CASE NO.:
Appeal (crl.) 689 of 2001
Special Leave Petition (crl.) 1522 of 2000

PETITIONER:
T.T.ANTONY

Vs.

RESPONDENT:
STATE OF KERALA & ORS.

DATE OF JUDGMENT: 12/07/2001

BENCH:
S.S.M.Quadri, S.N.Phukan

JUDGMENT:

J U D G M E N T

SYED SHAH MOHAMMED QUADRI, J.

Leave is granted in all the special leave petitions.

These four appeals arise out of the common judgment of a Division Bench of the High Court of Kerala at Ernakulam in WA Nos. 2708/1999, 2709/1999, 2710/1999, 8/2000, 52/2000 and 200/2000 dated February 29, 2000. Criminal Appeal NO. of 2001 (arising out of SLP(Crl.) No.1522/2000) is filed by T.T. Antony, Deputy Collector and Executive Magistrate, Kannur; Civil Appeal No. of 2001 (Arising out of SLP(C) No. 8840/2000) is filed by fourteen police constables; and Criminal Appeal Nos. of 2001 (Arising out of SLP(Crl.) Nos. 2724-25/2000 are filed by the State of Kerala. These appeals relate to the same incident and raise common questions of facts and law so they are being dealt with together.

The relevant facts, giving rise to these appeals, which have a strong political backdrop, need to be noticed for appreciating the contentions of the parties.

The Communist Party of India (Marxist), C.P.I.(M), is said to have a strong hold in Kannur District of the State of Kerala. One Mr.M.V. Raghavan who was once a comrade-in-arms in C.P.I.(M) and was its M.L.A. for over 15 years, broke away from that party and formed a new party -- 'The Communist Marxist Party' (CMP). He was elected as an M.L.A on the ticket of CMP from the Azheekkode Constituency, Kannur District. The CMP became a constituent of United Democratic Front (UDF) which formed the Government and was in power in the State of Kerala during the relevant period. He was a Minister in UDF Government having the portfolio of Co-operation and Ports. This gave rise to retribution in the rank and file of C.P.I.(M) particularly in the youth wing (DYFI) which took upon itself to prevent his visits to Kannur District. In January 1993 during his visit to Azhikal (Kannur District) a few country-made bombs were hurled on him. In view of that incident, the then Government ordered elaborate security arrangements for all his visits to Kannur District. It

appears, much against the advice of the district administration, the Minister finalised his visit, for inauguration of the 'evening branch of the Co-operative Urban Bank' in the Alakkandy Complex at Kuthuparamba - Tellicherry Road (Kannur District) on November 25, 1994. Far from being auspicious, it turned out to be an ill-starred day not only for the victims of police excesses and their families but also for the public and the public authorities as five persons died and six persons were injured in the police firing purportedly resorted to for the protection of the Minister and of public and private properties. In the melee which preceded the police firing more than hundred persons suffered injuries in the lathi charge and a few police personnel also sustained injuries.

The police opened fire at two places - (i) in the proximity of the town hall on the orders of the Executive Magistrate and the Deputy Superintendent of Police and (ii) in the vicinity of police station, Kuthuparamba on the orders of the Superintendent of Police. In respect of the occurrence near the town hall, the Assistant Superintendent of Police of Thalassery registered Crime No.353/94 of Kuthuparamba Police Station under Sections 143, 147, 148, 332, 353,324, 307 read with Section 149 IPC, Section 3(2)(e) of P.D.P.P.Act and Sections 3 and 5 of Explosive Substances Act against eight named and many other unidentifiable persons belonging to CPI(M) including the President of DYFI. In regard to the occurrence in the vicinity of the police station, the Superintendent of Police registered Crime No.354/94 of Kuthuparamba Police Station under Sections 143, 147, 148, 427, 307 read with Section 149 IPC and Section 3(2)(e) of P.D.P.P.Act against unidentifiable persons of CPI(M) for forming an unlawful assembly. Both the said crimes were registered on the date of the incident -- on November 25, 1994. On that day itself the Executive Magistrate submitted a report to the District Collector who in turn informed the Commissioner and Secretary to the Government regarding the police firing at Kuthuparamba (Ex.P3). On November 26, 1994, the Superintendent of Police sent a report of the incident of the previous day to Director General of Police, Kerala (Ex.P-4).

That incident gave rise to public uproar and demand for judicial inquiry. On January 20, 1995, the then Kerala Government of UDF appointed Mr.K.Padmanabhan Nair, the learned District & Sessions Judge, Thalassary as Commission of Inquiry under Section 3(I) of the Commission of Inquiry Act, 1952 to inquire into :

"(i) The circumstances which led to the firing by police on 25.11.94 at Kuthuparamba Kannur District which resulted in the death of five persons and injuries to many others.

(ii) Whether the said firing by the police was justified.
(iii) The person/persons responsible for the firing.
(iv) Such other matters as the incidental to and arising out of the above."

The 1996 assembly elections in the State of Kerala resulted in the change of the Government. The UDF lost to LDF which came to power and headed by CPI(M) formed the Government. On May 27, 1997 the Commission submitted its report to the LDF Government of Kerala recording the following findings :

"(1) The uncomprising attitude of Sri M.V.Raghavan, former Minister of Co-operation and Ports to attend the inaugural function of the opening of the evening branch of the Co-operative Urban Bank, Koothuparamba inspite of the prior informations of the possible consequences of his visit to Kuthuparamba is the root cause for the firing. The avoidable lathi charge which ignited the incidents at the instance and leadership of Sri Abdul Hakkim Bathery. Dy.S.P.Kannur paved way for the firing.

The failure on the part of Sri T.T.Antony, Dy.Collector and Executive Magistrate to evaluate and take stock of the situation ended in the police firing resulting in the death of five persons and injuries to many others.

(2) The police firing at Kuthuparamba on 25.11.94 was not justified.

(3) Sri M.V.Raghavan, the former Minister for Co-operation and Ports. Sri Abdul Hakkim Bathery Dy.S.P.Kannur and Sri T.T.Antony former Dy.Collector, Kannur were responsible for the police firing."

The report of the Commission was accepted by the Government. On June 30, 1997, as a follow-up action, the Additional Chief Secretary to the Government of Kerala, while enclosing a copy of the said report, wrote to the Director General of Police regarding acceptance of the report of the Commission by the Government and directed that legal action be taken against those responsible on the basis of findings of the Commission. The Director General of Police issued orders to the Inspector General of Police (North Zone), on July 2, 1997, to register a case immediately and have the same investigated by a senior officer. On July 4, 1997 the Inspector General of Police noted that firing without justification by which people were killed amounted to murder and issued direction to the Station House Officer to register a case under the appropriate sections and forward the investigation copy of the F.I.R. to the Deputy Inspector General of Police, North Zone, for urgent personal investigation. On that information the Deputy Superintendent of Police, Thalassery, registered Crime No.268/97 of Kuthuparamba Police Station under Section 302, IPC arraigning the said M.V.Raghavan, A.H.Bathery and T.T.Antony as accused 1 to 3 respectively (Ex.P-6). On September 29, 1998, the DIG of Police who investigated Crime No.268/97 filed interim report (Ex.P-8) in the court of the Judicial First Class Magistrate, Kuthuparamba implicating 19 police officers including R.A. Chandrasekhar and fourteen constables who are parties to these appeals.

At that stage three Writ Petitions - O.P.No.3408/98 by the Executive Magistrate (T.T. Antony); O.P.No.24401/98 by the Assistant Superintendent of Police (R.A.Chandrasekhar) and O.P.No.23702/99 by 14 constables (Damodaran and 13 others) - were filed in the High Court of Kerala praying to quash the F.I.R. in Crime No.268/97; alternatively for directing investigation into the said crime by the C.B.I.

It is noticed that cases registered as Crime Nos.353/94 and 354/94 of Kuthuparamba Police Station which were mainly against the workers and DYFI (youth wing of CPI(M)) came to be closed as being false and undetected some time in April 1999 and June 1999 respectively after the said Crime No. 268/97 of Kuthumparamba Police Station was registered.

The learned Single Judge who dealt with the said O.Ps thought it fit, having regard to peculiar facts and circumstances of the case, to have the case re-investigated by the C.B.I. instead of quashing the FIR at the threshold and accordingly disposed of the writ petitions on November 29, 1999. Against the said judgment of the learned Single Judge, six writ appeals were filed - three by the said writ petitioners and three by the State of Kerala. A Division Bench of the High Court, by its judgment dated February 29, 2000, confirmed in part the order of the learned Single Judge in regard to quashing the FIR in the said Crime No.268/97 of Kuthuparamba Police Station by ordering that as against the Assistant Superintendent of Police the FIR be quashed; however, it directed a fresh investigation by the State Police headed by one of the three senior officers named in the judgment instead of a

fresh investigation by CBI. Dissatisfied by the said judgment of the Division Bench, the appellants preferred the above-mentioned appeals.

Mr.R.F.Nariman, the learned senior counsel appearing for the Executive Magistrate, has argued that the allegations against him do not constitute any offence; they relate to discharge of his official duties in evaluating the law and order situation at Kuthuparamba in the following background : a mob of about 2000 DYFI workers assembled in front of Town Hall, the venue of the Minister's programme, and on arrival of the Minister, the crowd surged forward which prompted the Dy.S.P. and the police party under him, who were on escort duty with the Minister, to lathi charge; the agitated crowd turned violent and pelted stones at the police and motorcade of the Minister, set fire the Government vehicles parked in the nearby electricity office and indulged in arson; on finding that both the lathi charge as well as tear gas shells failed to control the mob, he ordered the ASP to disperse the mob by resorting to firing. It was pointed out that the Inquiry Commission also found that DYFI had resorted to a very crude and uncivilized form of agitation. The said action of the Executive Magistrate, it was submitted, being protected under Section 132 of the Code of Criminal Procedure, could never be termed as an offence so implicating him as an accused was wholly unjustified and illegal as such criminal proceedings against him ought to be quashed. It was brought to our notice that immediately after the police firing, the appellant submitted a complete report of the incident to the District Collector on November 26, 1994; the Additional District Magistrate and the S.P. had also sent their reports of the incident. The Collector in turn reported the incident to the Government on November 27, 1994. It was highlighted that all the police personnel on duty on the scene of occurrence were rewarded for their meritorious services and the constables who were injured were paid Rs.500/- each ex-gratia. The wind changed after the change in the Government; it resulted in arresting the said Executive Magistrate on the charge under Section 302 of Indian Penal Code and shielding the S.P. who also ordered firing which caused the death of five persons by charging him only under Section 201 I.P.C. as he turned an approver. It is also submitted that the Executive Magistrate has been under suspension from 1997 and thus lost one chance of promotion and if he is put to the ordeal of trial on the basis of the final report submitted by the new investigating team, which is a mere re-production of the first report, his career will be seriously affected.

Mr.Mahendra Anand, the learned Senior counsel, has argued that out of 350 police personnel deployed to take care of law and order in Kuthuparamba, fourteen constables for whom he is appearing, are arbitrarily booked under Section 302 read with Section 34 I.P.C.; they were under the leadership of the ASP and obeyed his orders; the criminal proceedings against him were quashed by the Division Bench of the High Court on the ground that he was exonerated by the Commission of Inquiry; all those reasons which justify quashing of the proceedings against ASP should equally apply to them and therefore as against them also the proceeding should have been quashed. The constables, it is submitted, were given cash award for good performance of their duties during very difficult situation by the then Government but after the change of the Government they are made to face the trial when indeed there could be no case against them in view of Sections 76 and 79 I.P.C. and that their action cannot be termed as offence much less murder under Section 302 I.P.C. The investigation has proceeded with pre-determined conclusions; the FIRs which were lodged on the date of the occurrence (FIR Nos.353/94 and 354/94) against DYFI, the workers and the leaders of CPI(M), were reported as false and got closed on their coming into power subsequently; the SP who was in overall charge of the law and order and who ordered firing which resulted in the death of five persons turned approver giving statement contrary to the report submitted by him earlier, is charged only under Section 201 I.P.C. but

on the basis of tainted investigations the constables are charged under Section 302 I.P.C. It is further submitted that to concoct the evidence against the appellants-accused, two special prosecutors have been appointed to assist the investigators. The alternative contention urged on their behalf is that as on the face of it the investigation has not been fair and impartial and is also vitiated by mala fide and irregularity, fresh investigation by CBI may be ordered.

The learned Solicitor General appearing for the State of Kerala has contended that when the Division Bench suggested that a fresh team should investigate the crime, none of the accused objected to that course of action on June 29, 2000; the new team after due investigation filed the final report in the court of the Magistrate and it is only thereafter that this Court passed interim order on July 24, 2000, therefore, they cannot be permitted to challenge the report in this court or seek direction for fresh investigation by CBI; as the FIR discloses a cognizable offence, no challenge against investigation into the offence is permissible. The FIR, it is submitted, is not necessarily against an offender but is in respect of an offence which is cognizable and requires investigation and collection of evidence by the investigating agency. Both the learned Single Judge as well as the learned Division Bench of the High Court did not find any mala fide intention in filing the FIR; they took note of the fact that the FIR was lodged on the basis of findings recorded by the Inquiry Commission that the firing was unjustified, therefore, there could be no interference with the investigation by the police in view of the guidelines laid down by this Court in Bhajan Lal's case. Inasmuch as after investigation the final report has been filed and the learned Magistrate has taken cognizance and issued summons, the trial court can consider the pleas of the accused under Section 227 of Cr.P.C. but at this stage neither the investigation can be challenged in these appeals nor can the sufficiency of the evidence be gone into by the High Court/the Supreme Court except to see whether a cognizable offence has been disclosed. Insofar as the appeal against quashing of criminal proceedings against the ASP by the Division Bench is concerned, it is contended that the reasons given by the High Court are untenable. It is submitted that the order directing firing at the mob was unjustified as the crowd was not violent; there was no danger to the life of the Minister as the crowd had withdrawn from the Town Hall and that the lathi charge and the firing started by the escort police party headed by Dy.SP without lawful orders from competent authority; the escort party left the Minister and went far away to the area under the control of the ASP who did not prevent the escort party from resorting to unjustified and unlawful firing on the crowd and that the ASP himself also ordered firing on peaceful crowd of people. The learned Solicitor General urged that the facts disclosed in the investigation showed complicity of ASP in the crime but as the criminal proceedings against him were quashed by the Division Bench of the High Court, the material could not be referred to in the final report nor could he be included in the array of the accused. It is argued that the Commission of Inquiry has no judicial powers and its report is purely recommendatory and not effective proprio vigore and that the findings of the Commission have also no evidentiary value, hence the accused persons cannot claim to be exonerated on the basis of its findings particularly when, in the investigation, sufficient material has come to light pointing to the involvement of Deputy SP, ASP and others. As none of the requirements for quashing the investigation is present, submits the learned Solicitor General, the High Court erred in interfering with the investigation of the cognizable offence by quashing the proceedings against the ASP. It is argued that the High Court committed a serious illegality in coming to the conclusion that once the Government accepts the Report of Commission, the investigating agency cannot give a go by to it and failed to notice that the role of the Government in any investigation is only supervisory and it cannot dictate either the mode or the outcome of the investigation, therefore the investigating agency rightly

conducted investigation uninfluenced by acceptance of Commission's report by the Government. Regarding the Executive Magistrate, it is submitted, that he is a party to the conspiracy which resulted in the death of innocent persons and that the legality of the FIR and the investigation cannot be challenged or examined on the basis of disputed questions of fact in proceedings under Article 226/227 of the Constitution. Inasmuch as in compliance with Section 132(1) Cr.P.C. sanction of the State Government has been obtained, the question whether the Executive Magistrate is protected under Section 129 of Cr.P.C. is a matter of defence in the trial and cannot be gone into at this stage. With regard to the police constables, it is contended that though they belong to different groups, namely, 'escort' party and 'law and order' party they subsequently merged into one group and resorted to indiscriminate firing; in any event they are not entitled to the benefit of Section 132(2) of Cr.P.C. which is applicable only to the armed forces; further the police constables who participated in unjustified firing cannot be permitted to plead defence of obedience to the order of the superior. It is argued that the material collected in investigation reveals that the Dy. SP took rifle from one Abdul Salam to whom it was officially issued and handed it over to Damodaran who had no authority to use the rifle for firing thus he resorted to deliberate illegal firing. The persons who fell to the shots and died were found to be far away from the Town Hall, the place where the Minister was to address a meeting, which shows that callous and indiscriminate firing was resorted to by the police in violation of the guidelines in the Police Manual. It is fairly conceded by the learned Solicitor General that if this Court is not inclined to interfere with the judgment under challenge in Chandrasekhar's case, the case of the constables cannot be dealt with differently. It is further submitted that no allegation was made against any of the members of the new investigating team; even in the appeal, there is no mention of any bias or malice against any of the officers of the new investigating team, therefore, at this stage the plea for a fresh investigation by a different agency, CBI, is not called for nor is it permissible in view of the dictum of this Court in Chandrasekhar vs. State of Kerala [1998 (5) SCC 223]. From the fact that the case diary runs into six volumes, submits the learned Solicitor General, it is evident that thorough investigation has been made and at this stage no useful purpose will be served by directing a fresh investigation by a new agency which will be a futile exercise. It is argued that by re-production of a portion of the report of the earlier investigating team in the final report submitted by the new team, which deals with narration of sequence of events, non-application of mind cannot be inferred.

At the re-hearing of the appeals, the learned counsel for the parties addressed arguments on the question of the legality of the second FIR registered as Crime No.268/97 and the investigation that followed it in respect of the cognizable offence mentioned therein after about three years of the occurrence when in that regard two FIRs pertaining to two different places were already filed and registered as Crime No.353/94 and Crime No.354/94 on the date of the occurrence -- November 25, 1994 and the investigations in those cases were pending. The learned counsel for the accused have argued that registration of a fresh information in respect of the very same incident as an FIR under Section 154 of Cr.P.C. is not valid, therefore all the steps taken pursuant thereto including investigation are illegal and liable to be quashed. The learned Solicitor General countered them stating that no illegality can be attached to the second FIR or the investigation made thereunder as nothing prevented the investigating agency from making further investigation on the basis of the first FIR in view of the subsequent information received and forwarding a further report; at any rate, the objection is merely one of a form and not of substance and it makes no difference so far as the final report is concerned.

On these contentions, four points arise for determination:

(i) whether registration of a fresh case, Crime

No.268/97, Kuthuparamba Police Station on the basis of the letter of the DGP dated July 2, 1997 which is in the nature of the second FIR under Section 154 of Cr.P.C., is valid and can it form the basis of a fresh investigation?

(ii) whether the appellants in Appeal Nos. _____(arising out of SLP(Crl.) 1522/00 and SLP(C) 8840/00) and respondent in Appeal Nos. (arising out of SLP(Crl.) Nos. 2724-25/00) have otherwise made out a case for quashing of proceedings Crime No.268/97 Kuthuparamba Police Station ;

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

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

As points (i) and (ii) are interconnected, it will be convenient to deal with them together. Inasmuch as the germane question relates to registration of an F.I.R., we may usefully refer to Section 154 of the Code of Criminal Procedure, 1973 (Cr.P.C.) which reads as under :

"154. Information in cognizable cases. -
(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

Sub-section (1) of Section 154 of Cr.P.C. contains four mandates to an officer in-charge of a police station. The first enjoins that every information relating to commission of a cognizable offence if given orally shall be reduced to writing and the second directs that it be read over to the informant; the third requires that every such information whether given in writing or reduced to writing shall be signed by the informant and the fourth is that the substance of such

information shall be entered in the station house diary. It will be apt to note here a further directive contained in sub-section (1) of Section 157 of Cr.P.C. which provides that immediately on receipt of the information the officer in charge of the Police Station shall send a report of every cognizable offence to a Magistrate empowered to take cognizance of the offence and then proceed to investigate or depute his subordinate officer to investigate the facts and circumstances of the case. Sub-section (2) entitles the informant to receive a copy of the information, as recorded under sub-section (1), free of cost. Sub-section (3) says that in the event of an officer in charge of a police station refusing to record the information as postulated under sub-section (1), a person aggrieved thereby may send the substance of such information in writing and by post to the Superintendent of Police concerned who is given an option either to investigate the case himself or direct the investigation to be made by a police officer subordinate to him, in the manner provided by Cr.P.C., if he is satisfied that the information discloses the commission of a cognizable offence. The police officer to whom investigation is entrusted by the Superintendent of Police has all the powers of an officer in charge of the police station in relation to that offence.

An information given under sub-section (1) of Section 154 of Cr.P.C. is commonly known as First Information Report (F.I.R.) though this term is not used in the Code. It is a very important document. And as its nick name 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 into motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 of Cr.P.C., as the case may be, and forwarding of a police report under Section 173 of Cr.P.C. 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 of Cr.P.C. 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 - F.I.R. postulated by Section 154 of Cr.P.C. 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 of Cr.P.C. No such information/statement can properly be treated as an F.I.R. 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 the Cr.P.C. Take a case where an FIR mentions cognizable offence under Section 307 or 326 I.P.C. and the investigating agency learns during the investigation or receives a fresh information that the victim died, no fresh FIR under Section 302 I.P.C. 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) of Cr.P.C., as the case may be. It is of course permissible for the investigating officer to send up a report to the concerned Magistrate even earlier that investigation is being directed against the person suspected to be the accused.

The scheme of the Cr.P.C. is that an officer in charge of a Police Station has to commence investigation as provided in Section 156 or 157 of Cr.P.C. on the basis of entry of the First Information

Report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of evidence collected he has to form opinion under Section 169 or 170 of Cr.P.C., as the case may be, and forward his report to the concerned Magistrate under Section 173(2) of Cr.P.C. However, even after filing such a report if he comes into possession of further information or material, he need not register a fresh FIR, he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 Cr.P.C.

From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156,157, 162, 169, 170 and 173 of Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus there can be no second F.I.R. 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. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a 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 Cr.P.C.

The learned Solicitor General relied on the judgment of this Court in Ram Lal Narang & Ors. Vs. State (Delhi Administration [1979 (2) S.C.C. 322] (referred to as Narangs case) to contend that there can be a second F.I.R. in respect of the same subject matter. In that case the contention urged by the appellant was that the police had committed illegality, acted without jurisdiction in investigating into the second case and the Delhi Court acted illegally in taking cognizance of that (the second) case. A reference to the facts of that case would be interesting. Two precious antique pillars of sand stone were deposited in the court of Ilaqa Magistrate, Karnal, as stolen property. One N.N. Malik filed an application before the Magistrate seeking custody of the pillars to make in detail study on the pretext that he was a research scholar. It appears that the then Chief Judicial Magistrate of Karnal, (H.L. Mehra), was a friend of Malik. At the instance of Mehra the said Ilaqa Magistrate ordered that the custody of the pillars be given to Malik on his executing a bond. About three months thereafter Malik deposited two pillars in the court of Ilaqa Magistrate, Karnal. After sometime it came to light that the pillars returned by Malik were not the original genuine pillars but were fake pillars. An F.I.R. was lodged against both Malik and Mehra under Section 120-B read with Sections 406 and 420 of I.P.C. alleging conspiracy to commit criminal breach of trust and cheating. The C.B.I. after necessary investigation filed charge sheet in the court of Special Magistrate, Ambala, against both of them. Ultimately on the application of the public prosecutor the case was permitted to be withdrawn and the accused were discharged. Sometime later the original genuine pillars were found in London which led to registering an F.I.R. in Delhi under Section 120-B read with Section 411 of I.P.C, and Section 25(1) of the Antiquities and Art Treasures Act, 1972 against three persons who were brothers (referred to as 'Narangs'). The gravamen of the charge against them was that they, Malik and Mehra, conspired together to obtain custody of the genuine pillars, got duplicate pillars made by experienced sculptors and had them substituted with a view to smuggle out the original genuine pillars to London. After issuing process for appearance of Narangs by the Magistrate at Delhi, an application was filed for dropping the proceedings against them on the ground that the entire second investigation was illegal as the case on the same facts was already

pending before Ambala Court, therefore, the Delhi Court acted without jurisdiction in taking cognizance of the case on the basis of illegal investigation and the report forwarded by the police. The Magistrate referred the case to the High Court and Narangs also filed an application under Section 482 of Cr.P.C. to quash the proceedings. The High Court declined to quash the proceedings, dismissed the application of Narangs and thus answered the reference. On appeal to this Court it was contended that the subject-matter of the two F.I.Rs. and two charge-sheets being the same there was an implied bar on the power of the police to investigate into the subsequent F.I.R. and the court at Delhi to take cognizance upon the report of such information. This Court indicated that the real question was whether the two conspiracies were in substance and truth the same and held that the conspiracies in the two cases were not identical. It appears to us that the Court did not repel the contention of the appellant regarding the illegality of the second FIR and the investigation based thereon being vitiated, but on facts found that the two FIRs in truth and substance were different - the first was a smaller conspiracy and the second was the larger conspiracy as it turned out eventually. It was pointed out that even under the Code of 1898 after filing of final report there could be further investigation and forwarding of further report. The 1973 Cr.P.C. specifically provides for further investigation after forwarding of report under sub-section (2) of Section 173 of Cr.P.C. and forwarding of further report or reports to the concerned Magistrate under Section 173(8) of Cr.P.C. It follows that if the gravamen of the charges in the two FIRs - the first and the second - is in substance and truth the same, registering the second FIR and making fresh investigation and forwarding report under Section 173 Cr.P.C. will be irregular and the Court can not take cognizance of the same.

On a perusal of the judgment of this Court in M.Krishna vs. State of Karnataka [1999 (3) SCC 247], we do not find anything contra to what is stated above. The case is distinguishable on facts of that case. In the case on hand the second FIR is filed in respect of the same incident and on the same facts after about three years. The right of the police to investigate into a cognizable offence is a statutory right over which the court does not possess any supervisory jurisdiction under the Cr.P.C.. In Emperor vs. Khwaja Nazir Ahmad [AIR (32) 1945 PC 18], the Privy Council spelt out the power of the investigation of the police, as follows :

"In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court."

This plenary power of the police to investigate a cognizable offence is, however, not unlimited. It is subject to certain well recognised limitation. One of them, is pointed out by the Privy Council, thus :

"if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation."

Where the police transgresses its statutory power of investigation the High Court under Section 482 Cr.P.C. or Article 226/227 of the Constitution and this Court in appropriate case can interdict the investigation to prevent abuse of the process of the Court or otherwise to secure the ends of justice.

In State of Haryana vs. Bhajan Lal & Ors. [1992 Suppl.(1)

SCC 335], after exhaustive consideration of the decisions of this Court in State of West Bengal vs. Swapan Kumar Guha (1982) 1 SCC 561; S.N.Sharma vs. Bipen Kumar Tiwari (1970) 1 SCC 653; R.P.Kapur vs. State of Punjab (1960) 3 SCR 388; Nandini Satpathy vs. P.L.Dani (1978) 2 SCC 424 and Prabhu Dayal Deorah vs. District Magistrate, Kamrup (1974) 1 SCC 103], approving the judgment of the Privy Council in Khwaja Nazir Ahmad's case (supra), it was concluded in para 102 as follows :

"In the backdrop of the interpretation of the various relevant provisions of the code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the

concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge."

The above list, as noted, is illustrative and not exhaustive. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court. There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narangs' case (supra) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C. or under Article 226/227 of the Constitution.

Coming to the facts of this case, which are not free from political overtones, the incident which gave rise to registering of FIRs, took place on November 25, 1994 on the occasion of the visit of the Minister to Alakkandy Complex at Kuthuparamba, Tellicherry Road (Kannur District) for inauguration of the evening branch of the Co-operative Urban Bank. The events that developed there led to firing by police at two places -- (i) in the vicinity of town hall for which FIR was lodged and Crime No.353/94 under Sections 143, 147, 148, 332, 353, 324, 307 read with Section 149 IPC, Section 3(2)(e) of P.D.P.P.Act and Sections 3 and 5 of Explosive Substances Act, was registered and (ii) in the vicinity of the Police Station, Kuthuparamba in respect of which FIR was filed and Crime No.354/94 of Kuthuparamba Police Station under Sections 143, 147, 148, 307 and 427 read with Section 149 IPC and Section 3(2)(e) of P.D.P.P.Act was registered. While the investigations on the basis of the said FIRs were pending, the report of Mr.K.Padmanabhan Nair, Inquiry Commission, was submitted to the Government. On June 30, 1997, the Additional Chief Secretary wrote to the Director-General of Police that the Government had accepted the report of the Commission and directed that the legal action be taken against those responsible on the basis of the findings of the Commission. On July 2, 1997, the Director-General of Police, however, wrote to Inspector General of Police (North Zone) to register a case immediately and have the same investigated by a senior officer. Two days thereafter, the Inspector General of Police added his own remarks - "firing without

justification by which people were killed amounted to murder" - and ordered the Station House Officer to register a case under the appropriate sections and forward the investigation copy of the FIR to the Deputy Inspector General of Police (North Zone) for urgent personal investigation. On the date when the Additional Chief Secretary wrote to the Director-General of Police, the investigations initiated in the said two crimes relating to the same incident were in progress. The investigating agency should have taken advantage of the report of the Commission for a proper further investigation into the case. On the facts which might come to light during investigation, if necessary, the investigating agency should have altered the offences under appropriate section of the relevant Acts and concluded the investigations. In view of the orders of the Director General of Police to register a case and on the further direction of the Inspector General of Police, the officer in-charge of Police Station registered Crime No.268/97 of Kuthuparamba Police Station. A comparison and critical examination of the FIRs in Crime Nos.353 & 354 of 1994 on one hand and FIR in Crime No.268/97 on the other, discloses that the date and place of occurrence are the same; there is alluding reference to the deaths caused due to police firing in the FIRs in Crime Nos. 353 and 354 of 1994. In any event, that fact was evident on the scene of occurrence. The narration of events, which we need not repeat here, are almost the same. The additional averments in Crime No.268/97 are based on the findings in the report of the Commission. Having regard to the test laid down by this Court in Narangs'case (supra), with which we are in respectful agreement, we find that in truth and substance the essence of the offence in Crime Nos. 353 and 354 of 1994 is the same as in Crime No. 268 of 1997 of Kuthuparamba Police Station. In our view, in sending information in regard to the same incident, duly enclosing a copy of the report of the commission of inquiry, to the Inspector General of Police for appropriate action, the Additional Chief Secretary adopted the right course of action. Perhaps the endorsement of the Inspector General of Police for registration of a case misled the subordinate police officers and the said letter with regard to the incident of November 25, 1994 at Kuthuparamba was registered again under Section 154 of Cr.P.C. which would be the second FIR and, in our opinion, on the facts of this case, was irregular and a fresh investigation by the investigating agency was unwarranted and illegal. On that date the investigations in the earlier cases (Crime Nos.353 and 354 of 1994) were pending. The correct course of action should have been to take note of the findings and the contents of the report, streamline the investigation to ascertain the true and correct facts, collect the evidence in support thereof, form an opinion under Sections 169 and 170 Cr.P.C., as the case may be, and forward the report/reports under Section 173(2) or Section 173(8) Cr.P.C. to the concerned Magistrate. The course adopted in this case, namely, the registration of the information as the second FIR in regard to the same incident and making a fresh investigation is not permissible under the scheme of the provisions of the Cr.P.C. as pointed out above, therefore, the investigation undertaken and the report thereof cannot but be invalid. We have, therefore, no option except to quash the same leaving it open to the investigating agency to seek permission in Crime No.353/94 or 354/94 of the Magistrate to make further investigation, forward further report or reports and thus proceed in accordance with law. Regarding point No.3, the principles as to the position of Commission of Inquiry appointed under the Commissions of Inquiry Act, the report and finding recorded by the Commission are too well-settled to admit of any elaborate discussion except to reiterate them here. As long back as in 1904, the Privy Council in Re: Maharaja Madhava Singh [31 Indian Appeals 239 (PC)] laid down,

"....it is sufficient to say that the Commission in question was one appointed by the Viceroy himself for the information of his own mind, in order that he should not act in his

political and sovereign character otherwise than in accordance with the dictates of justice and equity, and was not in any sense a Court.....".

A Division Bench of the Nagpur High Court in M.V.Rajwade, I.A.S., District Magistrate vs. Dr.S.M.Hassan & Ors. [AIR 1954 Nagpur 71] following the said judgment of the Privy Council, held that the Commission was a fact finding body meant only to instruct the mind of the Government without producing any document of a judicial nature and that findings of the Commission of Inquiry were not definitive like a judgment. It was also pointed out that there was no accuser, no accused and no specific charges for trial; nor was the Government, under the law, required to pronounce, one way or the other, on the findings of the Commission. That judgment was approved by various judgments of this Court.

In Shri Ram Krishna Dalmia vs. Shri Justice S.R.Tendolkar & Ors. [1959 SCR 279], a Constitution Bench of this Court while considering the constitutional validity of the Commissions of Inquiry Act, indicated that the Commission is merely to investigate, record its findings and make its recommendations which are not enforceable proprio vigore and that the inquiry or report cannot be looked upon as judicial inquiry in the sense of its being an exercise of judicial function properly so called. The recommendations of the Commission of Inquiry are of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it has in view. It would be appropriate to notice the following observations of the Constitution Bench :

"But seeing that the Commission of Inquiry has no judicial powers and its report will purely be recommendatory and not effective proprio vigore and the statement made by any person before the Commission of Inquiry is, under section 6 of the Act, wholly inadmissible in evidence in any future proceedings, civil or criminal, there can be no point in the Commission of Inquiry making recommendations for taking any action "as and by way of securing redress or punishment" which, in agreement with the High Court, we think, refers, in the context, to wrongs already done or committed, for redress or punishment for such wrongs, if any, has to be imposed by a court of law properly constituted exercising its own discretion on the 'facts and circumstances of the case and without being in any way influenced by the view of any person or body, howsoever august or high powered it may be."

In State of Karnataka vs. Union of India Anr. [1977 (4) SCC 608], the observations referred to above were approved by a seven-Judge Bench of this Court. In Sham Kant vs. State of Maharashtra [1992 Suppl.(2) SCC 521], it was held that the findings of the Inquiry Commission would not be binding on the Supreme Court. There, the question was whether an undertrial died due to injuries sustained by him in police custody. The report of the Commission of Inquiry mentioned that the injuries possibly might have been sustained by him even prior to his arrest. In the appeal arising out of conviction and sentence of the concerned police officer, this Court, on material before it, found that the victim died on account of ill treatment meted out by the police and held that the findings of the Commission would not bind this Court.

It is thus seen that the report and findings of the Commission of Inquiry are meant for information of the Government. Acceptance of the report of the Commission by the Government would only suggest

that being bound by the Rule of law and having duty to act fairly, it has endorsed to act upon it. The duty of the police - investigating agency of the State - is to act in accordance with the law of the land. This is best described by the learned law Lord - Lord Denning - in R. v. Metropolitan Police Commissioner [1968 (1) All E.L.R. 763 at p.769] observed as follows :

"I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or no suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself."

Acting thus the investigating agency may with advantage make use of the report of the Commission in its onerous task of investigation bearing in mind that it does not preclude the investigating agency from forming a different opinion under Section 169/170 of Cr.P.C. if the evidence obtained by it supports such a conclusion. In our view, the Courts civil or criminal are not bound by the report or findings of the Commission of Inquiry as they have to arrive at their own decision on the evidence placed before them in accordance with law.

For the aforementioned reasons, the registration of the second FIR under Section 154 of Cr.P.C. on the basis of the letter of the Director General of Police as Crime No.268/97 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 Crime No.353/94 and Crime No.354/94 for making further investigations and filing a further report or reports under Section 173(8) of Cr.P.C. 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. 268/97 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.

On this conclusion it is unnecessary to deal with the other aspects of the case including the fourth point, namely to direct investigation of the case by the C.B.I.

Criminal Appeal No. of 2001 [arising out of SLP (Crl.) No.1522/2000] and Civil Appeal No. of 2001 [arising out of SLP(C) No.8840/2000] filed by the appellants [T.T.Antony and Damodaran P. & Ors.respectively] are allowed. Criminal Appeal Nos. of 2001 [arising out of SLP(Crl.) Nos.2724-25/2000] filed by the State of Kerala are dismissed.

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2001
(Arising out of SLP (Crl.) No.1522/2000)
T.T.Antony ... Appellant

Versus

State of Kerala & Ors. ... Respondents
W I T H

CIVIL APPEAL NO. OF 2001
(Arising out of SLP (C) No.8840/2000)

JUDIS