

BRIEFING PAPER

Lalita Kumari vs. Government of Uttar Pradesh & Others
Writ Petition (Criminal) No. 68 of 2008 in the Supreme Court of India

Decided on:
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(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

[Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 375, section 376, section 376A, section 376B, section 376C, Section 376D, Section 376E and section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, as far as possible, by a woman police officer and such woman shall be provided legal assistance and also the assistance of a healthcare worker, and/or women's organization or both.

Provided further that:

(a) in the event that the person against whom an offence under Section 354, Section 354A, Section 354B, Section 354C, Section 354D, sub-section (1) or sub-section (2) of Section 376, Section 376A, Section 376B, Section 376C, Section 376D or Section 376E of the Indian Penal Code is alleged to have been committed or attempted is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the

FACTS:

Lack of Police action in registration of FIR & Arrest

When the minor daughter of the petitioner was kidnapped, he submitted a written report before the officer-in-charge of the concerned police station informing him about the same. The police officer did not take any action on the report. Aggrieved, the petitioner moved the Superintendent of Police which led to the registration of filing of First Information Report (FIR). However, even then no steps were taken either for arresting the accused or for the recovery of the minor girl child. Therefore, the petitioner filed a writ petition in the Supreme Court under Article 32 of the Constitution for the issuance of a writ of *Habeas Corpus* or direction(s) of like nature against the respondents for the protection of his minor daughter who has been kidnapped.

Inconsistency in registration of FIRs

A two-judge bench of this Court in this case noticed inconsistency in registration of FIRs by police officers on case to case basis across the country. For this reason, it issued notice to the Union of India, the Chief Secretaries of all the States and Union Territories and Director Generals of Police/Commissioners of Police to the effect that if steps are not taken for registration of FIRs immediately then the complainants may move the concerned Magistrates by filing complaint petitions. The petitions shall be for appropriate directions to the police to

attempted is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of a special educator or an interpreter, as the case may be.

- (b) The recording of such information may be videographed.
- (c) The police officer shall get the statement of the person recorded by a Judicial Magistrate under Clause (a) of sub-section (5A) of Section 164 as soon as possible.]
- (2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.
- (3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

register the case immediately and for arresting the accused persons. And if the police fail in doing the same then contempt proceedings must be initiated against such erring police officers.

Requirement for clear declaration of law

Owing to equally reasonable contentions of both the parties on the subject of compulsory registration of FIR on receipt of information under Section 154 of the Code of Criminal Procedure, the case was then heard by a three-judge bench. It was observed that the case holds great public importance and needs a clear declaration of law because of which it was referred to a Constitution Bench of five judges of Supreme Court for an authoritative judgment.

ARGUMENTS FOR COMPULSORY REGISTRATION OF FIR:

☞ The word 'shall' in Section 154 (1) is indicative of the statutory intention of the legislature. This signifies that there is no discretion left to the police officer except to register an FIR. (Reliance placed on *B. Premanand and Ors. vs. Mohan Koikal'* and *Others, M/s Hiralal Rattanlal Etc. Etc. vs. State of U.P. and Anr. Etc.*²

and *Govindlal Chhaganlal Patel vs. Agricultural Produce Market Committee Godhra and Ors*³).

¹ (2011) 4 SCC 266

² (1973) 1 SCC 216

³ (1975) 2 SCC 482

- ☞ Section 154(i) merely mentions 'information' without prefixing the words 'reasonable' or 'credible'. (Reliance was placed on *State of Haryana vs. Bhajan Lal*⁴, *Ganesh Bhavan Patel and Another vs. State of Maharashtra*⁵, *Aleque Padamsee and Others vs. Union of India and Others*⁶, *Ramesh Kumari vs. State (NCT of Delhi)*⁷, *Lallan Chaudhary and Others vs. State of Bihar and Another*⁸ and *Ram Lal Narang vs. State (Delhi Administration)*⁹).
- ☞ There are various safeguards inbuilt in the Code against lodging of false FIRs.
- ☞ The literal rule of interpretation is the primary rule of interpretation and it shall prevail over all the other rules of interpretation.

ARGUMENTS AGAINST COMPULSORY REGISTRATION OF FIR:

- ☞ Filing of FIR not mandatory as every activity which occurs in a police station (Section 2(s)) is anyway entered in a diary maintained at the police station which may be called as the General Diary, Station Diary or Daily Diary.
- ☞ It is common practice throughout our country that in matrimonial, commercial, medical negligence and corruption related offences, there exist provisions for conducting an inquiry or preliminary inquiry by the police, without/before registering an FIR under section 154 of the Code. (Reliance was placed on *Superintendent of Police, CBI vs. Tapan Kumar Singh*¹⁰ and *Jacob Mathews vs. State of Punjab & Anr.*¹¹)
- ☞ According to the Crime Manual of CBI, holding a preliminary inquiry before registering a case is permissible and legitimate in the eyes of law.
- ☞ The power to carry out an inquiry or preliminary inquiry by the police before the registration of FIR will reduce the misuse of the process, as the registration of FIR acts

⁴ 1992 Supp. (1) SCC 335

⁵ (1978) 4 SCC 371

⁶ (2007) 6 SCC 171

⁷ (2006) 2 SCC 677

⁸ (2006) 12 SCC 229

⁹ (1979) 2 SCC 322

¹⁰ (2003) 6 SCC 175

¹¹ (2005) 6 SCC 1

as a hurdle against a person for various important activities like applying for a job or a passport, etc.

Article 21 - Protection of and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law

☞ The moment the complaint disclosing elements of a cognizable offence is lodged, the police officer must register an FIR without any inquiry whatsoever is an extreme proposition and is against the mandate of Article 21 of the Constitution of India.

☞ Section 154 forms part of a chain of statutory provisions relating to investigation. Therefore, it shall be read in harmonization with other investigating provisions like Sections 41, 157, 167, 169, etc of the Code.

☞ The literal interpretation of Section 154 will reduce the registration of FIR to a mechanical act.

☞ There are remedies under Section 154(3) and Section 190 of the Code against refusal of the police officer to file an FIR which is indicative of legislative intent that he is not bound to record FIR merely because the ingredients of a cognizable offence are disclosed in the complaint.

Section 190 - Cognizance of offences by Magistrates

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

ISSUES:

☞ Whether the lack of immediate registration of FIR leads to scope for manipulation by the police which affects the rights of the victim/complainant to have a complaint immediately investigated upon allegations being made; and

☞ Whether in cases where complaint/information does not clearly disclose the commission of a cognizable

offence but the FIR is compulsorily registered then does it infringe the rights of an accused?

INDIAN PENAL CODE, 1860

Section 166A - Public servant disobeying direction under law

Whoever, being a public servant,--

- ¹ [(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or
- (b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or
- c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509,

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.]

DISCUSSION

Background of Section 154

There has been a history of non-registration of valid FIRs leading to a grieving victim as well as that of the accused being unnecessarily investigated upon false charges. The example of former rests in the case of *State of Maharashtra vs. Sarangdharsingh Shivdassingh Chavan & Anr.*¹², where there was no registration of FIR of the poor farmers in 67 out of 74 cases alleging illegal money lending against one Gokulchand Sananda. The latter situation can be explained with the case of *Preeti Gupta vs. State of Jharkhand*¹³, wherein the Court expressed its concern over misuse of Section 498A of the Indian Penal Code, 1860 with respect to which a large number of frivolous reports were lodged.

The Court then explored the background of Section 154 and the corresponding provisions that existed in the previous enactment of the Code of

Criminal Procedure, namely Sec. 139 of CrPC, 1861; Sec. 112 of CrPC, 1872; Sec. 154 of CrPC, 1882; Sec. 154 of CrPC, 1898; Sec. 154 of CrPC, 1973. It was noted that throughout the amendments the objective of the provision remained the same. It was to ensure that the

¹² (2011) 1 SCC 577

¹³ (2010) 7 SCC 667

starting point of the any investigation by the police remained recording of the first information.

Insertion of Section 166A

Further, the insertion of Section 166A in the Indian Penal Code, 1860 by way of Criminal Law (Amendment) Act, 2013 was helmed as indicative of legislature's intention to make it imperative for the police officer to register the FIR and apply his discretion in respect of offences as specified in sub-clause (c) of Section 166A. However, this argument was not accepted by the court and instead it observed that that insertion of the subject section should be seen in the light of the recent unfortunate occurrence of offences against women. It further clarified that the intention of the legislature was to 'provide enhanced safeguards to women' and 'to expressly punish the police officers for their failure to register FIRs in cases of crime against women'. No other meaning can be assigned for the insertion of the Section 166A

Interpretation of Section 154

Reliance was placed on the cases of *M/s Hiralal Rattanlal*¹⁴ and *B. Premanand*¹⁵ to hold that the literal rule of interpretation is the primary rule of interpretation. If the provision is unambiguous and if the legislative intent is clear, there is no need to call into aid the other rules of construction of statutes. Hence, the language of Section 154(i) admits of no other construction but the literal construction.

Further, the legislative intent of Section 154 was discussed in detail in the case of *Bhajan Lal*. It maintained that the Section has carefully used the expression 'information without qualifying the same as in Section

¹⁴ Supra 1

¹⁵ Supra 4

Section 41 - When police may arrest without warrant

(i) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

'[(a) who commits, in the presence of a police officer, a cognizable offence;

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India.

Section 39 - Public to give information of certain offences

(1) Every person, aware of the Commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely :--

- (i) sections 121 to 126, both inclusive, and section 130 (that is to say offences against the state specified in Chapter VI of the said Code);
- (ii) sections 143 , 144 , 145 , 147 and 148 (that is to say, offences against the public tranquility specified in Chapter VIII of the said Code);
- (iii) sections 161 to 165 A, both inclusive (that is to say, offences relating to illegal gratification);
- (iv) sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.);
- (v) sections 302 , 303 and 304 (that is to say, offences affecting life);
- [(va) section 364 A (that is to say, offence relating to kidnapping for ransom, etc.);]
- (vi) section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);
- (vii) sections 392 to 399 , both inclusive, and section 402 (that is to say, offences of robbery and dacoity);
- (viii) section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.);
- (ix) sections 431 to 439 , both inclusive (mat is to say, offence of mischief against property);
- (x) sections 449 and 450 (that is to say, offence of house-trespass);
- (xi) sections 456 to 460 , both inclusive (that is to say, offences of lurking house- trespass); and
- (xii) sections 489A to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes).

shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such Commission or intention;

(2) For the purposes of this section, the term "offence" includes any act committed at any place out of India which would constitute an offence if committed in India.

41 (1) (a) or (g) of the Code, wherein the expressions, 'reasonable complaint' or 'credible information' are used. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

Interpretation of the word

'Shall'

The use of the word 'shall' confirms the mandatory nature of Section 154(1). Reliance was placed on the case of *Khub Chand vs. State of Rajasthan*¹⁶ to state that "unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act."

Presence of the word 'shall' prompts the registration of FIR by police and expeditious investigation.

Moreover, permission of any discretion on the part of the police officer can adversely affect the rights of the victims including violation of their fundamental right to equality. Therefore, the word 'shall' be given its ordinary and natural meaning of being of 'mandatory' character. Also, when the Section 39 of the Code casts a statutory duty on every person to inform about the commission of certain offences which includes offences covered by Section 121 to 126, 302, 64-A, 382, 392 etc then it would be inconsistent to state that it is not obligatory on the part of the police officer to register the report.

Book versus Diary

FIR book is maintained under Section 154 of the Code and a General Diary is maintained under Section 44 of the Police Act, 1861. Reliance was placed on the case of *Madhu Bala vs. Suresh Kumar*¹⁷ to assert that the FIR must be registered in the FIR register which is a book bearing a unique annual number to keep a strict control and track over the registration of FIRs and is of

200 pages. However, in the Daily Diary/General Diary/Station Diary only the gist or substance of the FIR is mentioned as mandated in the respective Police Act or rules.

A comparative analysis was done to describe the relevancy of the FIR book and General Diary. Certain points were put across such as,

1. Signature of complainant is obtained in the FIR book, however no such requirement is necessary for the general diary.
2. Copy of each FIR is sent to the superior officers and to the concerned Judicial Magistrate which ensures a supervisory check over it. However, copy of

Article 254 – Inconsistency between laws made by Parliament and laws made by the Legislature of States.

- (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy,

¹⁷ (1997) 8 SCC 476

General Diary is not sent to the Judicial Magistrate which renders it impossible to keep a strict control over it.

3. The FIR book contains the complete complaint, whereas the General Diary only contains about one or two lines or paragraphs of the entire complaint.

Further, it was also pointed out that the Code will always have precedence over the Police Act as Code was enacted under Entry 2 of the Concurrent List and Police Act was enacted under Entry 2 of the State List. Under Article 254 (1) of the Constitution, it is clear that provisions of the Code will prevail over the provisions of the Police Act. Thus, FIR has to be recorded in the FIR Book first.

Interpretation of the word 'Information'

Reliance was placed on the cases of *Bhajan Lal*¹⁸, *Ramesh Kumari*¹⁹, *Lallan Chaudhary*²⁰ and *Ram Lal Narang*²¹ to assert that reasonability or credibility of the said information is not a condition precedent for the registration of the case.

Preliminary Inquiry

Registration of FIR is not discretionary Power - Going by the language used in Section 154, it is quite clear that a police officer can proceed to conduct investigation into a cognizable offence if he suspects the commission of such an offence. Therefore, the legislative intent becomes quite clear that every cognizable offence has to be promptly investigated in accordance with law. Hence, it leaves no space for the police officer to apply any discretion in registering or not registering an FIR.

Investigation 'after' Registration of FIR - The Court was of the view that the application of legal maxim of *expression unius est exclusion alterius* (expression of one thing is exclusion of another) fits best for the interpretation of Section 154 of the Code. Hence, conducting an investigation

¹⁸ Supra 4

¹⁹ Supra 7

²⁰ Supra 8

²¹ Supra 9

Section 5 - Saving

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

'after' registration of FIR is the 'procedure established by law' and thus in compliance with Article 21 of the Constitution of India.

Crime Manual of CBI is only for internal guidance of CBI officers- Lastly, coming on to the procedure in CBI investigation, it shall be

noted that Crime Manual of the CBI is not a statute and has not been enacted by the legislature. It is a set of administrative orders issued for internal guidance of the CBI officers. Also, CBI is constituted under the Delhi Special Police Establishment Act which is a Special Act and under Section 4(2) and 5 of the Code, special procedures are permitted to be followed by special Acts. Hence, it cannot be held that the concept of preliminary investigation should be imported to the Code.

Why should FIR be registered at the earliest?

The Court enumerated the advantages of the obligation to register FIR which are:

- a) It is the first step to 'access to justice' for a victim.
- b) It upholds the 'Rule of Law' inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.
- c) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.
- d) It leads to less manipulation in criminal cases and lessens incidents of 'ante-dates' FIR or deliberately delayed FIR.

To clarify its position, the Court placed reliance on the case of *Tapan Kumar Singh*²² which stated

"The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned,

²² Supra 10

Section 4 - Trial of offences under the Indian Penal Code and other laws

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences

Section 156 - Police officer's power to investigate cognizable cases

- (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.

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.”

Relying on the observations of the Committee on Reforms of Criminal Justice System headed by Dr. Justice V.S. Malimath the Court held that non-registration of FIR is a common practice in our country which is a clear violation of the rights of the victims of such a large number of victims. Therefore, reading of Section 154 in any other form would not only be detrimental to the Scheme of the Code but also to the society as a whole.

Misuse of Section 154

Mandatory registration of FIR does not mean requirement to

Arrest

The Court held that while registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. There are many safeguards available against arrest, for example – anticipatory bail under Section 438 of the Code.

Moreover, it has been held in many cases like *Joginder Kumar vs. State of UP & Ors.*²³ that arrest cannot be made in a routine manner. Therefore, it would be correct to say that it is just the ‘imaginary fear’ that merely because FIR has been registered, it would require arrest of the accused and thereby leading to loss of his reputation. On the other hand if a police officer misuses his power of arrest, he can be tried and punished under Section 166.

²³ (1994) 4 SCC260

Also, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence. That's because the police has the power of closing a matter both before and after investigation. Hence, the apprehension of misuse of the provision of mandatory registration of FIR is unfounded and speculative in nature.

Exceptions

1. In cases of medical negligence on the part of the doctors, it will be unfair to prosecute a medical professional only on the basis of the allegation in the complaint (*Jacob Mathew*²⁴ case).
2. In offences relating to corruption, a preliminary inquiry may be needed before proceeding against public servants (*P. Sirajuddin vs. State of Madras*²⁵).

However, the inquiry should only be for ascertaining as to whether a cognizable offence has been committed. And if the information is found to be false, there is always an option to prosecute the complainant for filing a false complaint. Therefore, the accused will always have safeguards against false FIRs against him along with lawful protection from illegal and unfounded arrests. It has to be clearly understood that registration of FIR does not straight away lead a person to the four walls of prison or even court, for that matter.

DIRECTIONS:

1. Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later

²⁴ Supra 10

²⁵ (1970) 1 SCC 595

than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:
 - (a) Matrimonial disputes/ family disputes
 - (b) Commercial offences
 - (c) Medical negligence cases
 - (d) Corruption cases
 - (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not of all conditions which may warrant preliminary inquiry.
7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.
8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

CONCLUSION:

Keeping in consideration the elaborate discussion by Supreme Court on the matter of compulsory registration of FIR, it would be pertinent to summarize the same by listing out certain key observations that were made by the Apex Court. They are:

1. *Disclosure of Cognizable Offence* - That it is compulsory for the officer-in-charge of the police station to register an FIR in the FIR book if the information given to him by the informant discloses a commission of cognizable offence.
2. *Registration of FIR does not necessarily lead to arrest* - That compulsory registration of FIR against a person does not automatically mean that the same person has to be necessarily put behind the bars by means of arrest. The legislature has decidedly kept this in mind while drafting the Code and hence one can find many provisions which very fittingly provides for safeguards against arbitrary arrest. Hence, arrest is not the essential consequence of registration of FIR. For example, Section 438 of the Code which deals with Anticipatory Bail.
3. *Prevalence of FIR Book over General Diary* - That the FIR has to be necessarily registered in the FIR book and not just in the General Diary because Section 154 very clearly uses the word 'book' and not 'diary' which is a deviation in respect to the older code of 1861 where the word 'diary' was used. But since the 1872 Code, the word 'book' has been used consistently till the present Code of Criminal Procedure, 1973. It is evident of the fact that the Legislature very obviously intended to record the FIR in the FIR book and not in the General Diary. Also because the FIR book can be relied upon more than the General Diary because of the constant check that is kept over it by the superior authorities. However, the contents of FIR have to be noted in the General Diary for keeping record of the transaction. This may be and is generally recorded in brief or concisely unlike the FIR book.
4. *Consequence of application of discretion* - The permission given to Police to apply discretion in every case could be very detrimental to the society as a whole. This would bring in huge chaos in the social thread for it is a known fact which was also validated by the National Crime Record Bureau (NCRB) that for every 60 lakh cognizable cases that were registered in India during 2010, the suppression of crime by way of non-

reporting may itself be in the range of about 60 lakh every year. It would lead to a 'definite lawlessness' in the society.

5. *Exceptional Cases* - That there will always be exceptional cases like cases of medical negligence, corruption, commercial transaction, matrimonial disputes etc where the veracity of the information becomes an important factor. But that will depend on the facts and circumstances of every case. When there is an obvious non-disclosure of cognizable offence and the stakes involved are very high, the officer-in-charge may conduct a preliminary inquiry only to ascertain the commission of a cognizable offence.

ABOUT CHRI

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. CHRI's objectives are to promote awareness of and adherence to the Harare Commonwealth Declaration, the Universal Declaration of Human Rights, and other internationally recognized human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

The Prison Reform Programme of CHRI is focused on increasing transparency of a traditionally closed system and exposing malpractice. The programme aims to improve prison conditions, reform prison management, enhance accountability and foster an attitude of cooperation between the various agencies of the criminal justice system in place of the prevailing indifference and discrimination. It seeks to achieve its goals through research, legal analysis and advice, advocacy, capacity building, network building and conference facilitation.