No.DGP/23/54/FIR/283/2012 Mumbai, Date 19/12/2013

Ref :- 1) DGP/23/54/Crime/2001, dated 03/10/2001,
2) DGP/23/54/FIR-954/2008, dated 16/08/2008,
3) DGP/23/66/Writ Peti./372/2010, dated 15/10/2010,
4) DGP/23/54/FIR/283/2012, dated 17/02/2012,
5) Standing Order No.20/2012, dated 26/09/2012,
6) Corrigendum No.DGP/23/54/FIR/283/2012, dated 11/12/2012.

Sub :- **Registration of F.I.R.**
Directions given by the Hon'ble Supreme Court of India in WP (Criminal) No. 68/2008 Lalita Kumari V/s Govt of U.P. & Others....dated 12th Nov. 2013.

****

Circular :

On the subject of registration of F.I.R.,this office had issued circulars from time to time as mentioned above. It will be worth while to mention here that the Hon'ble Supreme Court of India recently in the matter of Lalita Kumari V/s Govt. of U.P. & Others (W.P.(Criminal) No. 68/2008) on 12 th Nov. 2013 has issued the following directions which are bought to the notice of all Unit Commanders :

(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 prelminary 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 in one week. It must disclose reasons in brief for closing the complaints 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 offence, 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.

2. In view of above mentioned recent directions of the Hon'ble Supreme Court of India, all Unit Commanders are directed to follow the above directions scrupulously and bring these instructions to the notice of all subordinates in writing and further caution them that any failure to comply with the above directions would make them liable for disciplinary as well as penal action. Zero tolerance will be exhibited to this issue.

3. The above mentioned judgement is also available on the website of Hon'ble Supreme Court of India as well as on the website of Mahapolice.

4. All Unit Commanders must acknowledge the receipt of this circular personally and send the acknowledgement to this office within a week from the date of receipt of this circular.Any violations of the above mentioned direction shall be viewed seriously.

(Sanjeev Dayal)
Director General of Police,
Maharashtra State, Mumbai.

To,
All Commr. of Police (Including Rlys.)
All Supdts. of Police (Including Rlys.)

Copy to
The Addl. Director General of Police, CID., M.S., Pune.
The Addl. Director General of Police, Rly., M.S., Mumbai.

The Addl.DGP PCR,M.S.,Mumbai.
The ADG SRPF,TRAFFIC,TRG.
All Range Spl. Inspector General of Police.
Spl. Inspector General of Police, P.A.W., M.S., Pune.
D.I.G.P., Gadchiroli Range, Gadchiroli.

Copy to

Dy. S.P., Computer Section, D.G.P. Office.

2. He should put this circular along with the judgement on the website of Mahapolice immediately. Copy of Judgement is enclosed.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 68 OF 2008

Lalita Kumari .... Petitioner (s)

Versus

Govt. of U.P. & Ors. ....
Respondent(s)

WITH

S.L.P. (Crl.) No. 5986 of 2006

S.L.P. (Crl.) No. 5200 of 2009

CRIMINAL APPEAL No. 1410 OF 2011

CRIMINAL APPEAL No. 1267 OF 2007

AND

CONTEMPT PETITION (C) NO. 526722 OF 2008
IN
WRIT PETITION (CRIMINAL) NO. 68 OF 2008

J U D G M E N T

P.Sathasivam, CJI.

1) The important issue which arises for consideration in the referred matter is 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?"

2) The present writ petition under Article 32 of the Constitution, has been filed by one Lalita Kumari (minor) through her father, viz. Shri Bhola Kamat for the issuance of a writ of *Habeas Corpus* or direction(s) of like nature against the respondents herein for the protection of his minor daughter who has been kidnapped. The grievance in the said writ petition is that on 11.05.2008, a written report was submitted by the petitioner before the officer in-charge of the police station concerned who did not take any action on the same. Thereafter, when the Superintendent of Police was moved, an FIR was

registered. According to the petitioner, even thereafter, steps were not taken either for apprehending the accused or for the recovery of the minor girl child.

3) A two-Judge Bench of this Court in ***Lalita Kumari*** **vs. *Government of Uttar Pradesh & Ors.*** (2008) 7 SCC 164, after noticing the disparity in registration of FIRs by police officers on case to case basis across the country, issued notice to the Union of India, the Chief Secretaries of all the States and Union Territories and Director Generals of Police/Commissioners of Police to the effect that if steps are not taken for registration of FIRs immediately and the copies thereof are not handed over to the complainants, they may move the Magistrates concerned by filing complaint petitions for appropriate direction(s) to the police to register the case immediately and for apprehending the accused persons, failing which, contempt proceedings must be initiated against such delinquent police officers if no sufficient cause is shown.

4) Pursuant to the above directions, when the matter was heard by the very same Bench in *Lalita Kumari* **vs. *Government of Uttar Pradesh & Ors.*** (2008) 14 SCC

337. Mr. S.B. Upadhyay, learned senior counsel for the petitioner, projected his claim 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*** 1992 Supp. (1) SCC 335, ***Ramesh Kumari*** vs. ***State (NCT of Delhi)*** (2006) 2 SCC 677 and ***Parkash Singh Badal*** vs. ***State of Punjab*** (2007) 1 SCC 1. On the other hand, Mr. Shekhar Naphade, learned senior counsel for the State of Maharashtra submitted 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*** (1970) 1 SCC 595, ***Sevi*** vs. ***State of Tamil Nadu*** 1981 Supp SCC 43,

Shashikant vs. ***Central Bureau of Investigation*** (2007) 1 SCC 630, and ***Rajinder Singh Katoch*** vs. ***Chandigarh Admn.*** (2007) 10 SCC 69. In view of the conflicting decisions of this Court on the issue, the said bench, vide order dated 16.09.2008, referred the same to a larger bench.

5) Ensuing compliance to the above direction, the matter pertaining to Lalita Kumari was heard by a bench of three Judges in ***Lalita Kumari*** vs. ***Government of Uttar Pradesh & Ors.*** (2012) 4 SCC 1 wherein, this 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 while concluding as under:-

JUDGMENT

> "97. We have carefully analysed various judgments delivered by this Court in the last several decades. We clearly discern divergent judicial opinions of this Court on the main issue: whether under Section 154 Cr.P.C, a police officer is bound to register an FIR when a cognizable offence is made out or he (police officer) has an option, discretion or latitude of conducting some kind of preliminary inquiry before registering the FIR.
>
> 98. The learned counsel appearing for the Union of India and different States have expressed totally divergent views even before this Court. This Court also carved out a special category in the case of medical doctors in the aforementioned cases of *Santosh Kumar* and *Suresh Gupta* where preliminary inquiry had been postulated before

registering an FIR. Some counsel also submitted that the CBI Manual also envisages some kind of preliminary inquiry before registering the FIR.

99. The issue which has arisen for consideration in these cases is of great public importance. In view of the divergent opinions in a large number of cases decided by this Court, it has become extremely important to have a clear enunciation of law and adjudication by a larger Bench of this Court for the benefit of all concerned—the courts, the investigating agencies and the citizens."

100. Consequently, we request the Hon'ble the Chief Justice to refer these matters to a Constitution Bench of at least five Judges of this Court for an authoritative judgment."

6) Therefore, 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.

7) Heard Mr. S.B. Upadhyay, learned senior counsel for the petitioner, Mr. K.V. Vishwanathan, learned Additional Solicitor General for the Union of India, Mr. Sidharth Luthra, learned Additional Solicitor General for the State of Chhattisgarh, Mr. Shekhar Naphade, Mr. R.K. Dash, Ms. Vibha Datta Makhija, learned senior counsel for the State of Maharashtra, U.P. and M.P. respectively, Mr. G. Sivabalamurugan, learned counsel for the accused, Dr. Ashok Dhamija, learned counsel for the CBI, Mr. Kalyan Bandopodhya, learned senior counsel for the State of West

Bengal, Dr. Manish Singhvi, learned AAG for the State of Rajasthan and Mr. Sudarshan Singh Rawat.

8) In order to answer the main issue posed before this Bench, it is useful to refer the following Sections of the Code:-

"**154. Information in 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.

(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 subsection (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.

156. Police officer's power to investigate cognizable case. (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XII.

(2) No proceeding of a police officer in any such

shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

157. Procedure for investigation: (1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that-

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."

Contentions:

9) At the foremost, **Mr. S.B. Upadhyay**, learned senior counsel, while explaining the conditions mentioned in Section 154 submitted that Section 154(1) is mandatory as the use of the word 'shall' is indicative of the statutory intent of the legislature. He also contended that there is no discretion left to the police officer except to register an FIR. In support of the above proposition, he relied on the following decisions, viz. ***B.J. Premanand and Ors.*** vs. ***Mohan Koikal and Others*** (2011) 4 SCC 266, ***M/s Hiralal Rattanlal Etc. Etc.*** vs. ***State of U.P. and Anr. Etc. Etc.*** (1973) 1 SCC 216 and ***Govindlal Chhaganlal Patel*** vs. ***Agricultural Produce Market Committee, Godhra and Ors.*** (1975) 2 SCC 482.

10) Mr. Upadhyay, by further drawing our attention to the language used in Section 154(1) of the Code, contended that it merely mentions 'information' without prefixing the words 'reasonable' or 'credible'. In order to substantiate this claim, he relied on the following decisions, viz., ***Bhajan Lal (supra)***, ***Ganesh Bhavan Patel and Another*** vs. ***State of Maharashtra*** (1978) 4 SCC 371,

Aleque Padamsee and Others vs. *Union of India and Others* (2007) 6 SCC 171; *Ramesh Kumari* (supra); *Ram Lal Narang* vs. *State (Delhi Administration)* (1979) 2 SCC 322 and *Lallan Chaudhary and Others* vs. *State of Bihar and Another* (2006) 12 SCC 229. Besides, he also brought to light various adverse impacts of allowing police officers to hold preliminary inquiry before registering an FIR.

11) **Mr. K.V. Viswanathan**, learned Additional Solicitor General appearing on behalf of Union of India submitted that in all the cases where information is received under Section 154 of the Code, it is mandatory for the police to forthwith enter the same into the register maintained for the said purpose, if the same relates to commission of a cognizable offence. According to learned ASG, the police authorities have no discretion or authority, whatsoever, to ascertain the veracity of such information before deciding to register it. He also pointed out that a police officer, who proceeds to the spot under Sections 156 and 157 of the Code, on the basis of either a cryptic information or source information, or a rumour etc., has to immediately,

on-gathering information relating to the commission of a cognizable offence, send a report (ruqqa) to the police station so that the same can be registered as FIR. He also highlighted the scheme of the Code relating to the registration of FIR, arrest, various protections provided to the accused and the power of police to close investigation. In support of his claim, he relied on various decisions of this Court viz., ***Bhajan Lal (supra)***, ***Ramesh Kumari (supra)*** and ***Aleque Padamsee (supra)***. He also deliberated upon the distinguishable judgments in conflict with the mandatory proposition, viz., ***State of Uttar Pradesh*** vs. ***Bhagwant Kishore Joshi*** (1964) 2 SCR 71, ***P. Sirajuddin (supra)***, ***Sevi (supra)***, ***Shashikant (supra)***, ***Rajinder Singh Katoch (supra)***, ***Jacob Mathew*** vs. ***State of Punjab & Anr.*** (2005) 6 SCC 1. He concluded his arguments by saying that if any information disclosing a cognizable offence is led 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. Further, he emphasized upon various safeguards provided under the Code against filing a false case.

12) **Dr. Ashok Dhamija**, learned counsel for the CBI, submitted that the use of the word "shall" under Section 154(1) of the Code clearly mandates that if the information given to a police officer relates to the commission of a cognizable offence, then it is mandatory for him to register the offence. According to learned counsel, in such circumstances, there is no option or discretion given to the police. He further contended that the word "shall" clearly implies a mandate and is unmistakably indicative of the statutory intent. What is necessary, according to him, is only that the information given to the police must disclose commission of a cognizable offence. He also contended that Section 154 of the Code uses the word "information" *simpliciter* and does not use the qualified words such as "credible information" or "reasonable complaint". Thus, the intention of the Parliament is unequivocally clear from the language employed that a mere information relating to commission

of a cognizable offence is sufficient to register an FIR. He also relied on ***Bhajan Lal (supra)***, ***Ramesh Kumari (supra)***, ***Aleque Padamsee (supra)***, ***Lallan Chaudhary (supra)***, ***Superintendent of Police, CBI*** vs. ***Tapan Kumar Singh*** (2003) 6 SCC 175, ***M/s Hiralal Rattanlal (supra)***, ***B. Premanand (supra)***, ***Khub Chand*** vs. ***State of Rajasthan*** AIR 1967 SC 1074, ***P. Sirajuddin (supra)***, ***Rajinder Singh Katoch (supra)***, ***Bhagwant Kishore Joshi (supra)***, ***State of West Bengal*** vs. ***Committee for Protection of Democratic Rights, West Bengal*** (2010) 3 SCC 571. He also pointed out various safeguards provided in the Code against filing a false case. In the end, he concluded by reiterating that the 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. Further, he also clarified that the preliminary inquiry conducted by the CBI, under certain situations, as provided under the CBI Crime Manual, stands on a different footing due to the special provisions relating to the CBI contained in the Delhi

Special Police Establishment Act, 1946, which is saved under Sections 4(2) and 5 of the Code.

13) **Mr. Kalyan Bandopadhyay**, learned senior counsel appearing on behalf of the State of West Bengal, submitted that whenever any information relating to commission of a cognizable offence is received, it is the duty of the officer in-charge of a police station to record the same and a copy of such information, shall be given forthwith, free of cost, to the informant under Section 154(2) of the Code. According to him, a police officer has no other alternative but to record the information in relation to a cognizable offence in the first instance. He also highlighted various subsequent steps to be followed by the police officer pursuant to the registration of an FIR. With regard to the scope of Section 154 of the Code, he relied on ***H.N. Rishbud and Inder Singh*** vs. ***State of Delhi*** AIR 1955 SC 196, ***Bhajan Lal (supra)***, ***S.N. Sharma*** vs. ***Bipen Kumar Tiwari*** (1970) 1 SCC 653, ***Union of India*** vs. ***Prakash P. Hinduja*** (2003) 6 SCC 195, ***Sheikh Hasib alias Tabarak*** vs. ***State of Bihar*** (1972) 4 SCC 773, ***Shashikant (supra)***, ***Ashok Kumar***

Todi vs. *Kishwar Jahan and Others* (2011) 3 SCC 758; *Padma Sundara Rao (Dead) and Others* vs. *State of T.N. and Others* (2002) 3 SCC 533, *P. Sirajuddin (supra)*, *Rajinder Singh Katoch (supra)*, *Bhagwant Kishore Joshi (supra)* and *Mannalal Khatic* vs. *The State* AIR 1967 Cal 478.

14) **Dr. Manish Singhvi**, learned Additional Advocate General for the State of Rajasthan, submitted that Section 154(1) of the Code mandates compulsory registration of FIR. He also highlighted various safeguards inbuilt in the Code for lodging of false FIRs. He also pointed out that the only exception relates to cases arising under the Prevention of Corruption Act as, in those cases, sanction is necessary before taking cognizance by the Magistrates and the public servants are accorded some kind of protection so that vexatious cases cannot be filed to harass them.

15) **Mr. G. Sivabalamurugan**, learned counsel for the appellant in Criminal Appeal No. 1410 of 2013, after tracing the earlier history, viz., the relevant provisions in the Code of Criminal Procedure of 1861, 1872, 1882 and

1898 stressed as to why the compulsory registration of FIR is mandatory. He also highlighted the recommendations of the Report of the 41st Law Commission and insertion of Section 13 of the Criminal Law (Amendment) Act, 2013 with effect from 03.02.2013.

16) **Mr. R.K. Dash**, learned senior counsel appearing for the State of Uttar Pradesh, though initially commenced his arguments by asserting that, in order to check unnecessary harassment to innocent persons at the behest of unscrupulous complainants, it is desirable that a preliminary inquiry into the allegations should precede with the registration of FIR, but subsequently after considering the salient features of the Code, various provisions like Sections 2(4) (h), 156(1), 202(1), 164, various provisions from the U.P. Police Regulations, learned senior counsel contended that in no case recording of FIR should be deferred till verification of its truth or otherwise in case of information relating to a cognizable offence. In addition to the same, he also relied on various pronouncements of this Court, such as, ***Mohindro*** vs. ***State of Punjab*** (2001) 9 SCC 581,

Ramesh Kumari (supra), *Bhajan Lal (supra)*, *Parkash Singh Badal (supra)*, *Munna Lal* vs. *State of Himachal Pradesh* 1992 Cri. L.J. 1558, *Giridhari Lal Kanak* vs. *State and others* 2002 Cri. L.J. 2113 and *Katteri Moideen Kutty Haji* vs. *State of Kerala* 2002 (2) Crimes 143. Finally, he concluded that when the statutory provisions, as envisaged in Chapter XII of the Code, are clear and unambiguous, it would not be legally permissible to allow the police to make a preliminary inquiry into the allegations before registering an FIR under Section 154 of the Code.

17) **Mr. Sidharth Luthra**, learned Additional Solicitor General appearing for the State of Chhattisgarh, commenced his arguments by emphasizing the scope of reference before the Constitution Bench. Subsequently, he elaborated on various judgments which held that an investigating officer, on receiving information of commission of a cognizable offence under Section 154 of the Code, has power to conduct preliminary inquiry before registration of FIR, viz., *Bhagwant Kishore Joshi (supra)*, *P. Sirajuddin (supra)*, *Sevi (supra)* and

Rajinder Singh Katoch (supra). Concurrently, he also brought to our notice the following decisions, viz., ***Bhajan Lal (supra)***, ***Ramesh Kumari (supra)***, ***Parkash Singh Badal (supra)***, and ***Aleque Padamsee (supra)***, which held that a police officer is duty bound to register an FIR, upon receipt of information disclosing commission of a cognizable offence and the power of preliminary inquiry does not exist under the mandate of Section 154. Learned ASG has put forth a comparative analysis of Section 154 of the Code of Criminal Procedure of 1898 and of 1973. He also highlighted that every activity which occurs in a police station [Section 2(s)], is entered in a diary maintained at the police station which may be called as the General Diary, Station Diary or Daily Diary. He underlined the relevance of General Diary by referring to various judicial decisions such as ***Tapan Kumar Singh (supra)***, ***Re: Subbaratnam & Ors.*** AIR 1949 Madras 663. He further pointed out that, presently, throughout the country, in matrimonial, commercial, medical negligence and corruption related offences, there exist provisions for conducting an inquiry or preliminary inquiry

by the police, without/before registering an FIR under Section 154 of the Code. He also brought to our notice various police rules prevailing in the States of Punjab, Rajasthan, U.P., Madhya Pradesh, Kolkata, Bombay, etc., for conducting an inquiry before registering an FIR. Besides, he also attempted to draw an inference from the Crime Manual of the CBI to highlight that a preliminary inquiry before registering a case is permissible and legitimate in the eyes of law. Adverting to the above contentions, he concluded by pleading that preliminary inquiry before registration of an FIR should be held permissible. Further, he emphasized that the power to carry out an inquiry or preliminary inquiry by the police, which precedes the registration of FIR will eliminate the misuse of the process, as the registration of FIR serves as an impediment against a person for various important activities like applying for a job or a passport, etc. Learned ASG further requested this Court to frame guidelines for certain category of cases in which preliminary inquiry should be made.

18) Mr. **Shekhar Naphade**, learned senior counsel

appearing on behalf of the State of Maharashtra, submitted that ordinarily the Station House Officer (SHO) should record an FIR upon receiving a complaint disclosing the ingredients of a cognizable offence, but in certain situations, in case of doubt about the correctness or credibility of the information, he should have the discretion of holding a preliminary inquiry and thereafter, if he is satisfied that there is a *prima facie* case for investigation, register the FIR. A mandatory duty of registering FIR should not be cast upon him. According to him, this interpretation would harmonize two extreme positions, viz., the proposition that the moment the complaint disclosing ingredients of a cognizable offence is lodged, the police officer must register an FIR without any scrutiny whatsoever is an extreme proposition and is contrary to the mandate of Article 21 of the Constitution of India. similarly, the other extreme point of view is that the police officer must investigate the case substantially before registering an FIR. Accordingly, he pointed out that both must be rejected and a middle path must be chosen. He also submitted the following judgments, viz., ***Bhajan***

Lal (supra), ***Ramesh Kumari (supra)***, ***Parkash Singh Badal (supra)***, and ***Aleque Padamsee (supra)*** wherein it has been held that if a complaint alleging commission of a cognizable offence is received in the police station, then the SHO has no other option but to register an FIR under Section 154 of the Code. According to learned senior counsel, these verdicts require reconsideration as they have interpreted Section 154 *de hors* the other provisions of the Code and have failed to consider the impact of Article 21 on Section 154 of the Code.

19) Alongside, he pointed out the following decisions, viz., ***Rajinder Singh Katoch (supra)***, ***P. Sirajuddin (supra)***, ***Bhagwant Kishore Joshi (supra)*** and ***Sevi (supra)***, which hold that before registering an FIR under Section 154 of the Code, it is open to the police officer to hold a preliminary inquiry to ascertain whether there is a *prima facie* case of commission of a cognizable offence or not. According to learned senior counsel, Section 154 of the Code forms part of a chain of statutory provisions relating to investigation and, therefore, the scheme of provisions of Sections 41, 157, 167, 169, etc., must have a

bearing on the interpretation of Section 154. In addition, he emphasized that giving a literal interpretation would reduce the registration of FIR to a mechanical act. Parallelly, he underscored the impact of Article 21 on Section 154 of the Code by referring to ***Maneka Gandhi*** vs. ***Union of India*** (1978) 1 SCC 248, wherein this Court has applied Article 21 to several provisions relating to criminal law. This Court has also stated that the expression "law" contained in Article 21 necessarily postulates law which is reasonable and not merely statutory provisions irrespective of its reasonableness or otherwise. Learned senior counsel pleaded that in the light of Article 21, provisions of Section 154 of the Code must be read down to mean that before registering an FIR, the police officer must be satisfied that there is a *prima facie* case for investigation. He also emphasized that Section 154 contains implied power of the police officer to hold preliminary inquiry if he *bona fide* possess serious doubts about the credibility of the information given to him. By pointing out Criminal Law (Amendment) Act, 2013, particularly, Section 166A, Mr. Naphade contended

that as far as other cognizable offences (apart from ... se mentioned in Section 166A) are concerned, police ... a discretion to hold preliminary inquiry if there is some doubt about the correctness of the information.

20) In case of allegations relating to medical negligence on the part of the doctors, it is pointed out by drawing our attention to some of the decisions of this Court viz., ***Tapan Kumar Singh (supra), Jacob Mathew (supra)*** etc., that no medical professional should be prosecuted merely on the basis of the allegations in the complaint. By pointing out various decisions, Mr. Naphade emphasized 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 at least *prima facie* allegations levelled against the accused in the complaint are credible. He also contended that no single provision of a statute can be read and interpreted in isolation, but the statute must be read as a whole. Accordingly, he prayed that the provisions of Sections 41, 57, 156, 157, 159, 190, 200 and 202 of the Code must be read together. It is also pointed out that Section 154(3) of the Code empowers any

complainant whose complaint is not registered as an FIR by the officer in-charge of the police station to approach the higher police officer for the purpose of getting his complaint registered as an FIR and in such a case, the higher police officer has all the powers of recording an FIR and directing investigation into the matter. In addition to the remedy available to an aggrieved person of approaching higher police officer, he can also move the concerned Magistrate by making a complaint under Section 190 thereof. He further emphasized that the fact that the legislature has provided adequate remedies against refusal to register FIR and to hold investigation in cognizable offences, is indicative of legislative intent that the police officer is not bound to record FIR merely because the ingredients of a cognizable offence are disclosed in the complaint, if he has doubts about the veracity of the complaint. He also pointed out that the word "shall" used in the statute does not always mean absence of any discretion in the matter. For the said proposition, he also highlighted that this Court has preferred the rule of purposive interpretation to the rule of

literal interpretation for which he relied on ***Chairman Board of Mining Examination and Chief Inspector of Mines and Another*** vs. ***Ramjee*** (1977) 2 SCC 256, ***Lalit Mohan Pandey*** vs. ***Pooran Singh*** (2004) 6 SCC 626, ***Prativa Bose*** Vs. ***Kumar Rupendra Deb Raikat*** (1954) 4 SCR 69. He further pointed out that it is impossible to put the provisions of Section 154 of the Code in a straightjacket formula. He also prayed for framing of some guidelines as regards registration or non-registration of FIR. Finally, he pointed out that the requirements of Article 21 is that the procedure should be fair and just. According to him, if the police officer has doubts in the matter, it is imperative that he should have the discretion of holding a preliminary inquiry in the matter. If he is debarred from holding such a preliminary inquiry, the procedure would then suffer from the vice of arbitrariness and unreasonableness. Thus, he concluded his arguments by pleading that Section 154 of the Code may be interpreted in the light of Article 21.

21) **Ms. Vibha Datta Makhija**, learned senior counsel appearing for the State of Madhya Pradesh submitted that

a plain reading of Section 154 and other provisions of the Code shows that it may not be mandatory but is absolutely obligatory on the part of the police officer to register an FIR prior to taking any steps or conducting investigation into a cognizable offence. She further pointed out that after receiving the first information of an offence and prior to the registration of the said report (whether oral or written) in the First Information Book maintained at the police station under various State Government regulations, only some preliminary inquiry or investigative steps are permissible under the statutory framework of the Code to the extent as is justifiable and is within the window of statutory discretion granted strictly for the purpose of ascertaining whether there has been a commission or not of a cognizable offence. Hence, an investigation, culminating into a Final Report under Section 173 of the Code, cannot be called into question and be quashed due to the reason that a part of the inquiry, investigation or steps taken during investigation are conducted after receiving the first information but prior to registering the same unless it is found that the

said investigation is unfair, illegal, *mala fide* and has resulted in grave prejudice to the right of the accused to fair investigation. In support of the above contentions, she traced the earlier provisions of the Code and current statutory framework, viz., Criminal Law (Amendment) Act, 2013 with reference to various decisions of this Court. She concluded that Section 154 of the Code leaves no area of doubt that where a cognizable offence is disclosed, there is no discretion on the part of the police to record or not to record the said information, however, it may differ from case to case.

22) The issues before the Constitution Bench of this Court arise out of two main conflicting areas of concern, viz.,

(i) Whether the immediate non-registration of FIR leads to scope for manipulation by the police which affects the right of the victim/complainant to have a complaint immediately investigated upon allegations being made; and

(ii) Whether in cases where the complaint/information

does not clearly disclose the commission of a cognizable offence but the FIR is compulsorily registered then does it infringe the rights of an accused,

Discussion:

23) The FIR is a pertinent document in the criminal law procedure of our country and its main object from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps to trace and to bring to book the guilty.

24) Historical experience has thrown up cases from both the sides where the grievance of the victim/informant of non-registration of valid FIRs as well as that of the accused of being unnecessarily harassed and investigated upon false charges have been found to be correct.

25) An example of the first category of cases is found in ***State of Maharashtra*** vs. ***Sarangdharsingh Shivdassingh Chavan & Anr.*** (2011) 1 SCC 577 wherein

a writ petition was filed challenging the order of the Collector in the District of Buldhana directing not to register any crime against Mr. Gokulchand Sananda, without obtaining clearance from the District Anti-Money Lending Committee and the District Government Pleader. From the record, it was revealed that out of [illegible] cases, only in seven cases, charge sheets were filed alleging illegal moneylending. This Court found that upon instructions given by the Chief Minister to the District Collector, there was no registration of FIR of the poor farmers. In these circumstances, this Court held the said instructions to be *ultra vires* and quashed the same. It is argued that cases like above exhibit the mandatory character of section 154, and if it is held otherwise, it shall lead to grave injustice.

26) In ***Aleque Padamsee (supra)***, while dealing with the issue whether it is within the powers of courts to issue a writ directing the police to register a First Information Report in a case where it was alleged that the accused had made speeches likely to disturb communal harmony, this Court held that "the police officials ought to register the FIR whenever facts brought to their [illegible] show that a

cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Section 190 read with Section 200 of the Code."
As such, the Code itself provides several checks for refusal on the part of the police authorities under Section 154 of the Code.

27) However, on the other hand, there are a number of cases which exhibit that there are instances where the power of the police to register an FIR and initiate an investigation thereto are misused where a cognizable offence is not made out from the contents of the complaint. A significant case in this context is the case of ***Preeti Gupta*** vs. ***State of Jharkhand*** (2010) 7 SCC 667 wherein this Court has expressed its anxiety over misuse of Section 498-A of the Indian Penal Code, 1860 (in short 'the IPC') with respect to which a large number of frivolous reports were lodged. This Court expressed its desire that the legislature must take into consideration the informed public opinion and the pragmatic realities to make necessary changes in law.

28) The abovesaid judgment resulted in the 243rd Report

of the Law Commission of India submitted on 30th August, 2012. The Law Commission, in its Report, concluded that though the offence under Section 498-A could be made compoundable, however, the extent of misuse was not established by empirical data, and, thus, could not be a ground to denude the provision of its efficacy. The Law Commission also observed that the law on the question whether the registration of FIR could be postponed for a reasonable time is in a state of uncertainty and can be crystallized only upon this Court putting at rest the present controversy.

29) In order to arrive at a conclusion in the light of divergent views on the point and also to answer the above contentions, it is pertinent to have a look at the historical background of the Section and corresponding provisions that existed in the previous enactments of the Code of Criminal Procedure.

Code of Criminal Procedure, 1861

> "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."

Code of Criminal Procedure, 1872

"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."

Code of Criminal Procedure, 1882

"154. 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 form as the government may prescribe in this behalf."

Code of Criminal Procedure, 1898

"154. 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 Government may prescribe in this behalf."

Code of Criminal Procedure, 1973

"154. Information in 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 Sections 326A, 326B, 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 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 Sections 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 326C, 376D, 376E or Section 509 of the Indian Penal code 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 videographed;

(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.]

(Inserted by Section 13 of The Criminal Law (Amendment) Act, 2013 w.e.f. 03.02.2013)

(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 subsection (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.

A perusal of the above said provisions manifests the legislative intent in both old codes and the new code for compulsory registration of FIR in a case of cognizable offence without conducting any Preliminary Inquiry.

30) The precursor to the present Code of 1973 is the Code of 1898 wherein substantial changes were made in the powers and procedure of the police to investigate. The starting point of the powers of police was changed from the power of the officer in charge of a police station to investigate into a cognizable offence without the order of a Magistrate, to the reduction of the first information regarding commission of a cognizable offence, whether received orally or in writing, into writing and into the book separately prescribed by the Provincial government for recording such first information.

31) As such, a significant change that took place by way of the 1898 Code was with respect to the placement of Section 154, i.e., the provision imposing requirement of recording the first information regarding commission of a cognizable offence in the special book prior to Section

156, i.e., the provision empowering the police officer to investigate a cognizable offence. As such, the objective of such placement of provisions was clear which was to ensure that the recording of the first information should be the starting point of any investigation by the police. In the interest of expediency of investigation since there was no safeguard of obtaining permission from the Magistrate to commence an investigation, the said procedure of recording first information in their books along with the signature/seal of the informant, would act as an "extremely valuable safeguard" against the excessive, *mala fide* and illegal exercise of investigative powers by the police.

32) Provisions contained in Chapter XII of the Code deal with information to the police and their powers to investigate. The said Chapter sets out the procedure to be followed during investigation. The objective to be achieved by the procedure prescribed in the said Chapter is to set the criminal law in motion and to provide for all procedural safeguards so as to ensure that the investigation is fair and is not *mala fide* and there is no

scope of tampering with the evidence collected during the investigation.

33) In addition, Mr. Shekhar Naphade, learned senior counsel contended that insertion of Section 166A in IPC indicates that registration of FIR is not compulsory for all offences other than what is specified in the said Section. By Criminal Law (Amendment) Act 2013, Section 166A was inserted in Indian Penal Code which reads as under:-

> "**Section 166A—Whoever, being a public servant.—**
>
> (a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or
>
> (b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or
>
> (c) fails to record any information given to him under sub-section (1) of Section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under Section 326A, Section 326B, Section 354, Section 354B, Section 370, Section 370A, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E, Section 509 shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years and shall also be liable to fine."

Section 166A(c) lays down that if a public servant (Police Officer) fails to record any information given to him under Section 154(1) of the Code in relation to cognizable

offences punishable under Sections 326A, 326B, 354, 354B, 370, 370A, 376, 376A 376B, 376C, 376D, 376E or Section 509, he shall be punished with rigorous imprisonment for a term which shall not be less than six months but may extend to two years and shall also be liable to fine. Thus, it is the stand of learned counsel that this provision clearly indicates that registration of FIR is imperative and police officer has no discretion in the matter in respect of offences specified in the said section. Therefore, according to him, the legislature accepts that as far as other cognizable offences are concerned, police has discretion to hold a preliminary inquiry if there is doubt about the correctness of the information.

34) Although, the argument is as persuasive as it appears, yet, we doubt whether such a presumption can be drawn in contravention to the unambiguous words employed in the said provision. Hence, insertion of Section 166A in the IPC vide Criminal Law (Amendment) Act 2013, must be read in consonance with the provision and not contrary to it. The insertion of Section 166A was in the light of recent unfortunate occurrence of offences against

women. The intention of the legislature in putting forth this amendment was to tighten the already existing provisions to provide enhanced safeguards to women. Therefore, the legislature, after noticing the increasing crimes against women in our country, thought it appropriate to expressly punish the police officers for their failure to register FIRs in these cases. No other meaning than this can be assigned to for the insertion of the same.

35) With this background, let us discuss the submissions in the light of various decisions both in favour and against the referred issue.

Interpretation of Section 154:

36) It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. All that we have to see at the very outset is what does the provision say? As a result, the language employed in Section 154 is the determinative factor of the legislative intent. A plain reading of Section 154(1) of the Code provides that any information relating to the

commission of a cognizable offence if given orally to an officer-in-charge of a police station shall be reduced into writing by him or under his direction. There is no ambiguity in the language of Section 154(1) of the Code.

37) At this juncture, it is apposite to refer to the following observations of this Court in ***M/s Hiralal Rattanlal (supra)*** which are as under:

> "22...In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear."

The above decision was followed by this Court in ***S. Premanand (supra)*** and after referring the abovesaid observations in the case of ***Hiralal Rattanlal (supra)***, this Court observed as under:

> "3. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide *Swedish*

Match AB v. SEBI (2004) 11 SCC 641.

The language of Section 154(1), therefore, admits of no other construction but the literal construction.

38) The legislative intent of Section 154 is vividly elaborated in ***Bhajan Lal (supra)*** which is as under:-

> **30.** 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 incharge of a police station" (within the meaning of Section 2(o) 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.
>
> **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 concerned police officer 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"* 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. 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 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.

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.

39) Consequently, the condition that is *sine qua non* for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), 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. The provision of Section 154 of the Code is mandatory and the concerned officer is duty bound to register the case on the basis of information disclosing a cognizable offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

'Shall'

40) The use 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