ಠಾಣೆಯ ಹೆಸರು: ಜಿಲ್ಲೆ:

5. ಪಿಯೂದುದಾರ / ಬಾತ್ಮಿದಾರ:

(a) ಹೆಸರು : **Nisar Ahmed** ತಂದೆ / ಗಂಡನ ಹೆಸರು: **Nazeer
Ahmed**

(b) ವಯಸ್ಸು : 55 (c) ವೃತ್ತಿ : **Govt. official
gazetted**

The accused were workers of BJP. The allegations in the
FIR as contained in Clause 10 read as follows:

"10. ಪ್ರಥಮ ವರ್ತಮಾನ ವರದಿಯ ವಿವರಗಳು

ದಿನಾಂಕ 18.04.2018 ರಂದು ಬೆಳಿಗ್ಗೆ 09.00 ಗಂಟೆಗೆ ನಿಸಾರ್
ಅಹಮದ್, 55 ವರ್ಷ, ಪೌರಾಯುಕ್ತರು, ಹೊಸಕೋಟೆ ನಗರ ಸಭೆ ಹಾಗೂ
ಫ್ಲೆಯಿಂಗ್ ಸ್ವಾವಡ್ ತಂಡದ ಮುಖ್ಯಸ್ಥರು, ಹೊಸಕೋಟೆ ವಿಧಾನ ಸಭಾ
ಕ್ಷೇತ್ರ ಸಂಖ್ಯೆ 178, ಮೊಬೈಲ್ ನಂ.9481342786 ರವರು ಠಾಣೆಗೆ ಹಾಜರಾಗಿ
ನೀಡಿದ ದೂರಿನ ಸಾರಾಂಶವೆಂದರೆ ಹೊಸಕೋಟೆ ವಿಧಾನ ಸಭಾ ಕ್ಷೇತ್ರ
ಸಂಖ್ಯೆ 178 ಗೆ ಹಾಗೂ ಫ್ಲೆಯಿಂಗ್ ಸ್ವಾವಡ್ ತಂಡದ ಮುಖ್ಯಸ್ಥರಾಗಿ
ಕರ್ತವ್ಯಕ್ಕೆ ನೇಮಕ ಮಾಡಿದ್ದು, ದಿನಾಂಕ 18.04.2018 ರಂದು ಬೆಳಿಗ್ಗೆ ನಾನು
ಹೊಸಕೋಟೆ ಟೌನ್ ನಲ್ಲಿ ರೌಂಡ್ ಮಾಡಿಕೊಂಡು ಜಿ.ಸಿ.ಸರ್ಕಲಿಗೆ ಬಂದಾಗ
ಜಿ.ಸಿ.ಸರ್ಕಲ್‌ನಲ್ಲಿ ಬಿಜೆಪಿ ಪಕ್ಷದ ಬಂಟಿಂಗ್‌ಗಳನ್ನು ಹಾಕಿದ್ದು

ಬಂಟಿಂಗ್‌ಗಳನ್ನು ಹಾಕಲು ಯಾವುದೇ ಅನುಮತಿ ಪಡೆದಿರುವುದಿಲ್ಲ. ಆದ್ದರಿಂದ ಅನುಮತಿ ಪಡೆಯದೆ ಬಂಟಿಂಗ್‌ಗಳನ್ನು ಹಾಕಿರುವವರ ವಿರುದ್ಧ ಕಾನೂನು ರೀತ್ಯಾ ಕ್ರಮ ಜರುಗಿಸಲು ಕೋರುತ್ತೇನೆ ಇತ್ಯಾದಿಯಾಗಿ ನೀಡಿದ ದೂರಿನ ಮೇರೆಗೆ.”

(emphasis added)

Immediately thereafter, a second complaint came to be registered against the petitioner and several others alleging the offences punishable under Sections 504, 332 and 353 of the IPC, which came to be registered as Crime No.224 of 2018. The second FIR reads as follows:

“1. ಜಿಲ್ಲೆ: **Bengaluru Dist.** ನೃತ್ಯ/ಉಪವಿಭಾಗ: **Hosakote Circle**

ಪೊಲೀಸ್ ಠಾಣೆ: **Hosakote PS**

ಅಪರಾಧ ಸಂಖ್ಯೆ : 0224/2018

ಪ್ರ.ವ.ವ.ದಿನಾಂಕ : 18/04/2018

2. ಕಾಯ್ದೆ ಮತ್ತು ಕಲಂಗಳು: **IPC 1860 (U/S- 504, 332, 353)**

3. (a) ಕೃತ್ಯ ನಡೆದ ದಿನ: **Wednesday** ದಿನಾಂಕ ದಿಂದ: 18/04/2018 ದಿನಾಂಕ

ವರೆಗೆ: 18/04/2018

ವೇಳೆಯಿಂದ:07:45:00

ವೇಳೆಯವರೆಗೆ:07:50:00

(b) ಠಾಣೆಯಲ್ಲಿ ವರ್ತಮಾನ ಸ್ವೀಕರಿಸಿದ ದಿನಾಂಕ:18/04/2018 09:15:00

ಬರವಣಿಗೆಯಲ್ಲಿ / ಹೇಳಿಕೆ : **Written**

(c) ಪಿಯಾರ್‌ದುದಾರ / ಬಾತ್ಮೀದಾರ ತಡವಾಗಿ ವರದಿ ಮಾಡಿದಕ್ಕೆ ಕಾರಣಗಳು:

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(d) ಜನರಲ್ ಡೈರಿ ಉಲ್ಲೇಖ ಸಂಖ್ಯೆ ಮತ್ತು ಸಮಯ: 3, 09:15:00

4(a) ಕೃತ್ಯ ನಡೆದ ಸ್ಥಳ: J C Circle, Hosakote Town, Bengaluru
Dist, Karnataka.

(b) ಪೊಲೀಸ್ ಠಾಣೆಯಿಂದ ಇರುವ ದಿಕ್ಕು ಮತ್ತು ದೂರ: Towards East 1 km

(c) ಗ್ರಾಮ: HOSAKOTE TOWN ಗಸ್ತಿನ ಹೆಸರು: BEAT NO.1

(d) ಸ್ಥಳವು ಬೇರೆ ಪೊಲೀಸ್ ಠಾಣೆ ವ್ಯಾಪ್ತಿಗೆ ಬರುವಂತಹದ್ದು ಆದರೆ ಆ ಪೊಲೀಸ್ ಠಾಣೆಯ ಹೆಸರು: ಜಿಲ್ಲೆ:

5. ಪಿಯಾರ್‌ದುದಾರ / ಬಾತ್ಮೀಬಾರ:

(a) ಹೆಸರು : **Nisar Ahmed** ತಂದೆ / ಗಂಡನ ಹೆಸರು: **Nazeer Ahmed**

(emphasis added)

The allegation at clause 10 in the second FIR reads as follows:

"10. ದಿನಾಂಕ 18.04.2018 ರಂದು ಬೆಳಿಗ್ಗೆ 9.15 ಗಂಟೆಗೆ ನಿಸಾರ್ ಅಹಮ್ಮದ್ ಬಿನ್ ನಜೀರ್ ಅಹ್ಮದ್, 55 ವರ್ಷ, ಪೌರಾಯುಕ್ತರು, ಹೊಸಕೋಟೆ ನಗರ ಸಭೆ ಹಾಗೂ ಪ್ಲೇಯಿಂಗ್ ಸ್ಕ್ವಾರ್ಡ್ ತಂಡದ ಮುಖ್ಯಸ್ಥರು, ಹೊಸಕೋಟೆ ವಿಧಾನ ಸಭಾ ಕ್ಷೇತ್ರ ಸಂಖ್ಯೆ 178, ಮೊಬೈಲ್ ನಂ.9481342786 ರವರು ಠಾಣೆಗೆ ಹಾಜರಾಗಿ ನೀಡಿದ ದೂರಿನ ಸಾರಾಂಶವೆಂದರೆ ಹೊಸಕೋಟೆ ವಿಧಾನ ಸಭಾ ಕ್ಷೇತ್ರ ಸಂಖ್ಯೆ 178 ಗೆ ಪ್ಲೇಯಿಂಗ್ ಸ್ಕ್ವಾರ್ಡ್ ತಂಡದ ಮುಖ್ಯಸ್ಥರಾಗಿ ದುನಾವಣಾಧಿಕಾರಿಯವರು ನೇಮಕ ಮಾಡಿದ್ದು ಅದರಂತೆ ನಾನು ದಿನಾಂಕ 18.04.2018 ರಂದು ಬೆಳಿಗ್ಗೆ ಹೊಸಕೋಟೆ ಟೌನ್‌ನಲ್ಲಿ ರೌಂಡ್‌ನಲ್ಲಿದ್ದಾಗ ಜೆ.ಸಿ.ಸರ್ಕಲಿನಲ್ಲಿ ದಿನಾಂಕ 18.04.2018 ರಂದು ಬಿಜೆಪಿ ಪಕ್ಷದ ರಾಷ್ಟ್ರೀಯ ಅಧ್ಯಕ್ಷರಾದ ಶ್ರೀ ಅಮಿತ್ ಷಾ ರವರು ಹೊಸಕೋಟೆಗೆ ಬರುವ ಕಾರ್ಯಕ್ರಮದ ಅಂಗವಾಗಿ ಬಿಜೆಪಿ

ಪಕ್ಷದ ಬಂಟಿಂಗ್‌ಗಳನ್ನು ಹಾಕಿದ್ದು, ಬಂಟಿಂಗ್‌ಗಳನ್ನು ಹಾಕಲು ಅನುಮತಿ ಪಡೆದಿರುವುದಿಲ್ಲ. ಅನಧಿಕೃತವಾಗಿ ಹಾಕಿದ್ದ ಬಂಟಿಂಗ್‌ಗಳನ್ನು ತೆರವುಗೊಳಿಸುವಂತೆ ಹೊಸಕೋಟೆ ನಗರ ಸಭೆ ಆರೋಗ್ಯ ನಿರೀಕ್ಷಕರಾದ ನುಸರತ್ ಬಾನು ರವರಿಗೆ ತಿಳಿಸಿದ್ದು ಅದರಂತೆ ಅವರು ಸಿಬ್ಬಂದಿಗಳಾದ ವಿ.ನಾಗರಾಜ, ಚನ್ನದೇಶವ, ರಮೇಶ್, ಅಶೋಕ್, ಹಾಗೂ ಇನ್ನಿತರೆ ಪೌರಕಾರ್ಮಿಕರೊಂದಿಗೆ ಇದೆ ದಿನ ಬೆಳಿಗ್ಗೆ ಸುಮಾರು 6.45 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ಜೆ.ಸಿ.ಸರ್ಕಲಿಗೆ ಹೋಗಿ ಬಂಟಿಂಗ್‌ಗಳನ್ನು ತೆರವುಗೊಳಿಸುತ್ತಿದ್ದಾಗ ಅಲ್ಲಿಗೆ ಬಂದ ಬಿಜೆಪಿ ಪಕ್ಷದ ಮುಖಂಡರಾದ ಬಿ.ವಿ.ಬೈರೇಗೌಡ, ಕೇಶವಮೂರ್ತಿ, ಸುಬ್ಬರಾಜು ಹಾಗೂ ಇನ್ನಿತರರು ಅಡ್ಡಪಡಿಸಿರುತ್ತಾರೆ ತೆರವುಗೊಳಿಸಲು ಬಿಡುತ್ತಿಲ್ಲ ಎಂದು ನುಸರತ್ ಬಾನು ರವರು ನನಗೆ ಫೋನ್ ಮಾಡಿ ತಿಳಿಸಿದ್ದರು. ನಾನು ಇದೇ ದಿನ ಬೆಳಿಗ್ಗೆ 7:45 ಗಂಟೆಗೆ ಜೆ ಸಿ ಸರ್ಕಲಿಗೆ ಹೋಗಿ ನಗರಸಭೆ ಸಿಬ್ಬಂದಿಯೊಂದಿಗೆ ಅನಧಿಕೃತವಾಗಿ ಹಾಕಿದ್ದ ಬಂಟಿಂಗ್‌ಗಳನ್ನು ತೆರವುಗೊಳಿಸಲು ಹೋದಾಗ ಬಿಜೆಪಿ ಪಕ್ಷದ ಮುಖಂಡರುಗಳು ಆದ ಬಿ.ವಿ.ಬೈರೇಗೌಡ, ಸುಬ್ಬರಾಜು, ಕೇಶವಮೂರ್ತಿ ಹಾಗೂ ಇನ್ನಿತರು ಸೇರಿ ಬಾಯಿಗೆ ಬಂದಂತೆ ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದು ಬೈರೇಗೌಡರ ಜೊತೆಯಲ್ಲಿದ್ದ ಕಮ್ಮವಾರಿಪೇಟೆ ವಾಸಿ ಅಶೋಕ್ ರವರು ಕೈಗಳಿಂದ ನನಗೆ ಹೊಡೆದು ಹಲ್ಲೆ ಮಾಡಿರುತ್ತಾರೆ, ಚುನಾವಣಾ ಕರ್ತವ್ಯಕ್ಕೆ ಹಾಗೂ ಸರ್ಕಾರಿ ಕರ್ತವ್ಯಕ್ಕೆ ಅಡ್ಡಿಪಡಿಸಿರುವ ಮೇಲ್ಕಂಡವರ ವಿರುದ್ಧ ಕಾನೂನು ರೀತಿ ಕ್ರಮ ಜರುಗಿಸಲು ಕೋರುತ್ತೇನೆ ಎಂದು ಇತ್ಯಾದಿಯಾಗಿ ನೀಡಿದ ದೂರಿನ ಮೇರೆಗೆ.”

If both the FIR in Crime No.223 of 2018 and FIR in Crime No.224 of 2018 are read in juxtaposition, what would unmistakably emerge is that, both the complaints are by the very same complainant, which pertain to the same incident and same time and date of incident. Once having registered a complaint on a particular premise of an incident, it was not open to the complainant to have registered another complaint on the very same incident

regarding what happened during the very same period. The complainant cannot be permitted to improve on the earlier complaint and as an afterthought bring in other offences in the second complaint becoming a second FIR on sameness. It would amount to permitting multiple FIRs' on the very same - incident, time of the incident, date of the incident and by the very same complainant. It would be hit by the doctrine of sameness as held by the Apex Court in the afore-extracted judgments. Therefore, insofar as Crime No.224 of 2018 is concerned, the criminal trial cannot be permitted to continue as it would fall foul of the cardinal principle of violation of fundamental rights of a citizen and the law laid down by the Apex Court, as aforesaid.

13. A counter complaint is always permissible on the same incident as there can be complaints and two FIRs', if it is a case of complaint and counter complaint or a case of consequential complaint. These are not the facts in the

case at hand. Therefore, without a shadow of doubt it would hit by '**doctrine of sameness**'.

14. Insofar as judgments relied on by the learned counsel appearing for the respondents are concerned, there should be no qualm about the enunciation of law in the judgments relied on in the case of **MANOJ KUMAR** or **RAM LAL NARANG**, as they were either a case of counter complaint or a case of consequential complaint. The case which the learned counsel relied on with particular reference in the case of **MANOJ KUMAR** (*supra*), the very fact that the case was for a different purpose altogether can be gathered in paras 1 and 2 of the said judgment, which read as follows:

"1. The present matter is placed before us by virtue of referral order dated 22-05-2014 wherein the following question was placed for reference before us that, "whether the second FIR and the investigation in pursuance of further information thereof should be straightaway quashed or should it require a scrutiny during trial of the permissible matter of

prejudice, and truthfulness of the evidence collected on the basis of second FIR”.

2. But it is to be noted that, during the course of arguments the counsel from both sides admitted that, no second FIR was registered in the present case. Although the reference was made to us, to adjudicate the above question of law, basing on the submission we can conclude that the issue of second FIR does not arise in the present matter. Therefore, we are proceeding to adjudicate the matter on merits.”

(emphasis supplied)

The Apex Court at the 2nd paragraph clearly holds that there was no second FIR registered. Therefore, the judgment is clearly inapplicable to the facts of the case at hand. The remaining judgments relied on by the learned counsel for the 1st respondent are the ones that are relied on by the learned senior counsel appearing for the petitioner. Therefore, the judgments relied on by the learned counsel for the petitioner are the ones that are applicable to the facts of the case at hand and not the ones that are relied on by the learned counsel appearing for the first respondent.

15. For the aforesaid reasons, I pass the following:

ORDER

- i. The criminal petition is allowed.
- ii. The proceedings instituted before the Principal Civil Judge (Senior Division) & Chief Judicial Magistrate, Hoskote, Bangalore Rural in Crime No.224 of 2018 registered at Hoskote Police Station for offences punishable under Sections 504, 332 and 353 of the Indian Penal Code stands quashed *qua* the petitioner.

**Sd/-
JUDGE**

nvj/CT:MJ