

Refusal to Register FIR in Cognizable Offences Leads Lawlessness and Denying Justice to Millions of Indians

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Abstract—An FIR disclosing commission of a cognizable offence puts the law into motion and investigation begins thereafter. The refusal to register FIR is a common problem and leads lawlessness and denying justice to millions of Indians who are victims of cognizable offences. The provision of section 154(1), Cr. P.C. is mandatory and hence police cannot refuse to register an FIR. When informant approaches Magistrate complaining non-registration of FIR, then Magistrate has no option than to pass necessary order for registration of FIR. Magistrate cannot convert a petition u/s 156 (3), Cr. P.C. into a complaint. The non-registration of FIR amounts to dereliction of duty and, therefore, disciplinary action must be taken against erring police officers.

Keywords—FIR, Cognizable, Offences, Cr. PC

I. INTRODUCTION

THE 'First Information Report' (FIR) is the earliest information received by police which puts the law into motion and failure to get information of crime recorded stifles the criminal investigation process[1]. The importance of FIR is obviously immense as it is the first step toward criminal justice system. Ordinarily the efficiency of police administration and government is measured by the escalation or decline of crime rate during their tenure and, therefore, there is tendency to fudge the figures and more commonly to somehow the datas regarding crimes by not recording them. Such type of manipulation of crime figure often as an occupational disease plaguing the police force and at its root lies in the great evil of non-registration of information in cognizable offences aimed to manage and manipulate the statistics. The erring police officer are often encouraged by the magistrate who are often seen reluctant to exercise their power u/s 156(3), Cr. P.C. to ensure lodging of FIR on complaints of aggrieved persons.

The Criminal Law Amendment Act, 2013 made the registration of first information mandatory in sexual assault cases and a police officer refusing to register such information is liable to punishment under the revised law[2]. The law was amended due to sudden rise in incidents of rape cases and the facts that reporting has increased because of chances of turning

away of victims of rape or trying to effect compromise among the parties. In order to avoid the situation Section 166 A, IPC has been enacted which makes guilty of the offence of refusal to register an FIR a punishable act.

First Information Report (FIR) is a report prepared by police regarding commission of cognizable. This a written document that is supposed to contain the earliest information regarding the commission of a crime[3]. Such information can be given by any person and this is never necessary that such person should have the personal information about such occurrence.¹ The information may be conveyed either verbally or in written form. The term FIR is not defined anywhere in the Criminal Procedure Code (Cr. P.C.), yet it apply universally. So, the word 'complaint' as defined in Section 2(d) of Cr. P.C. and 'FIR' bear the same meaning, The First Information Report (FIR) may be lodged even by telephone but such information should not be vague and cryptic and identity of the person giving the information regarding cognizable offence should be clear.² Any person may lodge the FIR about the commission of an offence though he may not know even the name of the victim or his assailant. He may not even know how the occurrence took place. The informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the offence committed.³

It is well settled that the FIR should not be an encyclopedia, which must disclose all facts and details relating to the offence reported[4]. What is significant in this regard that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence[5]. At this stage, it is would meet the requirement of law, if the police officer, on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If the police has reason to suspect that, on the basis of information received that a cognizable offence may have committed, he is bound to record the information and give a copy free of cost to the informant and make the investigation.⁴ The police officer

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cannot refuse to register FIR on the ground of preliminary information as genuineness or credibility of information is not a condition precedent for registration of the first information report.⁵ Even if the information does not furnish all the details, he must find out all details in course of investigation and collect all the necessary evidence. The police officer cannot refuse to register the FIR also on the ground that the place of occurrence does not fall within the territorial jurisdiction of the concerned police station and doing so amount to dereliction of duty on his part.⁶ It is now settled that police officer cannot refuse to lodge the FIR in cognizable offence and he is duly bound to lodge the same and then investigation.⁷ Investigation before registration of the FIR is impermissible in law as no value can be attached to such investigation.⁸ FIR can be sent to the police station by the informant through anybody or his lawyer and it is not necessary that person lodging such information must be personally present before officer in charge of the police station.⁹ Section 157, Cr. P.C. casts a further duty on the police officer to send the FIR on registration to the nearest Magistrate within a period of 24 hours.¹⁰ However, no information about commission of an offence under ‘Terrorists and Disruptive Activities (Prevention) Act (TADA), 1987 can be registered without prior permission of District Superintendent of Police and such permission however may be either in writing or oral.¹¹

II. THE LEGISLATIVE PROVISIONS

The provisions of Section 154, Cr. P.C, 1973 as amended by the Criminal Laws Amendment Act, 2013 provides as follows :

Section 154 : Information to cognizable cases–

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

Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that–

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the IPC is alleged to have been committed or attempted, is temporarily

or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be video graphed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.

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

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

The bare perusal of the word “Shall” in Section 154 (1) of the Code clearly shows the legislative intent that it is mandatory to register an FIR if the information given to the police discloses the commission of a cognizable offence.¹² The earlier pronouncements in ‘P. Sirjaddun-V-State of Madras’ [AIR 1971 SC 502]; Sevi-V-State of Tamil Nadu’ [AIR 1981 SC 1230]; Shashikant-V-CBI’ [AIR 2007 SC 35] and Rajendra Singh Katoch-V-Chandigarh Administration’ [AIR 2008 SC 178] etc. empowering police to make a preliminary inquiry in cognizable offences without any exception is longer a good law in view recent pronouncement of Full Bench of Hon’ble Apex Court in ‘Lalita Kumari’ case.

III. CONSEQUENCES OF NON-REGISTRATION OF FIR

The provisions of Section 154 (1), Cr. P.C. is mandatory and, therefore, police cannot refuse to lodge the FIR. in “Nagesh-V-State of Karnataka”,¹³ the Hon’ble Apex Court directed to take disciplinary action against the erring police officer who were found to omit to perform their duty of lodging FIR despite knowledge of information about a cognizable offence.

The Hon’ble Karnataka High Court has ruled in “B.S. Sundaresh-V-State of Karnataka”,¹⁴ that police officer cannot refuse to lodge the FIR on the ground that concerned police station has no territorial jurisdiction over the place of crime and such denial amounts to dereliction of duty. The Hon’ble Patna High in “Umakant Singh-V-State of Bihar”, has also

directed to initiate disciplinary inquiry against the erring officer who intentionally and deliberately refused to lodge the FIR.¹⁵ The Hon'ble Full Bench of, Apex Court has also ruled in recent pronouncement in '*Lalita Kumari-V-Govt. of U.P.*',¹⁶ that the police officer cannot avoid his duty of registering offence if cognizable offence is disclosed and action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offences.

IV. REMEDY OF NON-REGISTRATION OF FIR

In the case of non-registration of FIR by the police officer, the remedy is available under Sections 190, 200 and 156 (3) of Code of Criminal Procedure Code (Cr. P.C)[6], but writ petition cannot be filed for issuance of direction to ensure the registration of the FIR.¹⁷ Magistrate before taking cognizance of offence can order for registration of FIR and investigation under Section 156(3), Cr. P.C.¹⁸ The Apex Court held in "*Anandwardhan-V-Panduranga*",¹⁹ that in case of refusal to register FIR in cognizable offence, it is open to the complainant to file a petition before Magistrate seeking appropriate direction for registration of FIR but writ petition cannot be filed for matter.

The Hon'ble Apex Court held in "*Sakiri Basu-V-State of U.P. and Others*",²⁰ that if a person has a grievance that police officer is not registering the FIR under Section 154, Cr. P.C. he may approach Superintendent of Police u/s 154 (3) Cr. P.C. and if still FIR is not lodged, then he may file petition under Section 156 (3), Cr. P.C. before Magistrate who may issue direction for registration of FIR and even monitor the investigation in order to ensure proper investigation.

The Hon'ble Patna High Court has ruled in "*Manu Sah-V-The State of Bihar*",²¹ that since refusal of registration of FIR is an arbitrary act of officer incharge of the concerned police officer, it would be just and proper to issue direction to register the FIR.

Judicial Magistrate, before taking cognizance of the offence, can order to lodge FIR and conduct investigation under the provisions of Section 156(3), Cr. P.C. in that event he is not required to examine the complainant on oath²² Even if the Magistrate does not say so many words while directing investigation under Section 156(3), Cr. P.C. of the Code stating that FIR should be lodged, still the police officer is duty bound to register the FIR and make the investigation.²³ No lenient or liberal view should be taken in case of non-registration because it amounts to dereliction of statutory duty enjoined upon police officer. Even transferee Magistrate can pass orders u/s 156(3) if CJM has made over a complaint to him.²⁴

IV. DUTY OF MAGISTRATE IN CASE OF NON-REGISTRATION OF FIR

The greater responsibility lies with the Judicial Magistrate before whom an aggrieved person comes with grivance that his FIR has not been registered. When a petition u/s 156(3) Cr. P.C. is filed by a victim complaining non-registration then the

Magistrate must pass necessary order to office incharge or SHO to lodge the FIR and make the investigation.²⁵ Magistrate should not convert such petition into complaint because the duty to make investigation primarily lies with the police. The Hon'ble Supreme Court has laid down a law in "*Gopal Das Sindhi-V-Govt. of Assam*",²⁶ that "a complaint disclosing cognizable offence well justify a Magistrate in sending the complaint under Section 156(3) to police for investigation. There is no reason why the time of Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offence is with the police."

When a person approaches a Magistrate seeking direction for registering the FIR, then it is mandatory duty of Magistrate to pass such orders. The Hon'ble Rajasthan High Court has ruled that "it is responsibility of the Magistrate to direct police to follow the mandate of law, if it is not so done, then it gives the police to long rope to act arbitrarily and its whims."²⁷ The Hon'ble Allahabad High Court has also ruled in cantena of case that if cognizable offences is disclosed in application u/s 156 (3), Cr. P.C., Magistrate is under legal duty to direct to direct police to exercise its plenary power of investigation and Magistrate cannot on his own convert the application to one under complaint.²⁸ The Hon'ble Apex Court has categorically ruled in "*Gopal Das Sidhi-V-State of Assam*",²⁹ that investigation is the duty of police primarily and hence Magistration should not waste its precious time in inquiry. Thus, a complaint disclosing cognizable offence may well justify a Magistrate in sending the complaint, under S. 156 (3) to the police for investigation.³⁰

V. CONCLUSION

Non-registration of FIRs by the police and reluctance to ensure registering the same is one of the most serious problem in the field of criminal justice administration in India[7]. The Supreme Court has taken serious cognizance in 2008 in the matter of delay in lodging of FIRs and conducting investigation. The Hon'ble Supreme Court has issued directions to governments of all the states and Union Territories along with their police commissioners and other Heads of Police to take positive steps to cheek such lapses and avoid delay as well as denial of FIRs on the part of police officers and to ensure speedy investigation in order to provide justice to the victims of cognizable offences[8]. The paper aims to create awareness among the students, police officers lawyers and judicial magistrates on the issue because non-registration of FIRs is resulting into denial of justice to millions of poor Indians. The denial of registration of FIR by police or Magistrate is violation legal as well as human rights of victims of cognizable offences.

NOTES:

1. ⁱVishwa Mitter-V. O.P. Poddar; (1983) 4 SCC 701 : AIR 1983 SC 5; Hallu-V-State of M.P.; AIR 1974 SC 1936;
2. Ramesh Baburao Devaskar-V-State of Maharashtra; 2008 (1) BBCJ 363; Jagat Singh-V-State of Rajasthan; 2007 (4) Crimes 552 (Raj).
3. Superintendent of Police, CBI-V-Tapan Kumar Singh; AIR 2003 SC 41410.
4. Lallan Choudhary-V-State of Bihar; 2006 (4) Crimes 2164 (SC); Lalita Kumari-V-Govt. of U.P.; AIR 2014 SC 186 (F.B.)
5. Mrs. Charu Kishore Mehta-V-State of Maharashtra; 2011 Cr LJ 1486 (Bom.) (D.B.);
6. Satvinder Kaur-V-State (NCT of Delhi); AIR 1999 SC 3596;
7. State of Haryana-V-Ch. Bhajan Lal; AIR 1992 SC 604; Ramesh Kumari-V-State of U.P., 2006 (1) Crimes 230 (SC); Lalita Kumari-V-State of U.P.; AIR 2014 SC 186 (F.B.); Lalan Choudhary-V-State of Bihar; 2007 (1) BBCJ 205.
8. Ganesh Gagoi-V-State of Assam; AIR 2009 SC 2955;
9. Nand Kumar Singh-V-State of Bihar; 2001 (2) PLJR 127;
10. R.B. Devaskar-V-State of Maharashtra; 2007 (4) Crimes 140 (SC);
11. Mukhtiar Ahmad-V-State (NCT of Delhi); 2005 (2) Crimes 107 (SC);
12. S. Sudharshan-V-State; AIR 2006 SC 2716, Lalita Kumari-V-Govt. of U.P.; AIR 2014 SC 186.
13. 2012 (3) PLJR (SC) 258;
14. 2012 Cr. L.J. 1986 (Kant.); M. Sarvana@ K.D. Sarvana-V-State of Karnataka; 2012 Cr LJ 3877 (SC);
15. 2011 (1) PLJR 1019;
16. Lalita Kumari (Supra);
17. Aleque Padamsee-V-Union of India; 2007 (3) Crimes 194 (SC).
18. Md. Yunus-V-Smt. Asfaq Jahen; 2006 (1) Crimes 81 (SC) = AIR 2006 SC 705.
19. 2006 (2) Crimes 165 (SC).
20. 2007 (8) Supreme 226.
21. 2005 (3) BBCJ 186; Umakant Singh-V-State of Bihar; 2011 (1) PLJR 1019.
22. Dilawar Singh-V-State of Delhi; 2007(3) Crimes 388.
23. Mohd. Yunus-V-Smt. Afaq Jahen; AIR 2006 SC 705.
24. Gopal Das Sindhi-V-The State & Anr; 1959, Cr. L.J. 1408.
25. Gurjant Singh-V-State of Punjab; 1998 Cr. L.J. 588.
26. Gopal Das Sindhi-V-Govt. of Assam; AIR 1961 SC 936.
27. Babu Lal-V-State of Rajasthan; 2009 Cr. L.J. 4362.
28. Sanjai Gupta-V-Gulab Mishra and others; 2007 (2) Crimes 2002 (All.); Phool Singh-V-State of U.P.; 2007 (4) Crimes 632; Santosh Kumar V-State of U.P.; 2007 Cr. LJ 3369; Manglesan-V-State of U.P.; 2010 (1) Crimes 670 (All.)
29. Gopal Das Sidhi-V-State of Assam's AIR 1961 SC 986 (Para-7);
30. *ibid.*

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