

the police discloses the commission of a cognizable offence.

41) In *Khub Chand (supra)*, this Court observed as under:

"7. The term "shall" in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature. To be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations..."

42) It is relevant to mention that the object of using the word "shall" in the context of Section 154(1) of the Code is to ensure that all information relating to all cognizable offences is promptly registered by the police and investigated in accordance with the provisions of law.

43) Investigation of offences and prosecution of offenders are the duties of the State. For "cognizable offences", a duty has been cast upon the police to register FIR and to conduct investigation except as otherwise permitted specifically under Section 157 of the Code. If a

discretion, option or latitude is allowed to the police in the matter of registration of FIRs, it can have serious consequences on the public order situation and can also adversely affect the rights of the victims including violating their fundamental right to equality.

44) Therefore, the context in which the word "shall" appears in Section 154(1) of the Code, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these factors clearly show that the word "shall" used in Section 154(1) needs to be given its ordinary meaning of being of "mandatory" character. The provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer in-charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR. It is settled position of law that if the provision is unambiguous and the legislative intent is clear, the court need not call into it any other rules of construction.

45) In view of the above, the use of the word 'shall'

coupled with the Scheme of the Act lead to the conclusion that the legislators intended that if an information relating to commission of a cognizable offence is given, then it would mandatorily be registered by the officer in-charge of the police station. Reading 'shall' as 'may' as contended by some counsel, would be against the Scheme of the Code. Section 154 of the Code should be strictly construed and the word 'shall' should be given its natural meaning. The golden rule of Interpretation can be given a go-by only in cases where the language of the section is ambiguous and/or leads to an absurdity.

46) In view of the above, we are satisfied that Section 154(1) of the Code does not have any ambiguity in this regard and is in clear terms. It is relevant to mention that Section 39 of the Code casts a statutory duty on every person to inform about commission of certain offences which includes offences covered by Sections 121 to 126, 302, 304-A, 382, 392 etc., of the IPC. It would be incongruous to suggest that though it is the duty of every citizen to inform about commission of an offence, but it is not obligatory on the officer-in-charge of a Police Station to

register the report. The word 'shall' occurring in Section 39 of the Code has to be given the same meaning as the word 'shall' occurring in Section 154(1) of the Code.

'Book'/'Diary'

47) It is contended by learned ASG appearing for the State of Chhattisgarh that the recording of first information under Section 154 in the 'book' is subsequent to the entry in the General Diary/Station Diary/Daily Diary, which is maintained in police station. Therefore, according to learned ASG, first information is a document at the earliest in the general diary; then, if any preliminary inquiry is needed the police officer may conduct the same and thereafter the information will be registered as FIR.

48) This interpretation is wholly unfounded. The First Information Report is in fact the "information" that is received first in point of time, which is either given in writing or is reduced to writing. It is not the "substance" of it, which is to be entered in the diary prescribed by the State Government. The term 'General Diary' (also called as 'Station Diary' or 'Daily Diary' in some States) is

maintained not under Section 154 of the Code but under the provisions of Section 44 of the Police Act, 1861 in the States to which it applies, or under the respective provisions of the Police Act(s) applicable to a State or under the Police Manual of a State, as the case may be.

Section 44 of the Police Act, 1861 is reproduced below:-

44. Police-officers to keep diary.—It shall be the duty of every officer in charge of a police station to keep a general diary in such form as shall, from time to time, be prescribed by the State Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined. The Magistrate of the district shall be at liberty to call for any inspect such diary."

49) It is pertinent to note that during the year 1861, when the aforesaid Police Act, 1861 was passed, the Code of Criminal Procedure, 1861 was also passed. Section 139 of that Code dealt with registration of FIR and this Section is also referred to the word "diary", as can be seen from the language of this Section, as reproduced below:-

"139. Every complaint or information preferred to an officer in charge of a Police Station, shall be reduced into writing, and the substance thereof shall be entered in a **diary** to be kept by such officer, in such form as shall be prescribed by the local government."

Thus, Police Act, 1861 and the Code of Criminal Procedure, 1861, both of which were passed in the same year, used the same word "diary".

50) However, in the year 1872 a new Code came to be passed which was called the Code of Criminal Procedure, 1872. Section 112 of the Code dealt with the issue of registration of FIR and is reproduced below:-

112. Every complaint preferred to an officer in charge of a Police station shall be reduced into writing, and shall be signed, sealed, or marked by the person making it; and the substance thereof shall be entered in a book to be kept by such officer in the form prescribed by the Local Government."

51) It is, thus, clear that in the Code of Criminal Procedure, 1872, a departure was made and the word 'book' was used in place of 'diary'. The word 'book' clearly referred to FIR book to be maintained under the Code for registration of FIRs.

52) The question that whether the FIR is to be recorded in the FIR Book or in General Diary, is no more *res integra*. This issue has already been decided authoritatively by this Court.

53) In *Madhu Bala vs. Suresh Kumar* (1997) 8 SCC 476, this Court has held that FIR must be registered in the FIR Register which shall be a book consisting of 200 pages. It is true that the substance of the information is also to be mentioned in the Daily diary (or the general diary). But, the basic requirement is to register the FIR in the FIR Book or Register. Even in *Bhajan Lal (supra)*, this Court held that FIR has to be entered in a book in a form which is commonly called the First Information Report.

54) It is thus clear that registration of FIR is to be done in a book called FIR Book or FIR Register. Of course, in addition, the gist of the FIR or the substance of the FIR may also be mentioned simultaneously in the General Diary as mandated in the respective Police Act or Rules, as the case may be, under the relevant State provisions.

55) The General Diary is a record of all important transactions/events taking place in a police station, including departure and arrival of police staff, handing over or taking over of charge, arrest of a person, details of law and order duties, visit of senior officers etc. It is in this

context that gist or substance of each FIR being registered in the police station is also mentioned in the General Diary since registration of FIR also happens to be a very important event in the police station. Since General Diary is a record that is maintained chronologically on day-to-day basis (on each day, starting with new number 1), the General Diary entry reference is also mentioned simultaneously in the FIR Book while FIR number is mentioned in the General Diary entry since both of these are prepared simultaneously.

56) It is relevant to point out that FIR Book is maintained with its number given on an annual basis. This means that each FIR has a unique annual number given to it. This is on similar lines as the Case Numbers given in courts. Due to this reason, it is possible to keep a strict control and track over the registration of FIRs by the supervisory police officers and by the courts, wherever necessary. Copy of each FIR is sent to the superior officers and to the concerned Judicial Magistrate.

57) On the other hand, General Diary contains a huge number of other details of the proceedings of each day.

Copy of General Diary is not sent to the Judicial Magistrate having jurisdiction over the police station, though its copy is sent to a superior police officer. Thus, it is not possible to keep strict control of each and every FIR recorded in the General Diary by superior police officers and/or the court in view of enormous amount of other details mentioned therein and the numbers changing every day.

58) The signature of the complainant is obtained in the FIR Book as and when the complaint is given to the police station. On the other hand, there is no such requirement of obtaining signature of the complainant in the general diary. Moreover, at times, the complaint given may consist of large number of pages, in which case it is only the gist of the complaint which is to be recorded in the General Diary and not the full complaint. This does not fit in with the suggestion that what is recorded in General Diary should be considered to be the fulfillment/compliance of the requirement of Section 154 of registration of FIR. In fact, the usual practice is to record the complete complaint in the FIR book (or annex it with the FIR form) but record only about one or two

paragraphs (gist of the information) in the General Diary.

59) In view of the above, it is useful to point out that the Code was enacted under Entry 2 of the Concurrent List of the Seventh Schedule to the Constitution which is reproduced below:-

"2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution."

On the other hand, Police Act, 1861 (or other similar Acts in respective States) were enacted under Entry 2 of the State List of the Seventh Schedule to the Constitution, which is reproduced below:-

"2. Police (including railway and village police) subject to the provisions of Entry 2A of List I."

60) Now, at this juncture, it is pertinent to refer Article 254(1) of the Constitution, which lays down the provisions relating to inconsistencies between the laws made by the Parliament and the State Legislatures. Article 254(1) is reproduced as under:-

***254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States**

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or

(57)

to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then subject to the provisions of clause (7), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void."

Thus it is clear from the mandate of Article 254(1) of the Constitution that if there is any inconsistency between the provisions of the Code and the Police Act, 1861, the provisions of the Code will prevail and the provisions of the Police Act would be void to the extent of the repugnancy.

61) If at all, there is any inconsistency in the provisions of Section 154 of the Code and Section 44 of the Police Act, 1861, with regard to the fact as to whether the FIR is to be registered in the FIR book or in the General Diary, the provisions of Section 154 of the Code will prevail and the provisions of Section 44 of the Police Act, 1861 (or in the provisions of the respective corresponding Police Act or Rules in other respective States) shall be void to the extent of the repugnancy. Thus, FIR is to be recorded in the FIR Book, as mandated under Section 154 of the Code.

and it is not correct to state that information will be first recorded in the General Diary and only after preliminary inquiry, if required, the information will be registered as FIR.

62) However, this Court in *Tapan Kumar Singh (supra)*, held that a GD entry may be treated as First information in an appropriate case, where it discloses the commission of a cognizable offence. It was held as under:

15. It is the correctness of this finding which is assailed before us by the appellants. They contend that the information recorded in the GD entry does disclose the commission of a cognizable offence. They submitted that even if their contention, that after recording the GD entry only a preliminary inquiry was made, is not accepted, they are still entitled to sustain the legality of the investigation on the basis that the GD entry may be treated as a first information report, since it disclosed the commission of a cognizable offence.

16. The parties before us did not dispute the legal position that a GD entry may be treated as a first information report in an appropriate case, where it discloses the commission of a cognizable offence. If the contention of the appellants is upheld, the order of the High Court must be set aside because if there was in law a first information report disclosing the commission of a cognizable offence, the police had the power and jurisdiction to investigate, and in the process of investigation to conduct search and seizure. It is, therefore, not necessary for us to consider the authorities cited at the Bar on the question of validity of the preliminary inquiry and the validity of the search and seizure.

Xxx xxx

19. The High Court fell into an error in thinking that the

57

information received by the police could not be treated as a first information report since the allegation was vague inasmuch as it was not stated from whom the sum of rupees one lakh was demanded and accepted. Nor was it stated that such demand or acceptance was made as motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show in exercise of his official function favour or disfavour to any person or for rendering, attempting to render any service or disservice to any person. Thus there was no basis for a police officer to suspect the commission of an offence which he was empowered under Section 156 of the Code to investigate.

63) It is thus unequivocally clear that registration of FIR is mandatory and also that it is to be recorded in the 'FIR Book' by giving a unique annual number to each FIR to enable strict tracking of each and every registered FIR by the superior police officers as well as by the competent court to which copies of each FIR are required to be sent.

'Information'

64) The legislature has consciously used the expression "information" in Section 154(1) of the Code as against the expression used in Section 41(1)(e) and (g) where the expression used for arresting a person without warrant is "reasonable complaint" or "credible information". The expression under Section 154(1) of the Code is not qualified by the prefix "reasonable" or "credible". The non-

qualification of the word "information" in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code is for the reason that the police officer should not refuse to record any information relating to the commission of a cognizable offence on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, reasonableness or credibility of the said information is not a condition precedent for the registration of a case.

65) The above view has been expressed by this Court in **Bhajan Lal (supra)** which is as under-

"32. ... in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word."

66) In **Parkash Singh Badal (supra)**, this Court held as

under:

"65. The legal mandate enshrined in Section 154(1) is that every information relating to the commission of a "cognizable offence" [as defined under Section 2(c) of the Code] if given orally (in which case it is to be reduced into writing) or in writing to "an officer in charge of a police station" [within the meaning of Section 2(b) of the Code] and signed by the informant, should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as "first information report" and which act of entering the information in the said form is known as registration of a crime or a case.

66. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the police officer concerned cannot embark upon an inquiry as to whether the information laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of any offence which he is empowered under Section 155 of the Code to investigate, subject to the proviso to Section 157 thereof. In case an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.

67. It has to be noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Sections 41(1)(a) or (d) of the Code wherein the expressions "reasonable complaint" and "credible information" are used. Evidently, the qualification of the word "information" in Section 154(1)

unlike in Sections 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, "reasonableness" or "credibility" of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that "every complaint or information" preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that "every complaint" preferred to an officer in charge of a police station shall be reduced in writing. The word "complaint" which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word "information" was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the Code. An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence.

68. It is, therefore, manifestly clear that if any informant disclosing a cognizable offence is laid before an officer in charge of a police station, satisfying the requirements of Section 154(1) of the Code, the said 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.

67) In *Ramash Kumari (supra)*, this Court held as under:-

4. That a police officer mandatorily registers a case on a complaint of a cognizable offence by the citizen under Section 154 of the Code is no more *res integra*. The point of law has been set at rest by this Court in *State of Haryana v. Bhajan Lal*. This Court after examining the whole gamut and intricacies of the mandatory nature of Section 154 of

the Code has arrived at the finding in paras 31 and 32 of the judgment as under:

"31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the police officer concerned cannot embark upon an inquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station, refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.

32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression 'information' when qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, 'reasonable complaint' and 'credible information' are used. Evidently, the qualification of the word 'information' in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information

not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word 'information' without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that 'every complaint' preferred to an officer in charge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190 of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be information and that information must disclose a cognizable offence.

(emphasis in original)

Finally, this Court in para 33 said:

"33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said 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."

5. The views expressed by this Court in paras 31, 32 and 33 as quoted above leave no manner of doubt that the provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of such information disclosing cognizable offence."

68) In *Ram Lal Narang (supra)*, this Court held as under:-

*14. Under the CrPC, 1898, whenever an officer in charge of the police station received information relating to

65

the commission of a cognizable offence, he was required to enter the substance thereof in a book kept by him, for that purpose, in the prescribed form (Section 154 CrPC). Section 155 of the CrPC invested the Police with the power to investigate into cognizable offences without the order of a Court. If, from the information received or otherwise, the officer in charge of a police station suspected the commission of a cognizable offence, he was required to send forthwith a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and then to proceed in person or depute one of his subordinate officers to proceed to the spot, to investigate the facts and circumstances of the case and to take measures for the discovery and arrest of the offender (Section 157 CrPC). He was required to complete the investigation without unnecessary delay, and, as soon as it was completed, to forward to a Magistrate empowered to take cognizance of the offence upon a police report, a report in the prescribed form setting forth the names of the parties, the nature of the information and the names of the persons who appeared to be acquainted with the circumstances of the case [Section 173(1) CrPC]. He was also required to state whether the accused had been forwarded in custody or had been released on bail. Upon receipt of the report submitted under Section 173(1) CrPC by the officer in charge of the police station, the Magistrate empowered to take cognizance of an offence upon a police report might take cognizance of the offence [Section 190(1)(b) CrPC]. Thereafter, if, in the opinion of the Magistrate taking cognizance of the offence, there was sufficient ground for proceeding, the Magistrate was required to issue the necessary process to secure the attendance of the accused (Section 204 CrPC). The scheme of the Code thus was that the FIR was followed by investigation, the investigation led to the submission of a report to the Magistrate, the Magistrate took cognizance of the offence on receipt of the police report and, finally, the Magistrate taking cognizance issued process to the accused.

15. The police thus had the statutory right and duty to "register" every information relating to the commission of a cognizable offence. The police also had the statutory right and duty to investigate the facts and circumstances of the case where the commission of a cognizable offence was suspected and to submit the report of such investigation to the Magistrate having jurisdiction to take cognizance of the offence upon a police report. These statutory rights and duties of the police were not circumscribed by any power of

superintendence or interference in the Magistrate, nor was any sanction required from a Magistrate to empower the Police to investigate into a cognizable offence. This position in law was well-established. In *King Emperor v. Khwaja Nazir Ahmad* the Privy Council observed as follows:

"Just as it is essential that everyone accused of a crime should have free access to a Court of justice, so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rules by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the Courts to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of Habeas Corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then ... In the present case, the police have under Sections 154 and 155 of the Criminal Procedure Code, a statutory right to investigate a cognizable offence without requiring the sanction of the Court ..."

Ordinarily, the right and duty of the police would end with the submission of a report under Section 173(1) CrPC upon receipt of which it was up to the Magistrate to take or not to take cognizance of the offence. There was no provision in the 1898 Code prescribing the procedure to be followed by the police, where, after the submission of a report under Section 173(1) CrPC and after the Magistrate had taken cognizance of the offence, fresh facts came to light which required further investigation. There was, of course, no express provision prohibiting the police from launching upon an investigation into the fresh facts coming to light after the submission of the report under Section 173(1) or after the Magistrate had taken cognizance of the offence. As we shall presently point out, it was generally thought by many High Courts, though doubted by a few, that the

67

police were not barred from further investigation by the circumstance that a report under Section 173(1) had already been submitted and a Magistrate had already taken cognizance of the offence. The Law Commission in its 41st report recognized the position and recommended that the right of the police to make further investigation should be statutorily affirmed. The Law Commission said:

"14.23. A report under Section 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting the report under Section 173 comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the Magistrate concerned. It appears, however, that Courts have sometimes taken the narrow view that once a final report under Section 173 has been sent, the police cannot touch the case again and cannot re-open the investigation. This view places a hindrance in the way of the investigating agency, which can be very unfair to the prosecution and, for that matter, even to the accused. It should be made clear in Section 173 that the competent police officer can examine such evidence and send a report to the Magistrate. Copies concerning the fresh material must of course be furnished to the accused."

Accordingly, in the CrPc, 1973, a new provision, Section 173(8), was introduced and it says:

"Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

69) In *Lallan Chaudhary (supra)*, this Court held

as under:

"As Section 154 of the Code thus casts a statutory duty upon the police officer to register the case, as disclosed in

the complaint, and then to proceed with the investigation. The mandate of Section 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option except to register the case on the basis of such information.

9. In *Ramesh Kumari v. State (NCT of Delhi)* this Court has held that the provision of Section 154 is mandatory. Hence, the police officer concerned is duty bound to register the case on receiving information disclosing cognizable offence. Genuineness or credibility of the information is not a condition precedent for registration of a case. That can only be considered after registration of the case.

10. The mandate of Section 154 of the Code is that at the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence, the police officer concerned cannot embark upon an inquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not relevant or credible. In other words, reliability, genuineness and credibility of the information are not the conditions precedent for registering a case under Section 154 of the Code."

A perusal of the above-referred judgments clarify that the reasonableness or creditability of the information is not a condition precedent for the registration of a case.

JUDGMENT

Preliminary Inquiry

79) Mr. Naphade relied on the following decisions in support of his arguments that if the police officer has a doubt about the veracity of the accusation, he has to conduct preliminary inquiry, viz., *E.P. Royappa vs. State of Tamil Nadu* (1974) 4 SCC 3, *Maneka Gandhi*

(supra), *S.M.D. Kiran Pasha vs. Government of Andhra Pradesh* (1990) 1 SCC 328, *D.K. Basu vs. State of W.B.* (1997) 1 SCC 416, *Uma Shankar Sitanl vs. Commissioner of Police, Delhi & Ors.* (1996) 11 SCC 714, *Preeti Gupta (supra)*, *Francis Coralie Mullin vs. Administrator, Union Territory of Delhi* (1981) 1 SCC 608, *Common Cause, A Registered Society vs. Union of India* (1999) 5 SCC 667, *District Registrar and Collector, Hyderabad vs. Canara Bank* (2005) 1 SCC 496 and *Ranjitsing Brahmajetsing Sharma vs. State of Maharashtra* (2005) 5 SCC 294.

71) Learned senior counsel for the State further vehemently contended that in appropriate cases, it would be proper for a police officer, on receipt of a complaint of a cognizable offence, to satisfy himself that *prima facie* the allegations levelled against the accused in the complaint are credible. In this regard, Mr. Naphade cited the following decisions, viz. *Tapan Kumar Singh (supra)*, *Bhagwant Kishore Joshi (supra)*, *P. Sirajuddin (supra)*, *Sevi (supra)*, *Shashikant (supra)*, *Rajinder Singh Katoch (supra)*, *Vineet Narain vs.*

Therefore, learned senior counsel vehemently pleaded for a preliminary inquiry before registration of FIR.

73) In terms of the language used in Section 154 of the Code, the police is duty bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e. FIR) about commission of such an offence, if the officer in charge of the police station otherwise suspects the commission of such an offence. The legislative intent is therefore quite clear, i.e. to ensure that every cognizable offence is promptly investigated in accordance with law. This being the legal position, 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 the commission of a cognizable offence. Every cognizable offence must be investigated promptly in accordance with law and all information provided under Section 154 of the Code about the commission of a cognizable offence must be registered as an FIR so as to initiate an offence. The requirement of Section 154 of the Code is only that the report must disclose the commission of a cognizable

offence and that is sufficient to set the investigating machinery into action.

74) The insertion of sub-section (3) of Section 154, by way of an amendment, reveals the intention of the legislature to ensure that no information of commission of a cognizable offence must be ignored or not acted upon which would result in unjustified protection of the alleged offender/accused.

75) The maxim *expressio unius est exclusio alterius* (expression of one thing is the exclusion of another) applies in the interpretation of Section 154 of the Code, where the mandate of recording the information in writing excludes the possibility of not recording an information of commission of a cognizable crime in the special register.

76) Therefore, conducting an investigation into an offence after registration of FIR under Section 154 of the Code is the "procedure established by law" and, thus, is in conformity with Article 21 of the Constitution. Accordingly, the right of the accused under Article 21 of the Constitution is protected if the FIR is registered first and then the investigation is conducted in accordance

with the provisions of law.

77) The term inquiry as per Section 2(g) of the Code reads as under:

"2(g) - "inquiry" means every inquiry other than a trial conducted under this Code by a Magistrate or Court."

Hence, it is clear that inquiry under the Code is relateable to a judicial act and not to the steps taken by the Police which are either investigation after the stage of Section 154 of the Code or termed as 'Preliminary Inquiry' and which are prior to the registration of FIR, even though, no entry in the General Diary/Station Diary/Daily Diary has been made.

78) Though there is reference to the term 'preliminary inquiry' and 'inquiry' under Sections 159 and Sections 202 and 340 of the Code, that is a judicial exercise undertaken by the Court and not by the Police and is not relevant for the purpose of the present reference.

79) Besides, learned senior counsel relied on the special procedures prescribed under the CBI manual to be read into Section 154. It is true that the concept of "preliminary

75

"Inquiry" is contained in Chapter IX of the Crime Manual of the CBI. However, this Crime Manual is not a statute and has not been enacted by the legislature. It is a set of administrative orders issued for internal guidance of the CBI officers. It cannot supersede the Code. Moreover, in the absence of any indication to the contrary in the Code itself, the provisions of the CBI Crime Manual cannot be relied upon to import the concept of holding of preliminary inquiry in the scheme of the Code of Criminal Procedure. At this juncture, it is also pertinent to submit that the CBI is constituted under a Special Act, namely, the Delhi Special Police Establishment Act, 1946 and it derive its power to investigate from this Act.

80) It may be submitted that Sections 4(2) and 5 of the Code permit special procedures to be followed for special Acts. Section 4 of the Code lays down as under:

***Section 4. Trial of offences under the Indian Penal Code and other laws.** (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.*

It is thus clear that for offences under laws other than IPC, different provisions can be laid down under a special Act to regulate the investigation, inquiry, trial etc., of those offences. Section 4(2) of the Code protects such special provisions.

81) Moreover, Section 5 of the Code lays down as under:

Section 5. Saving Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

Thus, special provisions contained in the DSPE Act relating to the powers of the CBI are protected also by Section 5 of the Code.

82) In view of the above specific provisions in the Code, the powers of the CBI under the DSPE Act, cannot be equated with the powers of the regular State Police under the Code.

Significance and Compelling reasons for registration of FIR at the earliest

83) The object sought to be achieved by registering the earliest information as FIR is *inter alia* two fold: one, that the criminal process is set into motion and is well

documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment etc. later.

84) Principles of democracy and liberty demand a regular and efficient check on police powers. One way of keeping check on authorities with such powers is by documenting every action of theirs. Accordingly, under the Code, actions of the police etc., are provided to be written and documented. For example, in case of arrest under Section 41(1)(b) of the Code, arrest memo along with the grounds has to be in writing mandatorily; under Section 55 of the Code, if an officer is deputed to make an arrest, then the superior officer has to write down and record the offence etc., for which the person is to be arrested; under Section 91 of the Code, a written order has to be passed by the concerned officer to seek documents; under Section 160 of the Code, a written notice has to be issued to the witness so that he can be called for recording of his/her statement, seizure memo/panchnama has to be drawn for every article seized etc.

85) The police is required to maintain several records including Case Diary as provided under Section 172 of the Code, General Diary as provided under Section 44 of the Police Act etc., which helps in documenting every information collected, spot visited and all the actions of the police officers so that their activities can be documented. Moreover, every information received relating to commission of a non-cognizable offence also has to be registered under Section 155 of the Code.


86) The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice delivery system but also to ensure 'judicial oversight'. Section 157(1) deploys the word 'forthwith'. Thus, any information received under Section 154(1) or otherwise has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the knowledge of the Investigating agency but also to the subordinate judiciary.

87) The Code contemplates two kinds of FIRs. The duly signed FIR under Section 154(1) is by the informant to the concerned officer at the police station. The second kind of

(77)

FIR could be which is registered by the police itself on any information received or other than by way of an informant [Section 157(1)] and even this information has to be duly recorded and the copy should be sent to the Magistrate forthwith.

88) The registration of FIR either on the basis of the information furnished by the informant under Section 154(1) of the Code or otherwise under Section 157(1) of the Code is obligatory. The obligation to register FIR has inherent advantages:

- 
- a) It is the first step to 'access to justice' for a victim.
 - b) It upholds the 'Rule of Law' inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.
 - c) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.
 - d) It leads to less manipulation in criminal cases and lessens incidents of 'ante-dates' FIR or deliberately delayed FIR.

89) In *Thulia Kall vs. State of Tamil Nadu* (1972)-3

SCC 393, this Court held as under:-

"12...First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained..."

90) In *Tapan Kumar Singh (supra)*, it was held as under:-

"20. It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is 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. At this stage it is enough 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

70

has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding those matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can."

JUDGMENT

91) In *Madhu Bala (supra)*, this Court held:

"6. Coming first to the relevant provisions of the Code, Section 2(d) defines "complaint" to mean any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence, but does not include a police report. Under Section 2(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which a police officer may in accordance with the First Schedule (of the Code) or under any other law for the time being in force, arrest without a warrant. Under Section 2(r) "police report" means a report

forwarded by a police officer to a Magistrate under sub-section (2) of Section 173 of the Code, Chapter XII of the Code comprising Sections 154 to 176 relates to information to the police and their powers to investigate. Section 154 provides, inter alia, that the officer in charge of a police station shall reduce into writing every information relating to the commission of a cognizable offence given to him orally and every such information if given in writing 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. Section 156 of the Code with which we are primarily concerned in these appeals reads as under....

9. The mode and manner of registration of such cases are laid down in the Rules framed by the different State Governments under the Indian Police Act, 1861. As in the instant case we are concerned with Punjab Police Rules 1934 (which are applicable to Punjab, Haryana, Himachal Pradesh and Delhi) framed under the said Act we may now refer to the relevant provisions of those Rules. Chapter XXIV of the said Rules lays down the procedure an officer in charge of a police station has to follow on receipt of information of commission of crime. Under Rule 24.1 appearing in the Chapter every information covered by Section 154 of the Code must be entered in the First Information Report Register and the substance thereof in the daily diary. Rule 24.5 says that the First Information Report Register shall be a printed book in Form 24.5(1) consisting of 200 pages and shall be completely filled before a new one is commenced. It further requires that the cases shall bear an annual serial number in each police station for each calendar year. The other requirements of the said Rules need not be detailed as they have no relevance to the point at issue.

10. From the foregoing discussion it is evident that wherever a Magistrate directs an investigation on a "complaint" the police has to register a cognizable case on that complaint treating the same as the FIR and comply with the requirements of the above Rules. It, therefore, passes our comprehension as to how the direction of a Magistrate asking the police to "register a case" makes an order of investigation under Section 156(3) legally unsustainable. Indeed, even if a Magistrate does not pass a direction to register a case, still in view of the provisions of Section 156(1) of the Code which empowers the police to investigate into a cognizable "case" and the Rules framed under the Indian Police Act, 1861 it (the police) is duty-bound to formally register a case and then investigate into

the same. The provisions of the Code, therefore, do not in any way stand in the way of a Magistrate to direct the police to register a case at the police station and then investigate into the same. In our opinion when an order for investigation under Section 156(3) of the Code is to be made the proper direction to the police would be "to register a case at the police station treating the complaint as the first information report and investigate into the same".

92) According to the Statement of Objects and Reasons, protection of the interests of the poor is clearly one of the main objects of the Code. Making registration of information relating to commission of a cognizable offence mandatory would help the society, especially, the poor in rural and remote areas of the country.

93) 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:-

"7.19.1 According to the Section 154 of the Code of Criminal Procedure, the officer incharge of a police station is mandated to register every information oral or written relating to the commission of a cognizable offence. Non-registration of cases is a serious complaint against the police. The National Police Commission in its 4th report lamented that the police "evade registering cases for taking up investigation where specific complaints are lodged at the police stations". It referred to a study conducted by the Indian Institute of Public

Opinion, New Delhi regarding "Image of the Police in India" which observed that over 50% of the respondents mention non-registration of complaints as a common practice in police stations.

7.19.2 The Committee recommends that all complaints should be registered promptly, failing which appropriate action should be taken. This would necessitate change in the mind - set of the political executive and that of senior officers.

7.19.4 There are two more aspects relating to registration. The first is minimization of offences by the police by way of not invoking appropriate sections of law. We disapprove of this tendency. Appropriate sections of law should be invoked in each case unmindful of the gravity of offences involved. The second issue is relating to the registration of written complaints. There is an increasing tendency among the police station officers to advise the informants, who come to give oral complaints, to bring written complaints. This is wrong. Registration is delayed resulting in valuable loss of time in launching the investigation and apprehension of criminals. Besides, the complainant gets an opportunity to consult his friends, relatives and sometimes even lawyers and often tends to exaggerate the crime and implicate innocent persons. This eventually has adverse effect at the trial. The information should be reduced in writing by the SH, if given orally, without any loss of time so that the first version of the alleged crime comes on record.

7.20.1.1 It has come to the notice of the Committee that even in cognizable cases quite 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."

94) It means that the number of FIRs not registered is approximately equivalent to the number of FIRs actually

23

registered. Keeping in view the NCRB figures that show that about 60 lakh cognizable offences were registered in India during the year 2012, the burking of crime may itself be in the range of about 60 lakh every year. Thus, it is seen that such a large number of FIRs are not registered every year, which is a clear violation of the rights of the victims of such a large number of crimes.

95) Burking of crime leads to dilution of the rule of law in the short run; and also has a very negative impact on the rule of law in the long run since people stop having respect for rule of law. Thus, non-registration of such a large number of FIRs leads to a definite lawlessness in the society.

96) Therefore, reading Section 154 in any other form would not only be detrimental to the Scheme of the Code but also to the society as a whole. It is thus seen that this Court has repeatedly held in various decided cases that registration of FIR is mandatory if the information given to the police under Section 154 of the Code discloses the commission of a cognizable offence.

Is there a likelihood of misuse of the provision?

97) Another, stimulating argument raised in support of preliminary inquiry is that mandatory registration of FIRs will lead to arbitrary arrest, which will directly be in contravention of Article 21 of the Constitution.

98) 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 under the law, and there are several safeguards available against arrest. Moreover, it is also pertinent to mention that an accused person also has a right to apply for "anticipatory bail" under the provisions of Section 438 of the Code if the conditions mentioned therein are satisfied. Thus, in appropriate cases, he can avoid the arrest under that provision by obtaining an order from the Court.

99) It is also relevant to note that in *Joginder Kumar vs. State of U.P. & Ors.* (1994) 4-SCG 260, this Court has held that arrest cannot be made by police in a routine manner. Some important observations are reproduced as

"20...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 bona fides of a complaint and a reasonable belief both as to the person's complicity and even 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. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do."

100) The registration of FIR under Section 154 of the Code and arrest of an accused person under Section 41 are two entirely different things. It is not correct to say that just because FIR is registered, the accused person can be arrested immediately. It is the imaginary fear that "merely because FIR has been registered, it would require arrest of the accused and thereby leading to loss of his reputation" and it should not be allowed by this Court to hold that registration of FIR is not mandatory to avoid such inconvenience to some persons. The remedy lies in strictly enforcing the safeguards available against

arbitrary arrests made by the police and not in allowing the police to avoid mandatory registration of FIR when the information discloses commission of a cognizable offence.

101) This can also be seen from the fact that Section 151 of the Code allows a police officer to arrest a person, even before the commission of a cognizable offence, in order to prevent the commission of that offence, if it cannot be prevented otherwise. Such preventive arrests can be valid for 24 hours. However, a Maharashtra State amendment to Section 151 allows the custody of a person in that State even for up to a period of 30 days (with the order of the Judicial Magistrate) even before a cognizable offence is committed in order to prevent commission of such offence. Thus, the arrest of a person and registration of FIR are not directly and/or irreversibly linked and they are entirely different concepts operating under entirely different parameters. On the other hand, if a police officer misuses his power of arrest, he can be tried and punished under Section 166.

102) Besides, the Code gives power to the police to close a matter both before and after investigation. A police

officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The Section itself states that a police officer can start investigation when he has a *'reason to suspect the commission of an offence'*. Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

103) Likewise, giving power to the police to close an investigation, Section 157 of the Code also acts like a check on the police to make sure that it is dispensing its function of investigating cognizable offences. This has been recorded in the 41st Report of the Law Commission of India on the Code of Criminal Procedure, 1898 as follows :

"14.1.....If the offence does not appear to be serious

and if the station-house officer thinks there is no sufficient ground for starting an investigation, he need not investigate but, here again, he has to send a report to the Magistrate who can direct the police to investigate, or if the Magistrate thinks fit, hold an inquiry himself."

"14.2. A noticeable feature of the scheme as outlined above is that a Magistrate is kept in the picture at all stages of the police investigation, but he is not authorized to interfere with the actual investigation or to direct the police how that investigation is to be conducted."

Therefore, the Scheme of the Code not only ensures that the time of the police should not be wasted on false and frivolous information but also that the police should not intentionally refrain from doing their duty of investigating cognizable offences. As a result, the apprehension of misuse of the provision of mandatory registration of FIR is unfounded and speculative in nature.

104) It is the stand of Mr. Naphade, learned senior counsel for the State of Maharashtra that when an innocent person is falsely implicated, he not only suffers from loss of reputation but also from mental tension and his personal liberty is seriously impaired. He relied on the *Maneka Gandhi (supra)*, which held the proposition that the law which deprives a person of his personal liberty must be

reasonable both from the stand point of substantive as well as procedural aspect is now firmly established in our Constitutional law. Therefore, he pleaded for a fresh look at Section 154 of the Code, which interprets Section 154 of the Code in conformity with the mandate of Article 21.

105) It is true that a delicate balance has to be maintained between the interest of the society and protecting the liberty of an individual. As already discussed above, there are already sufficient safeguards provided in the Code which duly protect the liberty of an individual in case of registration of false FIR. At the same time, Section 154 was drafted keeping in mind the interest of the victim and the society. Therefore, we are of the cogent view that mandatory registration of FIRs under Section 154 of the Code will not be in contravention of Article 21 of the Constitution as purported by various counsel.

Exceptions:

106) Although, we, in unequivocal terms, hold that 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. 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.

107) In the context of medical negligence cases, in *Jacob Mathew (supra)*, it was held by this Court as under:

"51. 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.

52. Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced *prima facie* evidence before the court in the form of a credible opinion given by

another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the *Bolam* test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against, would not make himself available to face the prosecution unless arrested, the arrest may be withheld.

108) In the context of offences relating to corruption, this Court in *P. Sirajuddin (supra)* expressed the need for a preliminary inquiry before proceeding against public servants.

109) Similarly, in *Tapan Kumar Singh (supra)*, this 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.

110) Therefore, in view of various counter claims regarding registration or non-registration, 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. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given *ex facie* discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

Conclusion/Directions:

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.

112) With the above directions, we dispose of the reference made to us. List all the matters before the appropriate Bench for disposal on merits.



.....
(P. SATHASIVAM)

.....
(DR. B.S. CHAUHAN)

.....
(RANJANA PRAKASH
DESAI)

.....
(RANJAN GOGOI)

.....
(S.A. ROBBE)

NEW DELHI;
NOVEMBER 12, 2013.