

CRM-M No.26794 of 2020 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.26794 of 2020 (O&M)
Date of Decision: 27.10.2020

Hitesh BhardwajPetitioner

Vs

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Abhinav Sood, Advocate
for the petitioner.

Mr. Ramdeep Pratap Singh, D.A.G., Punjab.

Mr. A.P.S. Deol, Senior Advocate with
Mr. H.S. Deol, Advocate
for respondent No.4.

RAJ MOHAN SINGH, J.

The case was taken up for hearing through video conferencing.

CRM No.24388 of 2020

[1]. Prayer made in this application is to place on record additional documents (Annexures P-16 to P-24) in addition to the inquiry report of DSP, City Batala (Annexure P-25) and speaking order dated 30.07.2020 passed by the Senior Superintendent of Police, Batala (Annexure P-26).

[2]. For the reasons mentioned in the application and in the interest of justice, the same is allowed. Additional documents are taken on record, subject to all just exceptions.

Main case

[3]. Petitioner has preferred this petition under Section 482 of the Code of Criminal Procedure seeking appropriate directions to register a First Information Report in pursuance of criminal complaint dated 22.03.2020 filed by the petitioner in respect of murder of Ramesh Kumari Bhardwaj (mother of the petitioner) against private respondents No.4 to 8.

[4]. Brief facts of the case are that a complaint was filed before respondent No.3 against respondent No.4 (real brother of the petitioner), respondent No.5 (wife of respondent No.4), respondent No.6 (brother of respondent No.5) and respondents No.7 and 8 (parents of respondent No.5) with the allegations that respondent No.4 was involved in the murder of his father Sh. Deepak Bhardwaj for which FIR No.121 of 2013 was registered at Police Station Vasant Kunj South Police Station, New Delhi. He faced trial for about seven years and was acquitted. Now appeal against acquittal is pending in the Delhi High Court. Mother of petitioner was living with respondent No.4. She succumbed to the demand of respondent No.4 for appointing him the Director in all the Companies of family. In the

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year 2014, respondents No.4 and 5 forced the mother of petitioner to register a Will in favour of respondent No.4. The Will was registered in a secret manner in favour of respondent No.4. Later on mother of petitioner made a handwritten Will on 22.02.2020 and this fact was told to the petitioner by his mother few days before her murder. When respondent No.4 came to know about this Will, he was very much annoyed with the mother. Mother of petitioner was very much afraid of respondent No.4.

[5]. It has been further alleged that respondents No.4 to 8 persuaded mother of petitioner to travel to Golden Temple, Amritsar. She was taken to Batala at the residence of respondents No.7 and 8 under the garb of showing some land of respondent No.7. Out of some suspicion and fear, mother of complainant insisted that her nephew namely Sandeep and one Balbir Singh (Balli) would accompany her to Punjab. Respondents No.4 to 8 along with Sandeep and Balbir Singh (Balli) reached the house of respondents No.7 and 8 on 08.03.2020 at midnight about 1.30 A.M. Respondent No.4 insisted his mother not to sleep in common room, rather to sleep in his room only. Respondent No.4 and his mother rested in one room, whereas Balbir Singh (Balli) and Sandeep slept in another room. On 08.03.2020, when Balbir Singh (Balli) woke up at 7.00

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A.M., he found that mother of petitioner was not around. He remained under the belief that she might have gone somewhere. Having waited till 8.00 A.M., he inquired from respondent No.5 and respondent No.8, but they did not inform him properly. At about, 10.00 A.M., Balbir Singh (Balli) was informed by respondent No.4 that his mother suffered heart attack early in the morning and she was taken to Hospital in Batala. Thereafter, Balbir Singh (Balli) was taken to Akal Hospital by respondent No.4 to show the dead body of his mother.

[6]. The complainant further alleged that Akal Hospital is very small nursing home. Respondent No.4 did not take his mother to big Hospitals like Batala Hospital, Mahajan Hospital and Akash Hospital in Batala. Mother of petitioner had no past medical history of any heart disease. She was taken to the Hospital early in the morning along with respondents No.6 and 7. Sandeep and Balbir Singh (Balli) who were sleeping in adjacent room, were not informed. Respondent No.6 was in Delhi for the last five years, staying with his sister (respondent No.5), but on 08.03.2020, he went to Batala from Delhi. Complainant further alleged that he was not informed by respondent No.4 in respect of alleged heart attack of his mother. Other relatives were also not informed. It was only Balbir Singh

(Balli), who made a telephonic call to the petitioner at about 10.00 A.M. On 08.03.2020. It has been alleged that there was a conspiracy and foul play on behalf of private respondents in murdering the mother of complainant.

[7]. Earlier, the petitioner filed a petition bearing CRM-M No.16384 of 2020 with the grievance that the Police is not taking any action in the matter despite filing of complaint dated 22.03.2020. The said petition was disposed of by the High Court vide order dated 25.06.2020. The order reads as under:-

“1. Case is being taken up for hearing through Video Conferencing due to the outbreak of pandemic Covid-19.

2. Grievance of the petitioner is that his parents were murdered by none else than his brother i.e. respondent No.4 but the police is not taking any action in the matter despite complaint Annexure P-8 dated 22.03.2020.

3. Learned counsel states that the petitioner would be satisfied if the petition is disposed of by directing respondent No.3 to consider and decide the complaint Annexure P-8 dated 22.03.2020 in accordance with law.

4. Notice of motion.

5. Mr. Harpreet Singh Multani, DAG, Punjab accepts notice on behalf of respondent No. 3 and states that he has no objection to the limited prayer of the petitioner for directing respondent No.3 to consider and decide complaint Annexure P-8 dated 22.03.2020 in accordance with law.

6. In view of the position as noted above, the petition is disposed of by directing respondent No.3 to consider and

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decide the complaint Annexure P-8 dated 22.03.2020 in accordance with law by taking into account instructions, Annexures P-9 and P-10 in case the same are applicable. Petition disposed of as above."

25.06.2020

(B.S. WALIA)
JUDGE"

[8]. The present petition has been filed for registration of criminal case against the private respondents in consonance with the guidelines issued in compliance of **Lalita Kumari vs. Govt. of U.P. and others, 2013(4) R.C.R. (Criminal) 979**. Vide order dated 10.09.2020, learned State counsel was directed to place on record copy of speaking order passed by respondent No.3 in pursuance of order dated 25.06.2020 passed in CRM-M No.16384 of 2020.

[9]. In compliance of the aforesaid order, learned counsel for both the parties have placed on record the relevant documents. While disposing of earlier petition i.e. CRM-M No.16384 of 2020, respondent No.3 was directed to consider and decide the complaint dated 22.03.2020 in accordance with law. Now this Court is obliged to see, whether the order dated 30.07.2020 passed by respondent No.3 is in accordance with law and satisfies the instructions/guidelines on the subject.

[10]. Learned counsel for the petitioner submitted that on 07.03.2020, private respondents persuaded the mother of

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petitioner to visit Batala. Mother of petitioner sensing callous attitude of private respondents insisted that Sandeep (her nephew) and one Balbir Singh (Balli) should accompany her to Punjab. Thereafter all the private respondents along with Sandeep and Balbit Singh (Balli) went to Batala. Balbir Singh (Balli) ultimately found the death of mother of petitioner in the manner as disclosed in the preceding paragraph. Postmortem of mother of the petitioner was conducted on 08.03.2020 itself at Batala. Petitioner made a complaint to respondent No.3 on 22.03.2020 in relation to commission of offence of criminal conspiracy and murder of his mother. Petitioner raised various suspicious circumstances before respondent No.3. Notice under Section 160 Cr.P.C. was issued to the petitioner to attend the office of DSP, City Batala on 15/16/18/19.05.2020 at any time in the morning in connection with inquiry of complaint filed by him. Petitioner was required to accompany his wife Samita, Naresh Kumar, Balbir Singh Bali, Sandeep Singh, Kunwar Pramod, Vineet and Mahesh. During the inquiry, statements of the petitioner and others were recorded on 20.05.2020. Statements of Balbir Singh (Balli) and Sandeep were also recorded.

[11]. As per statement of Balbir Singh (Balli), he along with others proceeded to Batala in two vehicles. They reached at Batala at about 1.30 A.M. in the in-laws house of respondent

No.4. They had milk in the night and at about 2.00 A.M., they went to sleep. Balbir Singh (Balli) and Sandeep were sent in room built behind the house. In the morning at about 6.00/6.30 A.M., both woke up and maid/servant gave them tea. When switch of the geyser in the bathroom was not found then Balbir Singh (Balli) went to the house and asked mother-in-law of respondent No.4 about the same. Balbir Singh (Balli) did not find any sign in the house that any big incident had taken place in the morning at about 6.00 A.M. At about 9.00 A.M., respondent No.4 came to the house and disclosed to Balbir Singh (Balli) that his mother had heart attack in the morning and she died. Balbir Singh (Balli) started crying and asked respondent No.4 to take him to the mother. At about 9.30 A.M., Balbir Singh (Balli) and respondent No.4 went to the Hospital and on the way, he informed the petitioner about death of his mother. At about 10.00 A.M., they reached Akal Hospital and found that dead body of mother of the petitioner was lying on a bed. Balbir Singh (Balli) insisted to take the dead body to Delhi in an ambulance. Respondent No.4 stated that prior to leaving for Delhi, they have to get the body packed and till such time they should go to fetch goods and Sandeep from the house. Similar statement of Sandeep was also recorded.

[12]. As per statement of respondent No.4, mother was

taken to Akal Hospital, where the Doctor had told that she was serious. He came back to the house to pick Balbir Singh (Balli) and took him to Hospital. After reaching the Hospital, the Doctor told them that mother of respondent No.4 had expired. The Doctor asked them to decide, if they wanted to get the postmortem done or not. Thereafter, they moved to Civil Hospital after deciding to go for postmortem. It took about two hours to finish of the proceedings in the Police Station and thereafter they went to Civil Hospital and waited for the postmortem to be conducted. Thereafter they left for Delhi. Petitioner and respondent No.4 did the last rites of their mother. Respondent No.4 also submitted that on 16th evening, maternal uncle(s) namely Naresh, Anil, cousin(s) namely Ramesh, Kishan, petitioner and including himself discussed the family business. Petitioner insisted not to use the Will as they will partition the family business between them.

[13]. As per statement of Sarabjit Singh (respondent No.7) at about 6.00 A.M. in the morning, Mata Ramesh Kumari Bhardwaj woke up and was walking outside the house. Respondent No.8 went to do her prayers in the lobby. Ramesh Kumari Bhardwaj fell down and on hearing the sound, respondent No.8 went to her and then she informed respondents No.4 and 5. Respondent No.7 also woke up. Ramesh Kumari Bhardwaj had

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a heart attack and they took her to Dr. Gosain Hospital in the car. The Doctor checked her and gave her first aid and told them that condition of the patient was critical. They should take her to some other Hospital. They took her to Akal Hospital, where the Doctor checked her and admitted her. After sometime, the Doctor informed that she had died due to the heart attack. They took her dead body to Civil Hospital, where postmortem was done. On the statement of respondent No.6, proceedings under Section 174 Cr.P.C. were conducted by Police Station, Civil Lines, Batala. Thereafter they went to Delhi along with the dead body, where the dead body was cremated.

[14]. As per statement of Dr. Rajbir Singh Bajwa, he is running Akal Hospital, Gurdaspur road in Batala. On 08.03.2020, at about 6.00 A.M., Pritpal Singh owner of the Hospital was telephonically informed by respondent No.7 that his relatives have come from Delhi. Out of them, an old woman was not well. They wanted to get her checked up. About 15 mins. thereafter, they brought the old woman in a car to the Hospital. Hospital staff checked the woman in the Car itself and informed Dr. Rajbir Singh Bajwa telephonically that pulse of the patient could not be found and the body was also cold. The Doctor directed the staff to refer the patient to Civil Hospital, Batala. The patient was neither given treatment in Akal Hospital,

nor any medicine was administered to her.

[15]. Statement of one Gurbag Singh was also recorded to the effect that he is a Pharmacist in Akal Hospital. On 08.03.2020, 2-3 persons brought an old lady in a vehicle. He checked the patient in the vehicle itself, whose pulse was not found and the body was cold. He informed Dr. Rajbir Singh Bajwa about the patient, who in turn asked him that the patient be referred to Civil Hospital, Batala, because Akal Hospital is only a surgical centre. Thereafter the patient was taken to Civil Hospital, Batala by her family members. Patient was not treated in Akal Hospital, nor any medicine was administered to her. Statement of Pritpal Singh was also recorded to the same effect that the patient was neither given any treatment and medicine in Akal Hospital and she was checked up in the vehicle only.

[16]. In the inquest proceedings statement of respondent No.4 was recorded by the Police to the effect that they took the mother to Akal Hospital, where the Doctor told them that mother had expired. His mother had died due to sudden heart attack and no one was responsible for that. Mishappening had occurred naturally and suddenly. Respondent No.4 did not want to pursue any legal proceedings against anyone. As per chemical examination report, no poison was detected in the exhibits. As per pathology report of the deceased, her heart was

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found to be 225 gm. LV wall thickness was found to be 1.5 cm. Coronary artery showed atherosclerotic changes and Luman patent. Cause of death was found to be a sudden cardiac arrest.

[17]. An inquiry was got conducted by respondent No.3 through DSP City, Batala. During the inquiry, it was found that there was a dispute regarding many documents relating to Will of deceased Ramesh Kumari Bhardwaj. A registered Will was executed in the year 2010 in which deceased Ramesh Kumari Bhardwaj had divided her property in equal shares to the tune of 50% each in the names of both the sons. Another registered Will was executed in the year 2014 in which she had given her property to respondent No.4. Respondent No.4 was in Jail in the year 2014. Thereafter, unregistered Will was executed by Ramesh Kumari Bhardwaj on 22.02.2020 in which she once again divided her property in equal shares in the names of petitioner and respondent No.4. Petitioner and respondent No.4 came to know about the aforesaid Wills after the death of Ramesh Kumari Bhardwaj. Respondent No.4 stated before the Inquiry Officer that all the rituals regarding cremation of deceased Ramesh Kumari Bhardwaj were done by the petitioner. Papers of the cremation ground suggested that the petitioner himself had written heart attack as cause of death of his mother.

[18]. During inquiry/investigation statement of respondent No.4 was also recorded that both the brothers had compromised in the presence of respectables on 09.06.2020 in respect of division of properties. Petitioner agreed to compromise on the ground that he will get 50% share of the whole properties, but the compromise could not be materialized. The Inquiry Officer also relied upon proceedings under Section 174 Cr.P.C. as well as medical opinion to conclude that from the secret and declared investigation till date, there was no evidence of murder of mother of petitioner. The cause of death was sudden cardiac arrest. On the basis of aforesaid report dated 30.07.2020 submitted by the DSP, City Batala, respondent No.3 also passed a speaking order on 30.07.2020 itself, endorsing the report of DSP City, Batala.

[19]. Learned counsel for the petitioner by referring to Annexures P-16 to P-24 further submitted that statement of respondent No.4 runs contrary to the statement of Dr. Rajbir Bajwa, Gurbaj Singh and Pritpal Singh to the extent that mother of petitioner was checked up in the car itself and was not admitted in the Hospital. No treatment/medicine was given to her in Akal Hospital. Balbir Singh (Balli) and Sandeep were kept in dark in the house itself in respect of medical status of the deceased. The inquest report is revolving around the solitary

statement of respondent No.4 only.

[20]. Learned counsel further submitted that a complaint regarding cognizable offence was given to respondent No.3. Deputy Superintendent of Police by way of issuing notice under Section 160 Cr.P.C. considered the matter and, therefore, requirement of Section 154(1) Cr.P.C. stood complied with. Delegatee of Respondent No.3 by exercising the powers under Section 154(3) Cr.P.C. proceeded to record the statements of the parties. He was required to satisfy himself with regard to cognizable offence for registration of FIR.

[21]. Learned counsel further submitted that the Police cannot embark upon full scale inquiry into the complaint filed by the petitioner without registration of FIR. Resort to inquest proceedings was not a substitute for investigation pursuant to Section 154(1) Cr.P.C. Any observation made in the inquest proceedings would not operate as bar to the registration of First Information Report. Chapter XII of Cr.P.C. deals with reporting of information to Police in cognizable offence and its power of investigation. Section 154(1) Cr.P.C. deals with registration of FIR by the Police Incharge of Police Station on receipt of information in respect of cognizable offence. The provision casts a statutory duty on the Police Office to enter the substance of such information in the prescribed form i.e. FIR. The Officer has

no choice but to enter the substance of information as laid before him, if it relates to commission of cognizable offence. The Police Officer cannot embark upon any elaborate inquiry to ascertain the genuineness or reasonableness of such information. He cannot refuse registration of a case. A discreet inquiry can be held if the complaint contains uncertain and indefinite allegations, raising doubts about the commission of cognizable offence. It is not open to the Police Officer to conduct full fledged inquiry into the merits, reasonableness and correctness of the allegations and to assume the role of a Trial Court in the process. The correctness or reasonableness of the information is not a condition precedent for registration of a case as the same was ascertainable upon investigation which was to follow under Section 156 Cr.P.C. Learned counsel relied upon **Abhay Nath Dubey vs. State of Delhi, 2002(99) DLT 114.**

[22]. Learned counsel further submitted that in **Bhajan Lal vs. State of Haryana, AIR 1992 SC 604** the Hon'ble Apex Court has laid that at the state of registration of a crime on the basis of information disclosing a cognizable offence, the concerned Police Officer cannot embark upon an inquiry as to whether information laid before him by the informant is reliable and genuine and to refuse registration of a case on that ground. It is

manifestly clear that if the information disclosing cognizable offence is laid before a Police Officer, Incharge of a Police Station, satisfying the requirements of Section 154(1) Cr.P.C., then the Police Officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

[23]. Learned counsel further submitted that in appropriate cases under the Prevention of Corruption Act etc., some suitable preliminary inquiry can be made into the allegations by responsible officer in order to prevent any incalculable harm not only to the officer in particular, but to the Department in general. The FIR itself is not an encyclopedia of the relevant facts. It is not customary nor necessary to record each and every minute detail in the FIR. Inquest proceedings have a very limited scope. Details of overt acts in the inquest proceedings are not necessary to be appreciated while registering a criminal case.

[24]. Learned counsel by relying upon **Lalita Kumari vs. Govt. of U.P and other, 2013(4) R.C.R. (Criminal) 979** further submitted that the guidelines framed by Ministry of Home Affairs on the basis of aforesaid case have been overlooked by respondent No.3 in not ordering registration of FIR. The order dated 25.06.2020 passed by this Court in CRM-M No.16384 of 2020 was in the context of issuing directions to respondent No.3

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to consider and decide the complaint dated 22.03.2020 in accordance with law.

[25]. I have considered the submissions made by learned counsel for the parties.

[26]. According to the ratio of **Lalita Kumari's** case (supra), the reliability, genuineness and credibility of the information are not conditions precedent for registration of case. The intention of the Legislature is to ensure prompt investigation of a cognizable offence in accordance with law. There is no discretion left with the Police Officer to register or not to register an FIR once information of a cognizable offence has been placed before him. Non-registration of criminal case leads to dilution of rules of law and lead to definite lawlessness which is detrimental to the society as a whole. Even the action against erring police officer is warranted in such circumstances in which FIR is not registered in respect of cognizable offence. The Hon'ble Apex Court has provided some exceptions to the mandatory registration of FIR. If the information does not disclose commission of cognizable offence, but indicates the necessity for an inquiry, preliminary inquiry may be conducted only to ascertain whether cognizable offence is made out or not. If the inquiry discloses cognizable offence the FIR be registered. In case preliminary inquiry ends in closing the complaint, the

information is required to be supplied to the complainant within one week after disclosing the reasons in brief for closing the complaint and not proceeding further. The preliminary inquiry can be made in matrimonial disputes/family disputes/criminal offences/medical negligence cases, corruption cases and cases where there is an abnormal delay in initiating criminal prosecution for more than three months in reporting the matter without satisfactory explanation for the delay. The preliminary inquiry has to be completed within seven days and the delay if any, should be reflected in the general/daily diary of the Police Station.

[27]. If a person has a grievance that the Police is not registering the First Information Report under Section 154 Cr.P.C, then he can approach the Sr. Superintendent of Police under Section 154(3) Cr.P.C. by way of filing a representation in writing. If such representation does not yield any satisfactory result and the FIR is not registered, then it would be open to the aggrieved person to file an application under Section 156(3) Cr.P.C. before the Magistrate concerned. On receipt of such application under Section 156(3) Cr.P.C., the Magistrate can direct for registration of FIR. The Magistrate can also monitor the investigation to ensure an appropriate investigation. The Hon'ble Apex Court has explained the position of law in **Madhu**

Bala vs. Suresh Kumar, 1997(3) R.C.R. (Criminal) 679.

[28]. Language of Section 154 Cr.P.C., is suggestive of the fact that the Police is bound to proceed to conduct investigation into a cognizable offence even without receiving information about commission of such an offence, if the Officer Incharge of the Police Station otherwise suspects the commission of such an offence. The Legislative intent is, therefore, quite clear to ensure prompt investigation of every cognizable offence in accordance with law. In view of aforesaid, there is no reason that there should be any discretion or option left with the Police to register or not to register an FIR when information is given about commission of a cognizable offence. The requirement of Section 154 Cr.P.C., is only that the report must disclose the commission of a cognizable offence. Receipt of such information would be sufficient to set the Investigating Agency into action.

[29]. Language of Section 154(3) Cr.P.C. would further make it abundantly clear that no information of commission of cognizable offence can be ignored. The aforesaid provision was added by way of amendment revealing the intention of the Legislature to ensure to take action as the inaction would result in unjustified protection of the offender. The expression '*es unius est exclusion alterius*' is fully applicable to the

interpretation attached with Section 154 Cr.P.C. which means that expression of one thing is the exclusion of another. The mandate of recording the information in writing excludes the possibility of not recording the information of commission of a cognizable offence in the special register. Therefore, conducting the investigation into an offence after registration of FIR under Section 154 Cr.P.C. is the procedure established by law and the same is in conformity with Article 21 of the Constitution of India. Right of the accused for speedy trial would come into being only after registration of FIR and after conducting the investigation in accordance with law. Preliminary inquiry is different than the investigation. Inquiry is other than a trial which is relatable to a judicial act and not to the steps take by the Police towards investigation after registration of FIR under Section 154 Cr.P.C. Concept of preliminary inquiry may be a special procedure prescribed under CBI Manual to be read with Section 154 Cr.P.C. Preliminary inquiry is contained in Chapter IX of the Crime Manual of CBI, but the same is not a statute. It has not been enacted by the Legislature, rather the same is an administrative order for internal guidance of the CBI officers. The aforesaid administrative order cannot supersede the Code of Criminal Procedure and the said analogy of conducting preliminary inquiry as recorded in CBM Crime Manual cannot be relied to import such a concept in the scheme of Code of

Criminal Procedure. The Central Bureau of Investigation is the creation of Special Act i.e. The Delhi Special Police Establishment Act, 1946 and it derives its power to investigate the offence from the said Act only. Scheme of Code of Criminal Procedure is different. Though the provisions in terms of Section (2) and (5) of Code of Criminal Procedure permit special procedure to be followed for Special Acts.

[30]. The requirement of compulsory registration of an FIR is not only to ensure transparency in the criminal justice delivery system, but it also ensures judicial oversight as the Police Officer has to inform the Magistrate about lodging of FIR forthwith in terms of Section 157(1) Cr.P.C. Thus, the commission of a cognizable offence is not only required to be brought to the notice of the Investigating Agency, but it has to be brought to the notice of the Magistrate as well. There are two types of FIRs i.e. the FIR which is duly signed by the complainant under Section 154(1) Cr.P.C and the second type of FIR could be the FIR which is registered by the Police itself on any information received or other than by way of an informant and even this information has to be duly recorded and the copy thereof should be sent to the Magistrate forthwith under Section 157(1) Cr.P.C. In view of aforesaid, it would be obligatory on the part of Police to register FIR either on the

basis of information submitted by the informant under Section 151(1) Cr.P.C. or otherwise under Section 157(1) Cr.P.C.

[31]. Registration of FIR under Section 154 Cr.P.C. and arrest of the accused are entirely different things. The arrest of the accused is not automatic on registration of an FIR. The arrest cannot be made in a routine manner on a mere allegation of commission of an offence. It would be prudent for a Police Officer not to arrest a person without a reasonable satisfaction after some investigation as to the genuineness and *bona fide* of a complaint and reasonable belief in the context of complicity of the accused. The arrest of person and registration of FIR are not directly linked as both have two concepts, operating under different parameters. Misuse of aforesaid concept would result in action against the Police Officer under Section 166 IPC.

[32]. Registration of FIR is mandatory under Section 154 Cr.P.C., if the information discloses commission of a cognizable offence. No preliminary inquiry is permitted in such a situation. Preliminary inquiry can be conducted in matrimonial cases, case relating to family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay of more than 3 months in initiating criminal prosecution or reporting the matter to the police without satisfactory explanation. The conclusions drawn in *Lalita*

Kumari's case (supra) are reproduced hereasunder:-

“111) *In view of the aforesaid discussion, we hold:*

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend

on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) *Matrimonial disputes/ family disputes*
- b) *Commercial offences*
- c) *Medical negligence cases*
- d) *Corruption cases*
- e) *Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.*

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

[33]. In the instant case, there is no abnormal delay in reporting the matter to respondent No.3, rather on the complaint

filed by the petitioner, the Deputy Superintendent of Police i.e. Delegatee of respondent No.3 issued notices to complainant party and recorded statements of various persons. The Police Officer cannot embark upon any elaborate inquiry to ascertain genuineness or reasonableness of the information and cannot refuse registration of criminal case. It does not lie under the domain of Police Officer to substitute preliminary/detailed inquiry with the investigation of the case, as the investigation can only be done after registration of an FIR.

[34]. In view of aforesaid legal position, refusal to register an FIR is not in accordance with law. It would be prerogative of the Police to file cancellation of the FIR after investigation in accordance with law. In such eventuality, the complainant would be having a right to file protest petition on receipt of notice from the Court. Thereafter the Court may accept the cancellation report or proceed with the case as a criminal case on receipt of preliminary evidence or may pass any other order in accordance with law including further investigation.

[35]. For the reasons recorded hereinabove, I accept this petition and direct registration of case. However, it is made clear that after registration of the case, if the Police files a cancellation report after lawful investigation, then the Court would proceed to accept or reject the same in accordance with

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law. Registration of FIR, in itself would not be construed to mean any final opinion about the case. Police would investigate the offence in a lawful manner and thereafter would act in accordance with the Code.

October 27, 2020

Atik

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No

(RAJ MOHAN SINGH)

JUDGE



सत्यमेव जयते

