

Neutral Citation No. - 2024:AHC:5384-DB

**AFR**

**Reserved on: 12.12.2023**

**Delivered on: 11.1.2024**

**In Chamber**

**Case:** CRIMINAL MISC. WRIT PETITION No. - 17595 of 2023

**Petitioner :** Ajay Rai

**Respondent :** State Of U.P. And 4 Others

**Counsel for Petitioner :** Awadhesh Kumar Malviya

**Counsel for Respondent :** G.A.

**Hon'ble Vivek Kumar Birla, J.**

**Hon'ble Vinod Diwakar, J.**

*(Delivered by Hon'ble Vinod Diwakar, J.)*

1. Heard Shri Awadhesh Kumar Malviya, learned counsel for the petitioner, Shri Rajesh Kumar Madhesia, learned State Law Officer for the State-respondents, and perused the record.
2. By way of the instant petition, the petitioner has challenged the legality and correctness of the impugned F.I.R. registered as Case Crime No.0182 of 2023, under section 409 IPC at P.S. Dullahpur, District Ghazipur.
3. In brief, the prosecution case is that during an inspection by the Additional District Co-operative Officer at Sikhadi Samiti, the Officiating Secretary i.e. the petitioner was observed engaging in certain illegalities. Immediately, the matter was reported to the Chairman of the Samiti, leading to the petitioner's suspension. Subsequently, vide order dated 23<sup>rd</sup> November 2022, by invoking section 66 of the Uttar Pradesh Co-operative Societies Act, 1965, a detailed inquiry was conducted by a three-member committee. The

findings of the inquiry revealed that the petitioner had misappropriated a sum of Rs.16,17,833/-.

**4.** In support of the prayer, learned counsel for the petitioner has made the following submissions:

**4.1** The petitioner has been falsely implicated by the department with ulterior motives.

**4.2** Upon reading the F.I.R., no offence under section 409 IPC is made out at its face.

**4.3** The registration of the F.I.R. is in contravention of the Government Order dated 16.8.2000, which stipulates that in such cases, the Regional Deputy Commissioner, Co-operative, Varanasi, is empowered to register the F.I.R. However, in this instance, the impugned F.I.R. was registered based on the complaint of the Additional District Co-operative Officer, Jakhniya, Ghazipur.

**4.4** The petitioner asserts that, in accordance with Sections 103 and 105 of the Uttar Pradesh Co-operative Societies Act, 1965, requisite approval from the Registrar, Co-operative, was not obtained prior to the registration of the impugned F.I.R.

**4.5** The petitioner emphasizes that Sections 16 and 17 of the Uttar Pradesh Co-operative Societies Act, 1965, providing for arbitration proceedings have not been invoked as a remedy.

**4.6** No inquiry was conducted prior to the registration of the impugned F.I.R. as required under section 65(2) of the Uttar Pradesh Co-operative Societies Act, 1965.

5. *Per contra*, learned A.G.A. submits that during on-the-spot inspection by the Additional District Co-operative Officer at Sikhadi Samiti, illegalities were noted. The complainant, satisfied with *prima-facie* evidence of the petitioner's involvement in embezzlement and illegal recovery of loan amounts from the farmers, constituted a committee comprising three members. The committee's report, dated 17.10.2022, reveals findings on five points, indicating the petitioner's engagement in the illegal recovery and embezzlement of funds. The committee scrutinized the ledgers of 56 account holders, revealing significant irregularities in the pass-books, with substantial differences in the amounts disbursed and subsequently recovered. Serious allegations against the petitioner, evident from the F.I.R. and the inquiry report, establish the ingredients of a cognizable offense. The investigation is in their preliminary stages, and no intervention in writ jurisdiction is deemed necessary by this Court at this juncture.

6. For the sake of clarity, sections 65(2), 68, 105 and 106 of the Uttar Pradesh Co-operative Societies Act, 1965 are reproduced herein below:

*“Section 65. (2) An inquiry of the nature referred to in sub-section (1) shall be held by the Registrar or by a person authorized by him in writing on this behalf on the application of- (a) a cooperative society to which the society concerned is affiliated; (b) not less than one-third of the total members of the society; (c) a majority of the members of the committee of management of the society.*

*Section 68. (1) If in the course of an audit, inquiry, inspection or the winding up of a cooperative society, it is found that any person who is or was entrusted with the organization or management of such society or who is or has at any time been an officer or an employee of the society, has made or caused to be made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has misappropriated or fraudulently retained any money or other property belonging to such society, the Registrar*

*may of his motion or on the application of the committee, liquidator or any creditor; inquire himself or direct any person authorized by him by an order in writing in this behalf to inquire into the conduct of such person; Provided that no such inquiry shall be commenced after the expiry of twelve years from the date of any act or omission referred to in this sub-section. (2) Where an inquiry is made under sub-section (1), the Registrar may, after affording the person concerned a reasonable opportunity of being heard, make an order of surcharge requiring him to restore the property or repay the money or any part thereof, with interest at such rate, or to pay contribution and costs or compensation to such an extent as the Registrar may consider just and equitable. (3) Where an order of surcharge has been passed against any person under sub-section (2) for having caused any deficiency in the assets of the society by breach of trust or willful negligence, or for having misappropriated or fraudulently retained any money or other property belonging to such society, such person shall, subject to the result of appeal, if any, filed against such order, be disqualified from continuing in or being elected or appointed to an office in any cooperative society for five years from the date of the order of surcharge.*

**Section 105.** *(1) No court inferior to that of a stipendiary magistrate of the first class shall try any offence under this Act. (2) No prosecution shall be instituted under this Act without the previous sanction of the Registrar, and such sanction shall not be given without affording the person sought to be prosecuted an opportunity to present his case.*

**Section 106.** *No person other than a cooperative society shall trade or carry on business under any name or title of which the word Sahkari or its equivalent in English, cooperative forms part, Provided that nothing in this section shall apply to the use by any person or his successor in interest of any name or title under which he carried on business at the date on which the Cooperative Societies Act, 1912, had come into operation."*

7. The First Information Report, stands as an indispensable document in the realm of criminal justice. It serves as the linchpin, marking the commencement of criminal proceedings and facilitating the subsequent investigation into alleged offenses. The legal foundation for registration of F.I.R. is firmly grounded in Sections 154 and 155 of the Code of Criminal Procedure, which

delineate the procedure and authority for lodging an F.I.R. Section 154 of the Cr.P.C. lays down the mandate for the registration of an F.I.R. It underscores the obligation of the police to register an F.I.R. upon receiving information about the commission of a cognizable offense. This provision encapsulates the immediacy and compulsoriness with which the F.I.R. must be lodged to set the criminal justice machinery in motion promptly by the informant. Section 155 provides certain exceptions in cases where there might be a delay in lodging the F.I.R. due to exceptional circumstances. Despite this, the general thrust of Section 154 emphasizes the expeditious registration of the F.I.R. to ensure the prompt initiation of the investigative process. The conjoint reading of sections 154 & 155 of Cr.P.C. explicitly state that anyone possessing knowledge about the commission of a cognizable offense has the authority to file an F.I.R. This includes not only the victim or an eyewitness but also any person who becomes cognizant of the offense, extending even to police officers themselves. The universality of the authority to lodge an F.I.R. is a foundational principle ensuring that the criminal justice system remains accessible to those with information about potential criminal acts. This inclusivity empowers informants comprising victims, eyewitnesses, and even law enforcement officers to initiate the process, fostering a collaborative and comprehensive approach to crime reporting. In essence, the legal framework governing the registration of F.I.R. is intricately woven into the fabric of criminal justice. Sections 154 and 155, in conjunction with numerous judgments of the Supreme Court, establish the foundation upon which the F.I.R. stands as an essential document initiating the process of criminal justice. The universal authority granted to individuals, including victims, eyewitnesses, and even police officers, underscores the inclusive

nature of the F.I.R. registration process, ensuring the swift and effective administration of justice.

8. In *Lalita Kumari v. Government of Uttar Pradesh and others*<sup>1</sup>, a watershed judgment on the guiding principle for registration of the F.I.R. makes it clear that the police officer is under the authority of law to register an F.I.R. on receipt of information of a cognizable offence. The police officer cannot avoid his duty of registering the F.I.R. if a cognizable offence is disclosed. The object sought to be achieved by registering the earliest information as F.I.R. is, among other things, two-fold: **i)** that the criminal process is set into motion and is well documented from the very start, and **ii)** that the earliest information received in relation to the commission of cognizable offence is recorded so that there cannot be any embellishment etc. One way of keeping a check on the authorities with such power is by documenting every action of theirs. Accordingly, under the Code of Criminal Procedure, police actions are provided to be written and documentary.

9. It is noteworthy that whenever an F.I.R. is registered, it does not mean that the investigation is mandatory to be commenced, and there are no inbuilt safeguards with the Code to prevent a likelihood of misuse. In *Dilawar Singh v. State of Delhi*<sup>2</sup>, it is held that even if an F.I.R. has been registered and the police have commenced the investigation, the aggrieved person may approach the Magistrate under section 156(3) Cr.P.C. to seek an order for proper investigation. In this regard, the reliance is also placed in *Abhay Gupta v. State of U.P.*<sup>3</sup>.

10. If there is sufficient evidence to corroborate the complainant's allegations, the charge sheet is filed, or else, a final

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1 (2014) 2 SCC 1

2 (2007) 12 SCC 641

3 Passed by this Court vide order dated 13.12.2023 in Criminal Misc. Writ Petition No.14212 of 2023

report mentioning that no evidence was found could be filed in the Court.

**11.** Shri Malviya's primary contention is that the complainant has no authority to register the impugned First Information Report, as per the provisions outlined in the notification dated 16.8.2000 issued by the office of the Registrar, Cooperative Societies, Uttar Pradesh. According to the said notification, the power to register the F.I.R. in instances of embezzlement involving Rs.25000/- or more is exclusively vested in the Regional Deputy Commissioner, Co-operative. In the instant matter, the F.I.R. has been registered by the Additional District Cooperative Officer, thus contravening, according to the petitioner, the stipulations set forth in the aforementioned notification.

**12.** In this context, it is prudent to assert that an administrative order lacks the authority to conclusively establish or adjudicate the rights of the parties involved. Rather, these orders are confined to considerations of policy regulation and expediency- subjective elements within the discretion of the administrative officer. The distinction between administrative and judicial processes becomes evident as administrative determinations are usually applied to matters situated within the realm of public policy, a conceptualization of law seen as inherently inflexible. In contrast, the adjudication of legal rights is explicitly reserved for the judicial domain, representing a crucial departure from the more adaptable and policy-oriented nature of administrative decisions. A crucial distinction emerges is that legal rights fall squarely within the realm of judicial functions. Judicial determinations, in contrast to administrative orders, are contemplated as mechanisms for definitively deciding legal rights. Courts are equipped with the authority, procedural frameworks, and legal principles necessary for

resolving disputes and determining the rights and obligations of parties involved. The administrative decisions are driven by the discretionary powers of the administrative officer. This subjectivity introduces an element of flexibility that may not align with the precision and rigidity often associated with the adjudication of legal rights.

**13.** Learned Additional Government Advocate has drawn our attention to the order dated 23.10.2023 emanating from the office of the Assistant Commissioner-cum-Assistant Registrar, Co-operative. In this directive, the Assistant Commissioner specifically instructs the Additional District Co-operative Officer to initiate the process for registration of the First Information Report against the petitioner in the present case. Essentially, the Assistant Commissioner has delegated his authority to the Additional District Co-operative Officer for the purpose of registering the F.I.R., therefore, the petitioner's argument has no legal strength and is thus misplaced.

**14.** The combined examination of the concept of delegated legislation in administrative jurisprudence and the guiding principles derived from *Lalita Kumari's case (supra)* judgment clarifies that registration of F.I.R. by the Assistant Commissioner or Additional District Co-operative Officer is inconsequential. The crucial consideration lies in determining whether the contents of the F.I.R. forms part of the cognizable offence or not.

**15.** The second noteworthy argument of the petitioner's counsel is non-compliance of sections 16, 17, 65(2), 68, 103 and 105 of the Uttar Pradesh Co-operative Societies Act, 1965 before registration of the impugned FIR.

**16.** The legal mandates delineated in the Uttar Pradesh Co-operative Societies Act of 1976 underscore various procedural



aspects and criteria pertinent to Co-operative Societies. Section 16 specifically prescribes the procedure for the division of assets and liabilities of these societies, while Section 17 delineates eligibility criteria for individuals seeking membership in Co-operative Societies. Section 65 imposes a mandatory inquiry by the Registrar into the constitution, functioning, and financial condition of the Co-operative Society, and Section 68 empowers the Registrar to initiate an inquiry, either on his own motion or in response to an application from the Committee, Liquidator, or any Creditor. This authority extends to directing an appointed individual, through written order, to investigate the conduct of the concerned person.

**17.** Furthermore, Section 103 addresses offenses and penalties within the purview of the Co-operative Societies Act, and Section 105 establishes a crucial procedural safeguard, stipulating that no prosecution under the Act shall be initiated without the prior sanction of the Registrar.

**18.** These statutory provisions, collectively governing the affairs of Co-operative Societies registered under the Act, align with the overarching objective of the legislation. The enactment of the Co-operative Societies Act is rooted in the intent to shield farmers from exploitation by traditional middlemen, ensuring they receive fair prices for their produce and safeguarding their economic interests. The Co-operative Department's vision dovetails with these objectives, aiming to facilitate accessible credit to farmers through co-operative societies on equitable terms.

**19.** In light of the stated aims and objectives of the Co-operative Societies Act of 1965, it is reasonably deduced that the registration of the impugned First Information Report in the present case does not *prima facie* contravene any provisions of the Act. The regulatory framework appears to be in consonance with the broader

objectives of shielding the agricultural community from exploitation and promoting their economic well-being through co-operative initiatives. In the wake of the aims and objective of the Act, it could be safely concluded that no provisions of the Co-operative Societies Act, 1965 have *prima facie* been violated for registration of the impugned F.I.R. in the instant case.

20. *Lalita Kumari case (supra)* explicitly emphasizes the mandatory nature of First Information Report registration, as outlined in Section 154 of the Code of Criminal Procedure. The Uttar Pradesh Co-operative Societies Act, 1965 remains silent on the specific procedure for registering an F.I.R. in cases involving embezzlement of society funds and the illicit recovery of credit from farmers, therefore, general legal principles in the regards would be applicable. The petitioner neither contends that the criminal proceedings against him is tainted with malice nor suggests any ulterior motives in the initiation of the prosecution.

21. Furthermore, the petitioner fails to align their case with any of the seven illustrations provided in the landmark judgment of *State of Haryana and others v. Bhajan Lal and others*<sup>4</sup>, which delineates circumstances warranting the quashing of criminal proceedings.

22. Turning to the facts of present case, serious allegations of embezzlement amounting to Rs.16,17,833.00, collected unlawfully from impoverished farmers by the Officiating Secretary of the Samiti, form the crux of the matter. The registration of the F.I.R. follows a conclusive determination of embezzlement by a three-member committee. No substantive reasons have been proffered by the petitioner's counsel to dispute the findings of this committee, which serves as the basis for the impugned F.I.R. In the legal

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4 1992 Supp. (1) SCC 335

context, the delegation of the power to register the F.I.R. holds no consequential weight, both in light of *Lalita Kumari case (supra)* and on broader legal grounds.

**23.** As the investigation is in its initial stages, the extraordinary power vested in this Court under Article 226 of the Constitution of India to quash the F.I.R. is deemed unwarranted given the current facts-circumstances.

**24.** The instant petition is devoid of merits, and hence *dismissed*.

**Order Date:** 11.1.2024

Anil K. Sharma

**[Vinod Diwakar, J.]**

**[Vivek Kumar Birla, J.]**