

# India: Scope Of Inquiry By The Police At The Time Of Registration Of FIR

**Constitutional Bench of Hon'ble S.C. comprising Chief Justice P. Sathasivam, Justice B.S. Chauhan, Justice Ranjana Prakash Desai, Justice Ranjan Gogoi and Justice S.A. Bobde.<sup>1</sup>**

In a very important judgment passed in November 2013 by the Constitutional Bench of Hon'ble Apex Court of India, it has been held that Police must register FIR upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure.

The issue which was considered by Hon'ble Supreme Court is of great public importance. In view of the divergent opinions in a large number of cases earlier decided, it was important to have a clear enunciation of law and adjudication by a larger Bench for the benefit of all concerned, the courts, the investigating agencies and the citizens.

The court's direction came on a reference by three judges' bench headed by Justice Dalveer Bhandari in February 2012 in a matter<sup>2</sup> relating to kidnapping of a minor girl in Uttar Pradesh. The mother of the victim challenged the refusal of local police to register an FIR against the kidnappers on the basis of her complaint. Hon'ble Apex Court, after hearing various counsel representing Union of India, States and Union Territories and also after adverting to all the conflicting decisions extensively, referred the matter to a Constitution Bench.

The important issue which was considered by the Constitutional Bench in the referred matter was whether "a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 (in short 'the Code') 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?"

It was contended on behalf of petitioner that upon receipt of information by a police officer in-charge of a police station disclosing a cognizable offence, it is imperative for him to register a case under Section 154 of the Code and placed reliance upon two-Judge Bench decisions of this Court in ***State of Haryana vs. Bhajan Lal***<sup>3</sup>, ***Ramesh Kumari vs. State (NCT of Delhi)***<sup>4</sup> and ***Parkash Singh Badal vs. State of Punjab***<sup>5</sup>. On the other hand it was argued on behalf of State that an officer in-charge of a police station is not obliged under law, upon receipt of information disclosing commission of a cognizable offence, to register a case rather the discretion lies with him, in appropriate cases, to hold some sort of preliminary inquiry in relation to the veracity or otherwise of the accusations made in the report. In support of his submission, he placed reliance upon two- Judge Bench decisions of this Court in ***P. Sirajuddin vs. State of Madras***<sup>6</sup>, ***Sevi vs. State of Tamil Nadu***<sup>7</sup>, ***Shashikant vs. Central Bureau of Investigation***<sup>8</sup>, and ***Rajinder Singh Katoch vs. Chandigarh Admn.***<sup>9</sup>

Cognizable offences are those which attract punishment of three years or more in case of conviction and where an investigating officer can arrest an accused without warrant.

**The only question before this Constitution Bench relates to the interpretation of Section 154 of the Code and incidentally to consider Sections 156 and 157 also.**

After hearing the contentions and arguments as well as due interpretation of statute in this regard, Hon'ble Apex Court has held regarding registration or nonregistration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed.

Such a preliminary inquiry should be time bound and not take more than one week.

But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. The Hon'ble Constitutional Bench has concluded its findings in below mentioned directions:

(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.

It was held that 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.

## **CONCLUSION**

Preliminary inquiry can be conducted in certain matters only to determine if there was cognizable element in the complaint relating to matrimonial family disputes, commercial offences, cases of medical negligence, corruption cases and cases of abnormal delay in the lodging of the complaint.

If a police officer decides to conduct a preliminary inquiry and finds that complaint does not merit registration of FIR, then the same shall be recorded and a copy of the closure report shall be given to the first informant in seven days.

Failure to comply with said direction would entail disciplinary action against erring investigating officer. Registration of an FIR in cognizable offences is mandatory and no preliminary inquiry by a police official is permissible as a condition for registering FIR in cognizable offences. Police officials can't avoid registration of FIR and action must be taken against them for not lodging FIR in cognizable offences.