

# FIR Its Evidentiary Value, Consequences on Denial By The Police To Lodge

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## First Information Report- Its Evidentiary Value, Consequences on Denial By The Police To Lodge With Its Practical Exposures In Criminal Courts

### Abstract

The standing point of every legal statute is based on the root of ubi jus ibi remedium i.e when there is a right there is a remedy. But priority to get absolute remedy should always be given to those persons who are aware of the laws of the country and not those who are sleeping over it. The current paper emphasizes on the true meaning of First Information Report, its procedural mechanism, misuse of power by the law enforcement agencies in lodging the same and its consequences. Moreover the paper also attempts to reveal the importance of First Information Report and its evidentiary value with relevant provisions governing the same.

### Introduction

Before going to the core discussion of the paper it is important to mention that procedural laws in India is one of the most interesting topics which ultimately supports the substantive part of law in its true implementation.

However the current discussion is based on the consequences on denial by the police to lodge First Information Report and its consequences. As per section 154 of the criminal procedure code[1]we get a clear reflection of the term FIR, but however it is very surprising to say that the word "FIR" being a common parlance could not be traced in the entire criminal procedure code.

### Meaning

What is a an FIR? An FIR is the first mechanism which initiates criminal proceedings to punish the offender. However section 154 of the criminal procedure code states about information as to cognizable offence while section 155[2]talks about information in regard to non-cognizable offence. However thus FIR has been segregated in to two parts:

- 1.FIR in case of cognizable offence
- 2.FIR in case of Non- Cognizable offence

FIR in case of cognizable offence- By virtue of section 154 of criminal procedure code, First Information Report is written by a Police Officer. It is the duty of the state to take the matter in cognizance the commission of a cognizable offence. However the police officials does not possess that expert knowledge to deal with the case immediately and as such the cases demand urgent attention otherwise evidence may get tamper.

The Police official of any concerned police stations has to discharge many responsibilities when registering the case as FIR as regard to filing Panchanama, memorandum of arrest, updating of case diary and the entire investigation is carried down by the investigating officer with the power to arrest any person without an order from a magistrate in relation to this cognizable offences. It is also pertinent to mention that the major duties to be discharged by the law enforcement agencies is confined to section 154 to 173 of the criminal procedure code and the rest of the powers are in the discretion of the court but any how the functions carried out by a police official play a vital role which facilitates a criminal court to render justice.

In the famous land mark case of **D.K Basu vs State of W.B**[3]THE Hon'ble Apex Court has observed that it is the prime duty of the police to deal with the criminals effectively and efficiently and to incorporate those who are involved in the crime. Sometimes it has also appeared that police without judging the fact of the case arrest a person without any

reasonable cause which is a clear violation of Article 21 and 19 of the constitution of India[4]. It has also been recorded in various cases that the police has wrongfully detained the arrestee beyond the period of twenty four hours without producing the same to the nearest magistrate which also a clear violation of Article 22 of the constitution of India.

FIR in case Non-Cognizable offence -It is by virtue of section 155 of the criminal procedure code that any person can lodge a first information report in relation to a non cognizable offence but this section does not empower the police authorities to arrest a person without an order or warrant issued by the magistrate. It is the duty of the police authorities that once an FIR in relation to a non cognizable offence is lodged the police authorities shall without delay convey and transmit the matter with all its relevant records to the nearest magistrate.

However an emerging issues has evolved nowadays that police authorities are denying to take first information report and the victims of such consequences are leading to injustice specially from marginalized sections of the community. Sometimes it looks to be very surprising that police authorities are demanding money to lodge an first information report or to release accused person. In the recent scenario which took place in Hyderabad most probably on July 31, 2018 that Police authorities are demanding money to release "Falsely accused Christians as Christians were arrested for praying in their home". Another rumor which has been heard in the eastern part of the country that West Bengal Police Department demanding a handsome amount of money in order to complete the verification procedure for getting RC book of a car and also harassing the owner. However it seems to overwhelmed us that being trained with all police manuals how the police reacts sometimes in such absurd manner which is not only losing their dignity but also the reliance which we keep on them.

The code of criminal procedure entails that if police authorities denies to take or lodge a matter as first information report then one has a option to send the information to the Superintendent of Police but it is fate to say that whether such information ultimately reaches to his good office or not. However a separate section 156(3) of the criminal procedure code[5]has given a effective right to file a petition before the magistrate for treating the complaint as FIR and also directing the police authorities to lodge the matter and start an investigation which was previously denied by them. It seems to be good that procedural has fulfilled the lacunas otherwise police authorities would have spared but in reality we have to think for a second whether the police officials who are governed by this code are actually abiding and discharging their duties.

### Stages

The criminal procedure code, 1973 have segregated the stages of criminal proceeding in to four parts

1. Investigation
2. Inquiry
3. Trial
4. Judgment

The First power of Investigation is vested on the police authorities and the rest of the three powers are vested on the Magistrate which seems to look as a ratio of 1:3. It is undoubtedly a fact that the magistrate exercise the maximum powers as it has been given by the criminal procedure code. However the entire investigation part covers the journey from FIR to Charge sheet. By virtue of section 156 of the criminal procedure code the police authorities exercise a statutory power. The code has vested enormous power on the statutory authorities for transferring an investigation from one police station to another in the circumstance if found that police authorities has no jurisdiction to look in to the matter or start an investigation. However in **Naresh Kavarchand Khatri vs State of Gujarat & Anr**[6]it was held by the court that the court should not indulge in the matter at a initial stage of the criminal proceedings i.e. investigation.

In **Dharambeshbhai Vasudevbbhai & Ors vs State of Gujarat & Ors** [2009 (7) SCALE 214][7]held that the power of JudicialMagistrate is limited, ordinarily he has no power to recall his order. The Power of the magistrate to make any interference on the statutory power of the investigation of the police is not contemplated under the code of criminal procedure.

However once the First Information Report is registered by the police the investigation procedure commences and the police has to start updating the case diary as prescribed under section 172 of criminal procedure code [8] in connection to the investigation of the offence alleged against any person by the informant.

However the investigation procedure includes recording of statements of the witnesses by the police officer under section 161 of the criminal procedure code [9], search and seizure (sec 100) [10] documents and other relevant extracts, procedure of search, search warrant (sec 93-98) [11], collection of other evidences including scientific evidence, medical evidence etc, examination and other process of investigation, examination and or/ arrest of accused persons.

The procedure of arrest by the police officers has also been one of the most vital part of the investigation. The police authorities are vested with wide powers regarding arrest without warrant by virtue of section 41 of CrPc [12] in connection to any cognizable offence or against whom a reasonable complaint has been or credible information has been received or a reasonable suspicion exist that such person has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine. It is the sole responsibility upon the police officials to arrest for the purpose to prevent such person from committing any further offence or for proper investigation of the offence if there is an apprehension exist that release of the accused may tend to tamper of evidences.

## Consequences On Denial To Lodge First Information Report

Sometimes it is very common to hear that the police authorities refusing to lodge first information report on the basis of the information given by informant and as such it makes a bit tough for the person to take the appropriate resort. Technology has developed over years with lodging of FIR by means of email and other electronic mechanisms in relation to cases of cyber related crimes involving facebook related issues, sending of offensive messages, but still India is a country comprising majority of illiterate and lay persons who are not aware of all this first mechanisms and thus are the victims of the consequences.

This persons being unaware of the facts revolve round the police stations to seek the justice but keeping in mind the ultimate resort which can give justice is the judiciary. It is not possible always to hire the best legal brain for filing a complaint before the magistrate because this requires huge amount of expenses for filing a complaint, court fees and the expenses to be incurred for the advocates per date wise thus it becomes a huge controversial issue and similarly on the other hand the system of free legal aid services are very much inoperative and justice is thus deprived for those particular sections of the society.

However getting back towards the practical discussion denial by the police to take a matter as FIR may be the result of various reasons as it is heard that investigation officers demanding huge sum for taking up a matter as FIR, inducing by wrong promises that in the event if the sum is not paid then false charges may be filed in the charge sheet.

However be it mentioned here that section 154(3) of the criminal procedure code [13] is sometimes felt like useless provisions as the superintendent of police does not look in to the matter which is denied by the police authorities subordinate to him, neither the information reaches to him nor he investigates it and as such it is fruitless but the information sent to the superintendent of police via registered acknowledgment due is a valuable piece of evidence to lodge a petition before the nearest judicial magistrates under section 156(3) criminal procedure code to treat the complaint/information as FIR and also directing the same police officials to take up the matter as FIR as expedient as possible but still it is felt that it is sarcastic that how the informant/victim is harassed not only by delay of time but also the mental agony which has been suffered in the due course of time. However being a legal thinker I feel that this latches should be covered up by some stringent laws so that such victim would get the right platform at the first instance to make a way out.

Once the FIR is registered a police case number is incorporated which is the first mode to start an investigation in

relation to cognizable and non cognizable offences and it is a mandate under the criminal procedure code to prepare a pre-investigation report within twenty four hours from the time of registering FIR. If the accused is arrested then such accused shall be produced before the nearest judicial magistrate within that period.

However certain limitations to the powers of the police officials has also been incorporated under the criminal procedure code by virtue of section 41A CrPc [14] regarding issuance of notice to the accused person directing the person against whom a reasonable complaint has been lodged or any suspicion exist, this serving of notice has been made mandatory in the event if the police thinks that the arrest is not imminent and expedient in connection to the alleged complaint, this gives a opportunity to the accused to cooperate with the investigation agencies. It is also important to mention that the procedure of arrest and duties of the police officials while making the arrest are exclusively stipulated under section 41B CrPc [15] and non-compliance of the said provisions by the police officials may attract show cause by the concerned court, the duties related to the arresting a female has also been strictly adhered under the procedure code to be conducted by a female police official within the time limit mentioned.

A memorandum of arrest shall also be prepared by the police officials to conduct the arrest and the rights of the accused shall also be forthwith informed by the police officials which is a fundamental principle of natural justice to ensure that free and fair trial in criminal courts. In *Niranjan Singh v state of U.P.* [16] it has been held that investigation is just a key which gives birth to the rest of the stages of the criminal proceedings. In *State of Bihar vs J.A.C Saldanha* [17] it was held by the court that the investigation powers is the sole field exclusively reserved for the executive in the police department.

## Evidentiary Value of First Information Report

The evidentiary value of First Information Report can be justified from the point of statements made to the police officials under three categories -:

- a. The statement which has been given and recorded as FIR.
- b. Statement Recorded under section 161 of criminal procedure code.
- c. Statement recorded other than the first two ways.

However neither these three categories of statements can be regarded as a substantive piece of evidence as because it was not made or recorded before a magistrate in trial or was not made on oath nor it was tested by cross examination. However such statements can be used to corroborate or to contradict his testimony as per the provisions of Indian Evidence Act, 1872 if the person making it subsequently appears and gives such evidence in court at the time of trial. As per section 157 of the Indian Evidence Act, 1872 [18] "In order to corroborate the testimony of a witness, any former statement made by such a witness relating to the same fact, at or about the time when the offence took place, or before any authority legally competent to investigate the fact may be proved." Further section 145 of the same act provides, "A witness may be cross-examined as to the previous statements made by him in writing or reduced in to writing and relevant to matters in question, without such writing being shown to him or being proved, but if it is intended to contradict him by the writing his attention must, before writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

It is thus by virtue of the above mentioned provisions the statements recorded in the FIR can be used to corroborate the informant and thus is not a substantive evidence. It is the first version of a criminal case as duly recorded by the police and thus statements which form the contents of the FIR naturally carry a weight. It is thus used as a previous statement for the purpose of either corroborating its makers or contradicting him. However it is also true that FIR has been treated as Dying Declaration as entailed under section 32 of the Indian Evidence Act, 1872 [19] as if the victim himself gives his last statement to the police which is recorded as FIR and subsequently after a day he expires then what may be the status of FIR from the footings of Indian Evidence Act, 1872.

In **Barati vs State of U. P.**, 1974 AIR 839, 1974 SCR (3) 570 [20], it was held that "it is not justifiable to discard the dying declaration made by the appellant to the police sub-inspector, and where the trial Court was wrong in rejecting the dying

declaration to the police (F.I.R.) on the ground that the deceased had stated to the doctor that he had become unconscious after the occurrence. There was nothing in the statement recorded by the doctor to indicate that the deceased remained unconscious for a long time and as such was not in position to lodge the F.I.R. The fact that the language used in the dying declaration made to the doctor was rather chaste would not go to show that the said statement could not have been made by the deceased. As to the language used in the dying declaration there is nothing abnormal or unusual in the same person using colloquial language while talking to one person and using refined language while talking to another person.

## Remedies available against Such Refusal To Lodge FIR

There are various remedies available against such law enforcement agencies who denies to lodge First Information Reports in connection to a crime. A writ petition in the nature of mandamus may be filed before respective High Court against such law enforcement agencies, inter alia, to register the FIR and also directing him to show cause the reasons for not filing.. In the famous Lalita Kumari Case it was held by the apex court that police must register FIR if the information disclose a cognizable offence. A contempt petition can also be filed before the High Court against the officer who refused to register the matter as FIR. The point of jurisdiction as a ground for refusal may attract imprisonment for the police officials for one year.

## Conclusion

Police officials are required to discharge their duties diligently as per the police manuals and regulations governed by the respective state governments. Misuse of power by the police officials will not only hamper the dignity and respect of the police departments but also may corrupt the entire administrative and judiciary functions beside society will also loose faith and reliance on the enforcement agencies. As society keeps reliance on the police departments as a means of first instrument for initiation of criminal proceedings if they diligently perform their duties then it may lead to proper set up of a criminal motion by arresting the offenders who actually infringe the law and by punishing them for a means of transformation.

## References

### Books

- i. Criminal Procedure Code, 1973 ( Criminal Manual).
- ii. Criminal Procedure Code, 1973 Bare Act (New Delhi :Universal Law Publication) 2017
- iii. Constitution of India ( Allahabad Law Agency), 2000

### Case Laws

1. D.K Basu vs State of West Bengal (1997) 1 SCC 416
2. Naresh Kavarchand Khatri vs State of Gujarat & Anr
3. Dharambeshbhai Vasudevbbhai & Ors vs State of Gujarat& Ors [ 2009 (7) Scale 214}
4. Niranjn Singh vsState of Utttar Pradesh
5. State of Bihar vs J.A.C Saldanha
6. Barati vs state of U.P, 1974 AIR 839, 1974 SCR (3) 570

### End-Notes

- [1] Section 154 criminal procedure code, 1973
- [2] Section 155 criminal procedure code, 1973
- [3] D.K Basu vs State of West Bengal
- [4] Article 19 and 21 of Constitution of India
- [5] Section 156(3) criminal procedure code
- [6] Narseh Kavarchand kahatri vs State of Gujarat & Anr
- [7] Dharambeshbhai Vasudevbbhai & Ors vs State of Gujarat& Ors [ 2009 (7) Scale 214}
- [8] Section 172 Criminal Procedure Code
- [9] Section 161 criminal procedure code
- [10] Section 100 criminal procedure code, 1973
- [11] Section 93-98 of criminal procedure code
- [12] Section 41 of criminal procedure code
- [13] Section 154(3) of criminal procedure code
- [14] Section 41 A Criminal Procedure Code
- [15] Section 41B of Criminal Procedure Code
- [16] Niranjn Singh vs State of Utttar Pradesh
- [17] State of Bihar vs J.A.C Saldanha
- [18] Section 157 oF Indian Evidence Act, 1872
- [19] Section 32 ofIndian Evidence Act
- [20] Barati vs state of U.P, 1974 AIR 839, 1974 SCR (3) 570