Kuldip Singh Vs. State

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Judge : S.C. Jain and; Y.K. Sabharwal, JJ.

Appeal No. : Cri. Writ 506 of 1990

Appellant : Kuldip Singh

Respondent : State

Advocate for Def. : Mr. P. S. Sharma, Standing Counsel ; Mr. D. R. Sethi, Adv.

Advocate for Pet/Ap. : Mr. S.K. Aggarwal, Adv

Judgement :

Y.K. Sabharwal, J.

1. A telegram received from under-trial Kuldip Singh who was confined in Central Jail, Delhi, was treated as a writ petition which is being disposed of by this judgment. The telegram bears the stamp of Telegraph office dated 9th October, 1990. It has been, inter alia, alleged in the telegram that on 5th October, 1990 Deputy Superintendent of Jail No. 4 Sh. Garg who was having old enmity against Kuldip Singh gave ruthless beatings, with rods and dandas and Kuldip Singh

received severe injuries all over the body; the said injuries were grevious; he was left unconscious; the medical aid was provided to him and that his life was in danger. Alleging in the telegram that no report was registered by the Police, directions have been sought for registration of a case against Garg and his associates. The telegram purports to have been sent by Kuldip Singh through Satnam Singh.

2. By orders dated 17th October, 1990 while issuing notice to respondents to show cause why the petition shall not be admitted directions were issued to Jail Superintendent to provide all necessary aid to Kuldip Singh and to also get him examined by the Medical Officer.

3. In reply two affidavits were filed, one by Darshanlal Sharma. Deputy Superintendent, Central Jail No. 1 and other by Ved Prakash Garg, Deputy Superintendent Jail No. 4.

4. In his affidavit Darshanlal Sharma stated, inter alia, that on 5th October, 1990 there was organized attempt of escape from the prison and force was used to foil the said attempt of escape. Garg in his affidavit stated, inter alia, that he was called by senior officers to assist the authorities in controlling violence in jail on 5th October, 1990 and denied the allegations of beating the petitioner.

5. The Bench, on 20th November, 1990, after giving personal hearing to Kuldip Singh and on not being satisfied with the Explanationn offered in the affidavits directed the Sessions Judge to conduct an enquiry and submit a report to this Court. As Kuldip Singh complained of a possible fracture in his right hand and denial of proper treatment, the Bench directed the Jail Superintendent to send him immediately to Orthopedic Surgeon so that he gets proper treatment. It is not clear from the record whether the direction in regard to sending the petitioner to Orthopedic Surgeon were complied with or not but for the present purpose that aspect is not of much relevance.

6. Pursuant to the aforesaid directions and after taking into consideration the statements of various persons recorded during course of enquiry and also documents produced, the enquiry report dated 9th January, 1991 was submitted

by Sh. J. P. Singh, learned Additional District and Sessions Judge. In the report the learned Judge has found, inter alia, that Kuldip Singh was given beatings with rods, pipes and lathis by Ved Prakash Garg and his associates, he was dragged out from the Cell and on being satisfied that he had died they left. Kuldip Singh, however, survived and sent the complaint.

7. After the receipt of report from Sh. J. P. Singh opportunity was again afforded to respondents to file the replies. The Jail Superintendent Sh. Akash Mahapatra submitted his affidavit and stated, inter alia, that in the incident dated 5th October, 1990, in view of alarming situation minimum force was used to quell the riots and jail break attempt in which 41 prisoners of Ward No. 2 itself and 110 more prisoners from other Wards were injured and they were duly forwarded to outside hospitals for treatment by a team of medical doctors. At the relevant time Kuldip Singh was confined in Cell No. 4 of Ward No. 2 in Central Jail No. 1. Mahapatra says that Kuldip Singh was one of the persons participating in the riots and attempt to jail break along with many others of that Ward.

8. The affidavit of Garg has given certain details in respect of the incident dated 5th October 1990, Garg says :-

'That on 5-10-1990 there was a preplanned and a serious attempt by a large number of prisoners for jail break in Central Jail No. 1. The gates and the walls of all the wards were demolished by the prisoners by using gas cylinders and iron rods. They also broke up the locks of the various wards. The women prisoners were dragged out of their wards/cells by breaking the locks and were taken to Ward No. 2 by the prisoners where the petitioner was lodged. Many prisoners got on to the roof tops, and started throwing the bottles looted from the dispensary of Jail No. 1 on the staff so that the entry of the staff is not permitted inside the ward and in the meanwhile they could demolish the walls. The blankets soaked in cooking medium were set ablaze and L.P.G. cylinders were brought in Ward No. 2 where the petitioner was lodged to demolish the last security wall in order to escape. About 150 prisoners were injured. Ten prisoners were killed in the action taken by jail administration. Ward No. 2 of Jail No. 1 consist of two barracks and thirty cells in two rows of 15 cells each. There were about 140 inmates in this ward

and 41 prisoners received injuries. The deponent was also called to help the administration in controlling the situation.'

9. The Lt. Governor of Delhi by notification dated 9th October, 1990 ordered an enquiry to be conducted by Sh. A. K. Banerjee regarding the riots which took place in jail on 5th October, 1990 resulting in death of 10 prisoners and injuries to several others. The terms of reference were :-

(A) To enquire into the cause and significance of the incident of rioting that took place in the Tihar Jail Complex on 5th October, 1990;

(B) To examine the promptness, propriety and adequacy of response of the Jail authorities/Security personnel in tackling the situation; and

(C) To suggest measures so as to avoid recurrence of such incidents in future and to examine effective handling of the situation should any such incident occurred.

10. Garg in his affidavit has set out various grounds and reasons why the report of Sh. J. P. Singh be not accepted and says that the said report is based on no evidence and is bad in law. Garg also says in that affidavit that in view of the fact that an enquiry is being conducted by Mr. Banerjee and the proceedings of the said enquiry are under progress no action is called for on the report of Sh. J. P. Singh. The affidavits of Mahapatra and Garg were filed on 20th March, 1991.

11. A copy of enquiry report dated 31st March, 1991 made by Sh. Banerjee has been placed on our record.

12. The main question which requires determination in this petition is whether on the allegations made by the petitioner directions should be issued or not for registration of the case and its investigation in accordance with provisions of Code of Criminal Procedure (for short the Code).

13. Mr. S. K. Aggarwal, learned counsel for the petitioner, has vehemently contended that the information in the telegram discloses commission of cognizable offences and directions may be issued for registration of a case under section 154 of the Code, and for its expeditious investigation in accordance with law,

particularly, when a Judicial Officer appointed by this Court has found that Kuldip Singh was given merciless beating by Garg and his associates. It is urged by learned counsel that on receipt of information regarding commission of cognizable offence it is not permissible for the police authorities to defer the registration of the case and first hold an enquiry and depending upon the result of the enquiry to decide whether to register the case or not.

14. On the other hand, Mr. D. R. Sethi, has very emphatically contended that the report of Sh. J. P. Singh is liable to be rejected on account of various infirmities. According to learned counsel the registration of the case against a Government servant or a member of the Force and for that matter against any person has serious consequences and the registration may by itself do irreparable and incalculable harm to the person against whom the case is registered. It has been vehemently urged that the registration of case may mar the entire career of the officials and is likely to demoralise the entire service. Mr. Sethi pointed out that for the services rendered in controlling the riots on 5th October, 1990, Garg has been recommended reward and if registration of the case is ordered it would do incalculable harm to him. According to Mr. Sethi, it is permissible for the police authorities to embark upon a preliminary enquiry before registration of a case. Learned counsel contended that Code does not forbid the holding of such an enquiry and withholding registration of case pending the enquiry though it may not be necessary to hold enquiry in every case.

15. Both learned counsel in support of their respective contentions in regard to law as to the registration of the case have relied upon the pronouncement of the Supreme Court in Bhajan Lal's case. We would advert to that pronouncement a little later. We may first notice briefly the infirmities in the report of Sh. J. P. Singh as pointed out by Mr. Sethi.

16. It was pointed out that in the statement of the petitioner recorded during enquiry he disclosed that three persons, namely, Satnam Singh, Meharban Singh and Shyam Singh came to meet him in mulakat on 8th October, 1990 and he requested them to send telegram to this Court, Lt. Governor and the Home Minister bringing it to their notice as to what had happened to him on 5th October,

1990. Learned counsel pointed out that as per the record of Jail (Annexure R-A) none of these persons came to meet Kuldip Singh on 8th October, 1990 and only one Mangal Singh mentioned as brother of Kuldip Singh came to meet him. It has been further pointed out that there are two discharge summaries on the record of the enquiry and though both the discharge summaries relate to person named Kuldip Singh but a perusal thereof makes it abundantly clear that the two discharge summaries relate to two different persons, one relates to petitioner - Kuldip Singh and the second to a different person named Kuldip Singh Sarma. That seems to be so. The Seriall number of two MLCs are different, the entries mentioned in the said summaries are different, one Kuldip Singh is shown to be aged 44 years and the other aged 32 years. Mr. Aggarwal did not dispute these facts. Mr. Sethi further pointed out that Kuldip Singh was sent for medical examination under orders of Sh. J. P. Singh on 15-12-90 and opinion of doctor on 19th December, 1990 as many as 19 injuries. The duration of the injuries is stated to be at least three-six weeks old. Mr. Sethi contended that even six weeks would not relate back the injuries to the date of incident i.e. 5th October, 1990, the date of examination being 15th December, 1990. According to learned counsel the use of the word 'at least' in the opinion of the doctor is superfluous and should be ignored as the doctor is required to give a definite opinion and, thereforee, no reliance shall be placed on the use of the word 'at least' while describing the duration of injuries. It was also submitted thus Satnam Singh who purports to have sent the telegram on behalf of the petitioner is not his brother but was a former Jail Warder who had enmity and grudge against Garg. It was contended that about 150 persons were sent to Ram Manohar Lohia hospital on 5th October, 1990 and out of them about 41 persons including the petitioner and Kuldip Singh Sarma were from Ward No. 2 who had also receive injuries during the attempt made to curb violence and foil the attempt to escape from the jail and no one else had made a reverence that he had been given beating and they had obviously received injuries during attempt to escape from jail. Mr. Sethi further content led that in view of extraordinary happenings of 5th October, 1990 a number of dignitaries including the Lt. Governor of Delhi had visited the Jail and to none of them any complaint was made by the petitioner.

17. The aforesaid submissions were made to buttress the argument that, injuries were received by Kuldip Singh when he along with others were trying to escape from jail and when attempts were made to control it and not on account of any alleged beating having been given to him by Garg or any of his associates. Reference was also made by Mr. Sethi to the report of Banerjee Committee to show the steps taken by the Jail authorities to curb violence to control the fire and foil the attempt of prisoners to escape from jail.

18. Mr. Aggarwal, on the other hand, strongly supported the report of Sh. J. P. Singh and contended that various jail inmates had deposed in favor of the stand of the petitioner before Sh. Singh and also took us thought the Banerjee Committee report to show the finding about corruption and other malpractices being indulged in jail and severe strictures having been passed against the inaction of the Jail authorities. Pointing out that the petitioner was not represented before Sh. J. P. Singh and assuming the report was not correct on certain aspects. Mr. Aggarwal contended that these aspects are not relevant for the present purpose and so also the question as to how persons other than Kuldip Singh received injuries. Counsel contended that even without report of Sh. Singh registration of case should have been ordered and now when the report finds Garg etc. prima facie guilty, there is no justification for police in not registering the case.

19. We may also notice that during the course of the arguments certified copy of an application dated 8th October, 1993 which had been filed in the Court of learned Additional Sessions Judge before whom the case was pending against Kuldip Singh under section 21 of the N.D.P.S. Act was filed as also the orders passed by the Judge on the said application. That application had been filed on behalf of Kuldip Singh by Satnam Singh claiming to be his cousin brother. It has been alleged in that application that Kuldip Singh told Satnam Singh when he went to meet him that on 5th October, 1990 Garg accompanied by 5/6 persons gave him severe beatings with iron rods, pipes and dandas because of previous enmity between Garg and Kuldip Singh. A copy of the letter dated 7th October, 1990 written by Kuldip Singh to Lt. Governor was also annexed with that application. That letter also states about beatings etc. having been given by Garg and others to Kuldip Singh. On that application a report was called from Superintendent, Jail,

who it seems reported that necessary treatment was being given to Kuldip Singh. On consideration of the said report on 10th October, 1990 production warrants for Kuldip Singh were issued by learned Additional Sessions Judge. The order dated 12th October, 1990 passed by learned Judge shows that both hands of Kuldip Singh were under plaster and he had stitches on his head. The learned Sessions Judge ordered that since Kuldip Singh was being given medicines as per the advise of the doctor of Ram Manohar Lohia Hospital no further orders were called on the application in which the prayer was for directions being issued to Jail Superintendent to get Kuldip Singh medically treated/examined in All India Institute of Medical Sciences or any other Government hospital.

20. Kuldip Singh on 5th October, 1990 was confined in Cell No. 4 of Ward No. 2 of Jail No. 1. There is no doubt that on that date Kuldip Singh did receive certain injuries. What were those injuries How the injuries were sustained Who inflicted the said injuries May be the injuries were sustained as pleaded by the Jail Officials May be the injuries were sustained as being alleged by the petitioner

21. The aforesaid questions cannot be appropriately decided in a writ petition. It may be that some facts have not been correctly stated in the report of Sh. J. P. Singh but, at the same time, it cannot be disputed that since at least from 8th October, 1990 Kuldip Singh is alleging that the injuries were inflicted on him by Garg and his associates. It is also possible that certain infirmities pointed out by Mr. Sethi in the report of Mr. J. P. Singh crept in inadvertently because of the fact that the parties were not represented. We do not wish to say much on these aspects of the report of Sh. J. P. Singh as any observation by us may prejudice either the complainant Kuldip Singh or the persons against whom the allegations have been made by him. Suffice it to say that neither on the basis of the material on record it is possible to return a finding in these proceedings that Kuldip Singh sustained injuries during attempts of jail officials to curb violence and foil an attempt of jail escape nor is it possible to hold that the said injuries were sustained in the manner alleged by the petitioner nor is it the scope of the present writ petition to enter into and adjudicate upon these factual matters. We also feel that when an enquiry of this nature is conducted under the directions by this Court, ordinarily, the report is liable to be accepted as such inquiry is ordered to facilitate

this Court to form a prima facie opinion and the type of criticism leveled against the report by Mr. Sethi, is not permissible. We do not think that it is a case where we should depart from that normal and ordinary course and instead delve upon the merit and adjudicate upon the disputed facts and return a finding in regard to guilt or innocence of jail officials.

22. Bearing in mind the aforesaid factual aspects of the case we would now examine the legal propositions urged by counsel for the parties on the scope of Section 154 of the Code in regard to the duties of the Police to register the case.

23. Section 154(1) of the Code mandates that every information relating to the commission of a cognizable offence given to an officer in charge of a Police Station should be entered in a book to be kept by such officer in such form as the State Government may prescribe. That form is commonly called as the First Information Report. The act of entering the information in the said form is known as registration of a crime or a case.

24. In support of the contention that on information relating to commission of cognizable offence being given to the officer in charge of the Police Station he has a statutory duty to register the case and the Police before registration of the case cannot embark upon an enquiry to find out whether the information is reliable, genuine or otherwise and refuse to register, the case on that ground, Mr. Aggarwal has placed strong reliance on the following observations made in the case of State of Haryana v. Ch. Bhajan Lal, : 1992 CriLJ527 :

'32. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police

officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context. In case, an officer in charge of a police station refuses to exercise the jurisdiction vested on him and to register a case on the information of a cognizable offence, reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3), of Section 154 of the Code.

33. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression information 'without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, 'reasonable complaint' and 'credible information' are used. Evidently, the non-qualification of the word 'information' in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, reasonableness or credibility of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word 'information' without qualifying the said word Section 139 of the Code of Criminal Procedure of 1861 (Act XXV of 1861) passed by the Legislative Council of India read that every complaint or information preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act X of 1872) which thereafter read that every complaint' preferred to an officer in charge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1955 which word is now used in Sections 154, 155, 157 and 190 of the present Code of 1973 (Act 11 of 1974). An

overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a First Information Report is that there must be an information and that information must disclose a cognizable offence.

34. It is, thereforee, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.'

25. It is thus clear that the police has under section 154(1) of the Code a statutory duty to register a cognizable offence. After registration of the case under Section 154(1), the commencement of investigation is within the exclusive domain of police and the courts have no power to stifle the investigation so long as it proceeds in compliance with the provisions relating to investigation. It is only when the police officer decides not to investigate in exercise of power under provisos (a) and (b) of Section 157(1) the Magistrate can direct investigation. If the police officer has reason to suspect the commission of a cognizable offence, he has to proceed with the investigation or cause it to be proceeded with by his subordinate. It is, however, not necessary to commence investigation in every case where First Information Report has been registered. Clause (b) of proviso to Section 157(1) mandates a police officer not to investigate a case where it appears to him that there are no sufficient grounds for commencing an investigation.

26. Can a Police Officer withhold the registration of a case and start an enquiry to find out whether the information disclosing commission of cognizable offence is reliable, genuine or otherwise and later refuse to register a case on the ground that the enquiry has shown that the information is not genuine, reliable or credible. Mr. Sethi vehemently contended that in Bhajan Lal's case the Supreme Court has held that it is permissible for a Police officer to make preliminary enquiry before registering a case and has relied upon the following observations from the said decision :-

'82. In this connection, it will be appropriate to recall the views expressed by Mitter, J. in Sirajuddin v. State of Madras : 1971 CriLJ523 in the following words :-

'Before a public servant whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person specially one who like the appellant occupied the top position in a department, even if baseless, would do in-calculable harm not only to the officer in particular but to the department he belonged to, in general ..... The means adopted no less than the end to be achieved must be impeccable.'

83. Mudholkar, J. in a separate judgment in the State of Uttar Pradesh v. Bhagwant Kishore Joshi, : 1964 CriLJ140 while agreeing with the conclusion of Subba Rao, J. (as he then was) has expressed has opinion stating :

'In the absence of any prohibition in the Code, express or implied, I am of opinion that it is open to a police officer to make preliminary enquiries before registering an offence and making a full scale investigation into it.' 84. We are in agreement with the views, expressed by Mitter J. and Mudholkar, J. in the above two decisions.'

27. Reliance has also been placed by Mr. Sethi on the decisions of the Supreme Court in the case of Sirajuddin v. State of Madras, : 1971 CriLJ523 and in the case of the State of Uttar Pradesh v. Bhagwant Kishore Joshi, : 1964 CriLJ140 noticed by the Supreme Court in the aforequoted passages. In these decisions while dealing with the cases of public servant under Prevention of Corruption Act the Supreme Court held that before registering a case against a public servant which may do incalculable harm not only to him but also to the department he belongs to, the holding of preliminary enquiry before going ahead with the registration of the offence leading to a full scale investigation under Chapter XII of the Code is permissible. In the present case, we are not concerned with such eventuality. In the cited decisions, the Supreme Court has not held that when an information about commission of cognizable offence is given to an officer in charge of a Police Station he can withhold registration of a case and embark upon an enquiry and refuse registration as a result of the said enquiry. Many offences are non-cognizable. Many are cognizable. The acceptance of contention of Mr. Sethi would

mean that on receipt of information about commission of cognizable offence a police officer may embark upon an enquiry and refuse registration of a case on the ground that as enquiry shows commission of a non-cognizable offence or it shows that the information is not genuine. That does not appear to be the law as pronounced by Supreme Court in Bhajan Lal's case. Mr. Sethi gave various examples to support his submission that incalculable harm may be done to a person on registration of a case based on unreliable and incredible information given to the police and submitted that every day cases purely of civil nature between landlord-tenant, between husband and wife and against police officers are coming to notice where information/complaint about the commission of a cognizable offence is laid before a Police officer with a view to wreck vengeance against the person against whom such allegations are made. We may notice that as regards public servants, the provisions of Section 197 of the Code and Section 19 of Prevention of Corruption Act, 1988, provide ample safeguards as cognizance of offence in those cases cannot be taken by court without previous sanction of the government. It was also pointed out that these informations are generally written/drafted under the legal advise and thus it is ensured that the information contains the necessary ingredients of law making it a cognizable offence. That may be so but in such cases the police is not helpless. Where information itself does not disclose commission of cognizable offence no duty is cast upon the police to register the case. If the information is vague, the police can say that information does not disclose commission of offence and thus registration of case may be refused or withheld and in the meantime a preliminary enquiry may be held to find out about the commission of a cognizable offence. In other cases of the nature pointed out by Mr. Sethi where care is taken to see that the information contains all ingredients of commission of cognizable offence, the police officer after registration of the case, if there is no reason to suspect the commission of an offence, may not proceed with the investigation but in that eventuality the requirements of Sections 157 to 159 of the Code will have to be complied with. The person deliberately laying wrong information before the Police may also subject himself to prosecution under the various provisions of the penal law. We also cannot shut our eyes from the other side of the picture presented before us forcefully by Sh. Aggarwal that even in genuine cases the Police refuses to

register the crime. Various such cases have also come to our notice where the Police refuses to register the crime.

28. Mr. Sethi also contended that the principal question before the Supreme Court in Bhajan Lal's case was not as to in which cases the FIR should be registered but was whether the decision of the High Court quashing the First Information Report was correct or not. That may be so but at the same time it has to be borne in mind that the Supreme Court before discussing the submission in regard to quashing of the FIR first considered in the forefront the legal principles governing the registration of cognizable offences and the power of investigation and it was clearly held that police officer has a statutory duty to register First Information Report on information being given disclosing commission of cognizable offence.

29. Mr. Sethi vehemently relied upon the observations of Supreme Court directing that no criminal case shall be registered against a judicial officer without prior permission of the Chief Justice of the concerned High Court. The said observations were made by Hon'ble Supreme Court keeping in view the requirement of maintaining independence of judiciary so that members of judicial service should not work under apprehensions of retaliatory action by the police and the executive and have no relevance for deciding the question in this case.

30. Under the Scheme of Code of Criminal Procedure, on registration of a case under Section 154(1) of the Code, irrespective of whether the investigation is embarked upon or not the matter has to be placed before an independent and impartial forum of Judiciary. When it is so placed various options are open to the Judicial Officer. He may concur with the Police and may make orders closing the case. The Judicial Officer may not be satisfied with the investigation or may not be satisfied with the action of police officer in not investigating the crime in exercise of power under clause (b) of proviso to Section 157(1) of the Code, and in these eventualities the Judicial officer can direct further investigation or investigation as the case may be. To give power to the police not to register the crime in a cognizable case and instead proceed with an enquiry and later refuse registration would have the effect of the matter never coming to gaze of judicial scrutiny. This is not contemplated by the Code.

31. Strong reliance was placed by Mr. Sethi on Rule 24.4 of Punjab Police Rules, 1934 in support of the contention that preliminary enquiry before the registration of the crime is permissible. The said rule reads as under :-

'24.4 (1) If the information or other intelligence relating to the alleged commission of a cognizable offence, is such that an officer in charge of a police station has reason to suspect that the alleged offence has not been committed, he shall enter the substance of the information or intelligence in the station diary and shall record his reasons for suspecting that the alleged offence has not been committed and shall also notify to the informant, if any, the fact that he will not investigate the case or cause it to be investigated.

(2) If the Inspector of other superior officer, on receipt of a copy of the station diary, is of opinion that the case should be investigated, he shall pass an order to that effect, and shall, in any case, send on the diary or an extract there from to the District Magistrate for his perusal and orders.

(3) When a counterfeit currency note is found in circumstances which indicate that owing to absence of guilty knowledge no offence under Section 489-B, Indian Penal Code, or cognate section has been committed, the information shall be recorded under Section 154, Criminal Procedure Code, in the station diary; the special report required by Rule 24.16 shall be submitted and enquiry shall be made to trace the point in the movements of the note at which a cognizable offence appears to have been committed. When reasonable suspicion of such commission arises a First Information Report shall be recorded in the police station concerned and investigation under Section 157, Criminal Procedure Code, shall be made.'

32. In order to appreciate the true scope of the rule and for facility of reference we may also reproduce Sections 157 and 158 of the Code which read as under :-

'157. Procedure for investigation. - (1) If from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance

of such offence upon a police report and shall proceed in person or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf to proceed, to the spot, to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender :

Provided that -

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot.

(b) If it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

Sec. 158. Report how submitted. - (1) Every report sent to a Magistrate under Section 157 shall, if the State Government so directs, be submitted through such superior officer of police as the State Government, by general or special order appoints in that behalf.

(2) Such superior officer may give such instructions to the officer in charge of the police station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.'

33. Rule 24.4 is not very happily worded. But reading Rule 24.4 and Sections 157 and 158 of the Code together makes it abundantly clear that on registration of a case and where Police officer has reason to suspect that the alleged offence has

not been committed, he may refuse to embark upon the investigation. The investigation is the prerogative of the Police. But that is subject to the control of the judiciary as spelt out from the provisions of the Code from Sections 156 to 173 and as also discussed above. We may also notice that rules cannot override the statutory provisions. Rule cannot be given effect to in violation of the Act.

34. The conferment of absolute and uncanalised discretion to the police to register a cognizable offence or not, would be vocative of equality clause enshrined in our Constitution. The Code vests power in Judiciary to control the discretion of the police. The judiciary will remain unaware in absence of recording of first information report. Whenever police officer after recording of the First Information Report has a reasonable doubt about the commission of a cognizable offence, he has power not to proceed with the investigation but that is subject to check by judiciary. There is rapid increase of custody deaths and deaths during encounters with law enforcing agency. It is the duty of all organs including Judiciary to protect human rights and, thereforee, it is necessary to provide safeguards for early recording of the crime and control of police by judiciary which would be negated if it is left to the police to decide in which case to register the crime on disclosure of commission of cognizable offence and in which defer it pending enquiry.

35. In our view the legal position is clear that on information being laid before the Police about the commission of a cognizable offence the Police has no option but to register the case and then to proceed with investigation of the case under the provisions of Chapter XII of the Code. The police can also decide not to investigate in terms contemplated by Section 157(1) of the Code. The Police has no right to refuse registration of a case on information being laid before it about commission of cognizable offence and instead proceed with an enquiry and refuse registration as a result of the said enquiry. If it is left to be determined by the Police to decide in which cases of disclosure of commission of cognizable offence it would first hold preliminary enquiry and then decide to register or not to register the case, it would also lead to delay in registration of the crime and in the meantime the material evidence may not be available. The conduct of enquiry itself may entail a long period. There may be then challenge to the said enquiry. The enquiry of the nature suggested by the respondents is not permissible in law.

36. Now reverting again to the facts and circumstances of the present case, admittedly, on 5th October, 1990 the petitioner was confined in Jail as an undertrial. The information laid by the petitioner makes an accusation against the jail officials that they gave severe beating to him and thus they committed various cognizable offences. The petitioner did receive injuries. The nature of those injuries and whether the same were inflicted in the manner alleged by the petitioner or were sustained as suggested by the Police is a matter which is still to be investigated under the Code of Criminal Procedure after registration of the case. It is not the case of the respondents that any investigation or even enquiry was conducted by the police or any intimation was sent to the petitioner. A Judicial Officer appointed under the directions of this court has found prima facie substance in the allegations of the petitioner. In our view, the type of examination of report of Sh. J. P. Singh as argued by Mr. Sethi is neither permissible in these proceedings nor is it desirable. In some appropriate proceedings it will have to be examined as to how Kuldip Singh received injuries while in jail custody and why leaving the real culprits he involved Garg and his associates. It was not argued before us that Kuldip Singh had himself inflicted injuries with a view to involve Garg and others. While deciding this petition it is not possible for us to say whether only the person named in Annexure R-A met the petitioner on 8th October, 1990 or other persons named in his statement made before Sh. J. P. Singh also met him. We may notice that according to the contention of Mr. Aggarwal as per practice being followed in jail any number of persons can meet an undertrial and it is not necessary that names of all will find place in jail record. We were told that 5th and 6th October, 1990 were holidays. The letter referred to above written by the petitioner to Lt. Governor is dated 7th October, 1990. The telegram was sent to this court on 8th October, 1990 and making similar allegations an application was also made before the Sessions Judge before whom the case was pending on 8th October, 1990. For present purpose, it is not necessary to decide the controversy about the date of the telegram. We may also notice that the complaint dated 25th October, 1990 made by the petitioner to Lt. Governor with copy to the Police Commissioner and Deputy Commissioner of Police (Crime) making allegations about beating having been given to him by Garg and others and seeking registration of a case under the relevant provisions of the Indian Penal Code,

purports to have been signed by 22 persons in jail. We have not been informed as to what action, if any, was taken on the said complaint. It is not possible for us to say whether other inmates of Jail have grouped together against jail officials because of any sense of brotherhood between the jail inmates or their conscious has pricked against the jail officials because of some terrible wrong having been done to the petitioner. For the present, by registration of the case only the investigating machinery has to be set in motion.

37. As a result of aforesaid discussion, we direct that the FIR be registered and the investigation be conducted expeditiously in accordance with law by the Crime Branch of Delhi Police. The rule is made absolute in the above terms.

38. Order accordingly.