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Case Comment: Lalita Kumari vs Govt. of UP and Ors.

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INTRODUCTION

The Supreme Court of India made a landmark judgement involving a five-judge panel in the midst of the Rafael case. When a cognitive offence is committed under Section 154 of the CRPC, 1973, the police must file a FIR, according to the five-judge panel. In Lalita Kumari vs. Government of Uttar Pradesh & Ors., the Supreme Court Section 154 of the Criminal Procedure Code requires the registration of a FIR if the information shows the commission of a cognizable offence, and no preliminary inquiry is permissible in such a situation except in limited situations.

Section 154 CrPC: Information of cognizable cases provides the informant the option of providing information verbally or in writing if the information is provided verbally, the report must be converted to writing by the police officer or under his supervision. The informant must be read the report.[1]

ISSUES

[1] Criminal Procedure Code 1973, s 154

The crucial question in the referenced case is whether "a police officer is required to file a First Information Report (FIR) upon obtaining information." or if the police have the power to take the preliminary inquiry for the same.

FACTS

A writ petition under Article 32 is filed by the plaintiff named Bhola Kamat in order to get a writ of habeas corpus or directions whose daughter who was a minor was missing for more than 24 hours and was suspected to be kidnapped. The said case mentions that no action was taken by the police officer present on duty even after filing the FIR against the chief suspects. The FIR was filed after the superintendent was moved but still no actions were taken to find the petitioner's daughter and Bhola Kamat was also ordered to pay a monetary sum to cover the costs of the investigation. In the case of Lalita Kumari, the order was passed by the court on 14/July/2008 showing its great anguish on not filling the case and not taking strict action for it even if it was a cognizable offence.[2]

ARGUMENT FROM THE SIDE OF THE PETITIONER

According to the petitioner's counsel, the person in charge of the task is required to lodge a FIR for any cognizable case or offence without completing an investigation under the Code of Criminal Procedure, Section 154. Mr. Upadhyay and many other learned solicitors argued that Section 154(1) of the Code simply specifies "information" without prefixing terms like "reasonable" or "credible," citing Supreme Court decisions such as "State of Haryana v. Bhajan Lal, Ramesh Kumari v. State (NCT of Delhi), and Parkash Singh Badal v. State of Punjab".Section 156(3) of the Code requires registration prior to the investigation of the problem. The word "shall" in section 154 suggests that FIR registration is necessary. He contended that section 154 of the Act contains no implicit responsibility for preliminary inquiry, and therefore the police officer has no choice. He relied heavily on the following rulings to back up his claims: "Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee, Godhra, B. Premanand v. MohanKoikal, Hiralal Rattanlal v. State of U.P., and

[2] Harish Choudhary, 'Lalita Kumari v. Govt of Uttar Pradesh: touching upon untouched issues' [2013] PL 100

Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee, Godhra". In other words, the information's reasonability' or 'credibility' is not a need for launching a case. With the exception of the concept of preliminary inquiry is foreign to the criminal justice system, as is the Prevention of Corruption Act and the offence to be probed by the Central Bureau of Inquiry (CBI).

ARGUMENT FROM THE SIDE OF THE RESPONDENT

Because no administrative act can ever be mechanical, the respondent argued that filing a FIR is an administrative act that demands one's thought, inspection, and verification of facts. He cited "Rajinder Singh Katoch, P. Sirajuddin v. State of Madras, State of U.P. v. Bhagwant Kishore Joshi, and Sevi v. State of T.N.," all of them maintain that a police officer may conduct a preliminary inquiry before filing a FIR under Section 154 of the Code to assess whether there is a prima facie case of a cognizable offence or not. The term "must" in Section 154(6) of the Criminal Procedure Code, according to the respondent, does not always imply a lack of discretion. In fraudulent cases, the FIR would be rendered useless and would become a dead letter. The police officer will then file a final report with the Magistrate. Furthermore, the report is not required prior to the start of a criminal investigation for the purpose of gathering and documenting information. A preliminary investigation into a case of medical malpractice was demonstrated. A crime does not go unnoticed or unpunished simply because a FIR was not filed.

Registration of FIR and the crime did not bring attention to are not directly related. These are usually understood to be going hand in hand but this is not the case. Coming to the point of the preliminary inquiry, the lack of it can result in unaccountability and an autocratic way of dealing with cases at hand. Articles 14 and 22 in the Indian Constitution require the police officer to mandatorily protect the innocent since everyone is innocent until proven guilty. Nobody deserves to be ill-treated because of allegations that have not even been proven and that is where preliminary inquiries serve a purpose.

JUDGEMENT OF THE SUPREME COURT

SC thoroughly examined different decisions issued by the Court. We readily detect different judicial views of the Court on the essential issue: whether, under Section 154 code of Criminal Procedure, when a cognizable offence is committed and reported to a police officer, it is mandatory for an FIR to be registered and a complaint to be logged in the records of the police station. In case of information not being satisfactory for the officer to believe it to be a cognizable offence, a preliminary investigation shall be initiated to conclude whether it is a cognizable offence, and an FIR shall be registered on the basis of the investigation. It is mandatory for a police officer to register an FIR in case of a cognizable offence; actions shall be taken against him if he fails to discharge his duties.[3]

COMMENT

While providing with the judgement in Lalita Kumari case Supreme Court stated that FIR is mandatory for the cognizable offence and ruling against some of their own cases like "P. Sirajuddin vs. State of Madras, Sevi vs. State of Tamil Nadu, Shashikant vs. Central Bureau of Investigation, and Rajinder Singh Katoch vs. Chandigarh Administration" which states that police officer in charge is not obligated to file an FIR mandatorily in the cognizable offence. Similarly in the case of state of Karnataka Lokayukta vs. M.R. Hiremath where Supreme Court stated that preliminary enquiry by the police officer in charge is permissible. The officer should not act under any assumptions and should carry enquiry in a manner to find the full and proper inference. The purpose of this enquiry is to make sure that the case is cognizable under section 154 of the criminal procedure code and the FIR can be lodged on the basis of the information provided with the officer.

There also some issues to be looked upon like:

- The increase in the number of fake cases in India is leading to a low rate of conviction and harassment of innocent individuals.

[3] *Lalita Kumari v Government of UP & Ors* (2008) 7 SCC 164

- As there is a rise in the number of fake cases, making it mandatory for an FIR to be registered may be a violation of the rights of the accused and thus an investigation should be initiated to find out whether the offence is a cognizable offence and an FIR should be lodged on the basis of the inquiry.
- There should be a time frame and set of rules for officials to be followed for the inquiry to be concluded to examine the authenticity of the case.
- The investigation must involve instructions and orders of a Magistrate to establish a fair and speedy inquiry without giving the police officials the sole authority of the investigation.[4]

CONCLUSION

To sum up the case comment, we cannot overlook the fact that most of the Criminal offences in India go unregistered and no complaint is filed against them. In such a situation, if registering of FIR is made non-mandatory the conditions may worsen resulting in even less accountability of such cases. It may lead to uncertainty of the legal procedures and would be contradictory to the constitutional norms. Making registration of FIR non-mandatory would give the police judicial powers which would go against the "Rule of Law" and thus a provision cannot be made disparaging in nature just because it may be abused.

SUGGESTIONS

The following are some recommendations for lodging a FIR and dealing with the issues related:

- To protect an individual's personal liberty, the judiciary should focus on the aspects of arrest rather than the filing of a police report.
- If the FIR is determined to be false or malicious after an investigation utilizing acceptable processes, senior police officers may be permitted to quash it.

[4] *Lalita Kumari v Government of UP and Ors* AIR 2012 SC 1515

- Only after an investigation should copies of the FIR be given to the Special Prosecutor and the District Magistrate. The traditional way of functioning can be discontinued.
- A copy of the pre-investigation report should be sent to the complainant.
- With appropriate assurances, online FIR registration can potentially be investigated.
- The Police officials should be given the discretionary power to examine if the complaint filed is reasonable and the information provided is reliable to avoid the filing of fake cases and FIRs.