CASE COMMENT: LALITA KUMARI V STATE OF UTTAR PRADESH AND ORS

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A cognizable offence is one where the police can arrest without a warrant. These include offences such as murder, rape, dowry death, kidnapping etc. Section 154 of the crpc lays down how the information received on the commission of cognisable offences needs to be treated. The landmark judgement in Lalitha Kumari v Govt. of UP and ors is not free from criticism it covers various aspects in the code of criminal procedure as well as the constitutional sphere to interpret the judgement in different views. The five-judge bench held that once a cognizable offence is made out under Section 154 of Crpc the police have to mandatorily register the FIR. Reading my following comment regarding the said case covers the essential details associated with the case, the courts view and my opinion by notable judgements to analyse the critical view.

First Information Report (FIR) is not defined anywhere in the Code of Criminal Procedure. It is the earliest report that was submitted to the police officer with a view to his action and based on which investigation begins. An FIR is a very important document as it sets the process of criminal justice in motion. It is only after the FIR is registered in the police station that the police take up an investigation of the case. The information received by the police officer has to be recorded in the manner provided in section 154 of Crpc. An important question that may arise here is whether a police officer is bound to register an FIR upon receiving any information relating to the commission of a cognizable offence under Section 154 of the Crpc or the police officer has the power to conduct a preliminary inquiry to test the veracity of such information before registering the same?

The Supreme Court of India (SC) in Ravi Kumar v State of Punjab defined FIR as a report giving details about the commission of the cognizable crime. It can be made by the complaint or by the complainant or by any other person knowing the commission of such offence. There are various SC decisions in which the court interpreted that police are not obliged to file an FIR as soon as he receives the information of the commission of a cognisable offence[1]. The

[1] P. Sirajuddin v State of Madras (1970) Mad 117

police officer is given the discretion to conduct a preliminary enquiry and confirm the commission of the cognisable offence.

Apex court in Lalitha Kumari v State of Uttar Pradesh and ors held that if the information discloses commission of a cognizable offence then registration of FIR is mandatory under Section 154 of CrPC and no preliminary inquiry is permissible in such a situation except in some cases. Here the Supreme court acknowledged that the law surrounding compulsory registration of FIR was uncertain due to conflicting judgements passed by the Courts. This uncertainty led to a referral to the Constitutional Bench of the Supreme Court in this case.
The question which may come to anyone's mind is whether SC took every aspect in mind while deciding that registration of FIR is mandatory under Section 154 of CrPC. The researcher tries to avoid the decision to explain the legal and social crisis associated with the compulsory registration of FIR. This case raises issues other than the statutory rules created, including the issue of preliminary investigation and enquiry associated with it. There is a clear-cut view that mandatory registration of FIR is unconstitutional and will have severe effects on our society. LalitaKumari judgement is a precedent in the criminal law as it makes filing of FIR mandatory, 'reasonableness' or 'credibility' of the received information is not a condition precedent for registration of a case.

In the present case[2], Bhola Kamath (the petitioner) filed a missing complaint at the police station, as Lalita Kumari, his minor daughter did not return for half an hour and he failed to locate her. Even after filing FIR against the respondents who were the chief suspects, the police took no action to trace Lalita Kumari. According to Bhola Kamat's statement, he has been asked to pay money to start the inquiry and arrest the accused. The writ petition was filed under Article 32 of the constitution by Lalita Kumari (Minor) through her father Shri Bhola Kamat for the issuance of a writ of Habeas Corpus as the officer-in-charge of the police station who did not take any action.

The petitioner stated that even after registration of FIR no concrete steps were taken to recover the minor girl or trace the accused as the amount to a violation of laws by the authority. The petitioner stated to the court that when the officer-in-charge of the police station receives a complaint disclosing a cognizable offence, he has to mandatorily register an

[2] Lalitha Kumari v Govt. of UP and others (2012) SC 1515

FIR under section 154 of the Code of Criminal Procedure. He added that under section 154 of the code there are no implicit provisions relating to Preliminary inquiry and there is no discretion left to the police officer to initiate the investigation and he is bound to act as per the law to find out the fact and issue which is impugned before him.

In support of his arguments, he placed heavy reliance on the judgments like Hiralal Rattanlal v State of U.P[3] and Govindlal Chhaganlal Patel v Agricultural Produce Market Committee, Godhra[4]**.** The Counsel draws the attention of the court that under Section 154(1) of the Code the word "shall" is used by the Legislation signifying the legislative intention and the police officer must register the FIR.

The counsel for the respondent submitted that the registration of an FIR cannot be subjected to a statistical formula as it is an administrative act requiring the application of mind, scrutiny, and verification of the facts. Court interpreted FIR in a manner that holds that before registering an FIR under Section 154 of the Code, it is open to the police officer to hold a preliminary inquiry to ascertain whether there is a prima facie case of commission of a cognizable offence or not. The learned counsel submitted that a statute should not be interpreted in such a manner where it leads to an absence of any discretion to the police officer especially in Fake cases where registration of an FIR leads to an empty formality. Also, for the receipt and recording of information, the report is not a condition precedent to the setting in motion of a criminal investigation. The counsel submitted to the court that every statute should be interpreted while keeping in mind the provisions of Articles 14, 19 and 21 of the Constitution. In situations like these, a police officer needs to be equipped with the power of conducting a Preliminary inquiry. The constitutional right to equality secured under Article 14 of the Indian Constitution serves as a protection against the arbitrary or unguided exercise of discretionary power conferred upon them by the statute. Notwithstanding the presumption in favour of statutory wisdom and authorities exercising authority in good faith, giving unfettered discretion to government officials through the use of broad and vague language in law clauses, strikes at the very foundations of justice, non-arbitrariness and equality. The Committee on Reforms of Criminal Justice System headed by Dr. Justice V.S. Mali math observed that in Section 154 of the Code of Criminal Procedure, any oral or

[3] Hiranlal Ratanlal v State of U.P and ors (1972)SC 1034

[4] Govindlal Changanlal Patel v Agricultural Produce Market Committee, Godhra and Ors (1975)

written information relating to the commission of a cognizable offence is required to be registered by the office in charge of a police station.

Here the Hon'ble Court must go against the jurisprudence of previous notable judgments of the Supreme Court like Abhinandan Jha v. Dinesh Mishra Here the Supreme Court took great framework in demarking the powers of the police and the judiciary, they explained the duties of the police, in the matter of investigation of offences, as well as their powers, it is necessary to refer to the provisions contained in Chapter XIV of the Code. Sections beginning from Section 154, and ending with Section 176. Section 154 deals with information relating to the commission of a cognizable offence, and the procedure to be adopted in respect of the same. In each of these sections, there is no role of Judiciary, the sections provide guidelines to the police on how to proceed with the Investigation but there is always a discretion to the police officer to conduct a preliminary inquiry in case a complaint does not disclose a Cognizable offence or has doubts over the veracity of the complaint.

The use of the word "shall[5]" leaves out no room for discretion by the police. The use of this word tells us about the legislative intention. The legislative makers have not to use words like 'reasonable complaint' and 'credible information[6]'. The absence of these words shows that 'reasonableness' or 'credibility' of the received information is not a condition precedent for the registration of a case. The use of the word "shall" does not mean police do not have any discretion. If it is a fake case, the FIR would become useless in the end. In that case, the police officer would submit a closure report to the magistrate. The conviction rate in India is very low which indicates the high number of fake cases filed in India. This leads to unnecessary harassment of an innocent person because of unscrupulous complainants. Hence, preliminary inquiry after receiving information should precede the registration of FIR.

In the Nazir Ahmed Case, H.NRishud and Inder Singh v State of Delhi[7] the court held that the Judiciary should not interfere with the police in matters such as Investigation especially of cognizable offence which is the statutory right of the police. The court opined that the functions of the police and judiciary are complementary and not overlapping keeping in mind

[5] Sec 154(1), Code of Criminal Procedure,1973
[6] ibid
[7] H.N Rishud and Inder Singh v the state of Delhi (1955) SCR (1)1150

individual liberty and law and order situation in the Country. The judiciary role comes into play when a charge is established and not before that.

In Binay Kumar Singh v State of Bihar[8], the Supreme Court categorically stated that an officer in charge of the police station cannot be expected to register an FIR on receiving information that does not disclose the commission of a cognizable offence. The court observed that it should be open to the officer-in-charge to check the veracity of the complaint and further inquiry whether a cognizable offence has been committed.

In Sevi v State of Tamil Nadu[9] also the court had expressly ruled that before registering the FIR under section 154 of Crpc is open to the station house officer (SHO) to hold a preliminary inquiry to ascertain whether there is a prima facie case of commission of a cognizable offence or not. Lastly, the Bombay High Court has laid general principles governing preliminary inquiry which can be followed by the courts. Such guides give discretion to the police to keep a check on frivolous complaints and also does not cause undue harassment to the accused. Therefore, in the case of Kalpana Kutty v State of Maharashtra[10] the guidelines laid down by the court relating to preliminary inquiry:

1. When information relating to the commission of a cognizable offence is received by an officer in charge of a police station, he would normally register an FIR as required by sec 154(1) of the code.
2. If the information received indicates the necessity for further enquiry, a preliminary enquiry may be conducted.
3. Where the source of information is of doubtful reliability i.e.; an anonymous complaint, the officer in charge of the police station may conduct a preliminary enquiry to ascertain the correctness of the information.
4. The preliminary enquiry must be expeditious and as far as possible it must be discreet.
5. The preliminary inquiry is not restarted only to cases where the accused are public servants or doctors or professionals holding top positions, in which case preliminary inquiry is necessary will depend on facts and circumstances of each case.

[8] Binay Kumar Singh v State of Bihar (1996) SC 283
[9] Sevi v State of Tamil Nadu (1981) 736 SCC 43
[10] Kalpana Kutty v State of Maharashtra (2007)109 Bom. 483

The mandatory registration of FIR is contrary to Article 21 of the Indian constitution as it deprives a person of his life and liberty. This becomes even more dangerous when these cases are fake as you are taking an innocent person's liberty based on a fake complaint that violates Article 21 of the constitution. Section 154 must be read in light of Article 21 of the constitution to mean that the police officer must be satisfied that there is a prima facie case for investigation before filing an FIR as there are severe consequences of an FIR filed against an innocent person. If the police officer does not have the power to hold a preliminary investigation then the procedure would become arbitrary. For this purpose, it must be held that police have implied power for preliminary enquiry under Section 154 of the Crpc. Giving discretionary power per sec 154 does not violate Article 14 of the constitution. Only when the authority's discretion is so broad and unguided that it allows for a high likelihood of arbitrary exercise does it draw the sanction of Article 14. While the nature of the discretionary powers bestowed on the government can be wide in some matters if such discretion is guided by appropriate rules and principles that would prevent the abuse of the same. Even if he is guilty, delay shakes his confidence in the system of criminal justice and makes him cynical. The impact of this drama does not confine itself to the accused but extends to his dependents who may be subject to undue suffering. Worse is the effect of delay on complaints or victims whose traumatic suffering the system seems to be heartless. It is a greater paradox that injustice is being done to them in the process of justice.

In the case of Francis Coralie Mullin v Administrator, Union Territory of Delhi[11] the Supreme Court held that Article 21 as interpreted in Maneka Gandhi's case provides that a procedure while depriving a person his life or personal liberty should be fair, reasonable, just and should not be arbitrary. The court has the constitutional power of judicial review whenever there is a deprivation of life or personal liberty by an unjust procedure. In a country like India where the police and judiciary are overburdened with work, if we make registration of FIR mandatory then it will deny justice to those against whom a serious and heinous crime is committed. If justice is time-consuming then fake cases affect the accused severely as his life socially and mentally gets completely changed. If an innocent person is wrongly implicated, he suffers not just from the loss of credibility but also mental stress and his freedom is seriously undermined.

[11] Francis Coralie Mullin v The Administrator, Union (1981) SCR (2)516

A balance needs to be drawn between the rights of the victim and the accused. FIR must not be made mandatory as it increases the likelihood of its misuse. On the other hand, there should be some guidelines for police officers to finish the preliminary enquiry. There should be a set timeline to finish the preliminary enquiry. The police must finish the preliminary enquiry within that time frame. After the preliminary enquiry, if the police are satisfied that the case is genuine and a cognisable offence took place, the police officer must file the FIR. A copy of the pre-investigation report should be forwarded to the complainant. while discussing the nature of FIR, one must take some things into account like the number of fake cases is very large in number. It is a serious concern owing to the potential for abuse. If we make the filing of FIR mandatory in nature then it will become problematic. Police must have some discretion in deciding the credibility of the information received. If no prima facie case is made then it must not be made mandatory for them to file an FIR. According to the Report of National Crime Records Bureau (NCRB) , people that are not convicted of any crime and are facing trial in a court of law till the year 2017 and some of them had mental abnormalities also. On average, every day four people die in prison. Seventy per cent of the convicts are illiterate. It will create unnecessary fear in the minds of people that a small act by them can lead to the filing of registration against them as revenge.

The position held by the three-judge bench of Lalita Kumari v. Govt of UP is a correct legal position and it should be revisited. Criminal procedural law has to embody principles of natural justice and the constitutional guarantees must be safeguarded. A balance has to be struck between speedy trial and fair trial and the principles of natural justice cannot be compromised to achieve speedy dispensation of justice. Therefore, I conclude that a delicate balance has to be maintained between the interest of society and protecting the liberty of an individual. The Liberty of an individual has to be zealously guarded by the law. Detention for even a single minute would amount to an invasion of liberty.