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FIR VS. PRELIMINARY INQUIRY*

Abstract: *This study would deal with question whether a police officer is bound to register an FIR upon receiving any information relating to commission of a cognizable offence under section 154 of the Code of Criminal Procedure or the police officer has the power to conduct a "preliminary inquiry" in order to test the veracity of such information before registering the same? The repercussion of reregistration of an FIR (especially the possibility of hasty arrest) against an individual has far reaching effect especially where it may be registered with some ulterior motive. Conversely, non-registration of a genuine FIR may also result in severe injustice. A cautious approach is required to maintain a balance.*

FIR- "First Information Report" is nowhere defined in Code of Criminal Procedure, but its glimpse found under section 154 of the Code. It is the information first in point of time. The FIR is a pertinent document in the criminal law of our country and its main object from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps to trace and to bring to book the guilty. It is impossible to put the provisions of section 154 of the Code in a straightjacket formula. As it is requirement of Article 21 that the procedure should be fair and just, there must be some guiding principles as regards registration or non-registration of FIR. Bare legislative language of Section 154 Cr.P.C only suggest that the disclosure of an cognizable offence is the only *sine-qua-non* for registering a FIR. If the police officer has doubts in the matter, it is imperative that he should have the discretion of holding a preliminary inquiry in the matter. If he is debarred from holding such a preliminary inquiry, the procedure would then suffer from the vice of arbitrariness and unreasonableness.

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According to Section 154(1) of the Code- the use of the word 'shall' is indicative of the statutory intent of the legislature and it left no discretion to the police officer except to register an FIR. To support of the above proposition, reliance can be based on *B. Premanand and Ors. vs. Mohan Koikal and Others*[1] , *M/s Hiralal Rattanlal Etc. vs. State of U.P. and Anr*[2] *and Govindlal Chhaganlal Patel vs. Agricultural Produce Market Committee, Godhra and Ors.*[3]Also, the word 'information' is used without prefixing the words 'reasonable' or 'credible' is unmistakably indicative of the statutory intent. This view has been reiterated by the Hon'ble SC in *State of Haryana vs. Bhajan Lal*[4] wherein the Hon'ble Apex Court categorically held that a Station House officer has no option but to register an FIR on receiving an information regarding commission of an cognizable offence irrespective of truthfulness or falsity of that information. Similar views were expressed by the Supreme Court in *Ganesh Bhavan Patel and Another vs. State of Maharashtra*[5], *Aleque Padamsee and Others vs. Union of India and Others*[6], *Ramesh Kumari vs. State (NCT of Delhi)*[7], *Parkash Singh Badal vs. State of Punjab*[8], *Ram Lal Narang vs. State (Delhi Administration)*[9] *and Lallan Chaudhary and Others vs. State of Bihar and Another*[10].

The number of FIRs not registered is approximately equivalent to the number of FIRs actually registered. The Committee on Reforms of Criminal Justice System headed by *Dr. Justice V.S. Malimath* also noticed the plight faced by several people due to non-registration of FIRs and recommended that action should be taken against police officers who refuse to register such information. The Committee observed:-

> *"According to the section 154 of the Code of Criminal Procedure, the officer in charge of a police station is mandated to register every information oral or written relating to the commission of a cognizable offence. The Committee recommends that all complaints should be registered promptly, failing which appropriate action should be taken. It has come to the notice of the Committee that even in cognizable cases quite*

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1(2011) 4 SCC 266

2(1973) 1 SCC 216
3(1975) 2 SCC 482
41992 Supp. (1) SCC 335
5(1978) 4 SCC 371
6(2007) 6 SCC 171
7 (2006) 2 SCC 677
8(2007) 1 SCC 1
9 (1979) 2 SCC 322
10 (2006) 12 SCC 229

often the Police officers do not entertain the complaint and send the complainant away saying that the offence is not cognizable. Sometimes the police twist facts to bring the case within the cognizable category even though it is non-cognizable, due to political or other pressures or corruption. This menace can be stopped by making it obligatory on the police officer to register every complaint received by him. Breach of this duty should become an offence punishable in law to prevent misuse of the power by the police officer."

However, this approach has not been welcomed in legal fraternity being rigid, harsh and oppressive. While registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. In fact, registration of FIR and arrest of an accused person are two entirely different concepts, and there are several safeguards available against arrest. It is also relevant to note that in *Joginder Kumar vs. State of U.P. & Ors.*[11], the Supreme Court has held that arrest cannot be made by police in a routine manner. It was observed that:-

"No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence.

Off late, the Hon'ble Apex Court reiterated the requirement of cautious approach in effecting arrest in *Arnesh Kumar vs. State of Bihar*[12] while substantiating its finding on the newly inserted Sections 41 & 41-A in Cr.P.C. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified.

11(1994) 4 SCC 260
12(2014) 8 SCC 273

Although,Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offence, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time.

1) One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint. In the context of medical negligence cases, in *Jacob Mathew vs. State of Punjab & Anr.*[13], it was held by the Hon'ble SC as under:

> *"We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasise the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefer recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.*

2) In the context of offences relating to corruption, Supreme Court in *P. Sirajuddin vs. State of Madras*[14] expressed the need for a preliminary inquiry before proceeding against public servants.

3) Similarly, in *Superintendent of Police, CBI vs. Tapan Kumar Singh*[15], the Supreme Court has validated a preliminary inquiry prior to registering an FIR only on the ground that at the time the first information is received, the same does not disclose a cognizable offence.

4) Matrimonial disputes including offences under section 498-A IPC as explained in *Rajesh Sharma & ors. Vs. State of U.P & Anr.*[16]

13(2005) 6 SCC 1

14(1970) 1 SCC 595

15(2003) 6 SCC 175

16 2017 SCC OnLine 821

Conclusion

In view of the aforesaid discussion, the law can be summarized as under especially in the wake of the law settled down by the Apex Court in *Lalita Kumari vs Govt. of U.P.& Ors*[17]:

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. And 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

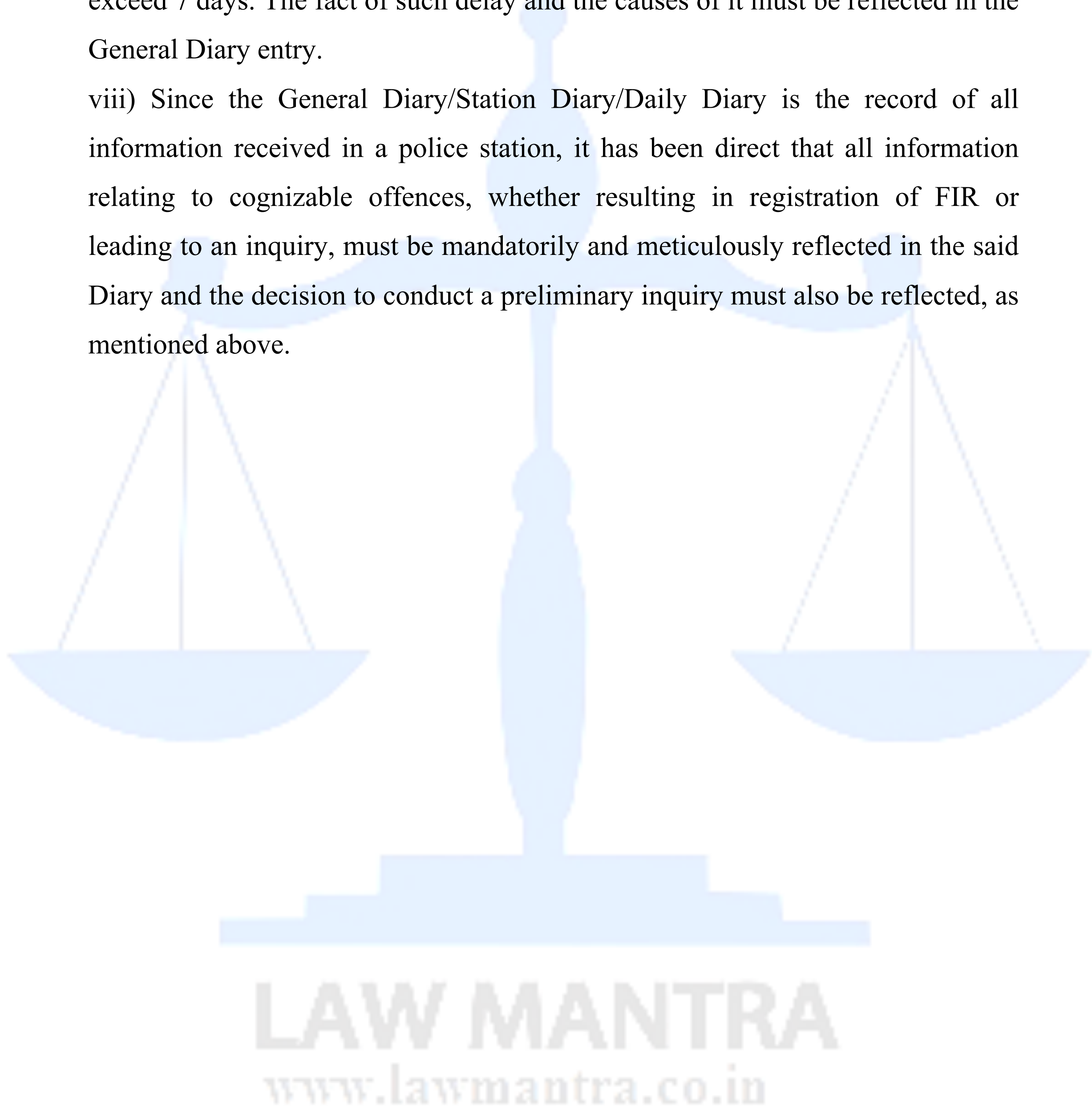
e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

17 (2014) 2 SCC 1

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, it has been 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.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