

## **Unit 2: Understanding FIRs, Affidavits and Other Documents**

### **UNIT 2: UNDERSTANDING FIRs, AFFIDAVITS & OTHER DOCUMENTS IN CRIMINAL CASES**

#### **2.1 Introduction**

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#### **2.1 INTRODUCTION**

First Information Reports (FIRs), affidavits, and other documents play a critical role in the criminal justice system. First Information Reports serve as the means of reporting a crime and thereby setting in motion the criminal justice process from investigation through acquittal or conviction. Affidavits are the means of furnishing information under oath in judicial proceedings. Given the centrality of these documents to criminal proceedings, this unit will provide an overview of these documents, the functions they serve, the procedures used in filing them, their various components, and the legal bases for their application in legislation and judicial decisions.

#### **2.2 OBJECTIVES**

After going through this unit, you should be able to:

- Understand the meaning, structure and contents of First Information Reports (FIRs).
- Know the importance of FIRs, their relevance in initiating criminal proceedings, and other details about FIRs.

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- Know what affidavits are, their admissibility as evidence in courts of law, different forms of affidavits, and variance in their structure.
- Attain a level of familiarity with a relevant sample of other documents that are important in the functioning of criminal courts.

### 2.3 FIRST INFORMATION REPORT (FIR)

The FIR serves as the basis for reporting a crime and initiating investigation and subsequent criminal proceedings under section 154 of the Code of Criminal Procedure, 1973.<sup>1</sup> The FIR refers to the first information about the commission of an offence provided to the police (either orally or in writing), and then recorded by the police in writing and signed by the informant.<sup>2</sup> An FIR is only registered for a *cognizable* offence, which is a serious offence posing an immediate danger, such as murder, rape, kidnapping, robbery, trespassing, rioting.<sup>3</sup> For cognizable offences, police can investigate without a magistrate order and/or arrest without a warrant.<sup>4</sup> One can still report to the police non-cognizable offences, which are less serious crimes that generally have less than a minimum sentence of three years imprisonment,<sup>5</sup> but the recorded statement does not have the same legal status as an FIR. This section will provide a brief overview of some of the main issues related to FIRs.

*Who can lodge an FIR?*

- A victim of a crime or somebody on her/his behalf,
- A witness to a crime
- Any person, even someone who has heard an account second hand.<sup>6</sup> Indeed, any person who has information about the commission of an offence or someone's intention to commit an offence must provide that information to the police or a magistrate.<sup>7</sup>

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<sup>1</sup> Code of Criminal Procedure 1973 (CrPC), sec. 154. The entirety of the CrPC, including the remaining sections cited in this unit, can be found at: <http://www.vakilno1.com/bareacts/CrPc/Criminal-Procedure-Code-1973.htm>.

<sup>2</sup> *Id.*

<sup>3</sup> See South Asia Human Rights Documentation Center (SAHRDC) HANDBOOK OF HUMAN RIGHTS AND CRIMINAL JUSTICE IN INDIA: THE SYSTEM AND PROCEDURE, 15-16 (Oxford University Press 2006) (Hereinafter "*SAHRDC Handbook*").

<sup>4</sup> CrPC, sec. 156(1).

<sup>5</sup> For a list of cognizable and non-cognizable offences, see CrPC, The First Schedule, Ch. V., Available at: <http://www.vakilno1.com/bareacts/CrPc/sCI.htm>.

<sup>6</sup> See, e.g., *Apren Joseph v. State of Kerala*, 1973 AIR 1.

<sup>7</sup> CrPC, sec. 39.

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### *Purpose of an FIR*

The FIR serves two main purposes. First the filing of an FIR causes the police to begin investigating the crime reported.<sup>8</sup> Second, the FIR itself provides a first account of the events involved in the commission of a crime, which can prove quite useful since memories and accounts of events can change over time.<sup>9</sup> Given these two purposes, an FIR and the information recorded in an FIR can have serious consequences and thus great care must be taken to ensure that accurate information is recorded in the FIR.

### *How to lodge an FIR*

As soon as possible after witnessing or falling victim to a crime, an individual should report the incident to the police.<sup>10</sup> The report should either be in writing or the officer in charge should record the statement and have it verified by the informant; in both cases, the informant should sign the document.<sup>11</sup> If a person has provided information to the police at the scene of a crime, that individual should still go to the police station to formally lodge an FIR.<sup>12</sup> An individual can lodge an FIR over the phone if the informant identifies herself/himself, provides information of a cognizable offence, and ensures the officer in charge accurately records the statement.<sup>13</sup>

Regardless of the method of recording, a person lodging an FIR should provide all relevant information known to her/him and must attempt to provide as reliable and accurate an account as possible. Indeed, any one who gives false information regarding an offence can face up to two years imprisonment.<sup>14</sup> Since police may file an FIR in a language other than that which the informant understands, the informant should have the FIR translated to ensure the accuracy of its contents prior to signing.<sup>15</sup> In any event, the police should provide a free copy of the recorded FIR to the informant.<sup>16</sup>

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<sup>8</sup> See SAHRDC Handbook, *supra* note 3, at 17.

<sup>9</sup> See *Id.*

<sup>10</sup> See *Id.*

<sup>11</sup> Someone who refuses to sign an FIR can face criminal punishment. Indian Penal Code (IPC), 1860, sec. 180. The entirety of the Indian Penal Code can be viewed at:

<http://www.vakilno1.com/bareacts/IndianPenalCode/indianpenalcode.htm>.

<sup>12</sup> See *Id.*

<sup>13</sup> See *Tohal Singh v. Rajasthan*, 1989 CRI LJ 1350 (Raj HC) (Found in *Id.*).

<sup>14</sup> IPC, sec. 203.

<sup>15</sup> See SAHRDC Handbook, *supra* note 3, at 18.

<sup>16</sup> CrPC, sec. 154(2).

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### *Format of an FIR*

Although the precise format varies from state to state, the recording police officer should document the lodging of an FIR in a format like that of the following:

RECORD			
	FIRST	INFORMATION	REPORT
No. _____			
1. District _____ Police Station _____ Year _____ FIR No. _____ Date _____			
2. (i) Act _____ Sections _____			
(ii) Act _____ Sections _____			
(iii) Act _____ Sections _____			
(iv) Other Acts & Sections _____			
3. (a) Occurrence of Offence: Day _____ Date from _____ Date to _____ Time Period _____ Time from _____ Time to _____			
(b) Information received at Police Station _____ Date _____ Time _____			
(c) General Diary Reference Entry No. _____ Time _____			
4. Type of Information _____ Written/Oral _____			
5. Place of occurrence:			
(a) Direction & Distance from Police Station _____			
(b) Address _____			
(c) In cases outside jurisdiction of this police station then the Name of the Police Station _____ District _____			
6. Complainant/ Informant			
(a) Name _____			
(b) Father's/Husband's Name _____			
(c) Date/ Year of birth _____			
(d) Nationality _____			
(e) Passport No. _____ Date of Issue _____ Place of Issue _____			
(f) Occupation _____			
(g) Address _____			

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7. Details of known/suspected/unknown accused with full particulars (Attach separate sheet if necessary)

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Physical Features, deformities & other details of the suspect:

Sex	Date of Birth/Year	Build	Height (cms)	Complexion	Identification marks

Deformities/ Peculiarities	Teeth	Hair	Eye	Habits	Dress Habits

Language/Dialect	Place of				
	Burn marks	Leucoderma	Mole	Scar	Tattoo

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1. Reasons for delay in reporting by the complainant/informant \_\_\_\_\_  
\_\_\_\_\_
2. Particulars of properties stolen/involved (Attach Separate Sheet if necessary) \_\_\_\_\_  
\_\_\_\_\_
3. Total Value of Properties Stolen \_\_\_\_\_  
\_\_\_\_\_
4. Inquest Report \_\_\_\_\_  
\_\_\_\_\_
5. FIR contents (Attach Separate Sheet if necessary) \_\_\_\_\_  
\_\_\_\_\_
6. Action taken: Since the above report reveals commission of offences u/s \_\_\_\_\_ as mentioned at Item No. 2 \_\_\_\_\_ registered the case & took up the investigation/ directed \_\_\_\_\_ Rank \_\_\_\_\_ to take up the investigation/refused investigation/transferred to Police Station \_\_\_\_\_ on point of jurisdiction FIR read over to the complainant/informant admitted to be correctly recorded and a copy given to the complainant/informant free of cost
7. Signature/ Thumb Impression of the complainant/informant \_\_\_\_\_
8. Signature of Officer-in-charge, Police Station \_\_\_\_\_
9. Date & time of dispatch to the Court \_\_\_\_\_

### *Essentials of an FIR*

An FIR should contain at least the following information:<sup>17</sup>

1. Identifying information of the informant/victim and the accused if known
2. Details regarding the offence, including the date, place, and time
3. An accurate description of the offence and the events related to the offence
4. The identity of any other victims or witnesses to the offence
5. Any reasons for delay in reporting the offence

<sup>17</sup> See, e.g., *Pedda Narayana and Ors v. State of Andhra Pradesh*, 1975 AIR 1252. See also *SAHRDC Handbook*, *supra* note 3, at 18.

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*What if there is a delay in lodging an FIR?*

Various reasons could cause a person to delay in lodging an FIR, including the physical or mental condition of the informant, natural calamities, distance between the site of the crime and the police station, threats or promises made by others, and so forth.<sup>18</sup> While a delay does not invalidate an FIR, courts will view FIRs lodged after longer delays with suspicion and assess their contents to contain less reliable evidence.<sup>19</sup>

*What happens to the FIR once it is lodged?*

Once an FIR is lodged, if the officer in charge at the given police station has “reason to suspect” that a cognizable offence has taken place, then she/he should send a report to a local magistrate and begin investigating the alleged crime.<sup>20</sup> The police should then investigate the case without “unnecessary delay”<sup>21</sup> and following the conclusion of an investigation should submit either a *challan* (charge sheet) or a closure report to a magistrate, depending on whether there is sufficient evidence.<sup>22</sup> The magistrate then has the power to decide whether to dismiss the charges,<sup>23</sup> take cognizance of the case,<sup>24</sup> or order further investigation.<sup>25</sup>

*Evidentiary Value of an FIR*

Courts will *not* consider an FIR as primary or substantive evidence, meaning that the contents of the FIR can only be used to corroborate or contradict information given by the informant if she/he testifies at trial.<sup>26</sup>

### **Please answer the following Self Assessment Questions:**

#### **Self Assessment Exercise 1:**

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<sup>18</sup> See *Apren Joseph v. State of Kerala*, 1973 AIR 1.

<sup>19</sup> See, e.g., *Ram Jag v. State of U.P.*, 1974 AIR 606.

<sup>20</sup> CrPC, sec. 157.

<sup>21</sup> CrPC, sec. 173(1).

<sup>22</sup> CrPC, sec. 173(2).

<sup>23</sup> CrPC, sec. 203.

<sup>24</sup> CrPC, sec. 190.

<sup>25</sup> CrPC, sec. 159.

<sup>26</sup> See *Apren Joseph v. State of Kerala*, 1973 AIR 1. See also The Indian Evidence Act, 1872, sec. 145, 157. The entirety of the Indian Evidence Act can be viewed at: <http://www.vakilno1.com/bareacts/indianevidenceact/indianevidenceact.htm>.

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1. The principal purposes of an FIR are: _____.
2. What information should an FIR contain? _____.

### *What to do if police refuse to register an FIR*

Police have a legal obligation to register an FIR in most cases in which an informant has presented information of a cognizable offence.<sup>27</sup> If the police refuse to register an FIR, an informant should first of all try to submit a written statement to the police and have the police provide some recognition of receipt of the statement, either by stamping a copy of the statement or providing a separate acknowledgment letter.<sup>28</sup> In addition, an informant can take formal legal action through either administrative or judicial channels. Administratively, an informant can send a statement to the Superintendent of Police, who must initiate an investigation if the statement indicates the commission of a cognizable offence.<sup>29</sup> Judicially, an individual can submit a complaint directly to a magistrate, who can directly take cognizance of a case<sup>30</sup> and/or direct the police or others to undertake investigation.<sup>31</sup>

### *What to do if a false FIR is reported against you*

If any proceeding or investigation has begun against an individual on the basis of an FIR, that individual is entitled to a free copy of the FIR, among other documents.<sup>32</sup> If a person believes that the FIR filed against her/him is false, that person can make a complaint to a magistrate, and the magistrate then has the authority to postpone the legal processes against the accused and initiate investigations into the case,<sup>33</sup> proceed with the case,<sup>34</sup> or dismiss the case.<sup>35</sup> Any person wrongly accused could also submit a petition to the appropriate High Court, which has the power to quash the investigation and the FIR,<sup>36</sup> although the Supreme Court has called for the limited use of this power.<sup>37</sup>

<sup>27</sup> *State of Haryana v. Bhajan Lal*, 1992 AIR 604.

<sup>28</sup> See *SAHRDC Handbook*, *supra* note 3, at 21.

<sup>29</sup> CrPC, sec. 154(3).

<sup>30</sup> CrPC, sec. 190.

<sup>31</sup> CrPC, sec. 202(1).

<sup>32</sup> CrPC, sec. 207(ii).

<sup>33</sup> CrPC, sec. 202.

<sup>34</sup> CrPC, sec. 204.

<sup>35</sup> CrPC, sec. 203.

<sup>36</sup> CrPC, sec. 482, Constitution of India, art. 226. The Constitution of India can be found at: <http://lawmin.nic.in/coi/coiason29july08.pdf>.

<sup>37</sup> See *Talab Haji Hussain v. Madhukar Purshottam Mondkar*, 1958 AIR 376, *State of Haryana v. Bhajan Lal*, 1992 AIR 604.



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### Please answer the following Self Assessment Question

Self Assessment Exercise 2:

1. Give three important features of an FIR (i) _____ (ii) _____ (iii) _____
2. What are the two steps one can take if the police refuse to register an FIR? _____.

### 2.4 AFFIDAVITS

Black's Law Dictionary defines an affidavit as follows:

*"Affidavit – A written or printed declaration or statement of facts made voluntarily and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation."*<sup>38</sup>

Every court in every State will have different rules pertaining to the drafting and submission of affidavits. This section will provide some general rules, which may or may not apply in every particular case, based on the Code of Criminal Procedure, the Civil Procedure Code, and state court amendments to the Civil Procedure Code.

#### *Use of Affidavits*

Courts generally have the power to admit affidavits into evidence in order to prove facts.<sup>39</sup> In a criminal case, generally any person can provide evidence through an affidavit.<sup>40</sup> If either the prosecution or the accused wants to examine or cross-examine the person who attested to the facts in the affidavit, the court has the power to summon that person to court.<sup>41</sup> Indeed, the prosecution or defence can cross-examine a witness specifically regarding the facts laid out in an affidavit made by that witness.<sup>42</sup>

<sup>38</sup> Black's Law Dictionary, 58, 6<sup>th</sup> ed., 1990 (Found in *Granada v. United States of America*, 51 F.3d 82, 1995 (7<sup>th</sup> Circuit), Available at: <http://openjurist.org/51/f3d/82>).

<sup>39</sup> Civil Procedure Code 1908, Order XIX – Affidavits (The First Schedule), Available at: <http://www.vakilno1.com/bareacts/CivilProcedure/sORDERXIX.htm>.

<sup>40</sup> CrPC, sec. 296(1).

<sup>41</sup> CrPC, sec. 296(2).

<sup>42</sup> The Indian Evidence Act, 1872, sec. 145.

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Under the Civil Procedure Code, if either party legitimately wants to cross-examine the witness and if the witness can appear, then an affidavit of that witness cannot be admitted into evidence.<sup>43</sup> In some states, under the same circumstances, the affidavit can be admitted into evidence but the Court can order the witness to appear in order to be cross-examined.<sup>44</sup>

### *Affidavit Content*

Affidavits should contain material facts that the declarant can prove based on her/his own knowledge as well as material facts that the declarant has “reasonable ground to believe to be true.”<sup>45</sup> The affidavit should have these two different kinds of information written in separate parts; for the beliefs, the declarant needs to articulate the grounds for such beliefs.<sup>46</sup> An affidavit should not contain any conclusions, arguments, or inflammatory comments.<sup>47</sup>

In civil cases, in most circumstances, affidavits should contain information that the deponent can prove himself/herself based on her own knowledge, rather than based on hearsay or belief.<sup>48</sup> In those circumstances where a particular court allows information that is based on belief to be included in an affidavit, such as at times in interlocutory proceedings, the declarant should clearly indicate as such.<sup>49</sup>

### *Sworn Statement*

An individual must swear to the contents of her/his affidavit before a judge, a judicial or executive magistrate, an appointed commissioner of Oaths, or an appointed notary.<sup>50</sup>

### *Style in Drafting Affidavits*

Affidavits should simply provide a precise statement of material facts. Those who write affidavits should use clear language and use the first person to describe what she/he is

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<sup>43</sup> Civil Procedure Code 1908, Order XIX – Affidavits (The First Schedule).

<sup>44</sup> See Uttar Pradesh Amendment to Indian Civil Procedure Code 1908, Order XIX – Affidavits (The First Schedule).

<sup>45</sup> CrPC, sec. 297 (2).

<sup>46</sup> CrPC, sec. 297(2).

<sup>47</sup> CrPC, sec. 297(3) (“The court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended.”).

<sup>48</sup> See Allahabad High Court Amendment to Indian Civil Procedure Code 1908, Order XIX – Affidavits (The First Schedule), Rule 3(1).

<sup>49</sup> See *Id.*

<sup>50</sup> CrPC, sec. 297(1).

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attesting to and knows.<sup>51</sup> It can prove helpful to divide affidavits into short consecutively numbered paragraphs, with each paragraph discussing a separate fact or subject.<sup>52</sup>

Whenever someone refers to a person or a place, the affidavit should contain as detailed and correct a description as possible.<sup>53</sup> Similarly, those who write affidavits should include their own personal identification information, such as name, address, occupation, etc.<sup>54</sup>

### **Please answer the following Self Assessment Question**

#### **Self Assessment Exercise 3:**

1. What is an affidavit? _____ _____.
2. What is an affidavit used for? _____ _____.

### **2.5 OTHER DOCUMENTS IN CRIMINAL PROCEEDINGS**

Various documents are involved in criminal proceedings. The remainder of this unit will provide examples of some of these documents used at different stages of the criminal process.

#### **A. Application for search and production of articles/documents under CrPC sec. 93**

In order for a police officer or other official to search for documents, evidence, property, or other items, often they will require a search warrant.<sup>55</sup> A search warrant, which can be issued by a court during any phase of the criminal process from investigation through trial, gives the legal authority to the officer to whom it is issued to search for a particular item or in a particular place.<sup>56</sup>

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<sup>51</sup> See Allahabad High Court Amendment to Indian Civil Procedure Code 1908, Order XIX – Affidavits (The First Schedule), Rule 8.

<sup>52</sup> See Allahabad High Court Amendment to Indian Civil Procedure Code 1908, Order XIX – Affidavits (The First Schedule), Rule 5.

<sup>53</sup> See Allahabad High Court Amendment to Indian Civil Procedure Code 1908, Order XIX – Affidavits (The First Schedule), Rule 10.

<sup>54</sup> See Allahabad High Court Amendment to Indian Civil Procedure Code 1908, Order XIX – Affidavits (The First Schedule), Rule 6.

<sup>55</sup> CrPC, sec. 93, 94.

<sup>56</sup> CrPC, sec. 93(2).

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A court has the authority to issue a warrant for such reasons as: a) the court has reason to believe that the person possessing an item needed by the court is not likely to adhere to a summons demanding the production of the item;<sup>57</sup> b) it is not known who currently possesses an item needed by the court;<sup>58</sup> c) the court has reason to believe that the place for which the warrant is issued contains stolen property;<sup>59</sup> d) the place for which the warrant is issued contains documents that are illegal, such as those that contain material that is seditious or obscene, among other grounds;<sup>60</sup> or e) the criminal process will be generally served by the search.<sup>61</sup> Courts have discretion not to issue a search warrant when one is applied for,<sup>62</sup> and must take care in issuing a search warrant.<sup>63</sup>

The following provides the basic format for the document used to request a warrant from a court:

**IN THE COURT OF THE DISTRICT AND SESSIONS JUDGE/ ASSISTANT  
SESSIONS JUDGE/ JUDICIAL MAGISTRATE OF FIRST CLASS/ \_\_\_\_\_  
METROPOLITAN MAGISTRATE AT \_\_\_\_\_**

Crl.M.P. No. \_\_\_\_\_ of \_\_\_\_\_  
In \_\_\_\_\_  
S.C./C.C. No. \_\_\_\_\_ of \_\_\_\_\_  
Or \_\_\_\_\_  
Crime No. \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_ Police Station \_\_\_\_\_

Between: -

In the case of State: The State of \_\_\_\_\_ represented by its Station  
House Officer \_\_\_\_\_

<sup>57</sup> CrPC, sec. 93(1)(a). Section 91 of the CrPC grants the court or police station officer in charge the authority to issue a summons to a person to demand the production of a document or item that is needed for investigation purposes.

<sup>58</sup> CrPC, sec. 93(1)(b).

<sup>59</sup> CrPC, sec. 94.

<sup>60</sup> CrPC, sec. 95. For the various types of publication falling under this provision as being punishable under the Indian Penal Code, see IPC, sec. 124(a), 153A, 153B, 292, 293.

<sup>61</sup> CrPC, sec. 93(1)(c).

<sup>62</sup> See *Melicio Fernandes v. Mohan*, AIR 1966 Goa 23, 26.

<sup>63</sup> See *Gangadharan v. Chellapan*, 1985 Cri LJ 1517, 1520.

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In the case of private complaint: Furnish the name of complainant, her/his father's/ husband's name, age, occupation, religion and residence

\_\_\_\_\_ Petitioner/ Complainant

And

Furnish the name of accused, her/his father's/husband's name, age, occupation, religion and residence

\_\_\_\_\_ Respondent/ Accused

### **PETITION FILED ON BEHALF OF PETITIONER/ COMPLAINANT UNDER SECTION 93 OF CrPC**

1. The Respondent/ Accused is accused of offence under section \_\_\_\_\_ of Indian Penal Code. (In case of State as complainant, detail the Crime No. \_\_\_\_\_ of \_\_\_\_\_).
2. To support the case of complainant, the lists of articles/documents/things detailed hereunder are most essential and they are in the custody of Respondent/Accused.
3. The Petitioner/Complainant apprehends that the Accused will not produce the documents/articles/things which at a later point of time even on direction to produce the same, as they are material to prove guilt of the accused. In view of the essentiality of the same, the complainant seeks permission of the Hon'ble Court for production of the same by an order of search and seizure.
4. It is therefore prayed that the Hon'ble Court may be pleased to issue warrant of search of the house situated at \_\_\_\_\_ person of the Accused, seize and produce the same into the Court and pass such order or orders as the Court may deem fit and proper.

#### **Lists of articles/ documents/ things**

- 1.
- 2.

Place:

Date:

Counsel for Petitioner/ Complainant

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### B. Application for recall of arrest warrant under section 70(2) CrPC

A court may issue an arrest warrant in certain *warrant cases* and less frequently in *summons cases*. A warrant case involves an offence punishable by death, life imprisonment, or more than two years imprisonment,<sup>64</sup> while a *summons case* involves all other offences.<sup>65</sup> After the issuance of an arrest warrant, an accused person against whom the arrest warrant has been issued may apply to the court to have the warrant cancelled.<sup>66</sup> The following provides the general format for such an application to have an arrest warrant cancelled:

**IN THE COURT OF THE DISTRICT AND SESSIONS JUDGE/ASSISTANT  
SESSIONS JUDGE/JUDICIAL MAGISTRATE OF FIRST CLASS/  
\_\_\_\_\_ METROPOLITAN MAGISTRATE AT \_\_\_\_\_**

Crl.M.P. No. \_\_\_\_\_ of \_\_\_\_\_

In

S.C./C.C. No. \_\_\_\_\_ of \_\_\_\_\_

Between: -

In the case of State: The State of \_\_\_\_\_ represented by its Station  
House Officer \_\_\_\_\_

In the case of private complaint: Furnish the name of complainant, her/his father's/  
husband's name, age, occupation, religion and residence

\_\_\_\_\_ Petitioner/ Complainant

And

Furnish the name of accused, her/his father's/ husband's name, age, occupation,  
religion and residence

\_\_\_\_\_ Respondent/ Accused

<sup>64</sup> CrPC, sec. 2(x). A court does not have to issue a warrant in a warrant case and may choose to only issue a summons. CrPC, sec. 204.

<sup>65</sup> CrPC, sec. 2(w). A court generally issues a summons to demand the appearance of a person in court in a summons case. CrPC, sec. 204. Sometimes the court will issue a warrant if there is reason to believe the person has fled or otherwise will not appear. CrPC, sec. 87(a).

<sup>66</sup> See CrPC, sec. 70.

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### **PETITION FILED ON BEHALF OF PETITIONER/ ACCUSED UNDER SECTION 70(2) CrPC**

1. The Petitioner/Accused is accused of offence under section \_\_\_\_\_ of the Indian Penal Code. (In case the State is complainant, furnish the Crime No. \_\_\_\_\_ of \_\_\_\_\_)
2. The Petitioner/ Accused is innocent of the offence. The accused/ witness failed to appear before the Hon'ble Court on \_\_\_\_\_ the date on which the matter stood posted for his appearance/ to give evidence in the above case. The reason for the absence of Accused/ Witness on \_\_\_\_\_ is due to \_\_\_\_\_ (Assign reason here).
3. Consequent to the failure of appearance of accused/ witness on \_\_\_\_\_ this Hon'ble Court was pleased to issue warrant of arrest against the accused/ witness. The warrant of arrest not yet executed against him.
4. The petitioner/ accused/ witness undertakes to appear before the court in future as and when required without fail.
5. The petitioner/ accused therefore prays that the Hon'ble Court may be pleased to order recall warrant of arrest issued against the petitioner/ accused/ witness and pass such other order or further orders as the court may deem fit and necessary in the circumstances of the case.

Station:

Date:

Counsel for Petitioner/ Accused/ Witness

#### **C. Application for the medical examination of the Accused**

An arrested person has the right under the CrPC to request a medical examination if that examination will provide evidence that will disprove her/his commission of the alleged offence for which the person was arrested.<sup>67</sup> Unless the request is being made to delay proceedings or thwart justice, the magistrate shall order the medical examination.<sup>68</sup>

#### **APPLICATION FILED BY THE PETITIONER UNDER SECTION 54 of CrPC**

1. The petitioner herein submits that he is accused of offences \_\_\_\_\_ IPC. In fact the petitioner is innocent.

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<sup>67</sup> CrPC, sec. 54.

<sup>68</sup> *Id.*

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2. The petitioner further submits that he was arrested by the police on \_\_\_\_\_ and thus has been kept in continuous police custody.
3. The petitioner further submits that he was tortured while in custody by the police and he was also threatened that those illegal acts should not be revealed before the Court.
4. In the said circumstances, it is prayed that this Hon'ble Court may be pleased to order medical examination of petitioner by a medical practitioner and also pass such other suitable orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Place:

Date:

Advocate for petitioner

### D. Application for Adjournment

The Supreme Court has interpreted the right to life under Article 21 of the Constitution to include a right to a speedy trial.<sup>69</sup> While the CrPC calls for all proceedings to “be held as expeditiously as possible,”<sup>70</sup> it also grants courts the power to adjourn proceedings for reasonable periods of time.<sup>71</sup> The following provides an example of the format for making an application for an adjournment:

**IN THE COURT OF THE DISTRICT AND SESSIONS JUDGE/ ASSISTANT  
SESSIONS JUDGE/ JUDICIAL MAGISTRATE OF FIRST CLASS/  
\_\_\_\_\_ METROPOLITAN MAGISTRATE AT \_\_\_\_\_**

Crl.M.P. No. \_\_\_\_\_ of \_\_\_\_\_

In

S.C./C.C. No. \_\_\_\_\_ of \_\_\_\_\_

Between: -

In the case of State: The State of \_\_\_\_\_ represented by its Station house  
Officer \_\_\_\_\_

<sup>69</sup> *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna (II)*, AIR 1979 SC 1369.

<sup>70</sup> CrPC, sec. 309(1).

<sup>71</sup> *Id.*



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In the case of private complaint: Furnish the name of complainant, her/his father's/ husband's name, age, occupation, religion and residence

\_\_\_\_\_ Petitioner/ Complainant

And

Furnish the name of accused, her/his father's/husband's name, age, occupation, religion and residence

\_\_\_\_\_ Respondent/ Accused

An application on behalf of the accused is as under: -

That today, the matter is fixed for hearing. However, the concerned Advocate for the accused is unable to attend the court as he is not feeling well (or any other reason). It is therefore, prayed that the matter may kindly be adjourned to a suitable date.

Place:

Date:

Advocate for the accused \_\_\_\_\_

### 2.6 SUMMARY

#### First Information Reports

- An FIR is the first information provided to and then recorded by the police regarding a cognizable offence
- Any person can lodge an FIR
- The FIR causes the police to initiate an investigation and serves as a first account of events related to the commission of an offence
- Any person can lodge an FIR orally or in writing, should do so as soon as possible, and should ensure that the information recorded is accurate
- An FIR should contain basic information about the alleged offence, the accused, the informant, victims, witnesses, and any delays in reporting the offence
- After an FIR is lodged, the police should investigate the crime and report to a magistrate
- If the case goes to trial, the FIR serves as corroborative evidence

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### **Affidavits**

- Affidavits are written statements of fact voluntarily made under oath
- Affidavits can be admitted into evidence, but the prosecution and defence must have the opportunity to examine and cross-examine the persons who made the affidavits
- Affidavits can contain both known facts and beliefs, as long as the grounds for belief are stated
- Affidavits should have clear language, stating facts in a format that is easy to read.

### **Other Documents**

- Application for search warrants: search warrants provide police or other officials the authority to search for documents, evidence, property, or other items
- Application for recall of arrest warrants: after an arrest warrant is issued, an accused can apply to have the warrant cancelled
- Application for medical examination: an accused person can apply to have a medical examination if it will prove her/his innocence
- Application for adjournment: the prosecution or defence can apply to have a trial delayed for a reasonable period of time.

### **2.7 QUESTIONS FOR CONTENT**

1. Who can lodge an FIR?
2. Will an affidavit be admitted as evidence in court?
3. For what reasons can a court issue a search warrant?
4. Write an application for adjournment on behalf of a Public Prosecutor seeking an adjournment because the attorney had an accident and is unable to attend.

### ***Answers to questions for content***

1. Anyone can lodge an FIR.

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2. Yes, an affidavit can be admitted in court as corroborative evidence, though not as substantive evidence.
3. A court can issue a warrant if someone is likely to not obey a summons to produce an item, an item's current possessor is unknown, the place to be searched has stolen property or documents that contain illegal material, or other reasons serving the criminal justice process.

### **2.8 QUESTIONS FOR DISCUSSION**

1. What do you think can be done to deal with the systematic problem of police officers refusing to register FIRs?
2. Do you think that a defendant in a criminal case must have the opportunity to examine every person who submits an affidavit? Why?

### **2.9 SUGGESTED READINGS IN ADDITION TO CITED SOURCES**

1. K.S. Gopala Krishnan & M.L. Gogia, CRIMINAL PLEADINGS (LAW, PRACTICE & PROCEDURE), 1<sup>st</sup> ed., (ALT Publications 1998).
2. S.N. Misra, THE CODE OF CRIMINAL PROCEDURE, 13<sup>th</sup> ed., (Central Law Publications 2006).
3. Rajaram S. Retawade, LEGAL DRAFTING, 7<sup>th</sup> ed., (2008).
4. "Broken System: Dysfunction, Abuse, and Impunity in the Indian Police", Human Rights Watch, 111 (August 2009), *Available at:*  
<http://www.hrw.org/en/reports/2009/08/04/broken-system-0>.