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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

“LALITA KUMARI VS THE STATE OF UTTAR PRADESH”

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INTRODUCTION-

This case is dealing with one of the major issues in Indian legislation which is the filing of an FIR by the police officer after receiving a piece of information. this issue needed to be discussed as it happens across the whole country. Filing of FIR on disclosure 0f a COGNIZABLE 0FFENCE is mentioned under “section 154”[1] of CrPC. But the word FIR- first information report is not mentioned anywhere in the code. Rather it has mentioned about the complaint to the police officer under Section 154. Earlier it was a complaint that has been rephrased as information now. FIR plays a very important role in our legislation. It protects the law and order, and the very first step is the filing of an FIR.

Before this case, there was an imbalance in the registration of FIRs. the amount of FIR being registered is equivalent to that of non-registration of FIR as some FIRs were registered immediately and appropriate actions and measures were taken immediately but there are also many cases where FIRs were not lodged even after written reports were being submitted, all this happened because of negligence and ignorance on part of police officers. But after this case, the registration of FIR on disclosure of cognizable offense by the complainant has been made mandatory.

The Committee on Reforms of the Criminal Justice System, led by Dr. Justice V.S. Malimath, took note of the hardships that many people were facing as a consequence of the incomplete registration of FIRs and proposed that steps be taken against police forces who fail to file such information and that they face harsh punishment.

[1] The Code of Criminal Procedure ‘1973, Section 154

the issue in the case of Lalita Kumari vs the state of Uttar Pradesh was **“**Whether a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to the commission of a C0GNIZABLE 0FFENCE under Section 154 of the CrPC or the police officer has the power to conduct a “preliminary inquiry” in order to test the veracity of such information before registering the same?”

BACKGROUND-

A minor girl named Lalita Kumari was kidnapped. Her father- SHRI BH0LA KAMAT headed to the police station on 11th May 2008 to file an FIR but the police refused to file an FIR. Then Shri Bhola Kamat went to the superintendent of police and had his FIR lodged, but no inquiry was conducted by the police and no action was made to rescue Lalita Kumari.

‘As a result, Shri Bhola Kamat filed a writ petition case in the Supreme Court under “Article 32” in the name of his daughter Lalita Kumari for the granting of habeas corpus or similar directives for the protection of his stolen daughter.

The contention of the petitioner was that it is the duty of officers in charge of police stations to lodge an FIR if a complaint is received. The council also brings light to the literal interpretation of the word “shall” used in the legislation and says that it is necessary to file the FIR stands for a first information report.

But the defendant contended that it is not mandatory for police to register an FIR. He can instead conduct a preliminary inquiry to verify the authenticity of the information obtained. Many states, including Chhattisgarh and Maharashtra, require a preliminary investigation before filing an FIR. It was also asserted that Section 154(1) must be construed in light of Articles 14[2], 19[3], and 21[4], which declare that "no citizen shall be the victim of a malicious prosecution or be linked with a criminal conduct". If the official in charge of the police station refuses to lodge the FIR, Section 154(3) allows the complainant to seek the Superintendent of Police. This means that if the police officer has reservations about the truth of the allegation, he is not required to file an FIR.

In 2008, a two-judge bench heard the matter for the first time, and a notice was given to the "chief

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[2] “C0NSTITUTI0N OF INDIA”,1950, “ARTICLE I4”
[3] “C0NSTITUTION OF INDIA”,1950, “ARTICLE I9”
[4] “C0NSTITUTION OF INDIA”,1950, “ARTICLE 2I”

secretaries" of all states, "the Union of India", the commissioners of police, and the director general of police. The petitioner argued that upon the revelation of C0GNIZABLE 0FFENCE, the police officer is required to register an FIR, but the experienced "senior counsel for the State of Maharashtra" contended that it is up to the police officer's decision whether to submit a fir or conduct a preliminary inquiry. He also took the support of judgments of various cases like "P Sirajuddin vs State of Madras"[5] (1970) 1 SCC 595, "Sevi vs State of Tamil Nadu" [6]1981 Supp SCC 43, but due to conflicting decisions the case was then referred to a three-judge bench in 2012. after hearing different ideas of different counsels again the case was transferred to a five-judge bench and had only the question of interpretation of section 154 of CrPC.in In this the supreme court gave several guidelines as judgment.

JUDGEMENT GIVEN BY SUPREME COURT-

- The Hon'ble Supreme Court concluded the case by laying out certain guidelines as well as the duty of police officers. The court ruled that when material containing a C0GNIZABLE 0FFENCE commitment is disclosed, an FIR must be filed and no "preliminary investigation" is permitted. Until and unless it is not sure that there was a C0GNIZABLE 0FFENCE then in that case a formal investigation will be held.

- The court went on with the literal interpretation while giving judgment. Emphasis was laid on the word "shall" in section 154 of crpc which implies that the FIR must be registered upon discovery of C0GNIZABLE 0FFENCE. In this regard, the observations made by M/s Hiralal Rattan Lal were relied upon.

- If the investigation reveals a cognizable offense, the FIR must be reported. If this is not the case, a copy of the entry of the closure must be sent to the first informant immediately and no longer than one week. Under "Bhajan Lal", this Court held that FIR has to be entered in a book in a form which is commonly called the First Information Report.

- The "SUPREME C0URT" provided some useful Guidelines for FIR registering. –

1. When there is a disclosure of commitment of cognizable offense then registration of FIR

[5] 1 SCC 595

[6] *SEVI AND ANOTHER; KOODAKKAL KARIAN AND OTHERS VERSUS STATE OF TAMIL NADU AND ANOTHER - LNIND 1981 SC 128* (1981) SCC (Cri) 679(1981) Supp SCC 431981 CrLJ 736AIR 1981 SC 1230[1981] 1 MLJ (Crl) 613[1981] MLJ 613[1982] 1 MLJ 7LNIND 1981 SC 128

is not obligatory u/s 154 and no preliminary inquiry will be permissible in such circumstances.

2. To check whether there is the commitment of cognizable or not a preliminary inquiry may be held if the information given by the informant does not contain commitment of cognizable offense but suggests that there is the commitment of the cognizable offense

3. The FIR must be filed if the investigation reveals that a cognizable offense was committed. A copy of the entry of such closure must be given to the first informant immediately and not later than one week in cases where the preliminary investigation results in the closure of the complaint. It needs to briefly explain why the complaint is being closed and no further action is being taken.

4. If a police officer does not file an FIR when there is the disclosure of the commission of a cognizable offense then strict measures must be taken against him.

5. The goal of conducting a preliminary inquiry is only to check whether there is a commission of the cognizable offense, verification of the credibility of the information is irrelevant.

6. Depending on the specifics of each case, preliminary investigations will be done in different ways and in different circumstances. Preliminary inquiries may be performed in the following categories of cases: Matrimonial and familial conflicts, commercial offenses, and incidents of medical negligence are only a few examples. Cases of corruption and Cases in which there is an abnormal delay or delays in starting a criminal prosecution, such as when a report is delayed by more than three months without a satisfactory justification.

7. There must be a set time limit of 7 days for preliminary inquiry and it should not go beyond 7 days. This is to protect the rights of complainant and the person against whom a complaint is being made

8. Because the General Diary, Station Diary, or Daily Diary is the record of all information received in a police station, we direct that all facts relating to cognizable offenses, whether resulting in the filing of a FIR or leading to an inquiry, must be obligatory and carefully reflected in the said Diary. As previously mentioned, the decision to conduct a preliminary

inquiry must also be reflected.[7]

ANALYSIS-

The whole concept of mandatory filing of FIR without preliminary inquiry is dissatisfactory to me. firstly, I argue that the judgement given by the Supreme court is against the judgment given in the case of “Abhinandan Jha v Dinesh Mishra”8. This case has generated concerns about the Police's ability to perform a Primary Inquiry. It highlighted the powers and duties of the police and judiciary. The functions of the police are described in sections 154 to 176, and neither part mentions any form of involvement of the judiciary. Even if the section instructs police on how to continue with a case, it is up to the officers to determine whether or not to undertake a preliminary inquiry. Also in Nazir Ahmed case, H.N. Rishbud and Inder Singh v. State of Delhi9, it is stated that the functions of the judiciary should not overlap functions of the police instead they should complement each other. This means that the judiciary should not interfere with the functions of the police. In the case of Sevi v. State of Tamil Nadu,10 the court held that a preliminary investigation should be done first to ascertain whether the case is actually of C0GNIZABLE 0FFENCE or not.

There are many reasons to conduct a preliminary inquiry before filing an FIR. For instance- filing of FIR baselessly merely filing FIR on getting information regarding the commitment of C0GNIZABLE 0FFENCE without any credibility. As per the judgment in this case considering whether the information is true or not is not relevant for filing of FIR. It promotes people for filing false FIR, Numerous times, a fake FIR is filed against a person in order to harass them or falsely accuse them in a case. Due to this an innocent person gets framed and defamed. If a preliminary investigation is done before the filing of FIR would solve most of the issues stated here, it will show the credibility of information and if the information is not genuine then it can also save an innocent person from getting accused which would have affected his future, physical and mental health, his reputation ultimately it will affect his whole life. Also, when a false FIR is filed and after which investigation starts and it is found out after the investigation that it was a false FIR then even if the person who gave the information will get punished for it but the time which was

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[7] “Lalita Kumari v Govt of UP”, (2014) 2 SCC 1

[8] *ABHINANDAN JHA & OTHERS VERSUS DINESH MISHRA WITH CONNECTED APPEAL - LNIND 1967 SC 144* (1968) CrLJ 971968 CriLJ 97AIR 1968 SC 117[1967] 3 SCR 668LNIND 1967 SC 144

[9] *H N RISHBUD AND INDER SINGH VERSUS THE STATE OF DELHI - LNIND 1954 SC 177* (1955) 1 SCR 1150(1955) S.C.J. 2831955 Cr LJ 5261955 CriLJ 526AIR 1955 SC 196AIR 1955 SC 198[1955] 1 MLJ 173LNIND 1954 SC 177

[10] *SEVI AND ANOTHER; KOODAKKAL KARIAN AND OTHERS VERSUS STATE OF TAMIL NADU AND ANOTHER - LNIND 1981 SC 128* (1981) SCC (Cri) 679(1981) Supp SCC 431981 CrLJ 736AIR 1981 SC 1230[1981] 1 MLJ (Crl) 613[1981] MLJ 613[1982] 1 MLJ 7LNIND 1981 SC 128

wasted will never come back. The police of our country have numerous cases to solve or investigate rather than wasting time on false cases it would be more efficient to conduct a preliminary investigation.

I would also like to highlight the part the literal rule of interpretation (which means focusing on the words and language of the code) was used in the present case. The whole idea of using the literal interpretation is absurd to me as this are not practical enough. The court clearly refused to use any other method of interpretation. The emphasis was laid mainly on the words “shall” and “information” mentioned in section 154 of CrPC which confers that it is an obligatory duty of the police to file an FIR on getting information of commitment of C0GNIZABLE 0FFENCE. “Dr. Ashok Dhamija, learned counsel for the CBI, submitted that the use of the word “shall” under Section 154(1) of the Code clearly mandates that if the information given to a police officer relates to the commission of a C0GNIZABLE 0FFENCE, then it is mandatory for him to register the offence. According to learned counsel, in such circumstances, there is no option or discretion given to the police. He further contended that the word “shall” clearly implies a mandate and is unmistakably indicative of the statutory intent. What is necessary, according to him, is only that the information given to the police must disclose the commission of a C0GNIZABLE 0FFENCE. He also contended that Section 154 of the Code uses the word “information” simpliciter and does not use the qualified words such as credible information or reasonable complaint”[11]. He also relied on Bhajan Lal (supra) to support his statement.

I highly criticize guideline no. 5 given by the court in its decision. Guideline 5 says “the scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any C0GNIZABLE 0FFENCE.” [12]As per the guidelines, a preliminary investigation must be done if there is any sort of doubt or there is no commitment of C0GNIZABLE 0FFENCE in the information given by the informant but the information suggests the police that there is a commitment of C0GNIZABLE 0FFENCE. Then a preliminary investigation should be conducted and the scope is only to check that is there any C0GNIZABLE 0FFENCE or not BUT as per me the scope of the preliminary investigation should be checking the veracity of information. The guideline goes totally against it and the whole concept of the scope mentioned here is unsatisfactory. Also, guideline no. 6 is useless to me, according to which there can be a preliminary investigation conducted depending on the

[11] “Lalita Kumari v Govt of UP”, (2014) 2 SCC 1
[12] “Lalita Kumari v Govt of UP”(2014) 2 SCC 1

circumstances with this statement I totally agree but the later part is totally baseless which says that an investigation “may” be conducted in cases of - (a) “Matrimonial disputes”/ “family disputes” (b) “Commercial offenses’ (c) “Medical negligence” cases (d) “Corruption cases”. The whole idea of differentiating matters for preliminary investigation is questionable. It should depend on the circumstance of each case and there is no point in giving certain matters special privileges. Also, the word may is used which means it is upon the police’s discretion so what is the point of mentioning these matters separately? A preliminary investigation should be done in every case before the filing of FIR whether it is mentioned in the guidelines or not. There are chances of false FIR in the abovementioned cases also and in any other cases that what is the point to put the abovementioned cases separately?

Last but not least “VIOLATION OF ARTICLE 21”. The Supreme Court's extreme and hazardous position—which is in violation of “Article 21” of the “Indian Constitution”— is that the police must be required to register FIRs without conducting enough investigation. The court also neglected to consider the repercussions of filing an FIR against an individual and the negative publicity that person would experience. If there is no preliminary investigation and even if a preliminary investigation takes place it is just for sake of checking whether it is C0GNIZABLE 0FFENCE or not, it deprives the person of many criminal remedies. The concept of seeking help from the police for serving justice and relief is totally non-existence to the person so accused. Even if the person so framed is innocent he has to go through much psychological anxiety, social stigma, and probable economic impairment till proven innocent. Even if he is proven innocent, the delay in trial breaks his endurance power completely. In “M0TI RAM v STATE of MP KRISHNA IYER”[13], J. claimed that the pre-trial detention are as worse as convicted detention. People are kept in jail for a long time without even a trial.in many cases, the accused person spends his time in jail for as long as the actual punishment is for the particular crime for which he is convicted even if he is innocent. A report says that around sixty-seven percent of prisoners are not convicted of any offense and are under trial for the same. It is not only the innocent person who suffers but his family also suffers along with him for example in cases where the person falsely accused of C0GNIZABLE 0FFENCE is the head of a family. All these circumstances clearly indicate a violation of Article 21.

[13] *Motiram and others Versus State of Madhya Pradesh - LNIND 1978 SC 206* (1978) 4 SCC 471978 Cr LJ 17031978 SCC (Cri) 485AIR 1978 SC 1594[1979] 1 MLJ (Crl) 280[1979] 1 SCR 335LNIND 1978 SC 206

CONCLUSION-

In conclusion, I would like to add my opinion on this very matter that there must be a balance between the rights of the accused and the rights of the victim. Filing of FIR should not be made mandatory as it has many negative results which is discussed above, also there are a lot more of these negative impacts which are yet to be discovered. Hence a preliminary investigation should be conducted before filing of FIR by the police if he thinks fit. And certain guidelines should also be introduced to police for conducting a preliminary investigation like setting a limited time period in which the investigation needs to be completed. And after the preliminary inquiry is completed and the police is satisfied with the credibility of the case then they should proceed with it. Police must file an FIR and a copy of the same must be shared with the complainant.

The mandatory filing of an FIR can create a sense of threat in people's minds that even a small act done by them would result in the filing of an FIR. the liberty of an individual must be protected. Detention of an innocent will amount to an invasion of that person's liberty. Therefore, the very idea of the criminal justice system should be protected at any cost.