Lalita Kumari vs Govt.Of U.P.& Ors on 27 February, 2012

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Author: Dalveer Bhandari

Bench: Dipak Misra, T.S. Thakur, Dalveer Bhandari

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO.68 OF 2008

Lalita Kumari ...Petitioner

Versus

Government of U.P. & Others ...Respondents

WITH

CRIMINAL APPEAL NO.1410 OF 2011

Samshudheen ...Appellant

Versus

State, Represented by Dy. Superintendent of Police

Tamil Nadu ...Respondent

WITH

SLP (CRIMINAL) NO.5200 OF 2009

Baldev Singh Cheema ...Petitioner

Versus

State of Punjab & Others ...Respondents

WITH

SLP (CRIMINAL) NO.5986 OF 2010

Surjit Singh & Another ...Petitioner

Versus

State of Punjab & Others ...Respondents

AND

CONTEMPT PETITION NO. ARISING OUT OF D.26722 of 2008

IN

WRIT PETITION (CRIMINAL) NO.68 OF 2008

Daljit Singh Grewal ...Petitioner

Versus

Ramesh Inder Singh ...Respondent

J U D G M E N T

Dalveer Bhandari, J.

1. We propose to deal with the abovementioned writ petition, the criminal appeals and the contempt petition by this judgment. The question of law involved in these cases is identical, therefore, all these cases are being dealt with by a common judgment. In order to avoid repetition, only the facts of the writ petition of Lalita Kumari's case are recapitulated.

2. The petition has been filed before this Court under Article 32 of the Constitution of India in the nature of habeas corpus to produce Lalita Kumari, the minor daughter of Bhola Kamat.

3. On 5.5.2008, Lalita Kumari, aged about six years, went out of her house at 9 p.m. When she did not return for half an hour and Bhola Kamat was not successful in tracing her, he filed a missing report at the police station Loni, Ghaziabad, U.P.

4. On 11.5.2008, respondent no.5 met Bhola Kamat and informed him that his daughter has been kidnapped and kept under unlawful confinement by the respondent nos.6 to 13. The respondent-police did not take any action on his complaint. Aggrieved by the inaction of the local police, Bhola Kamat made a representation on 3.6.2008 to the Senior Superintendent of Police, Ghaziabad. On the directions of the Superintendent of Police, Ghaziabad, the police station Loni, Ghaziabad registered a First Information Report (F.I.R.) No.484 dated 6.6.2008 under Sections 363/366/506/120B IPC against the private respondents.

5. Even after registration of the FIR against the private respondents, the police did not take any action to trace Lalita Kumari. According to the allegation of Bhola Kamat, he was asked to pay money for initiating investigation and to arrest the accused persons.

Ultimately, the petitioner filed this petition under Article 32 of the Constitution before this Court.

6. This Court on 14.7.2008 passed a comprehensive order expressing its grave anguish on non-registration of the FIR even in a case of cognizable offence. The Court also issued notices to all Chief Secretaries of the States and Administrators of the Union Territories. In response to the directions of the Court, various States and the Union Territories have filed comprehensive affidavits.

7. The short, but extremely important issue which arises in this petition is whether under Section 154 of the Code of Criminal Procedure Code, a police officer is bound to register an FIR when a cognizable offence is made out or he has some latitude of conducting some kind of preliminary enquiry before registering the FIR.

8. Mr. S.B. Upadhyay, learned senior advocate appearing for the petitioner has tried to explain the scheme of Section 154 Cr.P.C. with the help of other provisions of the Act. According to him, whenever information regarding cognizable offence is brought to the notice of the SHO, he has no option but to register the First Information Report.

9. This Court also issued notice to the learned Attorney General for India to assist the Court in this matter of general public importance. Mr. Harish P Raval, the learned Additional Solicitor General appeared before the Court and made comprehensive submissions. He also filed written submissions which were settled by him and re-settled by the learned Attorney General for India.

10. Learned Additional Solicitor General submitted that the issue which has been referred to this Court has been decided by a three-Judge Bench of this Court in the case of Aleque Padamsee and Others v. Union of India and Others (2007) 6 SCC 171. In this case, this Court while referring to the judgment in the case of Ramesh Kumari v. State (NCT of Delhi) and Others (2006) 2 SCC 677 in paragraph 2 of the judgment has observed as under:-

> "Whenever cognizable offence is disclosed the police officials are bound to register the same and in case it is not done, directions to register the same can be given."

11. The State of Gujarat, the respondent in the above case, on the facts thereof, contended that on a bare reading of a complaint lodged, it appears that no offence was made and that whenever a complaint is lodged, automatically and in a routine manner an FIR is not to be registered. This Court after considering Chapter XII and more particularly Sections 154 and 156 held (paragraphs 6 and 7) that "whenever any information is received by the police about the alleged commission of offence which is a cognizable one, there is a duty to register the FIR." There could be no dispute on that score as observed by this Court. The issue referred to in the reference has already been answered by the Bench of three Judges. The judgment in Aleque Padamsee and Others (supra) is not referred in the reference order. It is therefore prayed that the present reference be answered accordingly.

12. It was submitted on behalf of the Union of India that Section 154 (1) provides that every information relating to the commission of a cognizable offence if given orally, to an officer incharge of a police station shall be reduced in writing by him or under his directions. The provision is mandatory. The use of the word "shall" by the legislation is indicative of the statutory intent. In case such information is given in writing or is reduced in writing on being given orally, it is required to be signed by the persons giving it. It is further provided that the substance of commission of a cognizable offence as given in writing or reduced to writing "shall" be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Sub-section (2) provides that a copy of such information as recorded in sub-section (1) shall be given forthwith free of cost to the informant.

13. In light of the provisions contained in Section 154 (1) and the law laid by this Court on the subject, the following submissions were placed by the Union of India for consideration of this Court.

a) The statutory intention is manifest on a bare reading of provisions of Section 154(1) to the effect that when an officer incharge of a police station to whom information relating to commission of cognizable offence has been disclosed, he has no discretion save and except to reduce the said information in writing by him or under his direction.

b) Section 154(1) does not have ambiguity and is in clear terms.

c) The use of expression "shall" clearly manifest the mandatory statutory intention.

d) In construing a statutory provision, the first and the foremost rule of construction is the literal construction. It is submitted that all that the Court has to see at the very outset is what does that provision say. If the provision is unambiguous and if from that provision, the legislative intent is clear, the Court need not call into it the other rules on construction of statutes.

[Para 22 of Hiralal Rattanlal etc.etc. v. State of U.P. and Another etc.etc. 1973(1) SCC 216].

This judgment is referred to and followed in a recent decision of this Court in B. Premanand and Others v. Mohan Koikal and Others (2011) 4 SCC 266 paras 8 and 9. It is submitted that the language employed in Section 154 is the determinative factor of the legislative intent.

There is neither any defect nor any omission in words used by the legislature. The legislative intent is clear. The language of Section 154(1), therefore, admits of no other construction.

e) The use of expression "shall" is indicative of the intention of the legislature which has used a language of compulsive force. There is nothing indicative of the contrary in the context indicating a permissive interpretation of Section

154. It is submitted that the said Section ought to be construed as preemptory. The words are precise and unambiguous (Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee, Godhra and Others 1975 (2) SCC 482). It is submitted that it is settled law that judgments of the courts are not to be construed as statutes [para 11 of three-Judge Bench decision of this court in the case of M/s Amar Nath Om Prakash and others etc. v.

State of Punjab and Others (1985) 1 SCC 345].

The abovesaid decision is followed by a judgment of this Court in the case of Hameed Joharan (dead) and others v. Abdul Salam (dead) by Lrs. and Others (2001) 7 SCC 573.

f) The provision of Section 154(1) read in light of statutory scheme do not admit of conferring any discretion on the officer in charge of the police station of embarking upon an preliminary enquiry prior to registration of an FIR. A preliminary enquiry is a term which is alien to the Code of Criminal Procedure, 1973 which talks of (i) investigation (ii) inquiry and (iii) trial. These terms are definite connotations having been defined under Section 2 of the Act.

g) The concept of preliminary enquiry as contained in Chapter IX of the CBI (Crime) Manual, first published in 1991 and thereafter updated on 15.7.2005 cannot be relied upon to import the concept of holding of preliminary enquiry in the scheme of the Code of Criminal Procedure.

h) The interpretation of Section 154 cannot be depended upon a Manual regulating the conduct of officers of an organization, i.e., CBI.

i) A reference to para 9.1. of the said Manual would show that preliminary enquiry is contemplated only when a complaint is received or information is available which may after verification as enjoined in the said Manual indicates serious misconduct on the part of the public servant but is not adequate to justify registration of a regular case under provisions of Section 154 Cr.P.C.

Such preliminary inquiry as referred to in para 9.1 of the CBI Manual as also to be registered after obtaining approval of the competent authority. It is submitted that these provisions cannot be imported into the statutory scheme of Section 154 so as to provide any discretion to a police officer in the matter of registration of an FIR.

j) The purpose of registration of an FIR are manifold -that is to say

i) To reduce the substance of information disclosing commission of a cognizable offence, if given orally, into writing

ii) if given in writing to have it signed by the complainant

iii) to maintain record of receipt of information as regards commission of cognizable offences

iv) to initiate investigation on receipt of information as regards commission of cognizable offence

v) to inform Magistrate forthwith of the factum of the information received.

14. Reference has also been made to the celebrated judgment of the Privy Council in the case of Emperor v.

Khwaza Nazim Ahmad AIR 1945 PC 18 in which it is held that for the receipt and recording of an information, report is not a condition precedent to the setting in motion of a criminal investigation. It is further held, that no doubt, in the great majority of cases criminal prosecution are undertaken as a result of the information received and recorded in this way. (As provided in Sections 154 to 156 of the earlier Code). It is further held that there is no reason why the police, if in possession through their own knowledge or by means of credible though informal intelligence which genuinely leads them to the belief that a cognizable offence has been committed, should not of their own motion undertake an investigation into the truth of the matters alleged. It is further held that Section 157 of the Code when directing that a police officer, who has a reason to suspect from information or otherwise, that an offence which he is empowered to investigate under Section 156 has been committed, he shall proceed to investigate the facts and circumstances of the case. It is further held in the said judgment that, in truth the provisions as to an information report (commonly called a First Information Report) are enacted for other reasons. Its object is to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten or embellished, and it has to be remembered that the report can be put in evidence when the informant is examined, if it is desired to do so. It is further held in the said judgment that there is a statutory right on part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities.

15. On behalf of the Union of India reference was made to the judgment of this Court delivered in The State of Uttar Pradesh v. Bhagwant Kishore Joshi AIR 1964 SC 221 wherein it has been held vide para 8 that Section 154 of the Code prescribed the mode of recording the information received orally or in writing by an officer incharge of a police station in respect of commission of a cognizable offence. Section 156 thereof authorizes such an officer to investigate any cognizable offence prescribed therein. Though, ordinarily investigation is undertaken on information received by a police officer, the receipt of information is not a condition precedent for investigation.

16. It is further held that Section 157 prescribes the procedure in the matter of such an investigation which can be initiated either on information or otherwise. It is also held that it is clear from the said provision that an officer in charge of a police station can start investigation either on information or

otherwise. The judges in the said judgment referred to a decision of this Court in the case of H.N. Rishbud and Inder Singh v. The State of Delhi 1955 SCR (1) 1150 at pp.1157-58 that the graphic description of the stages is only a restatement of the principle that a vague information or an irresponsible rumour would not by itself constitute information within the meaning of Section 154 of the Code or the basis of an investigation under Section 157 thereof. The said case was in respect of an offence alleged under Prevention of Corruption Act, 1947. The said case was under the old Code which did not define the term `investigation' (paragraph 18 of the concurring judgment of Justice Mudholkar at page 226). It is also observed that the main object of investigation mean to bring home the offence to the offender. The essential part of the duty of an investigating officer in this connection is, apart from arresting the offender, to collect all material necessary for establishing the accusation "against" the offender.

17. The following observations in the concurring judgment of Bhagwant Kishore Joshi (supra) were found in paragraph 18 :

> "In the absence of any prohibition in the Code, express or implied, I am of opinion that it is open to a Police Officer to make preliminary enquiries before registering an offence and making a full scale investigation into it. No doubt, s. 5A of the Prevention of Corruption Act was enacted for preventing harassment to a Government servant and with this object in view investigation, except with the previous permission of a Magistrate, is not permitted to be made by an officer below the rank of a Deputy Superintendent of Police. Where however, a Police Officer makes some preliminary enquiries, does not arrest or even question an accused or question any witnesses but merely makes a few discreet enquiries or looks at some documents without making any notes, it is difficult to visualise how any possible harassment or even embarrassment would result therefrom to the suspect or the accused person."

18. In case of H.N. Rishbud (supra), in the case under the Prevention of Corruption Act, 1947, it is observed as under:-

"Investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under section 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender."

It is further held :-

> "Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes "all the proceedings under the Code for the collection of evidence conducted by a police officer".

It is further held in the said judgment that :

"Thus, under the Code investigation consists generally of the following steps:(1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under section 173."

19. It was further submitted that this Court in the case of Damodar v. State of Rajasthan reported in 2004(12) SCC 336 referred to the observations of the judgment of this Court rendered in case of Ramsinh Bavaji Jadeja v.

State of Gujarat 1994 (2) SCC 685 and observed that the question as to at what stage the investigation commence has to be considered and examined on the facts of each case especially when the information of alleged cognizable offence has been given on telephone.

The said case deals with information received on telephone by an unknown person. In paragraph 10 it is observed thus "in order to constitute the FIR, the information must reveal commission of act which is a cognizable offence."

20. It is further observed in paragraph 11 in the case of Damodar (supra) that in the context of the facts of the said case, that any telephonic information about commission of a cognizable offence, if any, irrespective of the nature and details of such information cannot be treated as an FIR. It is further held that if the telephonic message is cryptic in nature and the officer incharge proceeds to the place of occurrence on the basis of that information to find out the details of the nature of the offence, if any, then it cannot be said that the information which had been received by him on telephone shall be deemed to be an FIR.

21. It is also observed that the object and purpose of giving such telephonic message is not to lodge an FIR, but to make the officer incharge of the police station reach the place of occurrence. It is further held that if the information given on telephone is not cryptic and on the basis of that information the officer incharge is prima facie satisfied about commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence, then any statement made by any person in respect of the said offence including the participants shall be deemed to be statement made by a person to the police officer in the course of investigation covered by Section 162 of the Code.

22. This Court in the case of Binay Kumar Singh v.

The State of Bihar 1997(1) SCC 283 observed as under:-

> ".....It is evidently a cryptic information and is hardly sufficient for discerning the commission of any cognizable offence therefrom. Under Section 154 of the Code the information must unmistakably relate to the commission of a cognizable offence and it shall be reduced to writing (if given orally) and shall be signed by its maker. The next requirement is that the substance thereof shall be entered in a book kept in the police station in such form as the State Government has prescribed. First information report (FIR) has to be prepared and it shall be forwarded to the magistrate who is empowered to take cognizance of such offence upon such report. The officer in charge of a police station is not obliged to prepare FIR on any nebulous information received from somebody who does not disclose any authentic knowledge about commission of the cognizable offence. It is open to the officer-in-charge to collect more information containing details about the occurrence, if available, so that he can consider whether a cognizable offence has been committed warranting investigation thereto."

23. It is submitted that in the said judgment what fell for consideration of the Court was the conviction and sentence in respect of the offence under Sections 302/149 of the IPC in respect of a murder which took place in a Bihar village wherein lives of 13 people were lost and 17 other were badly injured along with burning alive of large number of mute cattle and many dwelling houses. It is also submitted that the interpretation of Section 154 was not directly in issue in the said judgment.

24. Reliance is placed on a decision of this Court in the case of Madhu Bala v. Suresh Kumar and Others reported as 1997 (8) SCC 476 in the context of Sections 156(3) 173(2), 154 and 190(1) (a) and (b) and more particularly upon the following paragraphs of the said judgment. The same read as under:-

> "Coming first to the relevant provisions of the Code, Section 2(d) defines "complaint"

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

section (2) of Section 173 of the Code.

Chapter XII of the Code comprising Sections 154 to 176 relates to information to the police and their powers to investigate. Section 154 provides, inter alia, that the officer in charge of a police station shall reduce into writing every information relating to the commission of a cognizable offence given to him orally and every such information if given in writing shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

Section 156 of the Code with which we are primarily concerned in these appeals reads as under:

> "(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
>
> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.
>
> (3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned."

On completion of investigation undertaken under Section 156(1) the officer in charge of the police station is required under Section 173(2) to forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government containing all the particulars mentioned therein. Chapter XIV of the Code lays down the conditions requisite for initiation of proceedings by the Magistrate.

Under sub-section (1) of Section 190 appearing in that Chapter any Magistrate of the First Class and any Magistrate of the Second Class specially empowered may take cognizance of any offence (a) upon receiving a "complaint" of facts which constitutes such offence; (b) upon a "police report" of such facts; or (c) upon information received from any person other than a police officer, or upon his own knowledge that such offence has been committed. Chapter XV prescribes the procedure the Magistrate has to initially follow if it takes cognizance of an offence on a complaint under Section 190(1)(a).

25. Learned counsel for the Union of India relied on the following passage from Madhu Bala (supra) :-

> "From a combined reading of the above provisions it is abundantly clear that when a written complaint disclosing a cognizable offence is made before a Magistrate, he may take cognizance upon the same under Section 190(1)(a) of the Code and proceed with the same in accordance with the provisions of Chapter XV. The other option available to the Magistrate in such a case is to send the complaint to the appropriate police station under Section 156(3) for investigation. Once such a direction is given under sub-section (3) of Section 156 the police is required to investigate into that complaint under sub- section (1) thereof and on completion of investigation to submit a "police report" in accordance with Section 173(2) on which a Magistrate may take cognizance under Section 190(1)(b) -- but not under 190(1)(a). Since a complaint filed before a Magistrate cannot be a "police report" in view of the definition of "complaint" referred to earlier and since the investigation of a "cognizable case" by the police under Section 156(1) has to culminate in a "police report" the "complaint"

> -- as soon as an order under Section 156(3) is passed thereon -- transforms itself to a report given in writing within the meaning of Section 154 of the Code, which is known as the first information report (FIR). As under Section 156(1), the police can only investigate a cognizable "case", it has to formally register a case on that report."

26. Mr. Raval also relied on the following passage from Madhu Bala' s case:-

> "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".

27. This Court in the case of Hallu and others v.

State of Madhya Pradesh 1974 (4) SCC 300 in the context of Section 154 of the Code held (para 7) that Section 154 of the Code does not require that the Report must be given by a person who has personal knowledge of the incident reported. It is further held that the said Section speaks of an information relating to the commission of a cognizable offence given to an officer incharge of a police station.

28. Mr. Raval placed reliance on para 8 of the judgment of this Court in the case of Rajinder Singh Katoch v.

Chandigarh Administration and others 2007 (10) SCC 69, wherein this Court observed as under:-

> "8.Although the officer in charge of a police station is legally bound to register a first information report in terms of Section 154 of the Code of Criminal Procedure, if the allegations made by them give rise to an offence which can be investigated without obtaining any permission from the Magistrate concerned, the same by itself, however, does not take away the right of the competent officer to make a preliminary enquiry, in a given case, in order to find out as to whether the first information sought to be lodged had any substance or not. In this case, the authorities had made investigations into the matter. In fact, the Superintendent of Police himself has,

> pursuant to the directions issued by the High Court, investigated into the matter and visited the spot in order to find out the truth in the complaint of the petitioner from the neighbours. It was found that the complaint made by the appellant was false and the same had been filed with an ulterior motive to take illegal possession of the first floor of the house."

29. While referring to the decision of this Court in Ramesh Kumari (supra) in para 11 of the judgment in Rajinder Singh's case, it is observed as under:-

> "11. We are not oblivious to the decision of this Court in Ramesh Kumari v. State (NCT of Delhi) wherein such a statutory duty has been found in the police officer. But, as indicated hereinbefore, in an appropriate case, the police officers also have a duty to make a preliminary enquiry so as to find out as to whether allegations made had any substance or not."

30. It is further submitted that the above observations run concurrently to the settled principles of law and more particularly the three judge Bench decision of this Court in Aleque Padamsee and Others (supra).

31. In the context of the statutory provisions, the learned counsel for the Union of India drew the attention of this Court to the decision of this Court in the case of Superintendent of Police, CBI and Others v. Tapan Kumar Singh AIR 2003 SC 4140, paragraph 20 at page 4145 as under:-

> "It is well settled that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is

whether the information furnished provides a reason to suspect the commission of an offence, which the concerned police officer is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can."

32. This Court in its decision in the case of Ramesh Kumari (supra) has observed as under in paragraphs 3, 4 and 5 :-

"3. Mr Vikas Singh, the learned Additional Solicitor General, at the outset, invites our attention to the counter-affidavit filed by the respondent and submits that pursuant to the aforesaid observation of the High Court the complaint/representation has been subsequently examined by the respondent and found that no genuine case was established. We are not convinced by this submission because the sole grievance of the appellant is that no case has been registered in terms of the mandatory provisions of Section 154(1) of the Criminal Procedure Code. Genuineness or otherwise of the information can only be considered after registration of the case. Genuineness or credibility of the information is not a condition precedent for registration of a case. We are also clearly of the view that the High Court erred in law in dismissing the petition solely on the ground that the contempt petition was pending and the appellant had an alternative remedy. The ground of alternative remedy nor pending of the contempt petition would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against a police officer.

4. That a police officer mandatorily registers a case on a complaint of a cognizable offence by the citizen under Section 154 of the Code is no more res integra. The point of law has been set at rest by this Court in State of Haryana v. Bhajan Lal. This Court after examining the whole gamut and intricacies of the mandatory nature of Section 154 of the Code has arrived at the finding in paras 31 and 32 of the judgment as under: (SCC pp. 354-55)

31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect

the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.

32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression `information' without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, `reasonable complaint' and `credible information' are used. Evidently, the non-qualification of the word `information' in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, `reasonableness' or `credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word `information' without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that `every complaint or information' preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that `every complaint' preferred to an officer in charge of a police station shall be reduced in writing. The word `complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word `information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence."

33. Finally, this Court in Ramesh Kumari (supra) in para 33 said :-

> "33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

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

35. In the case of Ramesh Kumari (supra), this Court has held that the views expressed by this Court in the case of State of Haryana and Others v. Bhajan Lal and Others 1992 Suppl. (1) SCC 335 leave no matter of doubt that the provisions of Section 154 of the Code is mandatory and the officer concerned is duty bound to register the case on the basis of such information disclosing a cognizable offence.

36. Mr. Raval while concluding his arguments reiterated that Section 154 of the Code it is mandatory for the officer concerned to register the case on the basis of such information including cognizable offence. According to Union of India, the police officer has no discretion in the matter and this is according to the legislative intention behind enacting Section 154 of the Code of Criminal Procedure.

37. Mr. Ratnakar Das, learned senior advocate appearing for the State of U.P. adopted the arguments addressed by Mr. Raval on behalf of the Union of India and submitted that the word `shall' appearing in Section 154 mandates the police to enter the information about commission of a cognizable offence in a book in such form commonly known as "First Information Report'. At that stage, the police cannot go into the question about the truth or otherwise of the information and make a roving enquiry.

38. It was also submitted by Mr. Das that the word `information' is not qualified by credible information. It has to be recorded with utmost dispatch and if its recording is dependent upon any type of preliminary enquiry, then there would be a great temptation to incorporate the details and circumstances advantageous to the prosecution which may be lacking in the earlier information. Similarly, if the police is given the power to hold a preliminary inquiry before registration of an FIR it may benefit the wrongdoer because by afflux of time, the evidence would be obliterated or destroyed and thereby justice would be denied to the victim of crime.

39. Mr. Das gave an example that in a bride burning case, when a person makes a complaint that the husband and the in-laws of his daughter have doused her with kerosene and set her ablaze and arrangements were being made to cremate the dead body, in that case, if the police instead of taking immediate steps to register an FIR proceeds to the spot to seize the dead body and the burnt clothes etc. on the plea that he is required to make preliminary enquiry to ascertain the truth, then during the interregnum, no evidence would be available to bring the offenders to book. It needs to mention that power is conferred upon the police under the Code to make seizure in course of investigation and not during the enquiry. So, the police being in connivance with the accused may permit them to

cremate the dead body in order to cause disappearance of the evidence.

40. It is further submitted by Mr. Das that now-a-days custodial violence is on the rise. Horror of Bhagalpur blinding case and the Maya Tyagi case in Uttar Pradesh are still in the minds of the people. It is complained that the police do not take action against their own brethren who commit crimes. Most of the times the Court intervenes and it is only then that the person wronged gets justice. In such cases if the police is given handle to hold a preliminary enquiry the offender will get a scope to fabricate evidence and ultimately the police will deny registration of an FIR on the ground that the preliminary enquiry does not reveal any such offence having been committed at all.

41. It was submitted on behalf of the Union of India and the State of U.P. that in the Code the Legislature never intended to incorporate any provision for conducting any `preliminary enquiry' before registering an FIR when a report regarding commission of a cognizable offence is made. The specific question on this issue was never raised or agitated earlier before this Court at any point of time whether as a general rule the police should hold a preliminary enquiry before registering an FIR and take further steps in the investigation. Only in two cases in respect of the offence under Prevention of Corruption Act which was to be investigated by the Central Bureau of Investigation (CBI) this Court taking note of the peculiar facts and circumstances of those cases, made an observation that where public servant is charged with acts of dishonesty amounting to serious misdemeanor, registering an FIR should be preceded by some suitable preliminary enquiry. In another case in which dispute regarding property between the brothers was involved, this Court in the peculiar facts of that case made an observation that though the officer in charge of a police station is legally bound to register a First Information Report in terms of Section 154 of the Code, if the allegations give rise to an offence which can be investigated without obtaining permission from the Magistrate, the same however, does not take away the right of the competent officer to make a preliminary enquiry in a given case in order to find whether the FIR sought to be lodged has any substance or not.

42. According to him, the grievance of the appellant in the said case was that his report which revealed commission of a cognizable case was not treated as an FIR by the concerned police. It was not the issue nor was any argument advanced as to whether registering of an FIR as provided under Section 154 of the Code should be preceded by some sort of preliminary enquiry or not. In such view of the matter, the observation of this Court that it does not take away the right of the competent officer to make a preliminary enquiry in a given case is nothing but a passing observation.

43. According to Mr. Das, the provision of law about registration of an FIR is very clear and whenever information relating to cognizable offence is received by the police, in that event the police had no option but to register the FIR.

44. Mr. Shekhar Naphade, learned Senior counsel appearing for the State of Maharashtra on the other hand has taken a different view as taken by the Union of India and submitted that before registering an FIR under Section 154 Cr.P.C. it is open to the SHO to hold a preliminary enquiry to ascertain whether there is prime facie case of commission of cognizable offence or not.

45. Mr. Naphade has comprehensively explained the statutory scheme of Section 154 Cr.P.C.. According to him, Sections 41, 57 154(3) 156(1) and 156(3), 157, 167, 190 and 202 are an integral part of the statutory scheme relating to investigation of crimes. These provisions clearly contemplate that the police officer can exercise powers under the aforesaid provisions provided he is prima-facie satisfied that there are reasonable grounds to believe that the accused is guilty of commission of the cognizable offence.

46. Section 154 of Cr.P.C. forms a part of a chain of statutory provisions relating to investigation, and therefore, it must follow that the provisions of Sections 41, 157, 167 etc. have a bearing on the interpretation of Section 154 of Cr.P.C. The said judgments have interpreted Section 154 of Cr.P.C. purely on the literal interpretation test and while doing so, the other important tests of statutory interpretation, like a statute must be read as a whole and no provision of a statute should be considered and interpreted de-hors the other provisions, the rule of purposive construction etc. are lost sight of. He referred to the following cases - Tarachand and Another v. State of Haryana 1971 (2) SCC 579, Sandeep Rammilan Shukla v. State of Maharashtra and Others 2009 (1) Mh.L.J. 97, Sakiri Vasu v. State of Uttar Pradesh and Others 2008 (2) SCC 409, Nasar Ali v. State of Uttar Pradesh 1957 SCR 657, Union of India and Another v. W.N. Chadha 1993 (Suppl.) 4 SCC 260, State of West Bengal v. S.N. Basak 1963 (2) SCR 52.

47. Mr.Naphade submitted that in the case of allegations relating to medical negligence on the part of doctors, this Court has clearly held that no medical professional should be prosecuted merely on the basis of the allegations in the complaint. There should be an in-

depth enquiry into the allegations relating to negligence and this necessarily postulates a preliminary enquiry before registering an FIR or before entering on investigation. He reported to State of M.P. v. Santosh Kumar - 2006 (6) SCC 1 and Dr. Suresh Gupta v. Govt.

of NCT of Delhi and Another 2004(6) SCC 422.

48. He also submitted that the same principle can also be made applicable to the people of different categories.

The literal interpretation of Section would mean the registration of an FIR to a mechanical act. The registration of an FIR results into serious consequences for the person named as accused therein. It immediately results in loss of reputation, impairment of his liberty, mental anguish, stigma, etc. It is reasonable to assume that the legislature could not have contemplated that a mere mechanical act on the part of SHO should give rise to such consequences.

49. He submitted that the registration of an FIR under Section 154 of Cr.P.C. is an administrative act of a police officer. In the case of Rai Sahib Ram Jawaya Kapur and Others v. State of Punjab 1955 (2) SCR 225, this Court has explained what is administrative function and has said that ordinarily the executive power connotes the residue of Government functions that remain after legislative/judicial functions are taken away. Every administrative act must be based on application of mind, scrutiny and verification of the facts. No administrative act can ever be a mechanical one. This is the

requirement of rule of law. Reference was made to paras 12 and 13 of State (Anti-Corruption Branch), Govt. of NCT of Delhi and Another v. Dr. R.C. Anand and Another 2004 (4) SCC 615.

50. According to Mr. Naphade, these judgments have not considered the impact of Article 21 on Section 154 of Cr.P.C. After and beginning with Maneka Gandhi v.

Union of India and Another 1978 (1) SCC 248, this Court has applied Article 21 to several provisions relating to criminal law. This Court has also said that the expression "law" contained in Article 21 necessarily postulates law which is reasonable and not merely a statutory provision irrespective of its reasonableness or otherwise. In the light of Article 21, provisions of Section 154 of Cr.P.C. must be read down to mean that before registering an FIR, the Station House Officer must have a prima-facie satisfaction that there is commission of cognizable offence as registration of an FIR leads to serious consequences for the person named as accused and for this purpose, the requirement of preliminary enquiry can be spelt out in Section 154 and can be said to be implicit within the provisions of Section 154 of Cr.P.C. Reliance was placed on Maneka Gandhi (supra) and S.M.D. Kiran Pasha v. Government of Andhra Pradesh and Others 1990 (1) SCC 328.

51. The fact that Sections 154 (3), 156(3), 190, 202 etc. clearly provide for remedies to a person aggrieved by refusal on the part of the SHO to register an FIR, clearly show that the statute contemplates that in certain circumstances the SHO can decline to register an FIR.

52. To require SHO to register an FIR irrespective of his opinion that the allegations are absurd or highly improbable, motivated etc. would cause a serious prejudice to the person named as accused in the complaint and this would violate his rights under Article

21. This Court has recognized the concept of pre-

violation protection implicit in Article 21. The said judgments while relying upon the literal interpretation test have not considered the rule of statutory interpretation that in certain situations the expression "shall" does not convey mandatory character of the provisions. For example, proviso to Section 202 (2) has been held using the expression "shall" not to be mandatory but directory. After all, Section 154 of Cr.P.C.

is a part of the procedural law and in respect of procedural law, the expression "shall" may not always necessarily convey that the provision is mandatory. Mr. Naphade placed reliance on the following cases - P.T. Rajan v. T.P.M. Sahir and Others 2003(8) SCC 498, Shivjee Singh v. Nagendra Tiwary and Others 2010 (7) SCC 578 and Sarbananda Sonowal (II) etc. v. Union of India 2007 (1) SCC 174. The said judgments have also not considered the rule of purposive interpretation and also that the statute must be considered as a whole and no provision can be interpreted in isolation.

53. The non-registration of an FIR does not result in crime going unnoticed or unpunished. The registration of an FIR is only for the purpose of making the information about the cognizable offence available to the police and to the judicial authorities at earliest possible opportunity.

The delay in lodging an FIR does not necessarily result in acquittal of the accused. The delay can always be explained.

54. Mr. Naphade also submitted that this Court has also held that registration of an FIR is not a condition precedent for initiating investigation into the commission of a cognizable offence. Section 154 Cr.P.C. clearly imposed a duty on the police officer. When an information is received, the officer in charge of the police station is expected to reach the place of occurrence as early as possible. It is not necessary for him to take steps only on the basis of an FIR. It is the duty of the State to protect the life of an injured as also an endeavour on the part of the responsible police officer to reach the place of occurrence in his implicit duty and responsibility. This has been held in the case of Animireddy Venkata Ramana and Others v. Public Prosecutor, High Court of Andhra Pradesh 2008 (5) SCC 368.

55. Mr. Naphade further submitted that ordinarily the SHO should record an FIR upon receiving a complaint disclosing the ingredients of a cognizable offence, but in certain situations he should have the discretion of holding a preliminary enquiry and thereafter if he is satisfied, register an FIR.

56. The provisions contained in Section 154 Cr.P.C. of 1973 were also there in the 1898 Cr.P.C. and even the earlier one of 1877. The interpretation that was placed by the High Courts and the Privy Council on these provisions prior to Maneka Gandhi (supra) rested principally on the words used in the Section de-hors the other provisions of the Act and also de-hors the impact of Article 21 of the Constitution on the criminal jurisprudence. In other words, the courts have followed the test of literal interpretation without considering the impact of Article 21.

57. It is a trite proposition that a person who is named in an FIR as an accused, suffers social stigma. If an innocent person is falsely implicated, he not only suffers from loss of reputation but also mental tension and his personal liberty is seriously impaired. After Maneka Gandhi's case, the proposition that the law which deprives a person of his personal liberty must be reasonable, both from the stand point of substantive aspect as well as procedural aspect is now firmly established in our constitutional law. This warrants a fresh look at Section 154 of Cr.P.C. Section 154 Cr.P.C.

must be read in conformity with the mandate of Article

21. If it is so interpreted, the only conclusion is that if a Police Officer has doubts about the veracity of the complaint, he can hold preliminary enquiry before deciding to record or not to record an FIR.

58. It is the mandate of Article 21 which requires a Police Officer to protect a citizen from baseless allegations. This, however, does not mean that before registering an FIR the police officer must fully investigate the case. A delicate balance has to be maintained between the interest of the society and protecting the liberty of an individual. Therefore, what should be the precise parameters of a preliminary enquiry cannot be laid down in abstract. The matter must be left open to the discretion of the police officer.

59. A proposition that the moment the complaint discloses ingredients a cognizable offence is lodged, the police officer must register an FIR without any scrutiny whatsoever, is an extreme proposition and is contrary to the mandate of Article 21. Similarly, the extreme point of view is that the police officer must investigate the case substantially before registering an FIR is also an argument of the other extreme. Both must be rejected and a middle path must be chosen.

60. Mr.Naphade mentioned about Maneka Gandhi's case and observed that the attempt of the Court should be to expand the reach and ambit of the fundamental rights, rather than to attenuate their meaning and contents by a process of judicial construction. The immediate impact of registration of an FIR on an innocent person is loss of reputation, impairment of personal liberty resulting in mental anguish and, therefore, the act of the police officer in registering an FIR must be informed by reason and it can be so only when there is a prima facie case against the named accused.

61. According to Mr. Naphade, the provisions of Article 14 which are an anti-thesis of arbitrariness and the provisions of Articles 19 and 21 which offer even a pre-

violation protection require the police officer to see that an innocent person is not exposed to baseless allegations and, therefore, in appropriate cases he can hold preliminary enquiry. In Maneka Gandhi's case this Court has specifically laid down that in R.C. Cooper's case it has been held that all fundamental rights must be read together and that Articles 14, 19 and 21 overlap in their content and scope and that the expression `personal liberty' is of the widest amplitude and covers a variety of rights which go to constitute personal liberty of a citizen. (Reliance was particularly placed on paras 5,6 and 7 on pages 278-284).

62. Mr. Naphade further argued that this Court has held that in order to give concrete shape to a right under Article 21, this Court can issue necessary directions in the matter. If directions as regards arrest can be given, there is no reason why guidelines cannot be framed by this Court as regards registration or non-registration of an FIR under Section 154 Cr.P.C.

63. Mr. Naphade also submitted that the importance of the need of the police officer's discretion of holding a preliminary inquiry is well illustrated by the judgment of this Court in the case of Uma Shankar Sitani v.

Commissioner of Police, Delhi and Ors. 1996 (11) SCC

714. In that case the complaint was lodged by one Sarvjeet Chauhan against one Uma Shankar relating to alleged cognizable offence. Uma Shankar was arrested and upon investigation it was found that the complainant was a fictitious person. Somebody else had filed the false complaint. The residential address of the fictitious complainant was also fictitious. In the whole process Uma Shankar went through serious mental turmoil as not only the allegation was found to be false, but he was arrested by the police and had to undergo humiliation and loss of reputation. Such incidents can happen and must have happened in scores of cases as filing of false cases due to personal, political, business rivalry, break-

down of matrimonial relationship etc. are rampant.

64. Mr. Naphade submitted that Section 498-A of I.P.C.

which was meant to be a measure of protection, turned out to be an instrument of oppression. Judicial notice of this has been taken by this Court in the case of Preeti Gupta and Another v. State of Jharkhand and Another (2010) 7 SCC 667. In the said case, this Court has referred to rapid increase in filing of complaints which are not bona fide and are filed with oblique motives. Such false complaints lead to insurmountable harassment, agony and pain to the accused. This Court has observed that the allegations of the complainant in such cases should be scrutinized with great care and circumspection. Is it, therefore, not advisable that before registering an FIR, a preliminary inquiry at least to verify the identity of the complainant and his residential address should be carried out. This case illustrates how on a false complaint, a person's right to life and liberty under Article 21 of the Constitution can be put to serious jeopardy.

65. This Court in its judgment in Francis C. Mullin v.

Administrator, Union Territory of Delhi 1981 (1) SCC 608 [paras 4 and 5) has held that Article 21 requires that no one shall be deprived of his life and personal liberty except by procedure established by law and this procedure must be reasonable, fair and just. If the procedure is not reasonable, fair and just, the Court will immediately spring into action and run to the rescue of the citizen. From this it can be easily deduced that where the police officer has a reasonable doubt about the veracity of the complaint and the motives that prompt the complainant to make the complaint, he can hold a preliminary inquiry. Holding of preliminary inquiry is the mandate of Article 21 in such cases. If the police officer mechanically registers the complaint involving serious allegations, even though he has doubts in the matter, Article 21 would be violated. Therefore, Section 154 must be read in the light of Article 21 and so read preliminary inquiry is implicit in Section 154. In paras 7 and 8 of the said judgment, this Court has made an unequivocal declaration of the law that any act which damages or injures or interferes with use of any limb or faculty of a person, either permanently or even temporarily, would be within the ambit of Article 21.

66. Not only this, every act which offends against and imperils human dignity, would constitute deprivation pro tanto of this right to live and it would have to be in accordance with the reasonable, just and fair procedure established by law which stands the test of other fundamental rights. A baseless allegation is a violation of human dignity and despite the police officer having doubts about the allegation, he being required to register an FIR, would be a clear infringement of Article 21.

67. Mr. Naphade further submitted that it is settled principle of law that no single provision of a statute can be read and interpreted in isolation. The statute must be read as a whole. In the present case, the provisions of Sections 41,57, 156, 157, 159, 167, 190, 200 and 202 of Cr.P.C. must be read together. These provisions constitute the statutory scheme relating to investigation of offences and, therefore, no single provision can be read in isolation. Both, Sections 41 and 154 deal with cognizable offence. Section 41 empowers the police to arrest any person without warrant from the Magistrate if such person is concerned in any cognizable offence or against whom a reasonable

complaint has been made or credible information has been received or reasonable suspicion exits of such person having been so concerned with the cognizable offence. Section 41 also specifically refers to a cognizable complaint about commission of a cognizable offence.

68. The scheme of the Act is that after the police officer records an FIR under Section 154 Cr.P.C., he has to proceed to investigate under Section 156 Cr.P.C. and while investigating the police officer has power to arrest.

What is required to be noted is that for the purpose of arresting the accused, the police officer must have a reasonable ground to believe that the accused is involved in the commission of a cognizable offence. If Sections 41 and 154 are so read together, it is clear that before registering an FIR under Section 154 the police officer must form an opinion that there is a prima facie case against the accused. If he does not form such an opinion and still proceeds to record an FIR, he would be guilty of an arbitrary action. Every public authority exercising any powers under any statute is under an obligation to exercise that power in a reasonable manner. This principle is well settled and it forms an integral part of the legal system in this country.

69. Mr. Naphade submitted that the provisions of Section 154(3) enable any complainant whose complaint is not registered as an FIR by the SHO to approach the higher police officer for the purpose of getting his complaint registered as an FIR and in such case, the higher police officer has all the powers of recording an FIR and directing investigation into the matter. Apart from this power under Section 36 any police officer senior in rank to an officer in charge of the police station can exercise the same powers as may be exercised by such officer in charge of the police station. Provisions of Section 154 (3) and Section 36 are clear indication that in an appropriate case a police officer can either decline to register the FIR or defer its registration. The provisions of Section 154(3) and Section 36 is a sufficient safeguard against an arbitrary refusal on the part of a police officer to register the FIR. The very fact that a provision has been made in the statute for approaching the higher police officer, is an indication of legislative intent that in appropriate cases, a police officer may decline to register an FIR and/or defer its registration.

70. In addition to the remedy available to the aggrieved person of approaching higher police officer, he can also move the concerned Magistrate either under Section 156(3) for making a complaint under Section 190. If a complaint is lodged, the Magistrate can examine the complainant and issue process against the accused and try the case himself and in case triable by Sessions Court, then he will commit the case to Sessions under Section 209.

71. The Magistrate can also on receipt of a complaint, hold an enquiry or direct the police to investigate. In addition to the above, the Magistrate also has a power to direct investigation under Section 159 Cr.P.C. In the case of Mona Panwar v. High Court of Judicature of Allahabad (2011) 3 SCC 496 in paras 17 and 18 on page 503 this Court has, inter alia, held that if the complaint relating to a cognizable officer is not registered by the police, then the complainant can go the Magistrate and then the Magistrate has the option of either passing an order under Section 156(3) or proceeding under Section 200/202 of the Code.

72. It was also submitted by Mr. Naphade that an order under Section 156(3) of the Code is in the nature of a preemptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with the vital report either under Section 169 or submission of a charge-sheet under Section 173 of the Code. A Magistrate can under Section 190 of the Code before taking cognizance, direct investigation by the police by order under Section 156(3) of the Code.

73. Mr. Naphade also submitted that the very fact that the Legislature has provided adequate remedies against refusal to register an FIR and hold investigation in cognizable offences is indicative of legislative intent that the police officer is not bound to record an FIR merely because the ingredients of cognizable offences are disclosed in the complaint if he has doubt about the veracity of the complaint.

74. In further support of the proposition that a police officer is not bound to register an FIR on mere disclosure of existence of ingredients of cognizable offence, it is submitted that the statute does not contemplate that for the purpose of investigation, recording of an FIR is a condition precedent. Section 156 empowers the police to do so. Similarly, Section 157 clearly lays down that if from information received or otherwise an officer in charge of the police station has reason to suspect the commission of an offence, he can investigate into the same. In Section 157(1) the expression "from information received" obviously refers to complaint under Section 154 Cr.P.C. registered as an FIR. The word "otherwise" in Section 157 Cr.P.C. clearly indicates that recording of an FIR is not a condition precedent to initiation of investigation. The very fact that the police have a power of investigation independent of registration of an FIR is a clear pointer to the legislative intent that a police officer is not bound to register an FIR in each and every case.

75. Mr. Naphade relied on the case of Apren Joseph alias current Kunjukunju and Others v. State of Kerala 1973 (3) SCC 114 wherein in para 11 this Court has held that recording of an FIR is not a condition precedent for setting in motion criminal investigation. In doing so, this Court has approved the observation of Privy Council made in the case of Khwaja Nazim Ahmad (supra).

76. Mere recording of an FIR under Section 154 Cr.P.C.

is of no consequence unless the alleged offence is investigated into. For the purpose of investigation after registration of the FIR, the police officer must have reason to suspect commission of an offence. Despite registration of the FIR, the police officer may not have a reasonable ground to suspect that an offence has been committed and in that situation he may decline to carry out investigation and may come to the conclusion that there is no sufficient ground for carrying out investigation. If under the proviso (b) to Section 157 Cr.P.C. the police officer has such discretion of not investigating, then it stands to reason that registration of an FIR should not result into an empty formality.

77. The registration of an FIR should be effective and it can be effective only if further investigation is to be carried out and further investigation can be carried out only if the police officer has

reasonable ground to suspect that the offence is committed. If, therefore, there is no reasonable ground to suspect the commission of cognizable offence, the police officer will not investigate and if that is a situation, then on the same footing he may decline to register the FIR. This is clearly implicit in the provisions of Section 154(1). It is, submitted that if the provisions of Section 154 are read with Sections 41,57,156,157,159,167,190,200 and 202 Cr.P.C., the only possible conclusion is that a police officer is not bound to register each and every case.

78. Mr. Naphade placed reliance on State of Maharashtra and Others v. Sarangdharsingh Shivdassingh Chavan and Another (2011) 1 SCC 577 wherein in paragraphs 29 and 30, this Court has observed as follows:-

> "29. The legal position is well settled that on information being lodged with the police and if the said information discloses the commission of a cognizable offence, the police shall record the same in accordance with the provisions contained under Section 154 of the Criminal Procedure Code. The police officer's power to investigate in case of a cognizable offence without order of the Magistrate is statutorily recognised under Section 156 of the Code. Thus the police officer in charge of a police station, on the basis of information received or otherwise, can start investigation if he has reasons to suspect the commission of any cognizable offence.
>
> 30. This is subject to provisos (a) and (b) to Section 157 of the Code which leave discretion with the police officer in charge of police station to consider if the information is not of a serious nature, he may depute a subordinate officer to investigate and if it appears to the officer-
>
> in-charge that there does not exist sufficient ground, he shall not investigate. This legal framework is a very vital component of the rule of law in order to ensure prompt investigation in cognizable cases and to maintain law and order."

79. He submitted that if the police officer is of the opinion that the complaint is not credible and yet he is required to register the FIR, then he would be justified in not investigating the case. In such a case the FIR would become a useless lumber and a dead letter. The police officer would then submit a closure report to the Magistrate. The Magistrate then would issue notice to the complainant and hear him. If the Magistrate is of the opinion that there is a case, then he may direct police to investigate.

80. Mr. Napahde submitted that the aforesaid analysis of various provisions of Criminal Procedure Code clearly bring out that the statutory provisions clearly maintain a balance between the rights of a complainant and of the Society to have a wrongdoer being brought to book and the rights of the accused against baseless allegations.

81. The provisions have also to be read in the light of the principle of malicious prosecution and the fundamental rights guaranteed under Articles 14, 19 and

21. Every citizen has a right not to be subjected to malicious prosecution and every police officer has an in-

built duty under Section 154 to ensure that an innocent person is not falsely implicated in a criminal case. If despite the fact that the police officer is not prima facie satisfied as regards commission of a cognizable offence, and proceeds to register an FIR and carry out investigation and thereby putting the liberty of a citizen in jeopardy, he would expose himself to the charge of malicious prosecution and against the charge of malicious prosecution the doctrine of sovereign immunity will not protect him. There is no law protecting a police officer who takes part in the malicious prosecution.

82. Mr. Naphade also submitted that the word "shall"

used in the statute does not always mean absence of any discretion in the matter.

83. The word "shall" does not necessarily lead to provision being imperative or mandatory.

84. The use of word "shall" raises a presumption that the particular provision is imperative. But, this presumption may be rebutted by other considerations such as, object and scope of the enactment and other consequences flowing from such construction. There are numerous cases where the word "shall" has, therefore, been construed as merely directory.

85. In the case of Sainik Motors, Jodhpur and Others v. State of Rajasthan AIR 1961 SC 1480, Hidayatullah, J. has held that the word "shall" is ordinarily mandatory, but it is sometimes not so interpreted if the context of intention otherwise demands.

86. Further, Subba Rao, J. in the case of State of Uttar Pradesh and Others v. Babu Ram Upadhya AIR 1961 SC 751, has observed that when the statute uses the word "shall" prima facie it is mandatory, but the Court may ascertain the real intention of the legislature carefully attending to the whole scope of the statute.

87. In the case of State of Madhya Pradesh v. M/s Azad Bharat Finance Co. and Another AIR 1967 SC 276 it has been held that the word "shall" does not always mean that the provision is obligatory or mandatory. It depends upon the context in which the word "shall" occur and the other circumstances.

88. In the case of Shivjee Singh (supra) it has been held that the use of word "shall" in proviso to Section 202 (2) of Cr.P.C. prima facie is indicative of mandatory character of the provision contained therein. But, a close and critical analysis thereof along with other provisions show that the same is not mandatory. Further, it has been observed that by its very nomenclature, Cr.P.C. is a compendium of law relating to criminal procedure. The provisions contained therein are required to be interpreted keeping in view the well recognized rule of construction that procedural prescriptions are meant for doing substantial justice. If violation of procedural provisions does not result in denial of a fair hearing or causes prejudice to the party, the same has to be treated as directly notwithstanding the use of the word "shall".

89. In P.T. Rajan (supra), this Court has discussed the principles as to whether a statute is mandatory or directory. The Court has observed that a statute as is well known must be read in the text and context thereof.

Whether a statute is directory or mandatory would not be dependent on the use of the word "shall" or "may". Such a question must be posed and answered having regard to the purpose and object it seeks to achieve. It has further been held that a provision in a statute which is procedural in nature although employs the word "shall"

may not be held to be mandatory if thereby no prejudice is caused. The analysis of various provisions of Cr.P.C.

clearly shows that no prejudice is caused if police officer does not register an FIR. The complainant has effective remedies under Sections 154(3), 156, 190 Cr.P.C. etc.

90. Mr. Naphade, the learned senior counsel submitted that it is impossible to put the provisions of Section 154 Cr.P.C. in any straight jacket formula. However, some guidelines can be framed as regards registration or non-

registration of an FIR. According to him, some such guidelines are as follows:-

> 1. Normally in the ordinary course a police officer should record an FIR, if the complaint discloses a cognizable offence. However, in exceptional cases where the police officer has reason to suspect that the complaint is motivated on account of personal or political rivalry, he may defer recording of the FIR, and take a decision after preliminary enquiry.
>
> 2. In case of complaints which are a result of vendetta like complaints under Section 498A Cr.P.C. (IPC), the police officer should be slow in recording an FIR and he should record an FIR only if he finds a prima facie case.
>
> 3. The police officer may also defer recording of an FIR if he feels that the complainant is acting under a mistaken belief.
>
> 4. The police officer may also defer registering an FIR if he finds that the facts stated in the complaint are complex and complicated, as would be in respect of some offences having financial contents like criminal breach of trust, cheating etc.

91. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant deferment of an FIR.

92. The second aspect of the matter is what test should the police officer take in case he is of the opinion that registration of an FIR should be deferred. He suggested the following measures :-

1. The police officer must record the complaint in the Station/General Diary. This will ensure that there is no scope for manipulation and if subsequently he decides to register an FIR, the entry in Station/General Diary should be considered as the FIR.

2. He should immediately report the matter to the superior police officer and convey him his reasons or apprehensions and take his permission for deferring the registration. A brief note of this should be recorded in the station diary.

3. The police officer should disclose to the complainant that he is deferring registration of the FIR and call upon him to comply with such requisitions the police officer feels necessary to satisfy himself about the prima facie credibility of the complaint. The police officer should record this in the station diary.

All this is necessary to avoid any charge as regard to the delay in recording the FIR. It is a settled law that a mere delay in registering an FIR is not harmful if there are adequate reasons to explain the delay in filing an FIR.

93. According to him, in the light of the above discussion in respect of the impact of Article 21 on statutory provisions, it must be held that Section 154 of Cr.P.C. must be interpreted in the light of Article 21. The requirement of Article 21 is that the procedure should be just and fair. If, therefore, the police officer himself has doubts in the matter, it is imperative that he should have the discretion of holding a preliminary inquiry in the matter. If he is debarred from holding such a preliminary inquiry, the procedure would then suffer from the vice of arbitrariness and unreasonableness.

94. Learned counsel appearing for the State of Tamil Nadu adopted the arguments submitted by Mr. Naphade, the learned senior counsel for Maharashtra and submitted that ordinarily a police officer has to register an FIR when a cognizable offence is made out, but in exceptional cases he must have some discretion or latitude of conducting some kind of preliminary inquiry before recording of the FIR.

95. Learned counsel for the parties have drawn our attention to two sets of cases decided by this Court expressing totally divergent judicial opinions. We deem it appropriate to briefly summarise them in the following paragraphs.

96. This Court in the case of Bhajan Lal and Others (supra), Ramesh Kumari (supra), Parkash Singh Badal and Another v. State of Punjab and Others (2007) 1 SCC 1 and Aleque Padamsee and Others (supra) held that if a complaint alleging commission of cognizable offence is received in the Police Station, then the S.H.O. has no option but to register an F.I.R. under Section 154 Cr.P.C..

97. On the other hand, this Court in following cases, namely, Rajinder Singh Katoch (supra), P. Sirajuddin etc. v. State of Madras etc. 1970 (1) SCC 595, Bhagwant Kishore Joshi (supra), Sevi and Another etc. v. State of Tamil Nadu and Another 1981 (Suppl.) SCC 43 have taken contrary view and held that before registering the FIR under Section 154 of Cr.P.C., it is open to the SHO to hold a preliminary enquiry to ascertain whether there is a prima facie case of commission of cognizable

offence or not.

98. We deem it appropriate to give a brief ratio of these cases.

99. In Bhajan Lal (supra), this Court observed as under:-

> "It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

100. In Ramesh Kumari (supra), this Court observed that the provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of such an information disclosing cognizable offence.

101. In Parkash Singh Badal (supra), this Court observed as under:-

> "It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

102. In Aleque Padamsee (supra), this Court observed as under :-

> "The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to their notice show that cognizable offence has been made out."

103. There is another set of cases where this Court has taken contrary view.

104. In Rajinder Singh Katoch (supra), this Court observed as under:-

> "We are not oblivious to the decision of this Court in Ramesh Kumari v. State (NCT of Delhi) wherein such a statutory duty has been found in the police officer. But, as indicated hereinbefore, in an appropriate case, the police officers also have a duty to make a preliminary enquiry so as to find out as to whether allegations made had any substance or not."

105. In Bhagwant Kishore Joshi (supra), Mudholkar, J. in his concurring judgment has observed as under:-

> "I am of opinion that it is open to a

Police Officer to make preliminary

enquiries before registering an offence

and making a full scale investigation into it."

106. In P. Sirajuddin etc. (supra), this Court quoted the observations of the High Court as under:-

> "(a) "substantial information and evidence had been gathered before the so-called first information report was registered"."

107. In Sevi and Another (supra), this Court observed as under:-

> "If he was not satisfied with the information given by PW 10 that any cognizable offence had been committed he was quite right in making an entry in the general diary and proceeding to the village to verify the information without registering any FIR."

108. It is quite evident from the ratio laid down in the aforementioned cases that different Benches of this Court have taken divergent views in different cases. In this case also after this Court's notice, the Union of India, the States and the Union Territories have also taken or expressed divergent views about the interpretation of Section 154 Cr.P.C.

109. We have carefully analysed various judgments delivered by this Court in the last several decades. We clearly discern divergent judicial opinions of this Court on the main issue whether under Section 154 Cr.P.C., a police officer is bound to register an FIR when a cognizable offence is made out or he (police officer) has an option, discretion or latitude of conducting some kind of preliminary enquiry before registering the FIR.

110. Learned counsel appearing for the Union of India and different States have expressed totally divergent views even before this Court. This Court also carved out a special category in the case of medical doctors in the aforementioned cases of Santosh Kumar (supra) and Dr. Suresh Gupta (supra) where preliminary enquiry had been postulated before registering an FIR.

111. Some counsel also submitted that the CBI Manual also envisages some kind of preliminary enquiry before registering the FIR. The issue which has arisen for consideration in these cases is of great public importance.

112. In view of the divergent opinions in a large number of cases decided by this Court, it has become extremely important to have a clear enunciation of law and adjudication by a larger Bench of this Court for the benefit of all concerned - the courts, the investigating agencies and the citizens.

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

.....J. (Dalveer Bhandari) .....J. (T.S. Thakur) .....J. (Dipak Misra) New Delhi;

February 27, 2012