



2026:AHC-LKO:5910

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/s 482 No. - 3721 of 2021

Vishal Kumar Saroj

.....Applicant(s)

Versus

State of U.P. Thru. Prin. Secy. Home. Lko and another

.....Opposite Party(s)

Counsel for Applicant(s)	: Lalji Yadav, Arun Sinha
Counsel for Opposite Party(s)	: G.A., Ashish Kumar Maurya, Sushil Kumar Singh

Reserved on: 13.01.2026

Pronounced on: 28.01.2026

Uploaded on: 28.01.2026 (AFR)

HON'BLE BRIJ RAJ SINGH, J.

1. Heard Sri Siddharth Sinha along with Sri Lalji Yadav, learned counsel for the applicant, Sri Rao Narendra Singh, learned A.G.A. for the State and Sri Sushil Kumar Singh, learned counsel for opposite party no.2.
2. This application has been filed seeking quashing of the impugned summoning order dated 10.1.2020 passed by the Civil Judge (Junior Division)/Judicial Magistrate, Lalganj, Pratapgarh, as well as entire criminal proceedings of Complaint No.188 of 2017, under Sections 323, 325, 326, 504, 506 I.P.C. (Anil Singh vs. Vikas and others), pending in the court of Civil Judge (Junior Division)/Judicial Magistrate, Lalganj, Pratapgarh as well as order dated 01.04.2021 passed by the Civil Judge (Junior Division)/Judicial Magistrate, Lalganj, Pratapgarh, by which bailable warrant was issued against the applicant.
3. Brief facts of the case are that on 28.05.2015, brothers and father of the applicant were brutally murdered by the brother and nephew of

opposite party no.2 and an FIR was lodged by the applicant. After lodging the said FIR, out of retaliation, opposite party no.2 filed an application under Section 156(3) Cr.P.C. for lodging the FIR against the applicant and 15 other persons and in pursuance of the direction of the court, FIR was lodged at Case Crime No.344 of 2015 under Sections 147, 148, 149, 323, 504, 506, 308, 324, 326 I.P.C. at Police Station Lalganj, District Pratapgarh. The investigation was concluded and final report was filed by the Investigating Officer before the court. Thereafter, opposite party no.2 moved a protest application before the Magistrate against the said FIR. After considering the objections, the Magistrate passed an order on 8.4.2017, accepting the final report submitted by the police. Against the order dated 8.4.2017, opposite party no.2 filed Criminal Revision No.111 of 2017 before the court of Sessions, which has also been dismissed on 01.08.2023. The opposite party no.2 also moved an application for further investigation before the Chief Minister of U.P., who directed the Director General of Police, U.P., to take appropriate action on the said application. The matter was inquired by the Superintendent of Police, Kaushambi, who had submitted a report on 27.6.2016 mentioning that final report was filed after fair investigation. The opposite party no.2 filed a criminal complaint before the Magistrate on 17.11.2017 on the same very incident, which was mentioned in the FIR lodged by opposite party no.2 and after recording the statements under Sections 200 and 202 Cr.P.C., summon has been issued which is under challenge.

4. Learned counsel for the applicant has submitted that if the opposite party no.2 has filed application under Section 156(3) Cr.P.C. raising his grievance and concerned court considered the same and directed for lodging the first information report and thereafter by the order of the Court, Circle Officer investigated the matter and has submitted the final report against which, opposite party no.2 filed protest application on oath wherein he again raised the same grievance and the competent court was pleased to consider his grievance and passed the order dated 08.04.2017 thereby accepted the final report by holding that the investigation does not suffer from any infirmity, then applicant cannot file complaint on the same

set of facts. He further submits that the revision filed by the opposite party No.2 against the order dated 08.04.2017 has also been dismissed on merit by the Additional Sessions Judge/F.T.C.-I, Pratapgarh.

5. Further submission of learned counsel for the applicant is that in Paras 18, 27, 30 & 32 of the judgment of the Supreme Court in the case of ***Subrata Chaudhary @ Santosh Chaudhary & others Versus The State of Assam & another***, 2024 INSC 834 has held that once the negative report/final report on the original complaint was accepted after rejecting the written objection/protest petition then on the same set of facts, complaint under Section 2(D) Cr.P.C. is not maintainable as second complaint. He further submits that opposite party No.2 has filed the complaint dated 17.11.2017, in which he has not disclosed the material facts and this Court as well as the Supreme Court in different cases held that if any person did not approach the court with clean hands, he cannot be entitled for any relief. It has been further submitted that the complaint of the opposite party No.2 is based on suppression of material facts as well as second complaint as held by the Supreme Court in the case of *Subrata Chaudhary @ Santosh Chaudhary* (supra), therefore the complaint and proceedings of the complaint are liable to be quashed.

6. To buttress his argument, learned counsel for the applicant has relied upon the judgment of the Supreme Court in the cases of ***Kusha Duruka vs. The State of Odisha***, 2024 INSC 46; ***Rekha Sharad Ushir vs. Saptashrunji Mahila Nagari Sahkari Patsansta Ltd.***, 2025 INSC 399; ***Amar Singh vs. Union of India and others***, (2011) 7 SCC 69; ***Ramjas Foundation and another vs. Union of India and others*** (2010) 14 SCC 38; ***Subrata Chaudhary @ Santosh Chaudhary & others Versus The State of Assam & another***, 2024 INSC 834. He has also relied upon the judgment of this Court in ***Smt. Ramendri vs. State of U.P. and another*** (Application U/s 482 No.5094 of 2021), decided on 24.2.2022; and ***Yogeshwar Raj Nagar and another vs. State of U.P. and another*** (Matters Under Article 224 No.4173 of 2018)(Neutral Citation No.2025:AHC:31994).

7. On the other hand, learned counsel for opposite party no.2 has opposed the submissions made on behalf of the applicant and has submitted that the respectful submission of opposite party no.2/complainant in his criminal complaint, under Chapter XV and Chapter XVI of Cr.P.C., referable to Sections 200, 202, 203 and 204 Cr.P.C., is that the second Final Report/Closure Report dated 07.01.2017 in FIR/Police Case Crime No.344 of 2015, P.S. Lalganj, District Pratapgarh, and the filing of a protest application by opposite party no.2 against the said second Final Report/Closure Report, as well as the order dated 08.04.2017 accepting the Final Report/Closure Report, would not acquire the character of a criminal complaint within the meaning of Chapter XV and Chapter XVI of Cr.P.C. It is submitted that a criminal complaint contemplates an enquiry or trial by the Court itself into an offence, including examination of witnesses in support of the complaint and consideration of other materials such as documentary and medical evidence. The order passed by the Magistrate under Section 203 Cr.P.C. (dismissal of complaint) or under Section 204 Cr.P.C. (issuance of process) is a judicial order passed by a trial court in the exercise of its judicial wisdom. Such an order cannot be equated with the acceptance of a Final Report/Closure Report and protest application, as the conclusion of the Investigating Officer accepted by the Magistrate does not acquire the character of *res judicata*. Therefore, the Final Report/Closure Report and protest application cannot be termed as a first criminal complaint, and consequently, when a regular criminal complaint is filed by the complainant, the same cannot be termed as a second criminal complaint.

8. Learned counsel for opposite party no.2 has further submitted that the power and jurisdiction exercised by the Magistrate while considering a police report, particularly a Final Report/Closure Report submitted by the Investigating Officer, is not based upon deposition of witnesses in the witness box. It is submitted that in a criminal complaint under Section 200 Cr.P.C., the statements recorded before the Court under Sections 200 and 202 Cr.P.C. constitute evidence within the meaning of the Indian Evidence Act. In contrast, the material collected by the Investigating Officer in the

case diary and the statements recorded under Section 161 Cr.P.C. (Section 180 BNSS) do not constitute evidence. At best, such material can be termed as investigative material, to which no legal evidentiary value can be attached. Even the protest application filed by the first informant does not acquire the character of evidence. Thus, there is a vast difference between a police case diary and a criminal complaint, and the statements recorded during enquiry or trial under Sections 200 and 202 Cr.P.C. stand on a much higher pedestal than the material collected during investigation.

9. It has further been submitted by learned counsel for opposite party no.2 that the jurisdiction exercised by the Magistrate while considering the Final Report/Closure Report submitted by the police and the protest application filed by the first informant is administrative in nature. He further submits that in the present case, the order dated 08.04.2017 passed by the Magistrate accepting the Closure/Second Final Report reflects perversity, particularly in respect of the injuries suffered by five injured persons, as noted by Dr. A.K. Gupta, who recorded injuries caused by a sharp-edged weapon. Despite this, the Magistrate treated the injuries of injured Ajay Singh (injury nos. 2 and 3) and injury no.1 of injured Vivek in a casual manner, without proper appreciation, thereby demonstrating a perverse approach. It is further submitted that the Magistrate did not consider the medical reports submitted by Swaroop Rani Nehru Medical College, Prayagraj, and recorded findings based on a perverse interpretation of the FIR, although the Magistrate himself referred to the Investigating Officer's report noting the existence of a cross-case.

10. It is further submitted that the Magistrate, in his order dated 08.04.2017, relied upon the alleged statement of the Deputy Superintendent of Police favouring the accused persons, without considering its relevance. The statement of the Deputy S.P. was recorded nearly three months after the incident, and therefore, its relevance to the offence is questionable. The Magistrate appears to have been influenced by the delay in filing the application under Section 156(3) Cr.P.C. Consequently, the order dated 08.04.2017 accepting the Final Report/Closure Report cannot be termed as a well-reasoned order. The

Magistrate also failed to correctly consider the protest application dated 29.03.2017 filed by opposite party no.2. It is thus submitted that the acceptance of the Final Report/Closure Report dated 08.04.2017 and the dismissal of the criminal revision on 01.08.2023 by the Additional Sessions Judge/FTC-1, Pratapgarh, would not create any hurdle in filing the present criminal complaint under Chapter XV and Chapter XVI of Cr.P.C., referable to Section 200 Cr.P.C.

11. Learned counsel for opposite party no.2 has placed reliance upon the judgment of the Supreme Court in ***Mahesh Chand v. B. Janardhan Reddy and Another, (2003) 1 SCC 734***, and has submitted that the Supreme Court held that even after dismissal of a criminal complaint under Chapter XV of Cr.P.C., a second criminal complaint on the same facts would not be barred if the previous order of dismissal under Section 203 Cr.P.C. was passed on an incomplete record, on a misunderstanding of the nature of the complaint, or where the order was manifestly erroneous. A second complaint would be barred only where the previous complaint was dismissed after full consideration on merits. In the said case, the complainant initially lodged an FIR and during investigation filed a criminal complaint. Thereafter, the Investigating Officer submitted a Final Report dated 29.07.1997 before the Magistrate. The complainant also filed a protest application, whereupon the Magistrate accepted the Final Report and simultaneously considered the complainant's criminal complaint. Subsequently, a criminal complaint dated 08.11.2002 under Section 200 Cr.P.C. was filed, in which the accused were summoned. The accused challenged the proceedings by filing a petition under Section 482 Cr.P.C. before the High Court of Andhra Pradesh, which held that the complaint was barred as a second complaint.

12. Learned counsel for opposite party no.2 has also placed reliance upon ***Vishnu Kumar Tiwari v. State of U.P., Criminal Appeal No.1015 of 2019 (arising out of SLP (Crl.) No.9654 of 2017)***, decided on 09.07.2018. In the said case, the Supreme Court held in paragraph 51, while taking note of the judgment of the Additional Sessions Judge, that the complainant could very well file a criminal complaint under Section 200 Cr.P.C. In the

said case, the complainant had filed an FIR under Section 304-B IPC. The Investigating Officer submitted a Final Report, which was accepted by the Chief Judicial Magistrate after dismissal of the protest application. The criminal revision filed by the complainant was also dismissed. A writ petition filed before the High Court was allowed, but the said judgment was challenged before the Supreme Court. The Supreme Court held that the High Court was incorrect in holding that the protest application was not considered. However, in paragraph 51 of the judgment, the Supreme Court clearly observed that the complainant was at liberty to file a criminal complaint under Section 200 Cr.P.C., despite acceptance of the Final Report and dismissal of the protest application.

13. Learned counsel for opposite party no.2 further submits that the judgment of the Supreme Court in ***Subrata Choudhury @ Santosh Choudhury*** (supra), relying upon ***Samta Naidu v. State of M.P., 2020 (1) ACC 660 (SC)***, is based on different facts. In ***Samta Naidu*** (supra), the first criminal complaint was dismissed under Section 203 Cr.P.C., after full consideration on merits, concluding that no prima facie case is made out against the accused-Samta Naidu & Dileep Naidu. Thereafter, second Criminal Complaint Case No.9296 of 2014 was filed by complainant on the same allegation. The Supreme Court held on the basis of previous judgments of the Supreme Court that if the first complaint has been disposed off on full consideration of the case of criminal complaint on merits, then the second criminal complaint on the same facts and same allegations would be barred and would not be maintainable. However, in ***Subrata Choudhury*** (supra), the factual matrix involved registration of an FIR, submission of a Final Report, filing of a protest application, acceptance of the Final Report, and dismissal of revision, after which the informant chose to file a criminal complaint under Section 200 Cr.P.C. It is submitted that the Supreme Court judgment dated 05.11.2024 did not consider the three-Judges' Bench decision in ***Mahesh Chand*** (supra). Therefore, the judgment in ***Subrata Choudhury @ Santosh Choudhury*** (supra) cannot be applied to the present case and this application deserves to be dismissed.

14. I have considered the submissions made by learned counsel for the parties and have gone through the record. The Supreme Court in the case of **Subrata Choudhury @ Samtosh Chourdhury** (supra) has been pleased to hold in Para-21 that in view of dismissal of the first complaint after considering the protest petition and hearing the complainant, the second complaint filed by the second respondent was not maintainable. The Supreme Court has also considered the judgment of **Mahesh Chand** (supra) and thereafter has come to the conclusion that the second complaint is not maintainable.

15. The factual backdrop in the case of **Subrata Choudhury @ Samtosh Chourdhury** (supra) is relevant to be noted that the Chief Judicial Magistrate accepted the final report on 06.06.2011 after hearing the complainant's protest. On 20.07.2011, the second respondent filed the second complaint with the same set of allegation against the appellant. In Paras 21, 27, 30 and 32, the Supreme Court held:

"21. The appellants herein contended that the second complaint carries the same set of allegations and in view of the dismissal of the first complaint after considering the protest petition and hearing the complainant, the second complaint filed by the second respondent dated 20.07.2011 is not maintainable. To buttress the said contention, the learned counsel relied on the decisions of this Court in Shivshankar Singh v. State of Bihar & Anr., H.S. Bains v. State (Union Territory of Chandigarh), Bindeshwari Prasad Singh v. Kali Singh and Poonam Chand Jain v. Farzu.

27. Now, we will have to proceed with the appeal bearing in mind the exposition of law in Samta Naidu's case (supra) that if earlier disposal of the complaint was on merits and in a manner known to law, the second complaint on 'almost identical facts' which were raised in the first complaint would not be maintainable. "If the core of both the complaints is same, the second complaint ought not to be entertained," it was further held therein. In the light of the factual narration with respect to the disposal of the original complaint dated 11.11.2010, made hereinbefore and in view of the courses open to a Magistrate on receipt of a negative report and applying the exposition of law in Samta Naidu's case (supra) with respect to the maintainability of a second complaint we have no hesitation to hold that the maintainability of the second complaint dated 20.07.2011 filed by the second respondent would depend upon the question whether the core of the original complaint dated 11.11.2010 and the second complaint dated 20.07.2011 is the same as the disposal of the complaint dated 11.11.2010 was on merits and in a manner known to law. In this context, it is also to be noted after considering the final report, the protest complaint and admittedly, upon hearing the counsel for the

complainant the protest petition was rejected not only by finding that the investigation suffers from no infirmity but also by finding that since it was conducted properly, no order for further investigation is invited and further that the materials are not sufficient to take cognizance. As noted earlier, despite the said nature of the order dated 06.06.2011 the second respondent-complainant has not chosen to challenge the same but, chosen only to file a fresh complaint, viz., the second complaint dated 20.07.2011.

30. We have already referred to the manner the original complaint was disposed of earlier. The submissions made on behalf of the parties, the documents annexed thereto and above all, the order dated 12.07.2012 of the learned CJM, would reveal that the second complaint was filed on the same set of facts contained in the first complaint and the second one was filed after the dismissal of the protest petition and the consequential acceptance of the Final Report in the first complaint. It is not in dispute that subsequent to the rejection of the protest petition and acceptance of the Final Report (Annexure P-5) as per order dated 06.06.2011, the matter was not taken forward further by the respondent/complainant. The second complaint was filed thereafter on 20.07.2011 reiterating, rather, reproducing the complaint dated 11.11.2010 and further adding allegations, virtually made by way of the protest petition dated 05.05.2011 that the investigation pursuant to the original complaint was done perfunctorily. It is to be noted that the said allegation against the investigation was also rejected earlier as per order dated 06.06.2011 holding that the investigation did not suffer from any infirmity and further that it did not deserve further investigation. Now, a comparison of the first complaint dated 11.11.2010 and the second complaint dated 20.07.2011 shows that they contain the same set of allegations against the same accused as has been observed by the learned CJM in the order dated 12.07.2012. The learned CJM, in the order dated 12.07.2012 after referring to various decisions observed and held thus:-

“After the original complaint has been duly investigated by the police and Final Report submitted therein has been accepted by the Court in a Judicial Proceeding; therefore, in my considered view it cannot be re-opened by the means of filing of a second complaint in respect of the same facts and circumstances. In this connection, reliance can be placed on (Sic : in) a Judgment of the Hon'ble Patna High Court reported in 1981 Cri LJ 795 Bhuveneswar Prasad Singh v. State of Bihar.

The Hon'ble Patna High Court relying upon a decision of the Hon'ble Apex Court reported in AIR 1968 SC 117 Abhinandan Jha v. Dinesh Mishra had held-

Where the Final Report by police holding the case against the accused persons to be untrue; was accepted by the Magistrate earlier, than the complaint petition was filed against the accused, the Magistrate would not be justified in taking cognizance on the basis of the complaint petition in respect of the same facts constituting the offence which were mentioned in the final form where a Judicial order was passed by accepting final form.”

32. In the context of the contentions, it is to be noted that the case at hand stands on a firmer footing than the case involved in Samta Naidu's case (supra). Paragraph 16 of Samta Naidu's case (supra), as

extracted above, would reveal that the earlier complaint involved in that case was disposed of not on technical ground but on finding that no prima facie case was made out and in the second complaint the nature of the supporting materials were furnished and this Court observed that it could not be said that those materials furnished and relied upon in the second complaint could not have been procured earlier. Thereafter, finding that both the complaints were identical the finding of the High Court that the second complaint was maintainable was rejected and the subject complaint was dismissed as not being maintainable. In the case at hand, a perusal of protest petition dated 05.05.2011 and the second complaint dated 20.07.2011 would reveal that the second complaint filed after acceptance of final report filed pursuant to the investigation in the FIR registered based on the complaint dated 11.11.2010, that too after considering the narazi petition and hearing the complainant (the second respondent herein) the second complaint dated 20.07.2011 has been filed reproducing the first complaint dated 11.11.2010 and stating that the said complaint was not properly investigated and action should be taken on the second complaint dated 20.07.2011. In fact, the indubitable position is that the core of the original complaint dated 11.11.2010 and the second complaint dated 20.07.2011 is the same."

16. Sri S.K. Singh, learned counsel for opposite party no.2 has invited attention of the Court to Para-24 of the judgment of **Subrata Choudhury @ Samtosh Chourdhury** (supra) and has submitted that the law laid down in the case of **Samta Naidu** (supra) has been considered by the Supreme Court and Para-12 of the said case, which is quoted in the judgment of **Subrata Choudhury @ Samtosh Chourdhury** (supra) has been pointed out to the extent that it is settled law that second complaint can lie only on fresh facts or even on the previous facts only if a special case is made out. There is no provision in the Code or in any other statute which debars the applicant for preferring a complaint on the same allegation if the first complaint did not result in a conviction or acquittal or even discharge. The Court has also considered the said issue wherein it is observed that in *Pramatha Nath Talukdar vs. Saroj Ranjan Sarkar*, AIR 1962 SC 876, there is no bar to entertain a second complaint on the same facts but it can be entertained only in exceptional circumstances.

17. In the case of **Mahesh Chand** (Supra), a fact is again relevant to be mentioned that the appellant in that case filed protest petition on 02.09.1998 against the final report submitted by the Investigating Officer in FIR under Sections 420, 426, 447, 448 IPC. The complaint filed by the

appellant was closed and the said order was not not questioned by him. On 8.11.2002, the third complaint was filed by the appellant herein purported to be under Section 200 Cr.P.C. whereupon summons were issued upon the respondent. The Supreme Court in the said case has held that it is settled law that there is no statutory bar in filing second complaint on the same facts where the previous order was passed on an incomplete record or on misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. The same can be looked into in the second complaint. In Paras 15 and 19, the Supreme Court held:

"15. The learned Judge posed the question as to what would be those exceptional circumstances. Noticing the decisions in Queen Empress v. Dolegobind Dass [ILR (1901) 28 Cal 211 : 5 CWN 169] , In re, Koyassan Kutty [AIR 1918 Mad 494 : 18 Cri LJ 329] , Kumariah v. Chinna Naicker [AIR 1946 Mad 167 : 47 Cri LJ 595] and several other decisions, the learned Judge came to the conclusion: (AIR p. 889, paras 22-23)

"It will be noticed that in the test thus laid down the exceptional circumstances are brought under three categories: (1) manifest error, (2) manifest miscarriage of justice, and (3) new facts which the complainant had no knowledge of or could not with reasonable diligence have brought forward in the previous proceedings. Any exceptional circumstances coming within any one or more of the aforesaid three categories would fulfil the test. In Ram Narain v. Panachand Jain [AIR 1949 Pat 256 : 50 Cri LJ 524 : ILR 27 Pat 986] it was observed that an exhaustive list of the exceptional circumstances could not be given though some of the categories were mentioned. One new category mentioned was where the previous order of dismissal was passed on an incomplete record or a misunderstanding of the nature of the complaint. This new category would perhaps fall with the category of manifest error or miscarriage of justice.

It appears to me that the test laid down in the earliest of the aforesaid decisions, Queen Empress v. Dolegobind Dass [ILR (1901) 28 Cal 211 : 5 CWN 169] , is really wide enough to cover the other categories mentioned in the later decisions. Whenever a Magistrate is satisfied that the previous order of dismissal was due to a manifest error or has resulted in a miscarriage of justice, he can entertain a second complaint on the same allegations even though an earlier complaint was dismissed under Section 203 of the Code of Criminal Procedure."

Yet again in Bindeshwari Prasad case [(1977) 1 SCC 57 : 1977 SCC (Cri) 33 : (1977) 1 SCR 125] this Court followed Pramatha Nath Talukdar case [AIR 1962 SC 876 : 1962 Supp (2) SCR 297 : (1962) 1 Cri LJ 770] holding: (SCC p. 59, para 4)

“[I]t is now well settled that a second complaint can lie only on fresh facts or even on the previous facts only if a special case is made out.”

19. Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate under Section 204 CrPC may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in *Pramatha Nath Talukdar case* [AIR 1962 SC 876 : 1962 Supp (2) SCR 297 : (1962) 1 Cri LJ 770] second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. In the facts and circumstances of this case, the matter, therefore, should have been remitted back to the learned Magistrate for the purpose of arriving at a finding as to whether any case for cognizance of the alleged offence had been made out or not."

18. In the case of **Vishnu Kumar Tiwari** (supra), again the Supreme Court has observed that acceptance of final report would not stand in the way of taking cognizance of protest/complaint application. Paras 25 and 39 of the said case reads as under:

25. In *Rakesh v. State of U.P.* [*Rakesh v. State of U.P.*, (2014) 13 SCC 133 : (2014) 5 SCC (Cri) 611] , on the basis of a first information report lodged by the police after investigation, a final report came to be filed. The Magistrate accepted the final report. He, simultaneously, directed that the case be proceeded with as a complaint case. Statements under Sections 200 and 202 of the Code were recorded. The High Court turned down the plea of the accused to whom summons were issued. It was the contention of the accused that having accepted a negative final report, the court could not take action on the basis of the protest petition filed by the complainant. This Court refers to the judgment in *H.S. Bains* [*H.S. Bains v. State (UT of Chandigarh)*, (1980) 4 SCC 631 : 1981 SCC (Cri) 93] . The principles of law laid down in para 12 of *Mahesh Chand* [*Mahesh Chand v. B. Janardhan Reddy*, (2003) 1 SCC 734 : 2003 SCC (Cri) 425] , which we have also referred to earlier, came to be approved. The order of the High Court was approved.

39. In *Mahesh Chand* [*Mahesh Chand v. B. Janardhan Reddy*, (2003) 1 SCC 734 : 2003 SCC (Cri) 425] , no doubt the matter was commenced by a first information report and followed up by the complainant in the court under Section 190(1)(a) of the Code. On the first

information report, after investigation, a final report was filed. The final report came to be accepted and it was closed. This is despite the fact that there was the protest petition. A third complaint, as it were, came to be filed by the complainant. This Court went on to hold that acceptance of the final report would not stand in the way of taking cognizance on a protest/complaint petition."

19. In **Samta Naidu** (supra), the Supreme Court has declared the law that there is no prohibition in filing or entertaining the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint. In Para 15, the Supreme Court held:

"15. Reliance was, however, placed by Ms Meenakshi Arora, learned Senior Advocate, on para 18 of the decision of this Court in Shivshankar Singh [Shivshankar Singh v. State of Bihar, (2012) 1 SCC 130 : (2012) 1 SCC (Cri) 513] . In that case, a protest petition was filed by the complainant even before a final report was filed by the police. While the said protest petition was pending consideration, the final report was filed, whereafter the second protest petition was filed. Challenge raised by the accused that the second protest petition was not maintainable, was accepted by the High Court [Anand Kumar Singh v. State of Bihar, 2009 SCC OnLine Pat 857 : (2010) 1 PLJR 167] . In the light of these facts the matter came to be considered by this Court as under : (Shivshankar Singh case [Shivshankar Singh v. State of Bihar, (2012) 1 SCC 130 : (2012) 1 SCC (Cri) 513] , SCC pp. 133-34 & 136, paras 7 & 18-19)

"7. Shri Gaurav Agrawal, learned counsel appearing for the appellant has submitted that the High Court failed to appreciate that the so-called first protest petition having been filed prior to the filing of the final report was not maintainable and just has to be ignored. The learned Magistrate rightly did not proceed on the basis of the said protest petition and it remained merely a document in the file. The second petition was the only protest petition which could be entertained as it had been filed subsequent to the filing of the final report.

18. Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit.

19. *The protest petition can always be treated as a complaint and proceeded with in terms of Chapter XV CrPC. Therefore, in case there is no bar to entertain a second complaint on the same facts, in exceptional circumstances, the second protest petition can also similarly be entertained only under exceptional circumstances. In case the first protest petition has been filed without furnishing the full facts/particulars necessary to decide the case, and prior to its entertainment by the court, a fresh protest petition is filed giving full details, we fail to understand as to why it should not be maintainable.”*

20. It is relevant to be noted that in ***Subrata Choudhury @ Samtosh Chourdury*** (supra), the judgments of ***Mahesh Chand*** (supra) and ***Samta Naidu*** (supra) have been considered and thereafter the Court has held that the second complaint is not maintainable. The important fact is also to be flagged that the factual aspect of the present case is identical to the case of ***Subrata Choudhury @ Samtosh Chourdury*** (supra). Therefore, this Court cannot take a different opinion and the law declared by the Supreme Court in ***Subrata Choudhury @ Samtosh Chourdury*** (supra) is binding.

21. In view of the aforesaid discussion, this application deserves to be allowed. Accordingly, the application is ***allowed*** and the entire criminal proceedings of Complaint No.188 of 2017, under Sections 323, 325, 326, 504, 506 I.P.C. (Anil Singh vs. Vikas and others), pending in the court of Civil Judge (Junior Division)/Judicial Magistrate, Lalganj, Pratapgarh as well as impugned orders dated 01.04.2021 and 10.1.2020, are quashed.

22. Before parting, one fact is also important to be noted that the revision preferred by opposite party no.2 has been dismissed by the revisional court against acceptance of final report vide order dated 1.8.2023. No one can be left remedy less. In case opposite party no.2 is aggrieved, he may take recourse to law against the revisional order dated 1.8.2023.

(Brij Raj Singh,J.)

Dated: January 28, 2026

Sachin