Form No.HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE.

JUDICIAL DEPARTMENT

W.P.No.25543 of 2024

Muhammad Ahsan Vs. The State and 3 others

S.No. of order /Proceedings	Date of order /Proceedings	Order with signature of Judge, and that of parties of counsel, where necessary.
8.	18.12.2024.	Mr. Nazim Ali Awan, Advocate with the petitioner. M/s. Burhan Moazzam Malik and Mian Tabassum Ali, Advocates as *amici curiae.* Ms. Nuzhat Bashir, Deputy Prosecutor-General as *amicus curiae.* Mr. Kamran Adil, DIG/City Police Officer, Faisalabad as *amicus curiae.* Mr. Imran Abbas Sahi, Assistant Advocate-General. Ms. Noshe Malik and Dr. Usman Iqbal, DPGs. Mr. Sajid Hussain Butt, Advocate for respondent No.4/complainant.

Through this writ petition Muhammad Ahsan, petitioner/accused seeks quashing of FIR No.3232, dated 07.12.2023 registered under section 295A PPC at police station Aroop, District Gujranwala.

2. Briefly stated allegation as per impugned FIR are that Chaudhary Sagheer Abbas Virk, respondent No.4/complainant submitted an application to the concerned police for registration of FIR with the allegation that on 26.11.2023 at 03:00 p.m. petitioner/accused issued "*Fatwa*" wherein he declared followers of Shia sect as non-Muslim with some more declarations uncalled for and thereby insulted their religious belief which have wounded the religious feelings of such community

3. Learned counsel for the petitioner contends that offence under Section 295A PPC is non-cognizable, and allegations cannot be used for prosecution until Provincial government files a complaint through a special procedure provided under section 196 Cr.P.C; therefore, registration of FIR on the application of private individual which offends the legal process is a nullity, liable to be quashed. In this respect he has

placed reliance on different reported judgments; some of which are referred as under;

> "*ALI RAZA and another Versus FEDERATION OF PAKISTAN and another*" **(PLD 2017 Islamabad 64);** "*ATTA MUHAMMAD DESHANI Versus DISTRICT POLICE OFFICER, HARIPUR and 2 others*" **(2019 P Cr. L J 275);** "*SABZ ALI KHAN and 2 others Versus INSPECTOR GENERAL OF POLICE, KPK and 3 others*" **(2016 YLR 1279);** "*MAKHDOOM JAVED HASHMI Versus THE STATE*" **(2010 P Cr. L J 1809);** "*Dr. ABDUL JABBAR KHATTAK and another Versus THE STATE*" **(1990 P Cr. LJ 1708);** "*MOIN ALAM Versus THE STATE*" **(1993 P Cr.L J 1913);** "*MAJOR-GENERAL FAZAL-I-RAZIQ. CHAIRMAN, WAPDA, LAHORE versus Ch. RIAZ AHMAD AND ANOTHER*" **(1978 PLD Lahore 1082;** "*MUHAMMAD ISHAQ and others versus THE STATE*" **(1988 P Cr. LJ 992);** "*QAISAR RAZA versus THE STATE*" **(1979 P Cr. L J 758);** "*NAVEED AHMAD KHAN, ADVOCATE and 6 others Versus STATION HOUSE OFFICER, RENALA KHURD and another*" **(1994 P Cr. LJ 2381);** "*MUHAMMAD AKRAM versus THE STATE*" **(PLD 2001 Karachi 112);** "*Haji TOOTI BASHAR Versus THE STATE*" **(1993 P Cr. L J 1448);** "*MUHAMMAD SHARIF versus THE STATE*" **(1991 MLD 1172);** "*Syed NAWAZ HUSSAIN and others Versus The STATE and others*" **(2014 P Cr. L J 1256)**

4. On the other hand, learned counsel for the complainant while relying on cases reported as "*SHAFIQ AHMAD versus THE STATE*" **(PLD 1959 (W.P.) Lahore 851)**; *"AZIM KHAN AND ANOTHER versus THE STATE"* **(1970 Cr. L J 77)**; "*MUHAMMAD ASLAM versus THE STATE AND ANOTHER*" **(1980 P Cr. L J 742)**; "*MUHAMMAD versus THE STATE*" **(1989 P Cr. L J 834);** and "*SHABBIR HUSSAIN versus THE STATE*" **(2011 P Cr. L J 1631)**, states that if any irregularity has been committed by the police, complainant cannot be held responsible; therefore, it can be rectified through further process. He further submits that penal provision mentioned in FIR does not decide its fate, rather contents be given preference which do disclose commission of an offence under section 8/9 of Anti-terrorism Act, 1997, for addition of which he had already filed an application before SP investigation concerned.

5. On the divergent contentions of both the parties it was desirable for the Court to look into the question of law with deep insight. By virtue of interim order, dated 15.11.2024 passed by this Court in connected Crl. Misc. No. 40979-B of 2024, it was observed that though as per criminal procedure, an investigation starts only after registration of FIR or with the permission of Magistrate yet a regime of preliminary investigation has been introduced in Section 196B Cr.P.C., for offences mentioned in section 196 of Cr.P.C., which includes section 295A PPC, probably for collection of material in order to obtain sanction for prosecution from Federal or provincial government; therefore, if the FIR stands registered as has been done in this case, would it be a nullity, or mere an irregularity which can be cured through process of law. Thus, Prosecutor-General Punjab was directed to assist the Court on this question of law whereas Ms. Nuzhat Bashir, Deputy Prosecutor-General and M/s. Burhan Moazzam Malik and Mian Tabassum Ali, Advocates were appointed as *amici curiae* for legal opinion in this case.

6. Learned Prosecutor-General Punjab entered appearance and stated that offence is non-cognizable, therefore, registration of FIR in this case is nullity and liable to be quashed; whereas Mr. Burhan Moazzam Malik, learned *amicus curiae* while agreeing with opinion of learned Prosecutor-General stated that section 196B added in Cr.P.C., in year 1923 empowers officer in charge of investigation in the district to direct an inspector to conduct *preliminary investigation* for offences listed in section 196 Cr.P.C., but such section stands in contrast to dicta laid down by Supreme Court of Pakistan in case reported as "*SHAHNAZ BEGUM versus THE HON'BLE JUDGES OF THE HIGH COURT OF SIND AND BALUCHISTAN AND ANOTHER*" (**PLD 1971 Supreme Court 677)**, which says that there is no concept of preliminary investigation in law nor it has been defined in Cr.P.C., therefore, it cannot take the status of a full-fledged investigation; however, stated that in this case even preliminary investigation was not conducted, therefore,

investigation in this case after registration of FIR under section 295A PPC (non-cognizable offence) cannot be given protection. Ms. Nuzhat Bashir, Deputy Prosecutor-General, learned *amicus curiae* while submitting her written submissions, opened the arguments that though FIR is nullity but for entering into investigation FIR is not a condition precedent, therefore, investigation so far conducted can be given protection under the shield of section 537 of Cr.P.C. She has placed her reliance in this respect on cases reported as "*MUHAMMAD BASHIR Versus STATION HOUSE OFFICER, OKARA CANTT. and others*" **(PLD 2007 Supreme Court 539)**, "*ALTAF HUSSAIN versus ABDUL SAMAD and 3 others*" **(2000 SCMR 1945)** and a case from Indian jurisdiction reported as "*Lalita Kumari vs Govt. of U.P. & Ors*" **(AIR 2014 Supreme Court 187).** She was of the view that investigation so far conducted shall be deemed regularized under section 196B Cr.P.C., or can be legalized by involving the institution of Magistrate as ordained under section 155 of Cr.P.C. On divergent contentions, this Court by virtue of order, dated 27.11.2024, passed in connected Crl. Misc. No. 40979-B of 2024 observed as under:

> "The divergent stances question the legal process for registration of FIR. The word 'FIR' (First information Report) is not the creation of section 154 or 155 of Cr.P.C. rather used for the first time in Chapter XXIV of Police Rules 1934. First information with respect to commission of an offence is sometimes received by the police from a passersby, medical attendant or person from the locality but on their information, FIR is not registered in our system; therefore, without looking at Police Rules, scheme of registration of case under Cr.P.C., is apparently straight. Every information received by Station House Officer shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf and both sections 154 & 155 probably talk about one book as ordained under Section 44 of Police Act 1861 and Article 167 of Police Order 2002, and then investigation in cognizable offence is started by the police officer at his own and in non-cognizable offence with the permission of Magistrate. In both type of offences when the formal process is initiated police enter into realm of section 157 Cr.P.C., and either decline to investigate or continue on investigation, ensued by a report either under section 157 or

section 173 of Cr.P.C. to be submitted before the Magistrate, who is authorized to order for an inquiry or investigation under section 159 Cr.P.C. or after taking cognizance on report under section 173 Cr.P.C. either commences the trial or send it for trial to Court of Session, or can cancel the case under section 173(3) of Cr.P.C.

Cognizable & non-cognizable offences are known as arrestable & non-arrestable offence in our system as per section 4(f) & 4(n) of Cr.P.C. Apparently entering the information in a register of FIR is not necessary for investigation or trial but in our system much energy is consumed to get the information entered in register of FIR for which an institution of *ex-officio* Justice of the Peace was also established whose orders for and against are further challenged before the High Courts and Supreme Court and in this way status of information is converted into legally drafted complaint which is not the spirit of section 154 or 155 of Cr.P.C. because case is to be developed through recording of statements under section 161 of Cr.P.C. and other processes. It has further been experienced that later for cancellation of such FIR, institution of Magistrate is also entangled whose orders for and against are further assailed before the higher forums. Such regime takes a considerable span of time even to initiate the first criminal process which in other jurisdictions is just a phone call away."

Thus, to resolve the controversy, following questions were framed for *amici curiae*: -

1. For registration of cases, Section 154 & 155 of Cr.P.C. mandate that information of offence shall be entered in a book to be kept as prescribed by the Provincial Government; had it ever been prescribed.?
2. Whether there are different books for cognizable & non-cognizable cases.?
3. If prescribed book is the 'register of FIR' for cognizable offence and daily diary/station diary for non-cognizable offence, then both being creation of Police Rules can surpass the provisions of Cr.P.C.?
4. When there are no direct provisions to regulate the process in Cr.P.C., can it be controlled by indirect subordinate legislation in the form of Police Rules 1934 made under Police Act 1861 (Now Police Order 2002).?
5. Aren't Police Rules for superintendence and administration of Police Department which deal with internal and departmental mechanism to put the things in order and they cannot add anything or supply omissions in Cr.P.C.?"

Matter was related to police functions, therefore, Mr. Kamran Adil, DIG/City Police Officer, Faisalabad was also appointed as amicus curiae.

7. Mr. Burhan Moazzam Malik along with Mian Tabassum Ali Advocates (learned *amici curiae)* in order to answer the above queries of the Court submits that there are two books for recording information of crime by the police; section 154 & 155 Cr.P.C., talk about entering of information with respect to cognizable & non-cognizable offences in separate books which cannot be the same. He further submits that it is undesirable to enter substance of information in cognizable cases first in the station diary and then in register of FIR, rather officer in charge of police station has no other option except to record the information directly in the register of FIR. In support of his contentions, he has mainly relied on "*Lalita Kumari v. Govt. of U.P. & Ors*." **(AIR 2014 Supreme Court 187).** According to him, entering of information for cognizable and non-cognizable offences has elaborately been discussed in the Indian jurisdiction through the said judgment which is *parametria* to the provisions of law available in Pakistan. He further submits that in year 1861 not only Police Act was enacted but first version of Code of Criminal Procedure 1861 as well. Section 44 of Police Act deals with station/general diary to be kept by the officer in charge of police station for recording of information referred in such section. According to section 139 of Code of Criminal Procedure 1861, every complaint or information preferred to an officer in charge of a Police Station shall be reduced to 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. In second version of Code of Criminal Procedure 1872, section 139 was swapped with section 112 which mentioned that 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. The two versions carry different features; in earlier version, section 139 Cr.P.C. talks about entering of "information and

complaints" in a diary; whereas second version of Code pursuant to Section 112 talks about entering of "complaint" only and that too not in diary but in a book. Similarly, third version of Code of Criminal Procedure 1882 talks about entering of only "information" in a book, and same is the position in section 154 of latest version of the Code of Criminal Procedure 1898. Learned amicus curiae stated that word "information" has not been qualified with "credible" or "reasonable" which shows intention of legislature that every information wrong may be, must be entered in a book/register of FIR if it discloses commission of a cognizable offence. He, however, could not explain that since promulgation of Police Act 1861 up to framing of Police Rules in the year 1934 what format was being used for the purpose of registration of FIR; whether information was being entered in police station daily diary maintained under section 44 of Police Act 1861 or any other book prescribed by the Local Government or the Provincial Government under section 154 of Cr.P.C. All other amici curiae also could not explain arrangement of registration of FIR in such period. However, all have consensus that after framing of Police Rules 1934 now FIR is registered on the format prescribed under Rule-24.5(1) Police Rules 1934. Mr. Burhan Moazzam, learned amicus curiae, however, in the last submission stated that system requires that information first be recorded in daily diary and then in register of FIR.

8. Mr. Kamran Adil, DIG, learned amicus curiae states that our system is victim centric and rights of the accused are not protected, therefore, any information received to the police is registered as FIR without examining the sensitivity of the matter. System is loaded with frivolous applications and there is no mechanism to filter them at early stage. Once the FIR is registered, it takes years to get it cancelled if the information is found false. While arguing above point, he has referred the crime data of Pakistan since 1947 to date and then a bifurcation of all the provinces from year 2019 to 2023 which is as under: -

Year	Population Period Wise	Total Cases	
1947	37.70 M	47359	.0474 M
1948		56429	.0564 M
1949		52152	.0522 M
1950		49549	.0495 M
1951	37.70 M	50006	.05 M
1952		49409	.0494 M
1953		47869	.0479 M
1954		44538	.0445 M
1955		42854	.0429 M
1956	45.95 M	44136	.0441 M
1957		43742	.0437 M
1958		42268	.0423 M
1959		37808	.0378 M
1960		42602	.0426 M
1961	51.84 M	46334	.0463 M
1962		44869	.0449 M
1963		49732	.0497 M
1964		48487	.0485 M
1965		48883	.0489 M
1966	59.29 M	55280	.0553 M
1967		60856	.0609 M
1968		69258	.0693 M
1969		68525	.0685 M
1970		74284	.0743 M
1971	68.13 M	77454	.0775 M
1972		97503	.0975 M
1973		98809	.0988 M
1974		100206	.1002 M
1975		104676	.1047 M
1976	80.62 M	104509	.1045 M
1977		84187	.0842 M
1978		102720	.1027 M
1979		90996	.091 M
1980		98301	.0983 M
1981	97.12 M	99775	.0998 M
1982		97558	.0976 M
1983		99300	.0993 M
1984		111414	.1114 M
1985		114486	.1145 M

Year	Population Period Wise	Total Cases	
1986	115.41 M	138661	.1387 M
1987		153042	.153 M
1988		164649	.1646 M
1989		182813	.1828 M
1990		185891	.1859 M
1991	133.12 M	171902	.1719 M
1992		172865	.1729 M
1993		169680	.1697 M
1994		197384	.1974 M
1995		201150	.2012 M
1996	154.37 M	196019	.196 M
1997		235855	.2359 M
1998		286466	.2865 M
1999		263490	.2635 M
2000		241169	.2412 M
2001	174.37 M	227107	.2271 M
2002		247888	.2479 M
2003		248979	.249 M
2004		273519	.2735 M
2005		276411	.2764 M
2006	194.45 M	342561	.3426 M
2007		344925	.3449 M
2008		374400	.3744 M
2009		383379	.3834 M
2010		386437	.3864 M
2011	210.97 M	419365	.4194 M
2012		395006	.395 M
2013		390932	.3909 M
2014		389554	.3896 M
2015		382932	.3829 M
2016	227.20 M	408283	.4083 M
2017		405895	.4059 M
2018		409030	.409 M
2019		490341	.4903 M
2020		544288	.5443 M
2021	249.95 M	673129	.6731 M
2022		697123	.6971 M
2023		1110531	1.1105 M

Year		Punjab	Sindh	Islamabad	KPK	Blochistan	GB	AJK	Total Crime
2019	%	63%	11%	1%	23%	1%	0%	1%	
	Reported	490313	87162	9748	178109	9462	1983	7682	784459
2020	%	62%	12%	1%	22%	1%	0%	1%	
	Reported	544852	100550	10539	193916	10504	1598	11974	873933
2021	%	64%	12%	2%	20%	1%	0%	1%	
	Reported	673327	127129	18573	207838	11199	1931	8971	1048968
2022	%	68%	11%	2%	17%	2%	0%	1%	
	Reported	759816	119499	21490	185366	19443	2203	8878	1116695
2023	%	75%	8%	2%	14%	1%	0%	1%	
	Reported	1095314	113250	25148	204234	13307	2347	9942	1463542

He was of the view that crime data index shows that despite increase in population, crime rate in the country raised by three times since independence, and the bifurcation of last five years shows that most of the crime was reported in Province of the Punjab. He submits that data shows only number of cases registered and not the actual reporting and Punjab leads the other provinces for honouring the complaints for registration of FIRs. He while criticizing other amici curiae said that much talk and emphasis is on the textual interpretation and no logical interpretation of section 154 of Cr.P.C., is being tabled before this Court. He stated that pursuant to judgment reported as "*INSPECTOR-GENERAL OF POLICE, PUNJAB, LAHORE AND OTHERS versus MUSHTAQ AHMAD WARRAICH AND OTHERS*" **(PLD 1985 Supreme Court 159)** the Hon'ble Supreme Court of Pakistan has given protection to Police Rules though in service matters but it would be considered as a whole a sacrosanct document duly supported with legislative backing. According to him Inspector General of Police was authorized under section 12 of the Police Act 1861 to make rules consistent with the Act. However, Rules are subservient to the Cr.P.C. which cannot

surpass or override it but are used as a supplement to support Cr.P.C.; therefore, would well be read while interpreting section 154 Cr.P.C. He further states that there is a time lag between entering of information and making of mind as to the commission of a cognizable offence, which requires a preliminary inquiry because police station is not a post office where FIR be reciprocated to an application filed on the whims and wishes of informant, rather a statutory duty cast upon the officer in charge of police station to apply his mind so as to save the innocent persons from sufferings and curtailment of liberties if the FIR stood registered. He urged that this area also requires consideration by this Court and it is the high time for updated interpretation of relevant laws and rules as held by Supreme Court of Pakistan in *"MEERA SHAFI Versus ALI ZAFAR"* **(PLD 2023 Supreme Court 211)** and by High Court in Crl. Misc. 40397/24 titled *"Rai Muhammad Aslam Vs The State etc."* **(2024 LHC 4993)** (LHC website). He has further informed that similar kind of legislation is pending consideration before the Federal Cabinet.

9. Ms. Nuzhat Bashir, learned Deputy Prosecutor-General as amicus curiae entered appearance by filing her written submissions, and while addressing the questions stated that in Pakistan, the Police Rules 1934, issued under the Police Act of 1861 (Now Police Order 2002), serve as a procedural framework for registering cases. Rule 22.47 of the Police Rules 1934 specifies the maintenance of First Information Report Register on Form 24.5(1) for entering information under Section 154 Cr.P.C. Similarly, for non-cognizable cases under Section 155 Cr.P.C., the Daily Diary Register (Roznamcha) is maintained under Rule 22.48 of Police Rules 1934. However, Provincial Governments have not consistently updated these rules or issued specific additional notifications prescribing the "book" mentioned in Cr.P.C. Instead, the colonial-era framework remains the primary guideline. The procedural continuity of these rules has been accepted without question, though some provinces like Punjab and Sindh have digitized the FIR process

via initiatives like the Police Record Management Information System (PRMIS).

She states that in India, similar provisions exist under section 154 and section 155 Cr.P.C., and corresponding rules are found in the “Police Regulations” of various States. For instance, States like Uttar Pradesh, Maharashtra, and Tamil Nadu have issued rules prescribing an FIR Register for cognizable cases and a General Diary (GD) for non-cognizable cases. The Indian Police Act 1861 along with State specific Police Manuals and Government Orders, addresses the procedural requirements for the "book" mentioned in the Cr.P.C. Notably, after the Indian Supreme Court's judgment in **Lalita Kumari v. Government of Uttar Pradesh of year 2013 reported in year 2014,** emphasis was placed on strict adherence to the registration of FIRs under Section 154 Cr.P.C., prompting states to revise or reaffirm their rules.

She words that the Police Rules 1934 do not "surpass" the provisions of the Code of Criminal Procedure; rather, it complements and implements them within the framework allowed by law. However, the question about their authority and the relationship with the Cr.P.C., requires understanding of hierarchy of laws and delegated legislation. Hierarchy of Laws in both Pakistan and India explains that the Cr.P.C., is a central statute enacted by the legislature; it provides the primary framework for criminal procedure, and the Police Rules are subordinate or delegated legislation. They derive their authority from statutes like the Police Act 1861 (now Police Order 2002) and are meant to operationalize and regulate police conduct, including the procedures under Cr.P.C. Subordinate legislation, such as the Police Rules, cannot conflict with or override the provisions of the Cr.P.C. If there is a conflict, the provisions of the Cr.P.C. will prevail because it is the higher law. She while referring para-10 of case reported as “*MUHAMMAD BASHIR Versus STATION HOUSE OFFICER, OKARA CANTT and others*” (**PLD 2007 Supreme Court 539),** states that First Information Report (F.I.R.) was not an expression of the Code of Criminal

Procedure, 1898 but was in fact the name given to the "Information" mentioned in section 154 of the Cr.P.C., by Chapter XXIV of the Police Rules of 1934. Further states that since the Police Rules prescribe these registers to operationalize the provisions of the Cr.P.C., they do not conflict with it. Rather, they provide the procedural clarity that the Cr.P.C. itself leaves to the Provincial/State Governments. Police Rules cannot surpass or override the Cr.P.C., but they can supplement it, provided they remain within the scope of the enabling legislation e.g., the Police Act 1861 (now Police Order 2002) and do not contravene the provisions of the Cr.P.C. In this case, the Cr.P.C. mandates maintaining a record of information in a "book" without detailing its format or specifics, the Police Rules fill in the procedural gap by prescribing the FIR register and daily diary as the appropriate "books." This prescription does not contradict the Cr.P.C.; instead, it supports its implementation.

Further passionate response was outlined by her that where the Code of Criminal Procedure (Cr.P.C.) does not directly regulate a process, it can be supplemented or controlled by subordinate legislation, such as the Police Rules 1934 provided these rules adhere to the principles like, legitimacy of Subordinate Legislation. Such rules function as delegated legislation, deriving their authority from the parent statute (Police Act/Order) and serve to operationalize both the Act and related provisions of the Cr.P.C. The Police Order 2002, explicitly allows the Provincial Governments to make rules regulating police functions. Article 186 of the Police Order 2002, provides for the continuity of the rules made under the Police Act 1861, unless explicitly repealed or amended. Hence, the **Police Rules 1934** continue to apply where consistent with the Police Order and Cr.P.C. Section 154 Cr.P.C., mandates maintaining a "book" for recording of FIRs but does not specify the format or procedural details. The Police Rules 1934 prescribe the format of FIR Register [24.5(1)]. Section 172 Cr.P.C. requires the investigating officer to maintain a Case Diary but leaves the specifics to subordinate legislation. The

Police Rules detail the structure and use of the case diary, define the chain of command and responsibilities in the investigation process, procedural details for reporting and managing crime statistics. The rules can supplement procedural gaps left by the Cr.P.C., but cannot introduce substantive law, as this requires legislative authority. This delegation is lawful because the Cr.P.C., permits Provincial Governments to prescribe procedural specifics. Courts in both Pakistan and India have upheld the role of subordinate legislation like the Police Rules in supplementing procedural aspects of criminal law, as long as they do not contradict higher laws. While referring para-26 of *"MUHAMMAD BASHIR Versus STATION HOUSE OFFICER, OKARA CANTT and others"* **(PLD 2007 Supreme Court 539)**, states that rules are always subordinate to the statutory provisions and no rule can permit what was not allowed by a statutory provision.

She lastly tabled the submissions that the Police Rules 1934 were primarily framed to regulate the superintendence and administration of the police department. However, the relationship between the Police Rules and the Criminal Procedure Code (Cr.P.C.) is nuanced, as the rules often intersect with procedural requirements under the Cr.P.C. The primary purpose of the Police Rules is to govern the internal and administrative mechanisms of the police department (e.g., hierarchy, discipline, and resource allocation). These regulate how the police carry out their duties, including investigation, maintenance of records, and interaction with the judicial process. While the Police Rules primarily deal with administrative mechanisms, they often serve as a procedural supplement to the Cr.P.C., in areas where the latter is silent or delegates responsibility as highlighted above. However, Police Rules cannot legislate or supply omissions in the Cr.P.C. that involve substantive law or fundamental procedural safeguards.

10. Dr. Muhammad Usman, learned Deputy-Prosecutor General appeared in representation of Prosecutor-General Punjab and submitted response of Prosecutor-General in black

and white which carry expression that there are two separate books; Register of FIR is for section 154 and Station diary register is for section 155 and they were legally prescribed through Police Rules. Police Rules cannot surpass or override the provisions of Cr.P.C rather supplement it and are not in conflict with the Cr.P.C. In the report of Prosecutor-General, Rules 24.1, 24.2, 24.3, 24.4 & 24.5 of Police Rules 1934 were cited in support of queries of this Court. Case reported as "*MUHAMMAD BASHIR Versus STATION HOUSE OFFICER, OKARA CANTT and others*" **(PLD 2007 Supreme Court 539)** was also cited with the submissions that no preliminary inquiry can be held before registration of FIR. However, in certain circumstances, with a limited scope inquiry held by the police shall not be illegal. In this respect he cited the cases reported as *"FAISAL HAYAT Versus ADDITIONAL SESSIONS JUDGE/EX-OFFICIO JUSTICE OF PEACE, ISLAMABAD (WEST) and 3 others"* **(2024 Y L R 1037).** *"GUL NAWAZ LONE ETC versus S.H.O"* **(K.L.R. 1991 Criminal Cases 258)**. He says that Police Rules may fill procedural gaps where the Cr.P.C. is silent, they must remain within their legal limits and cannot supersede statutory provisions of Cr.P.C. Rules are subordinate and delegated legislation, deriving authority and legal cover from provisions of main statute and cannot override provisions of the Statute. Rules are meant to deal with details and can neither be a substitute for fundamentals of parent statute nor can add to them. Delegated legislation forms an important part of statutory law, which expounds and explains skeleton principles of parent statute in order to achieve purposes of such legislation. Reliance in this respect was placed on case reported as *"COMMISSIONER INLAND REVENUE, LAHORE Versus COCA COLA PAKISTAN LIMITED, LAHORE"* **(2022 PTD 1400).** He stated that Police Act 1861 and Rules made thereunder even before enactment of present version of Code of Criminal Procedure 1898 has duly been given protection under section 3(1) of Code of Criminal Procedure 1898 because it states that in every enactment passed before this Code comes into force in which reference is made to,

or to any Chapter or section of the Code of Criminal Procedure Act XXV of 1861 or Act X Of 1872, or Act X of 1882, or to any other enactment repealed, such, reference so far as may be practicable be taken to be made to this Code or to its corresponding chapter or section.

11. Proponents were heard at length who have given valuable input on the subject as highlighted above. It was the consensus of all the amici curiae that book mentioned in section 154 of Cr.P.C., is the register of FIR whereas under section 155 of Cr.P.C., is the Police Station daily diary. It was a further consensus that Police Rules being subordinate legislation is a legal document which derive their authority under Police Act 1861 (Now Police Order 2002), they are not in conflict with Cr.P.C., nor they can surpass or over ride it, rather supplement, complement or implement the provisions of Cr.P.C., and rules making authority vested in Government has rightly been responded through Police Rules and it is not an intrusion in to provisions of Cr.P.C., because for prescribing book for section 154 & 155 there is no rule making power in Cr.P.C. It was also the consensus that though Police Rules primarily deal with administrative mechanisms yet they often serve as a procedural supplement to the Cr.P.C., in areas where the latter is silent or delegates responsibility as highlighted above. Thus, these rules would help understand the legal concept of Section 154 & 155 of Cr.P.C.

12. In order to ascertain the nature of books mentioned in sections 154 & 155 of Cr.P.C., it is essential to track the legislative history of registration of FIR in the light of provisions of Code of Criminal Procedure. Before I should talk about Code of Criminal Procedure, it is essential to note that General Code for Crimes was drafted on the recommendations of the first Law Commission of India established in 1834 under the Charter Act of 1833, under the chairmanship of **Thomas Babington Macaulay**, a British historian, poet, and Whig politician, who served as the Secretary at War between 1839 and 1841, and as

the Paymaster General between 1846 and 1848. He also played a substantial role in determining India's education policy. Title of such Code was ‘Indian Penal Code’ enacted and assented by Governor-General on 06th October, 1860, about 10 months after the death of Thomas Babington Macaulay. (28th December, 1859). It came into force in the sub-continent during the British Rule on **1st January, 1862**. However, it did not apply automatically in the Princely States, which had their own Courts and legal systems until the 1940s.

13. The word ‘police’ is derived from the Greek word ‘***Polis***’, which means a city. The Latin term ‘*Politeia*’, refers to the State or government’s condition. In **Ancient India**, *Rig Veda* and *Atharva Veda* identify specific types of crimes known to the Vedic people at the time. The security personnel were in place as far back as the *Harrapan* period. It is not exactly known what type of criminal justice system existed during the Vedic period, although the *Mauryan* period has many of the same traits. *The Arthashastra of Kautilya (310 BC)* is a work on the administration of justice. The Muslim rulers have also implemented the Islamic principles and dealt the non-Muslims as per their own law. The pious *Caliph Hazarat Umar (R.A)* appointed officials "*Ahdath*" (police officers) to maintain public order and overseeing market activities. This role evolved into a specialized institution known as "*Hisbah*" later. He also appointed Governors to different states to control law and order i.*e Abu Hurairah (R.A.)* at Bahrain, *Amr ibn al-Aas (R.A.)* at Egypt and *Ubadah ibn al-Samit (R.A.)* at Syria. Prior to emergence of British Rule, the system of policing in Mughal India was organized on the basis of land tenure. The public peace disturbers were apprehended through Zamindars and at village level this function was performed by the Village Headmen. Similarly, in large towns, this function was performed by Kotwals, performing duties of law enforcement, municipal administration and revenue collection. Violent organized crime was usually dealt with by the military. The British administration introduced Magistrates with Daroghas. The

modern police force came into existence in 19th century during the British period as a regular police force. The first police model was introduced by Sir Charles Napier in Sindh drawing inspiration from the Irish Constabulary, developed a separate and self-contained police organization for the province. However, the British Indian Government established a Police Commission in 1860 following the first war of the uprising in 1857. The Police Commission of 1860 recommended the abolition of the Military Arm of the Police. Upon the recommendations of the Commission, the Government of India submitted a bill which was passed into law as Police Act 1861 (**Act V of 1861)**, the first codified central law. **Section 12** of Police Act 1861 empowered the *Inspector General* to frame Rules for the administration of police force. The Police Act 1861 did not come into existence at once but was to be adopted by the States later on. Prior to the Punjab Police Rules 1934 State level Rules were framed at Bengal and United Provinces under the name of Police Regulations. In the case of *"QUEEN-EMPRESS V. ABDULHUSSAIN"* **(1887 ILR Cal 194)** the Calcutta High Court observed the non-existence of rules which were to be framed under section 12 of the Police Act 1861. The partition of Bengal in year 1905 led to the preparation of the 'Eastern Bengal and Assam Police Manual' which was published between the years 1910 and 1912. In the meantime, the Bengal Police Manual has been revised and was published for the districts of West Bengal in 1911. With the amalgamation of the provinces in 1912, Mr. A. E. O' Sullivan, Superintendent of Police, was placed on special duty in 1913 to amalgamate the Rules in two manuals and to revise and to amplify them where necessary and bring them up to date by the inclusion of all Police and Government Orders issued since the last publication was issued. After seven months' work Mr. O' Sullivan's duty was taken over and completed by Mr. J. E. Armstrong, Superintendent of Police, which contained police order and government orders up to the date of September 1914. It was decided to call compilation as "Police Regulations, Bengal" on

the analogy of "Army Regulations, India and of "Police Regulations, United Provinces". These Regulations were of year 1915. Which remained on updating time to time.

14. Police Act was promulgated on 22nd March, 1861 which introduced section 44 as regulator to record every information including commission of an offence in a general diary to be kept by officer in charge of police station. It is referred as under;

> **"44.** 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 **Local 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 and inspect such diary.

(Later in year 1937 the word "**Local Government**" was replaced with "**Provincial Government**")

This was the first document to record the information relating to commission of every offence in a General Diary. In the same year, for initiation, commencement and trial of offences Code of Criminal Procedure was legislated and assented by the Governor-General on 5th September, 1861; section 445 of the Code, fixed the date of operation of law as **1st day of January, 1862** in the presidencies of Bengal, Madras, and Bombay except in any part of the territories in British India not subject to the General Regulations of Bengal, Madars, or Bombay until shall be extended by the Governor-General of India in Council, or by the Local Government to which such territory is subordinate, and until such extension shall have been notified in the Gazette. The crime reporting mechanism was enacted through section 139 of such Code which is as under;

> "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."

Such section talks about preference of every 'complaint' or 'information' to officer in charge of police station but does not speak about commission of any cognizable or non-cognizable offence, because till then Indian Penal Code was not enforced in

the sub-continent which was made effective since 1st January, 1862, the date when the Code of Criminal Procedure 1861 was also to be operationalized as per section 445. Therefore, in order to meet the requirement of section 139 of Cr.P.C., Bengal Police Rules were framed after promulgation of Code of Criminal Procedure 1861 which explained the mechanism for recording of information in cognizable offences. Excerpts of Chapter titled "FIRST INFORMATION REPORT" available online as appendix-D with version of Code of Criminal Procedure 1861 on website *https://books.google.com.pk/books*, are referred. Rule-I of such Chapter is as under;

> I. Section 139 of the Code of Criminal Procedure clearly depicts that "every complaint or information preferred to an Officer in charge of a Police Station shall be reduced into writing" and this is quite independent of after-order directing substance of the complaint to be entered in the Diary. The Form given in Appendix No. I. is to be used in future in all districts.

Form given in Appendix. I. was for recording complaint or information in to cognizable offences which is as under;

APPENDIX. I. RULES OF THE BENGAL POLICE

The First information of a cognizable crime reported at _____Police Station, _____Sub-District, _____District, under Section 139 of the Criminal Procedure Code.

Date and hour of receipt at Police Station of first information	Name of informant and parties concerned	Crime reported, amount stolen, &c.	Date of occurrence of the crime	Place of occurrence, direction and distance from Police Station	Steps taken by Officer in charge of Station.

No.

In charge of _____Police Station.

Date of Despatch. _____

COMPLAINANT OR INFORMANT'S STATEMENT.

Above Form contains exactly the same information which does contain the Form 24.5(1) of present-day Police Rules 1934, which is as under;

FORM No. 24.5(1)

FIRST INFORMATION REPORT

FIRST INFORMATION OF A COGNIZABLE CRIME REPORTED UNDER SECTION 154, CODE OF CRIMINAL PROCEDUREABLES

Police Station _____ District _____

No. _____ Date and hour of occurrence

1	Date and hour when reported
2	Name and residence of information and complainant
3	Brief description of offence (with section) and of property carried off, if any
4	Place of occurrence and distance and direction from Police Station.
5	Steps taken regarding investigation; explanation of delay in recording information
6	Date and hour of despatch from Police Station

Signed _____

Designation _____

(First information to be recorded below)

Note. – The signature, seal or mark of the informant shall be affixed at the foot of the information and shall be attested by the signature of the officer recording the "first information".

15. It was the mandate of Benal Police Rules that the first part of the Form was to be filled by the officer in charge of the Police Station, and the second part should be verbatim the report brought to the Police Station (Rule-II) or if the complaint is given in writing, the original paper should be attached to the Form, and the second part not written. This part should always be signed by the person giving the information (Rule-XIV), which shall be numbered consecutively in each Police Station monthly (Rule-VI). Copies of such form shall be sent to District Superintendent and officer in charge of Sub-District for submission before the Magistrate of District. One copy with final report to Magistrate trying the offence.

If above Rules are read in the light of section 139 of Code of Criminal Procedure 1861, the scheme of law becomes clear that information in full shall be recorded in Form. I. when it discloses commission of cognizable offence and its substance in General Diary maintained at the Police Station under section 44 of Police Act. Thus, section 139 of Code of Criminal

Procedure 1861 (now 154) from the very beginning does not disclose any other separate book for registration of FIR in cognizable offence rather left it to the Police to frame rules for its internal functioning, however, every official act for recording of information about cognizable offence must be reflected in general diary as a proof that certain complaint or information was received and processed in the manner as required by regime of law on the subject. Rule-IV of Bengal Police Rules also says to the following effect:

> "Every *cognizable case* reported to the Police, no matter whether it afterwards turns out a false charge or not, whether it be a heinous offence or a petty one, is to be reported in the above form. If the Magistrate directs a *cognizable case* to be investigated by the Police, and the Police Officer has not received any previous information regarding the crime, and has not already sent in these forms, he shall, on receipt of the Magistrate's order, do so."

This rule shows mandatory recording of information. However, Rule XVIII explains that the practice of cancelling reports should be avoided; that is to say, if the first information of a crime is sent in a report, and half an hour after despatch of the report it is found that information was entirely false, the number should be left, and the next case reported in the next consecutive number. (Cancellation of case is still not the prerogative of Police rather of Magistrate a per rule 24.7 of Police Rules 1934). Rule-XIX from above Chapter of Bengal Police Rules however, deprecates recording of rumours in above Form, it is as under;

> "Vague rumours of crime said to have been committed should not be reported in this form, but should be mentioned in the Station Diary."

16. Second version of Code of Criminal Procedure was promulgated and assented on 25th April, 1872 (the year when Evidence Act 1872 was also promulgated) but operationalization date was fixed as first day of September, 1872, new version replaced section 139 with section 112 which is as under;

> "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."

This section had somewhat changed the complexion of section 139 of earlier Code in a way that now word “information” was deleted and only ‘complaint’ was used to report the crime and ‘general diary’ was replaced with a “book”, and a requirement of signed, sealed, or marked by the person making it was also introduced. It seemed that such changes were made in order to further formalize the process of recording of information and giving it a permanent documented feature so as to avoid tempering with record and to use it as an admissible form of evidence pursuant to promulgation of Evidence Act 1872 because section-35 of Evidence Act 1872 stated that an entry in any public or other **official book, register**, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book or register, is kept, is itself a relevant fact. The third version of Code of Criminal Procedure was enacted and assented by Governor-General on 6th March, 1882, made effective from first day of January, 1883. It enacted section 154 for information into cognizable cases which was exactly the same as the present-day section 154 of Code of Criminal Procedure 1898, with only difference of Local and Provincial Government.

17. Police Regulations, Bengal 1915 also dealt with first information of *cognizable crime* mentioned in section 154 of the Cr.P.C. Rule 71(a) says that such information shall be drawn up in ***P.R.B Form No. 228*** and police officers shall not defer drawing up the information report until they have tested the truth of the complaint. They shall not await the result of medical examination before recording a first information, when complaint is made of grievous hurt or other cognizable crime (71-f). First information reports, once recorded, shall on no account be cancelled by station officers. (71-h).

Rule 75 says that the general diary is the book prescribed under section 155, Criminal Procedure Code, 1898, for the

entry of all information received in respect of non-cognizable offences. The **Rule 138** (a) says that the general diary in the P. R. B. Form No. 241 is prescribed under section 44, Act V of 1861. It shall be kept at all police-stations, beat houses and section houses. Rule 138(b) says that ***every occurrence which may be brought to the knowledge of the officers of police shall be entered in the general diary at the time at which it is communicated to the station***, and if no incident be communicated during the day, this fact shall be noted in the diary before it is closed and despatched. What was the structure of P.R.B Form No. 228 for cognizable offence is reproduced as under;

P.R.B Form No. 228

First Information Report

(Vide Rule 71)

*First information of cognizable crime under section 154, Criminal Procedure Code, at police station*_____

Sub-division *District*

*No.*_____ *Date and hour of occurrence*

Date and hour when reported	Place of occurrence and distance and direction police station and Jurisdiction number	Date of despatch from police station

N.B _____A first information must be authenticated by the signature, mark or impression of informant and attested by the signature of the officer recording it.

Name and residence of informant and complainant.	Name and Residence of accused.	Brief description of offence with section, and of property carried of, if any.	Steps taken regarding investigation, explanation of delay in reporting information.	Result of the case.
1	2	3	4	5

Signed_____

Designation_____

(First information to be recorded below)

Note--- The signature, seal and mark of informant should be affixed at foot information.

18. **Rule 87** in CHAPTER-IX Part-II of Police Regulations, United Provinces (corrected and amended up to year 1928), says that whenever information relating to the commission of a cognizable offence is given to an officer in charge of a police station, the report should immediately be taken down in triplicate in the check receipt book for reports of cognizable offences (**Police Form No. 341**). This step should on no account be delayed to allow time for the true facts to be ascertained by a preliminary investigation, even if it appears untrue, the report must be recorded at once. If the report is made orally, the exact words of the person who makes it, including his answers to any questions that are put to him, should be taken down and read over to him; he must sign each of the three parts, or, if he cannot write, he must make his mark or thumb-impression. If a written report is received, an exact copy must be made, but the signature or mark of the messenger need not be taken. In all cases the officer in charge of the station must sign each of the three parts, and have the seal of the station stamped on each. The triplicate copy will remain in the book; the duplicate copy will be given to the person who makes the oral or brings the written report; the original will be sent forthwith through the Superintendent of Police to the Magistrate having jurisdiction with the original written report (if any) attached. The practice of delaying first information reports until they can be sent to headquarters attached to special or general diaries is contrary to the provisions of the Criminal Procedure Code and is prohibited. Rule 89 says that if an officer in charge of a police station receives an oral report of a cognizable offence when he is away from the station house, and wishes to begin the investigation at once and cannot dispense with the attendance of the person who made the report, he should take the report down in writing and, after having it signed or marked by the person who made it, should send it to the police station to be treated as a written report.

Rule 91 says that when a report is made of a non-cognizable offence, the important portions of the report should be recorded in the check receipt book for reports of non-cognizable offences **(Police Form No. 347)**. The informant should be required to sign or affix his mark to each of the two copies, and the duplicate copy should be given to him, the original remaining in the book. The substance of the report should be entered **in the general diary** and, if the report is in writing, the paper containing it should be attached to the diary. The informant should also be referred to the magistrate, as required by section 155 of the Code of Criminal Procedure.

This rule shows that information in non-cognizable offence was required to be recorded in Police Form No. 347, whereas to meet the requirement of section 155 of Cr.P.C., substance of report was to be entered in general diary on **Form No. 217** as explained by Rule 278. Such rule says that diary should be a complete but brief record of the proceedings of the police, and of occurrence reported to them or which they have obtained information. Rule 279 mentions the matters must be recorded in the general diary, and sub-rule (14) requires entry of reports of all occurrence which under the law have to be reported or which may require action on the part of police or the Magistracy, or of which the district authorities ought to be informed. Interesting to note under above Rules, there were three books; i.e., Police Form No.341 (for cognizable cases), Police Form 347 (for non-cognizable cases) & Police Form 217 (the general diary); a correct spirit of section 154 & 155 of Cr.P.C., which say that after reducing the information to writing, substance must be entered in a book, that of course was a general diary.

19. The analysis of the Police Regulations framed under the Police Act 1861 makes it clear that the Punjab Police Rules 1934 are not a new legislation but took the current shape after passing through the evolutionary process, being experienced in different States, and government in order to meet the situation

amended the rules from time to time. Even before framing of Police Rule 1934, Form of FIR 24.5(1) was also being used for drawing of FIR in such format. Some of the FIRs were also placed before the Court relating to year 1931 & 1932 with same format. Thus, a link of primary and secondary legislation is essential to achieve objectives. Primary legislation generally consists of statutes, also known as ‘acts', set out broad principles and rules, and delegate specific authority to an executive branch to make more specific laws under the aegis of the principal Act. Framing of rules is termed as Secondary Legislation which may be known as statutory instruments, delegated legislation, or simply, subordinate legislation and the form of which it is issued may be called Orders, Rules, Regulations, Schemes or Codes. Secondary legislation can be created where an Act of Parliament or primary legislation doesn’t specify the exact details of regulation, but delegates the authority, to create and modify this legislation, to a government department, with a less onerous process of scrutiny and implementation. The executive branch can then issue secondary legislation, creating legally enforceable regulations and the procedures for implementing them, and they are kept on changing without going for new statutory legislation.

20. Section 3 (1) of Code of Criminal Procedure 1898 says that in every ***enactment passed before this Code*** comes into force in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act XXV of 1861 or Act X of 1872, or Act X of 1882, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section. Enactment does not mean mere an Act of Parliament in the form of Statute but does include regulations as defined in General Clauses Act 1897. Section 3 (17) of such Act is as under;

> (17) **“Enactment.”** “enactment” shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid”

Similarly, it has also been defined in Punjab General Clauses Act 1956. Section 2 (23) of such Act is as under;

> (23) **"enactment"** shall include an Ordinance and a Regulation and any provision contained in any Act, Ordinance or Regulation applicable in the Punjab;

Thus, erstwhile Police Rules & Regulations which refer to the provisions of Code of Criminal Procedure 1861, 1872 or 1882 can also be read along with present Police Rules for understanding the concept and spirit of sections 154 & 155 of Cr.P.C., in the light of questions framed above; sections are reproduced for reference as under;

> **154. Information in cognizable cases**. 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 Provincial Government may prescribe in this behalf
>
> Provided that if the information is given by the woman against whom an offence under section 336B, section 354, section 354A, section 376 or section 509 of the Pakistan Penal Code, 1860 (Act XLV of 1860) is alleged to have been committed or attempted, then such information shall be recorded by an investigating officer in presence of a female police officer or a female family member or any other person with consent of the complainant, as the case may be:
>
> Provided further that if the information, given by the woman against whom an offence under section 336B, section 354, section 354A, section 376 or section 509 of the Pakistan Penal Code, 1860 (Act XLV of 1860) is alleged to have been committed or attempted, is distressed such information shall be recorded by an investigating officer at residence of the complainant or at a convenient place of the complainant's choice in presence of a police officer or family member or any other person with consent of the complainant, as the case may be.
>
> **155. Information in non-cognizable cases:** (l) When information is given to an officer incharge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.
>
> **(2) Investigation into non-cognizable cases.** No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or send the same for trial to the Court of Session.
>
> (3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power

> to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

The expression in section 154 Cr.P.C., clearly reflects two-stage action by the officer in charge of a police station. First duty of officer incharge is to receive in writing every information relating to commission of cognizable offence or reduce into writing such information or get it written if given orally and it shall be signed by the person giving it. Second stage is **entering of substance in a book** to be kept by such officer in such form as the Provincial Government may prescribe in this behalf. Sections 154 and 155 Cr.P.C., do not talk about recording of information in a book rather entering of substance only. Recording of information and entering the substance of information are two distinct functions. Substance of course connotes a gist or summary whereas recording is verbatim of information received. Section 154 Cr.P.C., requires mere entering of substance in a book whereas FIR is always verbatim of written application or what is reduced to writing. Thus, information in full cannot be summarized until it is recorded somewhere and signed by the informant; therefore, book for recording information in full cannot be a book mentioned in section 154 Cr.P.C. Entering substance of information either under section 154 or 155 of Cr.P.C in a book prescribed by provincial government clearly connotes one and the only book i.e., "**police station daily diary"**. Rule 24.1 (1) of Police Rules, 1934 also identifies the said book in the same fashion which says that pursuant to Sections 154 and 155, Code of Criminal Procedure, every information relating to an offence, whether cognizable or non-cognizable, shall be recorded in writing by the officer incharge of a police station. Such Rule further explains that the distinction between the form of reports required by the above-mentioned two sections has been defined by the Punjab Chief Court (now High Court) as under;

> Every information covered by section 154, Criminal Procedure Code, must be reduced to writing as provided in that section and the substance thereof must be entered in the **police station daily diary, which is the book provided for the purpose.** It is only information which raises a reasonable suspicion of the

> commission of a cognizable offence within the jurisdiction of the police officer to whom it is given, which compels action under Section 157, Criminal Procedure Code.

21. Thus, for entering substance of information either of cognizable or non-cognizable offence, the prescribed book is police station daily diary. By the combined reading of above Rule and section 154 of Cr.P.C., it is not discernable as to where such information shall first be reduced to writing, if it is for commission of cognizable offence, whether in the Register of FIR or in Police Station daily diary because section 154 of Cr.P.C., and above Rule talk about only entering of substance in a book (daily diary). It is experienced that when any person reports the episode of crime, he does not narrate the facts in sequence; therefore, a duty lies on officer in charge of police station to align the information into a story. Even otherwise while recording such information he can also question the informant on different aspect of the case as mentioned in Rule 24.1 (4) of Police Rules, 1934; which says that when it is necessary to question a person bringing information of the commission of an offence, special attention shall be paid to the following matters and the results of the inquires shall be clearly recorded in the first information report: -

> (a) The source from which the information was obtained and the circumstances under which the informant ascertained the names of the offenders and witnesses (if any are mentioned).
>
> (b) Whether the informant was an eye-witness to the offence.

Therefore, in no case information could directly be entered into register of FIR. It is resolved that every oral information is first to be reduced to writing on a blank paper (or if received in writing), the substance whereof shall be entered in police station daily diary, that such & such information has been received in the police station for commission of an offence. Entering of substance in police station daily diary is like officially receiving an information, as usually done in every government department which keep a daily-daak register and number every application or information, then, it is placed before the concerned officer for an action on it. Similarly,

officer in charge of police station also gives a rapt number to such information, and then becomes legally authorized to question the informant for further details in order to apply his mind on such officially documented information as to whether any cognizable offence has been committed or not. From information, if officer in charge of police station suspects commission of cognizable offence, he shall enter in full such information, with inquires made, in Register of FIR for an action under section 157 of Cr.P.C. Rule 24.1 (2) of Police Rules 1934 exactly connotes the same scheme that in every case in which the officer in charge of a police station, from information or otherwise, has reason to suspect the commission of an offence, which he is empowered under section 156, Criminal Procedure Code, to investigate, he shall enter in full such information or other intelligence as soon as practicable in the First Information Report Register, shall have each copy signed, marked or sealed by the informant, if present, shall seal each with the station seal, and shall dispose of the copies in accordance with rule 24.5, and if he abstains from investigation under either of the provisos to section 157 of the Code he shall submit the copy intended for the Magistrate through the Superintendent.

22. The above Rule also covers the situation when by his own knowledge (otherwise) commission of offence came into the notice of officer in charge who is bound to reduce to writing such information and source of knowledge, substance whereof in the daily diary and information in full in register of FIR if he suspects commission of cognizable offence. Rule 24.1(2) of Police Rules 1934 says that when the information is entered in register of FIR, at the same time a reference to such **report** shall be entered in the Station Diary, Register No. II. This rule requires entering of reference to report, which means that FIR bearing No. so & so has been registered as an official response to information earlier received in police station; whereas in **Lalita Kumari Case** Supra, it has been directed that information in cognizable offence first be recorded in Register

of FIR and then substance of information be entered in General diary to meet the requirement of section 154 of Cr.P.C., which arrangement opposes to requirement of the above Rules. Even after registration of FIR, when the whole information has been documented, reiterating the substance of information in police station daily diary will serve no useful purpose at all, rather reference of FIR in Police station daily diary expresses the fact that information earlier received has now been formalized into an FIR as it disclosed commission of a cognizable offence; that is the reason in every FIR in the column of date and time of reporting, it is mentioned by the police officer that "reference police station daily diary number" usually written in vernacular as "بحوالہ رپٹ نمبر" which means that with reference to information incorporated earlier in police station daily diary, this FIR is being registered. Police station daily diary is known as Register No. II and is maintained in accordance with section 44 of the Police Act 1861 (Article 167 Police Order, 2002) as mentioned in Rule 22.48 of Police Rules 1934. Rule 22.49 of Police Rules 1934 mentions what matters should be entered in police station daily diary. It includes as under;

> (n) A reference to every information relating to the commission of a cognizable offence, and action is taken under section 157, Code of Criminal Procedure, the number and date of the first information report submitted.

Sequence of facts in above rule is also in consonance with the conclusion drawn above; i.e., entering of information, suspecting cognizable offence, registration of FIR with number and date of first information report submitted to the senior police officer as mentioned in rule 24.5.

23. If the ratio of Lalita Kumari Case be accepted that information in cognizable offence first be recorded in Register of FIR followed by entering of substance in station diary, then on the eve of refusal by officer in charge of police station to register the FIR due to any reason, the substance of information could not also be entered in police station daily diary, and information brought by the messenger or aggrieved shall

remain in air without any official receiving, so as to create an impression of delayed reporting due to deliberation, consultation and concoction of story, one of the recognized grounds for acquittal of accused in the case. Whereas entering of information in police station daily diary in due time helps remove such doubts. Rule 138(b) of Police Regulations, Bengal was also to the same effect which says that every occurrence which may be brought to the knowledge of the officers of police shall be entered in the general diary at the time at which it is communicated to the station. If on information incorporated in police station daily diary, an FIR is not registered, matter can be reported to higher police officer under section 551 of Cr.P.C. who also enjoys the power of officer in charge of police station in that area, or to the ex. officio Justice of the Peace under section 22A/B of Cr.P.C. After registration of FIR, its reference in police station daily diary serves the purpose that an action has been taken officially on information earlier received in police station, as is done in every public office of government department through daily daak and dispatch register. This is also providing a legal shelter to the officer in charge of police station for recording reasons to refuse registration of FIR because not only Sessions Judge under Article 167 of Police Order 2002 is authorized to inspect the same but in some cases, information in daily diary can be also be requisitioned by the Court or forum where any such related issue is raised.

24. Similarly, if information about commission of non-cognizable offence is received in writing or reduced to writing on a plain paper by officer in charge of police station, substance of such information shall be entered in police station daily diary and informant shall be sent to Magistrate for seeking permission to investigate the matter. If permission is received, then written application and entry of daily diary shall be annexed with case dairy, transforming it into a police file for investigation of case as per Rule 25.11of Police Rules 1934.

Rule 24.3 of Police Rules 1934 relaters to entering of information in non-cognizable offences which says that where the information relates to a non-cognizable offence, it shall be briefly but intelligibly **recorded in the station diary**, shall be signed, sealed or marked by the person making it on both foil and counterfoil, and all particulars required by section 44 of Act V of 1861 shall also be noted. A copy of the entry in the diary made by the carbon copying process and signed and sealed with the station seal by the recording officer, shall be made over to the informant who shall be referred to the Magistrate in accordance with section 155, Code of Criminal Procedure.

25. The officer in charge of police station is required to apply his mind on the information as to whether it discloses commission of a cognizable offence. For this purpose, process of law has been kept very simple, which can be understood from the fact that officer in charge of the police station who is ordinarily a Sub-Inspector as per Rule 22.1 of Police Rules 1934 but in his absence, can be any officer next in rank above the rank of constable as per section 4 (P) of Cr.P.C. Rule 22.77 of Police Rules 1934 caters to the situation as under;

> **22.77. Station clerk as officer in charge of police station**. - In the absence of senior officers, the station clerk is frequently called upon to act as officer in charge of the police station. He must, therefore, be fully acquainted with all the powers, responsibilities and duties of that officer as laid down in the law and in Police Rules. The most important of these and the most important of the other duties devolving on the station clerk and not already detailed in this chapter are –
>
> (1) registration of cognizable cases and action subsequent to registration - Rule 24.1; (2) recording of complaints in non-cognizable cases - Rule 24.3; (3) dispatch of special reports - Rule 24.12; (4) disposal and completion of case files and completion of registers on the passing of orders in cases - Rule 27.29; (5) carrying out arrests - Rule 26.8; (6) granting of bail - Rule 26.21; (7) submitting applications for remands to police custody - Rule 26.25(2); (8) patrolling at rural stations - Rule 23.1; (9) issuing orders on the use of handcuffs - Rule 26.23.
>
> In all these matters the station clerk will be guided by the rules referred to and connected law.

However, it is not discernable from section 154 of Cr.P.C that for application of mind on information as to whether cognizable offence has been committed, is there any time lag or would it be

done immediately because section 154 does not use the word **"at once"**. However, Rule 24.2 of Police Rules 1934 says that it should be done as soon as practicable. It was a shift because earlier as per Rule 87 of Government of United Provinces, Police Regulations (corrected and amended up to year 1928), the words **"immediately & at once were used.** Thus, where from information, owing to the change in genesis and novelty of crimes with the passage of time, any technical or legal support is required for understanding the ingredients of offence, any delay in entering the information into register of FIR would not be fatal, but fact of delay must be mentioned in police station daily diary. However, in a case reported as "*GHULAM ABBAS V. THE STATE"* (**PLD 1968 Lahore 101)**, this Court has directed recording of information in the prescribed book soon upon its making. When from information no offence seems committed or wrong reporting is in the knowledge of police, such information shall not be entered in FIR register. Reliance in this respect is on a Division Bench judgment of Peshawar High Court reported as *"SHAH REHMAN Versus THE STATE through Advocate-General and 2 others"* **(2003 MLD 714)**. In such situation information should only be entered in police station daily diary as an event that somebody reported the matter. It has been the practice of police since year 1861 as highlighted above in Bengal Police Rules framed just after 1861 and Police Regulations, Bengal 1915 that vague rumours of crime said to have been committed should not be reported in the Form, but should be mentioned in the Station Diary. Para 71 (c) & (d) of Police Regulations, Bengal 1915 said that a vague information shall be distinguished from a hearsay report, which if received, station officer shall not wait to record, as the first information, the statement of the actual complainant or an eye witness.

26. It is trite that police station is not a post office to reciprocate with FIR on whims and wishes of informant rather as per rule 24.1 (2) Police Rule, 1934 read with section 157 of Cr.P.C. when the officer in charge of police station has reason to suspect commission of cognizable offence, then he shall enter

the information in register of FIR, but first it would be entered in police station daily diary. The case reported as *"GUL NAWAZ LONE ETC vs S.H.O"* **(K.L.R. 1991 Criminal Cases 258)** is also to the same effect;

> "It is thus evident that even an information apparently covered by Section 154 is first to be entered in the Station daily diary and it is only when the officer Incharge of the police station has reason to suspect the commission of a cognizable offence, that he is required to enter such information in the First Information Report Register. It is note-worthy that the word suspicion is preceded by the expression "reason", which would have a reference to the mind of the police officer and excludes the possibility of action founded on vague surmises. Rule 24.2 therefore, calls for a determination by the police officer, dictated by reasons and rested on definite facts. Such determination may be anchored on evaluation of fact stated in the report, reviewing of the circumstances attending the case and intelligence relating to the alleged commission of the offence. Evidence mustered in the course of investigation of the case already registered may also furnish material for such determination. It is to be remembered that this determination should not be equated with investigation undertaken by the police officer after registration of the case. The expression sufficiently indicates that when the appellants rushed to this Court, the matter was still under scrutiny of the S.H.O, who was under a compulsion to proceed according to law. Mention in the " of the case registered at the instance of the appellants' rivals, is part of the factual narration rather than to betray a disinclination of the S.H.O, to entertain the appellants grievance."

In another case reported as *"FAISAL HAYAT Versus ADDITIONAL SESSIONS JUDGE/EX-OFFICIO JUSTICE OF PEACE, ISLAMABAD (WEST) and 3 others"* **(2024 YLR 1037)**, Islamabad High Court has held that substance of information relating to cognizable offence be entered first in police station daily diary.

27. Form the above discussion, it is clear that the book mentioned in section 154 Cr.P.C. is not a register of FIR rather police station daily diary because said section requires entering of only substance in the book and not the information in full. Similarly, if information in writing is received, still it is the direction to enter only the substance and not the information as a whole. Moreover, above section talks about "every information" and not the "first information" which scopes recording of as many versions as there can be, but Supreme Court of Pakistan in a case reported as *"Mst. SUGHRAAN BIBI Versus The STATE"* **(PLD 2018 Supreme Court 595)** has barred the registration of

second FIR, rather directed that every further information in a cognizable case shall be recorded through statement under section 161 of Cr.P.C. Likewise, during the same occurrence when multiple offences are committed by the parties against each other, no further information is materialized into registration of separate FIR but through cross version usually recorded in the police station daily diary. In such situation, shall it be gainsaying that entering of information of a cognizable offence in the police station daily diary opposes to the scheme of law so far settled. Another situation also gets attention that when a constable while being in police station receives an information of cognizable offence what will he do because he is not the officer in charge of police station. In such situation it was the direction that he shall enter abstract of such information in police station daily diary. [Para-71(g)] of Police Regulations, Bengal 1915 is referred in this respect. Before that a case reported aa "Queen-Empress vs Muhammad Ismail Khan" **(1898) ILR 20 ALL 151),** was also to the same effect wherein it was held by John Edge, C.J, and Burkit, J that Ismail Khan Constable was bound by law to enter in the general diary reports of cognizable or non-cognizable cases made to him at the thana. Para-138 (h) of Bengal Police Regulations 1915 mentioned that an entry in the general diary does not obviate the necessity of separate report of any occurrence which is required by rule or order to be specially reported.

28. If the officer in charge of police station from the information received or otherwise suspects commission of cognizable offence, he shall start the investigation, which means that it is the **"information"** that gives him power to enter into investigation and not the **"registration of such information"**. Relying upon case reported as *"EMPEROR V. KHAWJA NAZIR AHMED"* (**AIR (32) 1945 Privy Council 18**)**,** it was held that investigation can be conducted the moment information is lodged before the officer in charge of police station. It is our everyday experience that police halt the persons for inspection and if something is found in his possession contrary to law, so as

to suspect commission of a cognizable offence, police officer there and then starts investigating the matter despite the fact that FIR by then had not been registered, and it is a misunderstanding that accused can only be arrested after registration of FIR. Code of Criminal Procedure 1898, as per section 4 (f) mentions two terms “Cognizable offence.” & “Cognizable case.” Cognizable offence means an offence for, and cognizable case means a case in, which a police-officer, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant. A cognizable offence when stood registered become a cognizable case. Thus, a cognizable offence committed within the view of police officer authorizes him to arrest the offender there and then.

29. Similarly, on receiving information, if commission of cognizable offence is suspected, it shall as soon as may be practicable to be entered ultimately in the Register of FIR. A police file is prepared for every case which contains copy of written application or information reduced to writing (فرد بیان) by the officer in charge of the police station, one copy of FIR and a case diary as per section 172 of Cr.P.C.; Rule 25.53(1) of Police Rules 1934 mentions that in such diary shall be recorded, concisely and clearly, the steps taken by the police, the circumstances ascertained through the investigation and the other information required by Section 172(1), Code of Criminal Procedure. As a first step the investigating officer shall get the information verified from the complainant or persons against whom offence has been committed, or if he receives any ***supplementary statement*** of complainant shall record its substance in case diary so as to pick another line of inquiry in the investigation of case. Practice of recording of supplementary statement was part of Police Regulations, United Provinces (as cited above). Para- 98 of such Regulations explains as under;

> “The case diary must contain the particulars required by section 172 of the Code of Criminal Procedure in no more detail than is absolutely necessary to enable a supervising officer to understand the facts. A note should be made in it as to whether the complainant confirms his first information

> report, and the **substance of any supplementary statement** he makes to the investigating officer should be briefly recorded……....”
>
> **(emphasis supplied)**

30. It is trite that preliminary inquiry before registration of FIR is barred, but urge of Mr. Kamran Adil DIG, learned amicus curiae that updated construction of laws is essential in the light of *“MEERA SHAFI Versus ALI ZAFAR”* **(PLD 2023 Supreme Court 211)** & judgment passed in Criminal Miscellaneous No.40397-M/2024, titled *“Rai Muhammad Aslam Vs. Additional Sessions Judge, etc.”* **(2024 LHC 4993)** (LHC Website) On the other hand, Mr. Burhaan Moazzam Malik, learned amicus curiae stated that there is no scope of preliminary inquiry before registration of FIR and it is well settled by different case laws of Pakistani jurisdiction yet the exhaustive judgment came from Indian jurisdiction reported as *“Lalita Kumari Versus Govt. of U.P. & Ors.”* **(AIR 2014 Supreme Court 187),** which thoroughly rules out the scope of preliminary inquiry; however, conceded that even in above said case, Supreme Court of India has given some situations, apart from statutory exception, where preliminary inquiry before registration of FIR is permissible, which are referred below;

> 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)……..
>
> 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.

In above said Case, the Indian Supreme Court has rightly held that there is no scope of preliminary inquiry before registration of FIR. The highlighted situations mostly fall in statutory exceptions. However, in same situation, with this limited scope preliminary inquiry in our system should not be barred, particularly when unlike India we have given power to an ex-officio Justice of the Peace for direction about registration of FIR, and that too after an inquiry by him as held in case reported as *"YOUNAS ABASS and others Versus ADDITIONAL SESSIONS JUDGE, CHAKWAL and others"* **(PLD 2016 Supreme Court 581)** that an ex-officio Justice of the peace now enjoys quasi-judicial powers which require him to call the parties and police comments, hear them, conduct an inquiry and then pass direction for or against registration of FIR.

31. The present writ petition for quashing of FIR revolves around mandatory preliminary investigation authorized under section 196B Cr.P.C., for offences mentioned in section 196 of Cr.P.C. to which section 295A PPC is a part. When such matter is reported to the officer in charge of police station, the first duty of police officer is to reduce such information to writing, and after entering the substance in police station daily diary shall apply his mind that which offence in fact seems committed from

the information; if it spurs out that from the information offence under section 295A PPC is attracted, he shall within the limited scope of inquiry shall collect further information and place the matter before officer in charge of investigation in the district for authorizing preliminary investigation. It is true that in other offences there is no concept of preliminary investigation as held in "*SHAHNAZ BEGUM versus THE HON'BLE JUDGES OF THE HIGH COURT OF SIND AND BALUCHISTAN AND ANOTHER*" (**PLD 1971 Supreme Court 677)** but the Supreme Court in above case while referring Cluse 22 of Letters Patent under which High Court was established held as under;

> "High Court under the latter part of the provisions of clause 22 of the Letters Patent has the power to direct the preliminary investigation to be started where no such investigation has already been initiated by even an officer B who in the ordinary course would not have had territorial jurisdiction to make such an investigation although he must still be an officer who is competent to make an investigation under the Criminal Procedure Code of an offence of that nature."

Clauses 22 of Letters Patent thus empowers the High Court to direct for preliminary investigation where no action in the form of registration of FIR or investigation has been taken by the police**.** Though section 196 Cr.P.C., since 1898 remained operating under ordinary regime of investigation as to cognizable or non-cognizable offences mentioned therein so as to evaluate the collected material for filing of complaint by Central or Provincial government yet High Court was established under such Letters Patent in year 1919 and Clause 22 above was made available for that purpose or for preliminary investigation of other offences in appropriate cases till the enactment of section 196B Cr.P.C., by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923). Sections 196 & 196B are reproduced as under;

> **196. Prosecution for offences against the State.** No Court shall take cognizance of any offence punishable under Chapter VI or IXA of the Pakistan Penal Code (XLV of 1860) (except section 127), or punishable under section 108A, or section 153A, or section 294A, or section 295A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the Federal Government, or the Provincial Government concerned, or some officer empowered in this behalf by either of the two Governments.

> **(Section 295A PPC was** inserted in above section by the Criminal Law Amendment Act, 1927 (25 of 1927).
>
> **196B. Preliminary inquiry in certain cases.** In the case of any offence in respect of which the provisions of section 196 or section 196A apply, officer-in-charge of the investigation in the district may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police-officer not being below the rank of Inspector, in which case such police-officer shall have the powers referred to in section 155, sub-section (3).

As per section 196 Cr.P.C., no Court shall take cognizance of offences mentioned therein unless upon complaint made by order of, or under authority from, the Federal Government, or the Provincial Government concerned, or some officer empowered in this behalf by either of the two Governments. Only four offences of PPC mentioned in section 196 Cr.P.C are cognizable; e.g., section 123B in Chapter VI of PPC, section 171J in Chapter IXA, sections 153A & 505 of PPC. Though it is held in number of judgments that taking cognizance and registration of FIR are different phenomena; therefore, for cognizable offences mentioned in 196 Cr.P.C., FIR can be registered, but when special procedure has been prescribed for dealing with offences mentioned in section 196 Cr.P.C., then regime introduced in section 196B Cr.P.C., must be followed for preliminary investigation. It is trite that even without registering an FIR, investigation can be initiated. Instances are of situations when Magistrate orders for investigation under section 156(3) or section 202 of Cr.P.C. In "*Lalita Kumari vs Govt. of U.P. & Ors*" **(AIR 2014 Supreme Court 187),** Indian Supreme Court has held that pursuant to such direction of Magistrate, officer in charge of police station shall first register the FIR and then investigate the matter. What exactly has been directed is reproduced below;

> "10. From the foregoing discussion it is evident that whenever 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".

I am afraid such direction opposes to erstwhile rules of Bengal Police. As per Rule-IV, upon receiving direction from Magistrate for investigation of cognizable offence, the information shall be entered in the Form only if police had not already received any information; it is as follows;

> If the Magistrate directs a *cognizable case* to be investigated by the Police, *and the Police Officer has not received any previous information regarding the crime*, and has not already sent in these forms, he shall, on receipt of the Magistrate's order, do so."

Police Regulations, Bengal 1915; Para-76 (a) & (b) is also to the same effect, which is as under;

> (a) When a Magistrate directs the police to enquire into the complaint of a cognizable offence, ***of which no previous information has been laid before the police***, the written information sent by the Magistrate to the police shall be treated as the first information.
>
> (b) When such a complaint is referred for enquiry upon some specific point or points, the police shall submit an ordinary report not in the prescribed form.

The above direction in ***Lalita Kumari Case*** for registration of FIR could only be carried out when police had not received prior information at police station about commission of cognizable offence and complaint is made to the Magistrate, and he without recording the statement of complainant under section 200 of Cr.P.C., directs the police for action under the law, ***(****in our country, this function has also been assigned to an ex-officio Justice of the Peace****)*** but once statement is recorded under section 200 of Cr.P.C., and Magistrate opts to go for inquiry or investigation under section 202 of Cr.P.C., then there would be no scope of registration of FIR by the police rather investigation shall be carried out to collect the material for private prosecution, and in this case it can be claimed that an investigation in cognizable offence can be resorted to even without registration of FIR.

32. It is trite that police cannot investigate a non-cognizable offence except by the order of Magistrate; similarly, police also cannot investigate the offences mentioned in section 196 of Cr.P.C. except by the order of officer in charge of investigation in the district. Earlier officer in charge of the investigation in the district was a District Magistrate; therefore, it is mentioned in Rule 25.11 of Police Rules 1934 that no police officer shall investigate a non-cognizable offence unless ordered to do so by a competent magistrate under sections 196B or 202, Criminal Procedure Code. however, now this authority vests in Superintendent of Police (Investigation) in the district. In the light of above discussion if an information is received at police station about commission of an offence, it shall be reduced to writing and then for officially documenting it enter the substance in police station daily diary, upon which it becomes imperative upon officer in charge of police station to apply his mind as to the commission of cognizable offence. If from the information commission of cognizable offence is not suspected police can collect further information, but while considering it a cognizable offence shall enter into register of FIR, then mere mentioning penal section of non-cognizable offence in FIR does not by itself provide grounds for its quashing, in particular when a legal opinion from concerned prosecutor or Prosecutor General can be sought for further proceedings. Learned Counsel for the respondent also submitted that like application for insertion of other penal provisions is pending before the SP investigation. Police has authority even to prepare case cancellation report later under Rule 24.7 of Police Rules 1934, if the offence ultimately turns out to be a non-cognizable. Though as per section 537 of Cr.P.C., any error in complaint shall not over turn any sentence, finding or order of the Court rather determination lies with the Court that it actually has occasioned the failure of justice. The reliance in respect is on cases reported as "*ALTAF HUSSAIN versus ABDUL SAMAD and 3 others*" **(2000 SCMR 1945);** *"MUHAMMAD Versus THE STATE"* **(1989 P Cr. L J 834).** One of the finest judgments of this Court authored by His

lordship Rustam S. Sidhwa. J as he then was, reported as *"MUHAMMAD ASLAM versus The STATE And ANOTHER"* **(1980 P Cr. L J 742)** wherein it was held that if the investigation conducted by the police in non-cognizable offence was not authorized under section 155 (2) by the Magistrate, then the remedy is as follows;

> "8. I now turn to the submissions made by the learned counsel for the petitioner and the State as regards the question whether the investigation of a non-cognizable offence by a police officer not authorised under section 155 (2), Cr. P. C. to do so, prevents the Court from taking cognizance of the offence on the report submitted by such officer or renders the subsequent trial illegal. I need not labour, on those questions as they have been decided by a **Division Bench judgment of the High Court of West Pakistan in Mst. Sadan v. The State (PLD1965 B.J 12)**, which judgment is binding on me. In this authority, it was **held that a police report in a non-cognizable offence, which the police officer had not been duly ordered by a Magistrate to investigate. could be treated as a report falling under clause (b) of subsection (1) of section 190 of the. Criminal Procedure Code or, in the alternative, as a complaint. falling under clause (a) of subsection (1) of the same section**. It was also held in this case that the mere irregularity in the investigation of the case by the police officer who was not authorised to investigate the same, did not affect the legality of the trial. **The Crown v. Mehar Ali (PLD 1956 FC 106)** was also followed in this respect. The two rulings cited by the learned counsel for the petitioner, namely, Mst. Razia v. The State and Muhammad Yaqub v. The State (1977 P Cr. L J 328), do not, therefore, correctly lay down the law. In Mst. Razia's case which is a Single Bench judgment of this Court, the attention of the learned Judge was not drawn to Mst. Sadan's case. Likewise, in Muhammad Yaqoob's case, which is a Single Bench decision of the Sind High Court, the attention of the learned Judge was not drawn either to Mst. Sadan's case or to the other decisions of that Court, e.g., Shah Abdul Majid v. The State (1978 P Cr. L J 812), Wali zad v. State (P L D 1958 Kar. 86), and Mami v. The. State (PLD 1960 Kar. 204). Therefore, following the view taken in Mst. Sadan's case, I hold that the challan by the police officer in the present. case can be treated both as a report of a police officer or a complaint under clause (b) or clause (a) of subsection (1) of section 190 of the Criminal Procedure Code and that the cognizance of the same by the Magistrate cannot vitiate the trial before him.

There is no cavil that FIR if registered in non-cognizable offence can be quashed in the light of judgment relied by learned counsel for the petitioner but this judgment covers the situation that if in serious issue investigation is started without out authorization by Magistrate, still on the report of police officer Magistrate can take cognizance either under clause (a) or (b) of subsection (1) of section 190 Cr.P.C., then while framing charge if sanction for prosecution in offence under section 295A PPC is

required as per section 196 Cr.P.C., then Magistrate can stay the proceedings until such sanction is received as ordained under section 230 of Cr.P.C. Even initiative of Magistrate at his own to take cognizance under section 190 (1)(c) of Cr.P.C. can regularize the process. Reliance in this respect is placed on cases reported as *"SHAFIQ AHMAD versus The STATE"* **(PLD 1959 (W.P.) Lahore 851);** *"AZIM KHAN AND ANOTHER versus The STATE"* **(1970 P Cr. L J 77).**

33. In the present case report under section 173 of Cr.P.C./ Challan has not been put into the Court and when such report shall route to the Court through concerned prosecutor, it shall face scrutiny under section 9(5) of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006, and applicability of wrong penal provision in FIR is also a defect to be rectified on the direction of prosecutor as held in case reported as *"AZIZULLAH KHAN Versus S.H.O. POLICE STATION SADDAR, MIANWALI and 4 others"* **(2013 P Cr. LJ 1411)**. A contentious religious issue cannot be brushed aside at preliminary stage on the altar of technicalities, particularly when the petitioner has given a religious opinion 'Fatwa' in black & white that could strip up sectarian hatred. Even as per case reported as *"SHABBAR HASSAIN versus THE STATE"* **(2011 P Cr. L.J 1631)**, it has been held that before taking cognizance of a case any irregularity incurred that does not vitiate the trial, may be rectified.

34. In the light of above discussion following course is open in this case;

1) Police has authority even to prepare case cancellation report later under Rule 24.7 of Police Rules 1934, if the offence ultimately turns out to be a non-cognizable.

2) SP investigation can pass direction for preliminary investigation in this case pursuant to provisions of section 196B Cr.P.C., if he opines commission of offence under section 295A PPC only. thereafter case shall proceed through preliminary investigation which shall follow

collection of material to facilitate the Federal or Provincial Government to lodge complaint for prosecution of offence under section 295A PPC before the Court concerned.

3) If SP investigation swaps section 295A PPC with any other cognizable offence, or add some cognizable offences with section 295A PPC, then investigation shall stand regularized because in that case by investigating cognizable offences police can also investigate non-cognizable offence without the order of Magistrate. Reliance in this respect is placed on case reported as *"MUHAMMAD JAMIL Versus S.H.O. and others"* **(1998 P Cr. L J 1718)**. In such situation if the report under section 173 Cr.P.C. is sent to the Court, accused when summoned and if charged under section 295A PPC as well then Court can stay the proceedings till the receipt of sanction from Provincial Government as per section 230 of Cr.P.C.

4) If SP Investigation considers that from the contents of allegation an offence under section 8/9 of Anti-terrorism Act 1997 is attracted then of course section 295A PPC shall also be tried by the Anti-terrorism Court under section 17 read with section 21M of said Act, and in such situation, bar contained in section 196 shall stand neutralized for trial without the complaint of Provincial Government as held in case reported as *"JAVED IQBAL and others Versus The STATE"* **(2016 SCMR 787)**.

5) If SP investigation declines to pass direction for preliminary investigation, then Police can submit report under section 173 of Cr.P.C. before the Magistrate who can take the cognizance either under clause (a) or (b) of sub-section (1) of Section 190 Cr.P.C.

6) However, if the matter remained processed through preliminary investigation, then accused petitioner can only be arrested through a warrant of arrest as mentioned in

section 155(3) of Cr.P.C., a mode provided in section 196B of Cr.P.C. as well.

7) Otherwise, on summoning by Magistrate on police report as cited above, Magistrate can ask the accused to submit bail bond under section 91 of Cr.P.C., or he be committed to custody under section 351 of Cr.P.C., as held in case reported as *"MUHAMMAD ASLAM Versus THE STATE and others"* **(2024 P Cr. L J 977).**

Thus, no case for quashing of FIR at this preliminary stage of the proceedings is made out.

35. At the end, I gratefully acknowledge the assistance provided by Learned Prosecutor General, Mr. Burhan Moazzam, Advocate Supreme Court, Mian Tabbasum Ali, Advocate High Court, Ms. Nuzhat Bahir, Deputy Prosecutor General & Mr. Kamran Adil, DIG Police (all learned amici curiae). The additional efforts, put in with provision of relevant material by Mr. Bilal Munir, Civil Judge & Mr. Ijaz Ahmad Sapra, Civil Judge, both research officers of Lahore High Court, were simply matchless. They dug out the material which was not readily available. I appreciate their efforts.

36. These are also the detailed reason for disposal of connected bail petition of the petitioner. With the above observations, this writ petition is disposed of.

(MUHAMMAD AMJAD RAFIQ)
JUDGE

Approved for Reporting

Judge

Signed on _____

Ishtiaq.