

SUPREME COURT GUIDELINES ON FIR AND ROLE OF POLICE IN CRIMINAL JUSTICE SYSTEM

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INTRODUCTION

FIR is a very important document as it sets the process of criminal justice in motion. It is only after the FIR is registered, the police take up investigation of the case, and all other necessary actions. In the case of, **Munna Lal v. State of Himachal Pradesh & others**¹, the provisions of law about the registration of FIR are very clear. When the petitioner approached the police on Feb.9, 1991 and brought the fact, which are given in this petition to their notice and prayed for the registration of FIR, the police has no opinion but to register it and thereafter start investigation. It is not necessary that only the victim of the crime should file an FIR, it may lodge by any person having information about a cognizable crime. Article 246 of the Constitution of India places the police, public order, courts, prisons, reformatories, borstal and other allied institutions in the State List. To understand things related to Police a person should also have a clear understanding of the Criminal Justice System.

MEANING AND DEFINITION

The provisions of the Code and more particularly the provisions in Chapter XII of Code of Criminal Procedure, 1973 deal with the procedure to be followed in case of every information in cognizable cases to the police and their powers to investigate. It starts with Section 154 which deals with information in cognizable cases providing several stages for the police to follow and their powers to investigate.

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

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¹ 1992 CrLJ 1558

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.

Under this section, information about the cognizable offence needs to be reduced in writing by an officer in-charge of a police station. Such information is known as First Information Report (hereinafter referred as FIR) under Section 154 of the Code. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, he shall reduce it to writing and then to enter the substance thereof in the prescribed format and register the case on the basis of such information.

CASE LAWS ON FIR

In **Tapinder Singh v. State of Punjab**², wherein the Supreme Court has held that an anonymous telephone message at police station that firing had taken place at taxi stand does not amount to FIR.

In this Ruling the telephone message was anonymous and therefore their Lordships of the Supreme Court had held that such an anonymous telephone message will not amount to an FIR under Section 154, Cr.P.C.

In **Suresh Sakharam Nangre v. State of Maharashtra**³, wherein the Supreme Court has held that a telephonic message that a person was lying injured without indicating that any offence was committed will not amount to FIR.

² 1970 AIR 1566

³ (2012) 9 SCC 249

Again, in this Ruling the message was only to the effect that a person was lying injured. The message did not disclose that any offence was committed, much less, cognizable offence. Their Lordships of the Supreme Court have held that it will not amount to an FIR in the case.

In **Soma Bhai v. State of Gujarat**⁴, therein the Supreme Court has held that the first information report (FIR) is the earliest report made to the police officer with a view to taking his action in the matter. In that case the Supreme Court held that a cryptic telephonic message will not constitute an FIR.

In **Ramsinh Bavaji Jadeja v. State of Gujarat**⁵, Every telephonic information about commission of a cognizable offence irrespective of nature and details of such information cannot be treated as FIR.

After perusing the Supreme Court Rulings stated above it is clear that a telephonic message also can be a FIR provided it discloses the particulars required by Section 154, CrPC about the commission of cognizable offence.

Jayantibhai Lalubhai Patel v. State of Gujarat⁶ whenever FIR is registered against the accused, a copy of it is forwarded to the Court under provisions of the Code thus it becomes a public document. Considering,

- 1) the provisions of Art 21 of the Constitution of India,
- 2) first Information Report is a public document in view of 5.74 of the Evidence Act;
- 3) Accused gets right as allegations are made against him under provisions of 5.76 of the Indian Evidence Act and
- 4) FIR is a document to which S.162 of the Code does not apply and is of considerable value as on that basis investigation commenced and that is the first version of the prosecution, as and when application is made by accused for a certified copy of the complaint, the Court to which it is forwarded should give certified copy of the complaint, the Court to which it is forwarded should give certified copy of the FIR, if the application and legal fees thereof have been tendered for the same in the Court of law. The application is therefore allowed.

⁴ AIR 1975 SC 1453

⁵ 1994 SCC (2) 685

⁶ 1992 Cr.L.J. 2377 (Gujrat)

SUPREME COURT DIRECTION ON FIR⁷

1. An FIR must be registered as soon as information about a cognizable offence is received,
2. Before starting an investigation, police officers should make a rational inference that a cognizable offence has been committed. The inference should be made solely on the basis of facts mentioned in the FIR,
3. Courts will not as a rule interfere in the investigation process except in the following circumstances when the High Court⁶ can cancel the FIR and other proceedings carried out by the police.
 - i. Where the allegations in the FIR do not constitute any cognizable offence or justify an investigation by the police.
 - ii. Where the allegations made in the FIR and the evidence collected by the police in support of the allegations do not point towards the guilt of the accused.
 - iii. Where investigation has been carried out by the police in a non-cognizable offence⁷ without the order of a magistrate.
 - iv. Where the CrPC or any other law expressly prohibits carrying out criminal proceedings against the accused.
 - v. Where criminal proceedings have been started with dishonest intent to take revenge from the accused.

EVIDENTIARY VALUE OF FIR

The FIR has certain evidentiary value, and this value is perhaps much greater than the evidentiary value which would exist with any statement which is made to any police officer during any point of time of the investigation. FIR is definitely not substantive, but, it cannot be doubted that it is an important piece of evidence and is an essential tool to corroborate the informant under Section 157 of the Indian Evidence Act. Alternatively, it may also be used to contradict him under Section 145 of the same Act.⁸ This is however, only possible if the informant is the witness when the trial is taking place

DUTIES AND RESPONSIBILITIES OF THE POLICE

⁷ State of Haryana v. Bhajanlal & Others AIR 1992 SC 604

⁸ Hasib v. State of Bihar, (1972) 4 SCC 773

Police are one of the most universal organisations of the society. The policemen, is the most evident legislative body of the government.

According to Article 246 of the Indian Constitution and section 3 of the IPA, the police force is a state subject and not dealt with at central level. Each state government has the responsibility to draw guidelines, rules and regulations for their respectively police forces. These regulations are found in the state police manuals.

To maintain the law scrupulously and decisively to prevent crime to pursue and bring to justice those who break the law to uphold and enforce the law impartially, and to protect life, liberty, property, human rights, and dignity of the members of the public to promote and preserve public order is the main purpose of the police service is and to keep the Queen's peace to protect, help and reassure the community and to be seen to do this with integrity, common sense and sound judgement.

In an hour of need, danger, crisis and difficulty, when a citizen does not know, what to do and whom to approach, the police station and a policeman happen to be the most appropriate and approachable unit and person for him. The police are expected to be the most nearby, collaborating and active organization of any society. Their roles, functions and duties in the society are natural to be varied, and multifarious on the one hand and complicated, knotty and complex on the other. Broadly speaking the twin roles, which the police are expected to play in a society are maintenance of law and maintenance of order. However, the ramifications of these two duties are numerous, which result in making a large inventory of duties, functions, powers, roles and responsibilities of the police organization.

The Police Act of 1861 laid down the following duties for the police officers:

- i. Obey and execute all orders and warrants lawfully issued by any competent authority;
- ii. Collect and communicate intelligence affecting the public peace;
- iii. Prevent commission of offences and public nuisances;
- iv. Detect and bring offenders to justice; and
- v. Apprehend all persons whom he is legally authorized to apprehend and for whose apprehension sufficient ground exists.

An area assigned to every police station in a state where the police are upholding local law and order. patrolling neighborhood for security; solving petty crimes; investigating grave criminal offences and assisting the public prosecution; presenting the accused and bringing witnesses to the court during trial; serving court summons; crowd management and riot control are the examples of typical duty of police

“The primary duty of the police is to stop crime and disorder and the police must recognise that the test of their efficiency is the absence of both and not the visible evidence of police action in dealing with them.”

In the case of, **Ramesh Kumar v. The State (Delhi Admn)**⁹ The duty officer is required to mention the brief facts including the name of the assailant, names of the witnesses and the weapon used in the daily diary entry about the registration of the case. In the instant case all these details are conspicuous by their absence from D.D. entry. There are no valid explanations as to why these details have not been mentioned. Also, the special report was sent without mentioning the name of the constable through whom it was dispatched, and no efforts have at all been made to bring on record the testimony of this constable which could have led corroboration to the testimony of the duty officer and other police officials about the factum of the recording of the FIR at the time at which it is claimed to have been recorded.

In the aforesaid circumstances, the prosecution had, not been able to prove that the FIR was recorded at the time at which it was claimed to have been recorded.

The charter prescribed by the National Police Commission goes far beyond the 1861 charter, taking into account not only the changes which have occurred within the organization during this period, but also in the socio-political environment in which the organization is required to function. The NPC's Model Police Bill prescribes the following duties to the police officers.¹⁰

- i. Promote and preserve public order;
- ii. Investigate crimes, apprehend the offenders where appropriate and participate in subsequent legal proceedings connected therewith.
- iii. Identify problems and situations that are likely to result in commission of crimes;

⁹ 1990 Cr.L.J. 255 (Delhi)

¹⁰ National Police Commission: Eight Report, Police Bill, Section 43

- iv. Reduce the opportunities for the commission of crimes through preventive patrol and other prescribed police measures;
- v. Aid and co-operate with other relevant agencies in implementing the prescribed measures for prevention of crimes;
- vi. Aid individuals who are in danger of physical harm;
- vii. Create and maintain a feeling of security in the community;
- viii. Facilitate orderly movement of people and vehicles;
- ix. Counsel and resolve conflicts and promote amity;
- x. Provide necessary services and afford relief to people in distress situations;
- xi. Collect intelligence relating to matters affecting public peace and crimes in general including social and economic offences, national integrity and security; and
- xii. Perform such other duties as may be enjoined on them by law for the time being in force.

PROCESS OF CRIMINAL JUSTICE

1. Registration of the FIR

The process of criminal justice is initiated with the registration of the FIR. The FIR is a written document prepared by the police when they receive information about the commission of a cognizable offence.

2. The police officer proceeds to the scene of crime and investigates the facts of the case.

Police investigation mainly includes:

- In cognizable offences, the police have a direct responsibility to undertake investigation and the power to arrest a person without warrant. Non-cognizable offences cannot be investigated by the police on their own, unless directed by the courts having jurisdiction to do so.
- FIR is the report of information that reaches the police first in point of time and that is why it is called the First Information Report.
- The First Schedule of Cr.P.C lists all offences in the IPC and mentions whether they are cognizable (255 of the offences) or non-cognizable (122 of the offences).

- Examination of the scene of crime Examination of witnesses and suspects
Recording of statements Conducting searches Seizing property Collecting
fingerprint, footprint and other scientific evidence Consulting records and
making entries in the prescribed records, like case diary, daily diary, station
diary etc. Making arrests and detentions Interrogation of the accused
- 3. After completion of investigation, the officer in charge of the police station sends a
report to the area magistrate. The report sent by the investigating officer is in the form
of a charge sheet, if there is sufficient evidence to prosecute the accused. If sufficient
evidence is not available, such a report is called the final report.
- 4. On receiving the charge sheet, the court takes cognizance and initiates the trial of the
case.
- 5. The charges are framed. The procedure requires the prosecution to prove the charges
against the accused beyond a shadow of doubt. The accused is given a full
opportunity to defend himself.
- 6. If the trial ends in conviction, the court may award any of the following punishments:
 - Fine
 - Forfeiture of property
 - Simple imprisonment
 - Rigorous imprisonment
 - Imprisonment for life
 - Death Sentence

SOCIAL PRESSURE AND MEDIA PRESSURE ON POLICE

Working with a free mind is very important regardless of the organization. We live in a society where everyone is inter-related to one another creating a relation. It depends on the persons involved and the situation what will be the effect of the relation Positive or Negative. If we Focus on the relation between Police, Society, and Media, we come to a result that it depends on to which extent we exercise our power in Mathura Case.¹¹

The judgment by the court found the defendants not guilty. It was stated that because Mathura was 'habituated to sexual intercourse, her consent was voluntary; under the circumstances only sexual intercourse could be proved and not rape.

¹¹ Tukaram & Others v. The State Of Maharashtra 1979 AIR 185

The case was appealed in the Nagpur bench of the Bombay High Court who sentenced the accused to one and five years' imprisonment respectively. The Court held that passive submission due to fear induced by serious threats could not be construed as consent or willing sexual intercourse.

The Justice failed when India justices Jaswant Singh, Kailasam and Koshal of Supreme Court in 1979 gave a judgment on case of Tukaram. Their judgment reversed the High Court ruling and again acquitted the accused policemen.

Law was saved from failing when prof. Upendra Baxi, Raghunath Kelkar et al wrote an open letter to the Supreme Court, protesting the concept of consent in the judgment.

“Consent involves submission, but the converse is not necessarily true...From the facts of case, all that is established is submission, and not consent...Is the taboo against pre-marital sex so strong as to provide a license to Indian police to rape young girls.”

Spontaneous widespread protests, demonstrations followed by women's organisations who demanded a review of judgment, receiving extensive media coverage, Creating both Social and media pressure. The case was a turning point in women right's movement in India. The Mathura rape case protests, which eventually led to amendments in Indian rape law via The Criminal Law (Second Amendment) Act 1983 (No. 46).