

Radha Vs. State

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Court : Delhi

Decided On : May-18-2011

Judge : Kailash Gambhir, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973 \(CRPC\)](#) - Sections 482, 154, 156(3), 174, 161; [Constitution of India](#) - Article 226; Indian Penal Code (IPC) - Sections 177, 180

Appeal No. : Crl. Misc.(C) No. 3494/2008

Appellant : Radha

Respondent : State

Advocate for Def. : Mr. Pawan Sharma, Adv.

Advocate for Pet/Ap. : Mr. Anil Soni, Adv.

Judgement :

1. By this petition filed under Section 482 of the Code of Criminal Procedure, 1973, the petitioner has approached this Court to seek directions to direct the police to register an FIR and investigate the case expeditiously.

2. The present petition was filed by the petitioner on 3.11.2008 and the same was taken up by this Court on 5.11.2008 in the presence of the State Prosecutor. The case in hand depicts the sordid, despotic and nepotic functioning of the Delhi

Police who in a most brazen, blatant and contemptuous manner have flouted and defied not only the mandate of the law as envisaged under Section 154 of Cr.P.C., but also various directions given by the Honble Apex Court and the High Court pronouncing that once any information disclosing the commission of a cognizable offence is brought before the police officer of a police station, then the concerned police officer is bound to register an FIR.

3. Before I proceed to discuss the legal position and the approach of the concerned police officials including that of the rank of not less than the Additional Commissioner of Police and the Commissioner of Police, it would be apt to give a sequence of facts which compelled the petitioner to approach this court by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure. The petitioner happens to be an unfortunate sister of a 22 year old young boy namely Brijesh Kumar @ Birju who had gone out from his house i.e. House No. B-9/427, Sector-3, Rohini, Delhi on the evening of 05.08.2007 for some work and did not return until midnight. When Brijesh did not return till midnight, his mother went out in search of him and later on approached the local police so as to report missing of her son. The police, however, did not oblige her and the mother came back with the hope that her son Brijesh may come back home soon. On 6.8.2007, someone informed the police that the dead body of a person is lying in the park of B-9, Sector-3, Rohini. The petitioner and her family members after having come to know about the said information reached the spot and were shocked to find the dead body of Brijesh. As per the petitioner, she and the other family members had noticed some injuries on the head and other parts of the body of the deceased. The deceased was removed by the police to Baba Saheb Ambedkar Hospital by PCR Van bearing No. C-43 and thereafter the body was referred to the mortuary of Sanjay Gandhi Memorial Hospital for postmortem. The petitioner and her mother visited the police station for the registration of the case but the police refused to register any case. The petitioner then sent telegrams to various higher authorities requesting them to give directions to the concerned SHO of P.S. Rohini to register an FIR and for thorough investigation of the case. The petitioner had also apprised the police that on 3.8.2007 a quarrel between the deceased and one Vaibhav Gautam @ Michael had taken place over some girl and the deceased was threatened by the said Michael that he would be

killed. Since the police did not register any FIR, therefore, the petitioner filed a writ petition before this court vide W.P.(C) No. 1096/2007 to seek directions for the registration of an FIR. The High Court did not entertain the said writ petition filed by the petitioner in view of the judgment of the Apex Court in the case of Aleque Padamsee & Ors. Union of India & Ors. (2007)6 SCC 171 and directed the petitioner to approach the court of the Metropolitan Magistrate under Section 156(3) of Cr.P.C., instead of invoking the writ jurisdiction of this court. Pursuant to the said direction of the High Court, the petitioner filed a complaint case before the concerned Metropolitan Magistrate, Delhi on 29.8.2007, but even after the lapse of more than one year, neither the Magistrate give any direction to the police to investigate the said crime nor did the concerned police officials take any steps in this direction. It is also the case of the petitioner that the learned Magistrate allowed the police a free hand for over a period of one year without directing registration of a case involving such a heinous and grave crime of the nature of murder and also that the police started conducting a preliminary inquiry first at the level of the local police and then by the Crime Branch but did not choose to register an FIR.

4. Feeling aggrieved with the lackadaisical approach of the police as well as that of the concerned Magistrate, the petitioner approached this court to seek directions for the registration of an FIR and for investigation of the case. Taking a serious note of the conduct of the police in the present case, this court vide order dated 5.11.2008 expressed its displeasure not only on the inaction of the police but also on the casual approach of the concerned Magistrate. In the said order dated 5.11.2008 this court observed as under:

"It is most shocking that the police has not registered the FIR for such a heinous crime which had taken place on the intervening night of 5th/6th 2007. Time and again the Apex Court as well as various High Courts have clearly mentioned that on the filing of the complaint disclosing commission of cognizable offence, the police should register an FIR. In the present matter even after a lapse of more than one year the police brazenly remained

blindfolded in not registering an FIR and even the learned M.M. has not discharged his judicial functions in the right earnest as no directions till date have been given by the Magistrate for the registration of an FIR. The Joint Commissioner of Local Police Station as well as Joint Commissioner, Crime Branch shall explain the reasons for such serious dereliction on the part of the concerned police officers of local police and of Crime Branch for their deviant conduct in not registering an FIR in a murder case by way of affidavit. The officers will also explain as to what action has been initiated against the delinquent officers for their such despicable conduct. The affidavits be filed within a period of one week."

Pursuant to the said directions given by this court, two of the senior officers of the Delhi Police of the rank of Joint Commissioner of Police and Additional Commissioner of Police had filed their respective affidavits. Since both the said affidavits filed by the said senior officers were on the same lines, it would be relevant to refer to the stand taken by the Delhi Police in the affidavit filed by the Additional Commissioner of Police, Crime Branch as under:

"I, Satyendra Garg, Additional Commissioner of Police, Crime, Delhi Police, Police Headquarters, Indraprastha Estate, New Delhi do hereby solemnly affirm and declare as under:-

1. That on 6/8/07 at 6:20 AM information was received vide DD No.6A from the PCR that a male dead body was lying in the park of Pkt.B/9, Sector 3, Rohini, Delhi. The call was marked to SI Jagdish Chander of PS Rohini. SI Jagdish Chander reached the spot and found that the dead body was removed by PCR to Baba Saheb Ambedkar Hospital, Rohini, Delhi. After reaching hospital SI Jagdish Chander collected MLC No.4045/07 of Brijesh Singh s/o Dharampal Singh r/o B-9/427, Sec.3, Rohini, Delhi who was declared as brought dead in the hospital with alleged history of

being found lying in the park in water as told by police personnel. At the time of preparation of MLC mother of deceased Smt. Shanti Devi was also present in the hospital and her name was mentioned in the MLC itself by the doctor present on duty. (Photograph and copy of MLC annexed as A & B).

2. That on 6/8/07 the post mortem was conducted on the dead body of deceased Brijesh Singh at Sanjay Gandhi Memorial Hospital, Delhi. The autopsy surgeon described "no external injury mark seen on dead body". Viscera of deceased was preserved by the autopsy surgeon to rule out any common poisoning. Inquest proceeding u/s 174 Cr.P.C. was conducted by the local police. The cause of death was kept pending till report of chemical analysis of the viscera was received. During inquest proceeding, various persons were examined by local police. On 28.8.07 the viscera of the deceased was sent to Forensic Science Laboratory, Rohini, Delhi for chemical examination. (PM report annexed as C)

3. That on 11.1.08 Smt. Radha made complaint before Commissioner of Police that her brother Brijesh Singh had been murdered. The complaint of Smt. Radha was marked to Crime Branch for enquiry on 19/1/08. Accordingly enquiry was initiated by Crime Branch.

4. That during enquiry, Smt. Radha, sister of deceased was examined on 22/1/08. In her statement she stated that on 4/8/07 her brother Brijesh Singh told her that he had an altercation with Vaibhav Gautam @ Michael over a girl who was studying a computer course in Rohini and Vaibhav Gaurtam wanted to make friendship with that girl. She also stated that one year ago Manish Gandhi had an altercation with Brijesh Singh, and Manish Gandhi had made a complaint to police against Brijesh Singh. In the police station, the father of Manish Gandhi had

threatened Brijesh Singh with dire consequences. On 5/8/07 when her brother did not return to home, her mother called Smt. Radha and told her about the incident. She further stated that when her mother reached PS Rohini, police officials advised them to look for Brijesh Singh for some more time. They searched for their brother but due to rain they were not able to find their brother. On 6/8/07 at about 6.00 am someone from the locality came to their house and informed them that the body of her brother was lying inside the park in a water logged tree pit. She stated that she along with her mother saw the dead body of her brother in a water logged tree pit inside park in front of their home. Police removed the dead body to Baba Saheb Ambedkar Hospital, Delhi. Postmortem was conducted at hospital and after postmortem the dead body of Brijesh Singh was handed over to them and they cremated the dead body.

5. That during enquiry at Crime Branch, Vaibhav Gautam @ Michael and Manish Gandhi, suspected by Smt. Radha were interrogated at length. The following persons were also examined:-

i) SI Jagdish Chander, Initial I.O. of PS Rohini, who conducted Inquest Proceedings.

ii) Neelam Sharma s/o Dinesh Chand Sharma r/o 47, Pkt B-9 Sec.3, Rohini Delhi-friend of the deceased.

iii) Jitender Dahiya s/o Randhir Singh r/o WZ-3158, Mahindera Park, Rani Bagh, Delhi-friend of the deceased.

iv) Smt. Parmila w/o Ramgopal r/o F-36, Sector 4, Vijay Vihar, Delhi- Cellphone of deceased was recovered from her.

v) Raju s/o Tika Ram r/o Vill. Dairy, PO Bayana, PS Bhavnoli, Distt. Sagar, MP- he found the cell phone on the road and sold it

to Parmila.

6. That during enquiry SI Jagdish Dahiya of PS Rohini, Outer District was examined. He had been conducting the Inquest Proceeding of deceased Brijesh Singh. During enquiry he stated that initially the family members of deceased did not give any statement regarding death of Brijesh Singh. During enquiry he stated that initially the family members of deceased did not give any statement regarding death of Brijesh Singh. Subsequently, they began suspecting Vaibhav Gautam as Brijesh Singh had a scuffle with Michael over a girl a few days prior to his death.

7. That during enquiry Vaibhav Gautam stated that on the day of incident he was not in Delhi. He had gone to fetch "Kanwad" from Hardwar. He returned back to Delhi on 10/8/08. He produced a ticket of Rs.10/- issued to vehicle No DL3CW 9350 as Marg Sudharan Shulk, Rajaji Rashtriya Park, Dehradun (Uttaranchal). Vehicle No. DL3CW 9350 is the registration number of Indica car which belongs to his father. He had gone to Hardwar by his car and returned back carrying the "Kanwad" on foot.

8. That Manish Gandhi stated that at the time of incident he was not in India. He had been in Atlanta, USA. He came back to Delhi on 8/8/07. He produced the photocopy of passport and visa to prove his point.

9. That during the enquiry Neelam Sharma was also interrogated. He was the last person to see Brijesh Singh alive. He stated that on the night of 5/8/07 Brijesh Singh had consumed alcohol with his friends in Jheel Wala Park situated near Rani Bagh. At about 12.30 am on 6.8.07 Neelam Sharma left him alone in the park of Pkt B/9, Sector 3, Rohini, Delhi which is right in front of Brijesh Singh's house. Brijesh Singh told Neelam

Sharma that his family members would scold him if he reached home late in drunken position.

10. That the mobile phone of the deceased had been missing since the day of the incident. Call details of his telephone number 9818546606 were analysed. It was found that the last call was an outgoing call on 5/8/07 at 10.30 pm to telephone 9313877834. This telephone number belongs to Jitenra Dahiya s/o Randhir Singh Dahiya r/o WZ-3158, Rani Bagh Delhi. The conversation lasted for 12 seconds. Jitender Dahiya is a friend of Neelam Sharma.

11. That during enquiry Jitender Dahiya stated that on 5/8/07 he along with his friend took drinks on roof of his house. From about 7 to 7.30 P.M. Neelam Sharma made several calls to him. Neelam Sharma told him that he had some altercation with his girl friend and he wanted to have drinks. Jitender Dahiya received Neelam Sharma along with one friend who was already in drunken position near a barber's shop near his house. The person was introduced to Jitender Dahiya by Neelam Sharma as his friend Brijesh Singh. Jitender Dahiya bought one bottle of McDowell whisky from a wine shop. After that, the friends of Jitender Dahiya and Neelam Sharma and Brijesh Singh went to Jheel Wala Park, Rani Bagh, Delhi and all of them consumed alcohol in a picnic hut at Jheel Wala Park. At that time, according to Jitender Dahiya, due to heavy consumption of alcohol, Brijesh Singh started staggering. Jitender Dahiya asked Neelam Sharma to take Brijesh Singh home. Then all of them rode on two bikes to leave Brijesh Singh at his home. When they reached near the house of Brijesh Singh, Neelam Sharma told Jitender Dahiya that whenever Brijesh Singh consumed so much liquor, he usually slept outside the park in front of his home instead of going home. Then Jitender Dahiya along with friends

left Neelam Sharma and Brijesh Singh inside the park and left for their homes.

12. That in the enquiry conducted so far nothing was found to suggest that Vaibhav Gautam and Manish Gandhi were involved in the death of Brijesh Singh. Both of them were not in Delhi on the day of incident.

13. That the IMEI no. 357948000653750 of the missing phone was sent to all mobile phone service providers in India. The IMEI number of the missing mobile phone was traced in Delhi circle on mobile number 9999698068. On the analysis of call details of the mobile phone, it was found that the missing mobile phone was used by Smt. Parmila, w/o Ram Gopal r/o F-36, Sector-4, Vijay Vihar, Delhi. She was examined on 9/9/08 and she stated that she had bought the mobile phone from one Raju s/o Tika Ram R/o Vill. Dairy, PO & PS Minoli, Distt. Sagar, M.P. who was a tenant in the same house. She further stated that Raju had not paid his rent and he needed money, so he sold the mobile phone to her for Rs.900/-.

14. That Raju s/o Tika Ram was interrogated and he stated that he had found the mobile phone near the petrol pump in Sec.3 Rohini about 10/12 months ago. He needed money to pay his rent and he sold the mobile phone to Smt. Parmila. The mobile phone was recovered and seized through a memo and deposited in malkhana of PS Rohini.

15. That the result of chemical analysis of the viscera of deceased Brijesh Singh was received from Forensic Science Laboratory, Delhi. Ethyl alcohol 150.1 mg/100ml of blood was found in the viscera. On 9/9/08 the Forensic Science Laboratory report along with post mortem report of deceased Brijesh Singh was submitted before the autopsy surgeon Sanjay Gandhi

Memorial Hospital, Delhi for giving the cause of death. The autopsy surgeon reported that " after going through P.M. report and examination of FSL report. I am of the opinion that person had a fall in drunken state and had a head injury as written in PM report and that injury is sufficient to cause death." (FSL report along with subsequent PM report annexed as D and E)

16. That on 08.07.08 a detailed status report listing out the steps taken was submitted in the Hon'ble Court of Sh. M.C. Gupta, ACMM, Rohini during the hearing of complaint of Smt. Radha u/s 156 (3) Cr. P.C. Thereafter, progress reports were duly filed on 4.8.08 and 10.9.08 in the Hon'ble Court. After hearing arguments the Hon'ble Court had adjourned the matter for 12/11/08. On 12/11/08, the matter was fixed for 17.11.08.

In view of the facts and circumstances it is most respectfully submitted from the enquiry conducted so far, the report of Forensic Science Laboratory and the final opinion given by the autopsy surgeon regarding cause of death, there is nothing to suggest that the deceased Brijesh Singh died due to any criminal act. However, the respondent is willing to abide by any direction issued by the Hon'ble Court in the matter."

Unsatiated by the explanation given by the said two senior officers of Delhi Police in their respective affidavits, this court vide order dated 18.11.2008 gave directions to the Commissioner of Police to explain by way of an affidavit as to what prevented the police from registering an FIR on the complaint filed by the sister of the deceased suspecting murder of her brother. The Commissioner of Police was also directed to explain as to why the police had failed to follow the mandate of law envisaged under Section 154 Cr.P.C. and the law laid down by the Apex Court in Ramesh Kumari v. State (NCT of Delhi) & Ors AIR 2006 SC 1322. The gist of the order dated 18.11.2008 is reproduced as under:

"The case in hand reflects total mal-functioning, insensitivity, apathy and inaction of the police as they sat on the complaint of the sister of the deceased for over more than one year but did not register an FIR. The sister of the deceased had earlier filed a writ petition when she was directed to approach the lower court to seek remedy. The lower court also did not give any directions till yesterday and as per the affidavits filed by these two police officers, the inquiry was being conducted into the incident but without the registration of any FIR. In both the affidavits filed by the police officers no reasons have been given as to what prevented the police to first register an FIR and then proceed with the necessary investigation or inquiry. Indisputably, in this case a young person of 22 years of age lost his life and his sister had approached the police authorities to register an FIR but failing in her endeavour the petitioner approached this court by way of filing the writ petition and then on the direction of the court she approached the Ld. M.M. by filing an application under Section 156 (3) Cr.P.C. as no steps were taken by the police to register an FIR. The contention of the counsel for the State is far from convincing that since the police did not suspect any foul play, therefore, no FIR was registered. Once the real sister had suspected of a foul play in the matter and had been approaching the police to register an FIR, there could not have been any ground for not registering an FIR and that too in a case where a person has died in mysterious circumstances. No doubt, in a given case the police can carry out a preliminary inquiry but the settled legal position is to first register an FIR and then to carry out investigation. The police could not have straight away relied upon the conclusions given in the postmortem report and in the FSL report to reach to its own decision, more particularly, when the sister of the deceased suspected a foul play and had gone to the extent of raising finger at some person behind the said

murder. Both these officers of the rank of Joint Commissioner of Police and Additional Commissioner of police have given justification for not registering an FIR and if such kind of explanation can be given by such high ranking officers, then nothing better can be expected from the lower hierarchy of Delhi Police. It is thus evident that in the present case police has virtually violated the directions given by the Apex Court in Ramesh Kumari v. State (NCT Of Delhi) and Ors. ; AIR 2006 SC 1322. Relevant para of the said judgment is reproduced as under:-

4. That the Police Officer mandatorily registers a case on a complaint of a cognizable offence by the citizen under Section 154 of the Code are no more res integra. The point of law has been set at rest by this Court in the case of State of Haryana and Ors. v. Bhajan Lal and Ors. 1922 Supp (1) SCC 335. This Court after examining the whole gamut and intricacies of the mandatory nature of Section 154 of the Code has arrived at the finding in paras 31 & 32 of the judgment as under:

31. 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 in 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.

32. 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 25 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 10 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 1898 which word is now used in Sections 154, 155, 157 and 189(c) of the present Code of 1973 (Act 2 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.

Finally, this Court in para 33 said:

33. It is, therefore, 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.

5. The views expressed by this Court in paragraphs 31, 32 and 33 as quoted above leave no manners of doubt that the provision of Section 154 of the Code is mandatory and the concerned officer is duty bound to register the case on the basis of such an information disclosing cognizable offence.

It would be thus evident that the two Senior Police Officers in their affidavits have failed to give any justifiable reason for non-registration of a case despite untiring efforts made by the

petitioner.

Let the Commissioner of Police by way of an affidavit explain as to what prevented the police from registering an FIR on the complaint of the sister of the deceased who suspected murder of her brother and secondly, why the police failed to follow the mandate of law envisaged under Section 154 Cr.P.C. and the law laid down by the Apex Court in Ramesh Kumari v. State (NCT Of Delhi) and Ors. ; AIR 2006 SC 1322 regarding registration of an FIR after receiving the information of commission of a cognizable offence.

Let the affidavit be filed within a period of two weeks."

5. Pursuant to the said directions, Mr. Yudhvir Singh Dadwal, the then Commissioner of Delhi Police had filed his affidavit dated 1.12.2008. On facts, the Commissioner of Police reiterated the same sequence of events as narrated by the Additional Commissioner of Police in his affidavit. The Commissioner of Police in his affidavit, however, tried to defend the conduct of the police officers in not registering an FIR by taking shelter under the provision of Section 174 of Cr.P.C. and also in view of the observations of the Honble Apex Court in Rajinder Sinigh Katoch v. Chandigarh Administration & Ors. (2007)10 SCC 69, wherein the Honble Apex Court observed that in a given case the preliminary enquiry can also be conducted by the concerned police officers in order to find out as to whether the FIR sought to be lodged has any substance or not. The Commissioner of Police in para 7(i) of his affidavit admitted the fact that between 7.8.2007 to 29.5.2008 the petitioner made several complaints to the police and other authorities requesting for registration of an FIR in the said case. In para 9 of the affidavit the Commissioner of Police took a stand that in view of the observations made in the inquest report, post mortem report and initial findings, the concerned I.O. did not think it appropriate to register a case of murder. In para 10, however, the Commissioner of Police stated that pursuant to the direction dated 17.11.2008 given by the learned ACMM under Section 156(3) Cr.P.C., an FIR bearing No. 26/08 was registered by the police u/s 302/392/120-B/34 IPC. The relevant paras

of the said affidavit of the Commissioner of Police are also reproduced as under:

" ..

5. It is the submission of the deponent that whenever information of a cognizable offence is made out an FIR is registered and the matter is investigated. However, the Hon'ble Supreme Court of India in *Rajinder Singh Katoch v. Chandigarh Administration and others* have laid down that although the officer In charge of a police station is legally bound to register a first information report in terms of Section 154 of the Code of Criminal Procedure, if the allegations made by them gives rise to an offence which can be investigated without obtaining any permission from the magistrate concerned; the same, by itself, however, does not take away the right of the competent officer to make a preliminary enquiry, in a given case, in order to find out as to whether the first information sought to be lodged had any substance or not. This coupled with provision of Section 174 Cr.P.C. guides police as regards unnatural deaths and other cases, reported to police. This was also followed in the complaint of Smt. Radha and the death of Brijesh Singh.

6. It is respectfully submitted that the very purpose of conducting inquest proceeding is to find out the cause of death. While conducting inquest if at any stage a cognizable offence is made out an FIR is registered and investigation taken thereon and a final report in terms of Section 173 Cr.P.C. is filed. In a case where, however, commission of cognizable offence is not made out the inquest proceedings are only conducted wherein the cause of death is ascertained by getting the post mortem conducted and also recording of statements of the relevant witnesses. After the conclusion of inquest, unlike a report u/s 173 Cr.P.C. to the Magistrate, a report is sent to the concerned

SDM, who takes a final decision on the same in terms of Section 174 Cr.P.C.

7 ..

(i) That from 7.8.07 to 29.5.08 Mrs. Radha made several complaints to the police and other authorities upon which the factual report was submitted to the concerned authorities by the SHO and subsequently by the DCP Outer District and DCP Vigilance. The DCP Vigilance also sent a report to NHRC in response to the complaint of petitioner. It was also reported that action would be taken after receiving the final report regarding the cause of death. Copy of the complaint dated 9.8.2007 sent by the petitioner to the deponent is annexed as Annexure R-3.

..

8. (a) Smt. Radha had made a complaint before the deponent that her brother Brijesh Singh had been murdered. In her complaint she alleged that her brother Brijesh Singh @ Birju went on 5/8/07 at about 6.P.M. On next date 6/8/07 the dead body of her brother was found in a park. She suspected that her brother Brijesh Singh was murdered. She further made allegations that her brother had some quarrel on 3.8.08 with Vaibhav Gautam @ Michael who was known to her brother Brijesh Singh and he had threatened to kill Brijesh. She had requested for registration of a case. The complaint of Smt. Radha was marked to Crime Branch for enquiry on 19/1/08. Accordingly an enquiry was initiated by the Crime Branch.

(b) The enquiry was marked to Inspector R.K. Meena, Anti-Homicide Section of Crime Branch. During the course of enquiry Smt. Radha, sister of deceased was examined on 22/1/08. In her statement she stated that on 4/8/07 her brother Brijesh Singh

had told her that he had an altercation with Vaibhav Gautam @ Michael over a girl who was studying in a computer course in Rohini and Vaibhav Gautam wanted to make friendship with that girl. She also stated that one year ago Manish Gandhi had an altercation with Brijesh Singh, and Manish Gandhi had made a complaint to police against Brijesh Singh. In the police station, the father of Manish Gandhi had threatened Brijesh Singh with dire consequences. On 5.8.07 when her brother did not return home, her mother called her daughter Ms. Radha and told her about the incident. She further stated that when her mother reached PS Rohini, police officials advised them to look for Brijesh Singh for some more time. They searched for their brother but due to rain they were not able to find Brijesh Singh. On 6.8.07 at about 6.00 A.M. someone from the locality came to their house and informed them that the body of Brijesh Singh was lying inside the water logged park near a tree pit. Smt. Radha stated that she along with her mother saw the dead body of her brother in the water logged park near a tree pit in front of their home. Police removed the dead body to Baba Saheb Ambedkar Hospital, Delhi. Post mortem was conducted at the hospital and after post mortem the dead body of Brijesh Singh was handed over to them and they cremated the dead body.

(k) That during enquiry Jitender Dahiya stated that on 5.8.07 he along with his friends took drinks on roof of his house. From about 7 to 7.30 P.M. Neelam Sharma made several calls to him. Neelam Sharma told him that he had some altercation with his girl friend and he wanted to have drinks. Jitender Dahiya received Neelam Sharma along with his friend who was already in drunk position near a barber's shop near his house. The person was later introduced to Jitender Dahiya by Neelam Sharma as his friend Brijesh Singh. Jitender Dahiya bought one bottle of McDowell whisky from a wine shop. After that, the

friends of Jitender Dahiya and Neelam Sharma and Brijesh Singh went to Jheel Wala Park, Rani Bagh, Delhi and all of them consumed alcohol in a picnic hut at Jheel Wala Park. At that time, according to Jitender Dahiya, due to heavy consumption of alcohol Brijesh Singh started staggering. Jitender Dahiya asked Neelam Sharma to take Brijesh Singh to his home. When they reached near the house of Brijesh Singh, Neelam Sharma told Jitender Dahiya that whenever Brijesh Singh consumed so much liquor, he usually slept inside the park in front of his home instead of going home. After that Jitender Dahiya along with friends left Neelam Sharma and Brijesh Singh inside the park and left for their homes.

(o) The result of chemical analysis of the viscera of deceased Brijesh Singh was received on 4.9.2008 from Forensic Science Laboratory, Delhi. According to FSL report Ethyl alcohol 150.1 mg/100ml of blood was found in the viscera. On 9.9.08 the Forensic Science Laboratory report along with post mortem report of deceased Brijesh Singh was submitted before the autopsy surgeon Sanjay Gandhi Memorial Hospital, Delhi for giving the cause of death. The autopsy surgeon reported that "after going through P.M. report and examination of FSL report I am of the opinion that person had a fall in drunken state and had a head injury as written in PM report and that injury is sufficient to cause death."

9. It is submitted that from the time the body of deceased Brijesh Singh was discovered on 6.8.07, through the process of inquest and post mortem which was conducted on the same day, no external injury had been discovered on the body. During post-mortem the viscera of the deceased was preserved and sent to Forensic Science Laboratory. In view of observations in inquest, post mortem and initial findings, the I.O did not think it

appropriate to register a case of murder. The statement of witnesses who saw Brijesh Singh drinking heavily on the night of incident was corroborated by FSL report which showed heavy presence of alcohol content in his blood being 150.1 mg/100 ml. This also indicated that no offence had been committed against Brijesh and led to the action of the I.O. in continuing with the inquest.

10. That on 17.11.2008 the Ld. ACMM, Rohini, Sh. Amit Bansal, was pleased to give directions u/s 156(3) Cr.P.C. and pursuant thereto FIR no. 26/08 u/s 302/392/120-B/34 IPC PS Crime Branch, was registered on 17.11.2008."

6. After the registration of the said FIR, as per the status report filed by the Delhi Police, investigation of the said case was entrusted to Inspector Dharambir Singh, Anti Homicide, Crime Branch. During the investigation the I.O. had interrogated various persons who were named by the petitioner in her complaint and also those who were found with the deceased on the night of 5.8.2007. As per the status report, the mobile phone of the deceased was recovered by the police on 9.9.2008 during the course of inquest proceedings but no cue after interrogating the person from whom the mobile phone was recovered could be found by the concerned I.O. Polygraph test of Neelam Sharma, Vaibhav Gautam and Promod Sharma was also got conducted by the Crime Branch during investigation from Central Forensic Science Laboratory, CBI, Lodhi Road but all these persons were found to be truthful in their answers. As per the status report filed by Inspector Dharambir Singh on 5.8.2010 and the latest status report filed on 7.5.11 by Inspector Bhaskar Sharma, the investigation of the case was still in progress.

7. Besides addressing oral arguments, both the parties have filed their written synopsis in support of their arguments. In the written synopsis filed by the petitioner, her stand is that the petitioner and her mother had reached the spot where the dead body of Brijesh was lying and it was found by them that mobile phone, wrist watch, currency notes and papers contained in the purse were found missing. They also found that one notebook which did not belong to the deceased

along with one iron rod was found lying near the dead body. As per the petitioner, she and her mother told the S.I. Jagdish Chander that they suspect foul play as mobile phone, wrist watch and money from the purse was missing but S.I. Jagdish Chander without paying any heed to such vital information handed over the notebook and purse to the mother of the deceased. The petitioner also pointed out that the clothes of the deceased were not preserved by the police but the same were thrown away in a great hurry. The petitioner also raised a grievance that the statements of various material witnesses were recorded by the police during the course of preliminary enquiry but they were of no consequence as the police ought to have recorded their statements under Section 161 Cr.P.C. after registration of an FIR. The petitioner also submitted that the callous attitude of the police in unnecessarily carrying out the preliminary enquiry for a period of over one year was merely to help the accused to eliminate evidence. The petitioner also submitted that the learned ACMM also failed to give any direction to the police to register an immediate FIR for proper investigation of the case, but instead kept on asking for the status report from the police. In support of her case, the petitioner relied upon the following judgments:

1. Bhagwant Singh v. Commissioner of Police 1985 (2) SCC 537
2. Abhinandan Jha & Anr v. Dinesh Mishra 1968 AIR (SC) 117
3. Indra Carat Pvt. Ltd. v. State of Karnataka & Ors. 1989 AIR (SC) 885
4. Ramesh Kumari vs. State of NCT of Delhi 2006 AIR (SC) 1322

8. On the other hand, in the brief submissions filed by the respondent-State, the stand taken is that a call was received by the PCR, Head Quarter at about 6.07 A.M. reporting that a person was lying dead inside the B-9 park, Sector-3, Rohini. At 6.20 A.M. the call from the PCR through District Net reached P.S. Rohini wherein it was lodged in daily diary of P.S. Rohini vide D.D. No. 6A dated 6.8.2007 and the copy of the same was sent to the S.I. Jagdish Chander for necessary action. It has also been stated that one Beat Constable Beg Raj helped the PCR officials in removing the dead body and before picking up the dead body the constable had taken the photograph of the place of occurrence from his mobile

phone camera. S.I. Jagdish Chander reached the spot along with one Constable Harinder but by that time the body was already removed to Baba Saheb Ambedkar Hospital by the said PCR Van. S.I. Jagdish Chander then went to the hospital and had obtained MLC No. 4045/07 and thereafter the dead body was referred to the mortuary of Sanjay Gandhi Memorial Hospital for forensic examination. It is further stated that no article belonging to the deceased or any foreign material was found by the I.O. Jagdish Chander. It is further stated that since no apparent injury was noticed by the I.O. and due to non availability of any eye witness who could give any first hand account of the circumstances leading to the death of the deceased, the I.O. initiated the inquest proceedings under Section 174 Cr.P.C. for ascertainment of the exact cause of death. After getting the post mortem conducted, the body was handed over by the I.O. to Shri Raj Singh, brother of the deceased. It has also been denied that any missing article of the deceased was reported by the family members to the I.O. It is further stated that even in the telegram dated 6.8.2007 sent by the petitioner to various authorities there was no mention of any foreign article found near the body or any article belonging to the deceased found missing. It is only in the subsequent complaints dated 9.8.2007 onwards that the petitioner started making such allegations regarding missing of purse and presence of iron road and note book. The respondent also took a stand that no external injury on the body of the deceased was found and the facts at the spot did not make out a case of commission of a cognizable offence and hence inquest proceedings under Section 174 Cr.P.C. were conducted by the I.O. so as to ascertain the cause of death. It has also been stated that the enquiry on the complaint of the petitioner was marked to the Crime Branch on 19.1.2008 and during this enquiry several persons were examined by the Crime Branch. On the legal issue, the stand taken by the respondent is that no cognizable offence seemed to have been committed after taking into consideration the allegations and the facts as were available. In the status report it is also stated that at no stage during the inquest proceedings it could be found that the death was due to any act or injury caused by someone. The State in their submissions also came in defence of the learned Magistrate for not directing registration of an FIR. The State placed reliance on the following judgments in support of their case:

1. Gurudath Prabhu & Ors. vs. Ms. Krishna Bhat & Ors. 1999 CrL. L. J. 3909

2. Tapinder Singh vs. State Of Punjab 1970(2) SCC 113
3. Satish Kumar Goel vs. State & Ors. 84(2000) DLT 199(DB)
4. Rajinder Singh Katoch vs. Chandigarh Administration & Anr. 2007(10) SCC 69
5. Binay Kumar Singh vs. State of Bihar 1997(1) SCC 283

9. I have heard learned counsel for the petitioner Mr. Anil Soni and Mr. Pawan Sharma, learned Standing Counsel for State and carefully gone through the stand taken by both the parties in their oral arguments as well as written submissions. Before furthering the discussion on the controversy in hand, it would be appropriate to reproduce the relevant provisions of the Code of Criminal Procedure pertinent to the facts of the present case as under:

"2. Definitions.- In this Code, unless the context otherwise requires, - (c)"cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;."

154. Information in cognizable cases.-

(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.

(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.

156. Police officers power to investigate cognizable case.-

(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.

174. Police to enquire and report on suicide, etc.-

(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of

death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

10. The First Information Report sets into motion the process of criminal machinery. The Honble Apex Court and various High Courts of the country through various authoritative legal pronouncements have time and again taken an unequivocal view that where a complaint is made to the police officer which discloses commission of a cognizable offence, it is the statutory duty of the police to register an FIR and then proceed to hold investigation in the complained offence, but unfortunately the voice of various High Courts and even the Highest Court of the land has fallen on deaf ears of not only the lower officials but also of the rank of Joint Commissioner of Police, Additional Commissioner of Police and the top Cop of the Delhi Police as well. To give a reminder of the same to the Delhi police once again, it has become imperative to reiterate the dicta of law laid down by the Honble Supreme Court through various pronouncements. Mandate of Section 154(1)

11. In the celebrated pronouncement of the Apex Court in the case of State of Haryana v. Bhajan Lal AIR 1992 SC 604, the court has held that:

"30. The legal mandate enshrined in Section 154(1) is that every information relating to the commission of a "cognizable offence" (as defined Under Section 2(c) of the Code) if given orally (in which case it is to be reduced into writing) or in writing to "an officer incharge of a police station" (within the meaning of Section 2(o) of the Code) and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as "First Information Report" and which act of entering the information in the said form is known as registration of a crime or a case.

31. 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 incharge 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-extensor in the present context). In case, an officer incharge 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.

32. 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 Cr PC of 1861 (Act XXV of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer incharge 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 incharge 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 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973(Act II 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.

33. It is, therefore, manifestly clear that if any information disclosing a organizable offence is laid before an officer incharge of a police action satisfying the requirements of Section 154(1) of the Code, the void 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."

The above said legal position has been reiterated by the Apex Court in the case of Parkash Singh Badal v. State of Punjab (2007)1 SCC 1. The Honble Apex Court in Lallan Chaudhary & Ors. v. State of Bihar & Anr. (2006)12 SCC 229 held as under:

"Section 154 of the Code thus casts a statutory duty upon police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation. The mandate of Section 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option except to register the case on the basis of such information.

5. In the case of Ramesh Kumari v. State (NCT of Delhi) and Ors. : 2006 CriLJ1622 this Court has held that the provision of

Section 154 is mandatory. Hence, the police officer concerned is duty-bound to register the case on receiving information disclosing cognizable offence. Genuineness or credibility of the information is not a condition precedent for registration of a case. That can only be considered after registration of the case. The mandate of Section 154 of the Code is that at the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence, the police officer concerned 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 relevant or credible. In other words, reliability, genuineness and credibility of the information are not the conditions precedent for registering a case under Section 154 of the Code."

The Full Bench decision of the Bombay High Court presided over by Honble Justice Swatanter Kumar (the then Chief Justice of the Bombay High Court) in Sandeep Rammilan Shukla vs. The State Of Maharashtra through the Secretary, Home Department and Ors. 2009(1) MhLj 97 is in fact a treatise on the subject of FIR and it would be quite useful to refer the following paras of the same as under:

"27. In the light of above enunciated principles, now let us revert back to the language of Section 154 and the other provision which would have a bearing on its true construction. The provisions of Section 154 use a clear language and hardly leave any scope for doubt. The moment information relating to the commission of cognizable offence is given to the officer in charge of a Police Station, he "shall reduce the same in writing or cause it to be written under his direction and shall be signed by the person giving information and entered in such book which may be prescribed by the State Government in that behalf." Thus, this provision casts an absolute obligation upon

an officer in charge of a Police Station that wherever information about cognizable offence is brought to his notice, he shall follow the procedure prescribed under Section 154(1). In the event of default, Section 154(3) provides a remedy to the aggrieved party. In other words, the Legislature did contemplate the possibility of a refusal to record information of a cognizable offence by officer in charge of a Police Station, and therefore, found a need of spelling out a remedy under Section 154(3).

28. A cognizable offence by its very definition would be a serious offence and in fact, an assault on the freedom and liberty of another individual as protected under the basic rule of law. A cognizable offence would be one where the Investigating Officer can arrest without warrant. Section 41 specifies when, without order from the Magistrate and without warrant, a person could be arrested who is concerned in any cognizable offence. Section 157 is another important provision, which throws some light on the matters in issue. Section 157 of course is preceded by Sections 154 to 156 but its language does not indicate that the procedure of investigation indicated in it can be followed only after registration of a case.

29. In the case of Emperor v. Khwaja Nazir , it is held that receipt and recording of FIR is not a condition precedent to criminal investigation and police have statutory right under Section 154 to investigate. Section 157 requires that if from the information received which may even refer to Section 154 or otherwise, an officer in charge of a Police Station has reason to suspect commission of an offence which he is empowered under Section 156 to investigate after sending report to Magistrate would proceed to investigate personally or appoint his subordinate to investigate. Here the expression `reason to suspect the commission of an offence indicates arriving at some kind of

satisfaction on the part of the Investigating Officer in regard to commission of an offence, which he is empowered to investigate in terms of Section 156 i.e. a cognizable offence. Proviso (b) to Section 157(1) further grants some kind of leverage to the Investigating Officer that he may not enter upon the investigation where there is no sufficient ground for investigation. Besides submitting the report, he is under obligation to notify the informant as well. The report is to be submitted in terms of Section 158 where the Magistrate can even direct investigation in terms of powers conferred upon the Magistrate under Section 159. This provision gives some element of discretion to the Investigating Officer, which he could exercise as per the prescribed procedure, in accordance with the law and to have fair play into the investigation. Abuse of this discretion can lead to drastic consequences on the entire criminal law.

30. The opening words of Section 157 are also of some significance. The expression "If" used in "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", is considered it suggests that the power to investigate under Section 157 is dependent upon some satisfaction as indicated the word "if". The expression "if" has to be given some meaning and reference in the language of Section. This expression will have to be examined in light of the language of Section 154(1) of the Code.

31. In the scheme of the Code of Criminal Procedure, the provisions of Section 154 is a significant provision and has considerable impact on administration of criminal justice as well as have substantial effect on the society. The question, which requires serious consideration, is whether any kind of discretion

is available to the officer in charge of a Police Station in terms of Section 154 or he is left with no choice whatever as per the circumstances of the case. The advantages and disadvantages per se may not be a relevant consideration in interpretation of provisions of criminal law but this exemption in the light of object of the statute and provision and its purpose can be of definite help in such situation. Experience has shown and even it is not disputed at the bar during the course of arguments that the abuse of this power either way is not only possible but has actually been seen in practice. Fear of manipulation per se cannot be the basis for enactment of a law and for that matter its interpretation. The Court essentially must believe that all the things would be done fairly and as required under the law unless contrary is shown. Sometimes, cases relating to cognizable offence are registered even if they are patently false, absurd and the credibility and reliability of which is prima facie questionable. They are filed just to harass the party complained against at the behest of some influential persons. On the other hand, a genuine complainant who is the real victim of commission of a cognizable offence committed by another is neither attended to nor heard at various police stations and the officer in charge of a Police Station refuses to record any entry of such information, thus leading to consequences which result in not bringing the influential people to the command of law.

32. The word `shall appearing in Section 154 has to be given its plain and simple meaning as its plain interpretation is neither hit by any rule of great hardship, inconvenience or ambiguity. The expression `shall therefore is a mandatory provision and in no uncertain terms places an absolute duty upon the officer in charge of a Police Station to record information of a cognizable offence in the appropriate book/books. No doubt, the words shall and `may are interchangeable but in the present case,

mandatory interpretation of the word `shall can hardly be avoided. Corollary to the question that follows is whether this absolute duty arising from the word `shall specifically or by definite implication puts an absolute prohibition on the police officer in charge of a Police Station to do any other act ancillary thereto or otherwise under the Scheme of the Act.

33. The provisions of Section 154 are capable of being interpreted and given a meaning on its plain interpretation without harming either doctrine of fair investigation, avoiding adverse effect on the society and ensuring expeditious commencement and disposal of the trials without exposing the complainant to the possible disadvantage for non registration of his complaint. Once the matter falls within the realm of investigation, it is controlled by the Investigating Agency, normally, without interference of the Court. The only condition precedent to put the machinery of investigation in motion is information of a cognizable offence and/or registration of offence alleged to have been committed which is cognizable. The investigation includes all proceedings under the Code for collection of evidence conducted by a police officer. There is no specific provision or legislative command where preinvestigative inquiry is either specifically permitted or prohibited. There appears to be nothing in the language of Section 154 of the Code, which debars recourse to preregistration inquiry howsoever formal it might be, that necessarily may not mean that it specifically permit such an inquiry. This aspect of the matter, we shall revert back for a detail discussion after noticing the judgments on the subject."

Thus it would be luculent from the above that there can be no departure from the fact that there is an inviolable duty cast upon the police officer incharge of a police station to register an FIR .

First Information Report: Object & Importance 12. In the case of Ravi Kumar v. State of Punjab (2005)9 SCC 315, the Honble Supreme Court has defined the First Information Report in the following words:-

"15. The First Information Report is a report giving information of the commission of a cognizable crime which may be made by the complainant or by any other person knowing about the commission of such an offence. It is intended to set the criminal law in motion. Any information relating to the commission of a cognizable offence is required to be reduced to writing by the officer-in-charge of the Police Station which has to be signed by the person giving it and the substance thereof is required to be entered in a book to be kept by such officer in such form as the State Government may prescribe in that behalf. The registration of the FIR empowers the officer-in-charge of the Police Station to commence investigation with respect to the crime reported to him. A copy of the FIR is required to be sent forthwith to the Magistrate empowered to take cognizance of such offence. After recording the FIR, the officer-in-charge of the Police Station is obliged to proceed in person or depute one of his subordinate officers not below such rank as the State Government may, by general or special order, prescribe in that 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. It has been held time and again that the FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 161 of the Indian Evidence Act, 1872 (in short the 'Evidence Act') or to contradict him under Section 145 of that Act. It can neither be used as evidence against the maker at the trial if he himself becomes an accused nor to corroborate or contradict other witnesses. It is not the requirement of law that the minutest details be recorded in the FIR lodged immediately after the

occurrence. The fact of the state of mental agony of the person making the FIR who generally is the victim himself, if not dead, or the relations or associates of the deceased victim apparently under the shock of the occurrence reported has always to be kept in mind. The object of insisting upon lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed."

The Apex court further in the case of Thulia Kali vs. The State of Tamil Nadu AIR 1973 SC 501 emphasized the importance of FIR in the following manner:

"First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused: The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story As a result of deliberation and consultation."

The Apex Court in the case of Hasib vs. State of Bihar AIR 1972 SC 283 put forth the essence of FIR as under:

The legal position as to the object, value and use of first information report is well settled. The principal object of the first information report from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity

so as to be able to take suitable steps for tracing and bringing to book the guilty party.

It would also be useful here to refer to some of the important observations made by the Apex Court in the case of Ramesh Kumari v. State of NCT of Delhi,(2006) 2 SCC 677 and in the case of CBI and Ors. v. Tapan Kumar Singh (2003) 6 SCC 175 which are respectively reproduced as under:-

"3. Mr. Vikas Singh, learned Additional Solicitor General, at the outset, invites our attention to the counter-affidavit filed by the respondent and submits that pursuant to the aforesaid observation of the High Court the complaint/representation has been subsequently examined by the respondent and found no genuine case was established. We are not convinced by this submission because the sole grievance of the appellant is that no case has been registered in terms of the mandatory provisions of Section 154(1) of the Criminal Procedure Code. Genuineness or otherwise of the information can only be considered after registration of the case. Genuineness or credibility of the information is not a condition precedent for registration of a case. We are also clearly of the view that the High Court erred in law in dismissing the petition solely on the ground that the contempt petition was pending and the appellant had an alternative remedy. The ground of alternative remedy nor pending of the contempt petition would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against the Police Officer.

4. That the Police Officer mandatorily registers a case on a complaint of a cognizable offence by the citizen under Section 154 of the Code are no more res integra. The point of law has been set at rest by this Court in the case of State of Haryana and Ors. v. Bhajan Lal and Ors. : 1992 CriLJ527 . This Court after

examining the whole gamut and intricacies of the mandatory nature of Section 154 of the Code has arrived at the finding in paras 31 & 32 of the judgment as under:

5. The views expressed by this Court in paragraphs 31, 32 and 33 as quoted above leave no manner of doubt that the provision of Section 154 of the Code is mandatory and the concerned officer is duty bound to register the case on the basis of such an information disclosing cognizable offence."

"22. It is well settled that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete

investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the concerned police officer 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."

It would also be useful here to refer to the judgment of the Division Bench of this court in the case of Shanti Devi & Anr. State 97(2002)DLT410 (DB) where the court very eloquently put the legal position as under:

"5. It is a beaten track that if an information is laid before an officer or a police station, he is saddled with duty to enter it in the prescribed form and register a case and then to conduct an investigation into the allegations made. Though he can make some inquiry as to the commission of a cognizable offence but

he can't examine the credibility, correctness or reliability of the accusations made in the complaint. so long as the complaint is not uncertain and it is not entertaining any doubt on the commission of any cognizable offence he has no option but to register the FIR on the complaint where the facts narrated laid a foundation for making out a cognizable offence.

6. In this conspectus it remained to be seen how petitioners' complaint was handled and treated. There is no dispute that it had charged ASI Dharam Pal of being instrumental for the fall of two motor cycle riders resulting in death of one of them and grievous hurt to the other. It could not, Therefore, be said that the information put up before the concerned SHO made the commission of a cognizable offence doubtful or that it was vague or uncertain as to warrant no action in the matter. Respondents' stand that petitioners' complaint was examined by Public Grievance Cell and was found devoid of any substance is wholly misconceived and irrelevant.

7. It is not understandable how the inquiry by that Cell would justify the non-registration of a case on the petitioners' complaint which otherwise indicated commission of a cognizable offence irrespective of the correctness of the accusations. Such an inquiry by any forum of police, it must be under-scored, had no such sanctity in the eyes of law. It indeed fell outside the scope and scheme of Chapters XII and XIV of Cr.P.C.

8. It requires to be made clear at this stage that a police officer was not competent to conduct any investigation of sorts on the complaint or to refer it to any forum for testing its veracity or correctness or substance before entering it in prescribed form and registering a case. Or else, it would tantamount to putting the cart before the horse, because the registration of FIR had to

precede the investigation and not the vice versa."

(emphasis supplied)

I may also refer to some of the other important extracts from the judgment of the Bombay High Court in Sandeep Rammilan Shukla(Supra) which are reproduced as under:

"60. It is evident from the analysis of the above judgments of the Supreme Court as well as this Court that there are some what divergent points of view taken by the different Benches of the Court. Of course, they cannot be termed as diametrically divergent views. They can be easily reconciled if looked from appropriate perspective in the backdrop of respective facts. The judgments which have taken the view that there is permissibility within the scope of Section 154 for an officer in charge of a police station to conduct some kind of an inquiry preregistration of the FIR have stated so to be an exception and not the rule. In other words, it has to be one of those rare cases where recourse to such a procedure may be adopted. As a rule and as requirement of law, the police officer in charge of a police station is stated to have hardly any discretion in registering the case once the information given to such an officer discloses a cognizable offence. The essence appears to be that the information should disclose commission of a cognizable offence which alone would vest power and jurisdiction in the officer in charge to put into motion the investigation machinery. It needs to be noticed with some emphasis that it is not necessary that FIR should be registered for the purposes of setting the mechanism of investigation into motion. It is sufficient that a cognizable offence is disclosed by the information given. This is the true implication of the provisions of Section 154 read with Section 157 of the Code. The Supreme Court and Privy Council

have consistently taken the view that for investigation to commence, registration of a FIR is not a sine qua non (Emperor v. Khwaja Nazir , and Apren Joseph @ Current Kunjukunju and Ors. v. State of Kerala : 1973 CriLJ185).

61. One of the arguments raised before us on behalf of the Petitioners was that the judgments relied upon by the State are judgments on their own facts and cannot be constituted as precedent of law settling or answering proposition involved in the present case. Somewhat similar is the contention on behalf of the State. It can hardly be disputed that the dictum of the Supreme Court and even this Court are judgments on facts and circumstances of those cases. In each case, whether for and against the proposition of law, there were peculiar circumstances. Despite ingredient of the Section being satisfied, the police had intentionally not registered or delayed the registration of information disclosing the cognizable offence. While in other cases, there was an overzeal on the part of the police and while even conducting the pre- registration inquiry they acted unfairly. Still, a third class of cases is where despite an offence having been made out the investigating agency or the police officer in charge, neither entered upon a preliminary inquiry preregistration nor even registered the case thus compelling the aggrieved party to approach the High Court under Article 226 of the [Constitution of India](#). There are also cases where the investigation was so unfair and opposed to the rule of law that parties had come for quashing of an FIR or for transfer of investigation to CBI. Whichever view is accepted as correct exposition of law, the basic principle therein is necessity of bona fide exercise of power and unbiased and fair investigation of an alleged offence by the police. Rule of criminal jurisprudence make no exception to the principle that a fair investigation is the soul of proper administration of criminal

justice system. Criminal justice system has two components. The role of the State and role of the judiciary. Exercise of power or authority by any of these components has to ensure due protection with dignity to the rights of a complainant as well as suspect and the society at large, while ensuring that there is no adverse impact on the social fabric of the society.

62. It is required to be noticed with some emphasis that the judgment in the case of Bhagwant Kishore Joshi (supra) is a judgment delivered by a Bench of three Judges, while all the other judgments relied on by either parties are judgments by two Judge Bench. In that case, the Supreme Court had clearly taken the view while explaining the word "investigation" that merely making some preliminary inquiry upon receipt of the information from an anonymous source or a source of doubtful reliability for checking up the correctness of the information does not amount to collection of evidence and so cannot be regarded as investigation. The Court further clarified that in absence of any prohibition in the Code, express or implied, it was open to the police officer to make such preliminary inquiry.

63. The judgment of Ramesh Kumari vs State of NCT of Delhi. : 2006 CriLJ1622 , was duly noticed by the Supreme Court in the case of Rajinder Singh Katoch (supra). The judgment in Rajinder Singh Katoch (supra) had been pronounced after the judgment of the Supreme Court in Badal's case (supra). In other words, the view taken in Rajinder Singh Katoch's case (supra) is in the latest judgment where the subject in controversy has been discussed in some detail.

64. In other words, the judgments of the Courts have permitted and accepted the practice of preregistration inquiry, of course with a limited compass and with utmost caution. It is obvious that such limited inquiry is not specifically and/or by necessary

implication prohibited under the provisions of Section 154 of the Code. It is expected of the officer in charge of the police station to examine whether the information received is disclosing a cognizable offence or not. In absence of such disclosure, he attains no jurisdiction to look into the matter or authority to investigate without leave of the Court if the offence is non cognizable. Even during this limited process of examining and conducting some kind of an inquiry to establish those ingredients, the officer concerned is to do nothing which is unjust or unfair. He essentially must examine the complaint/information as it comes to him.

68. Even in the case of Tapan Kumar (supra), the Supreme Court culled out a very fine distinction stating that on the information given to the police officer, even if he suspects the commission of a cognizable offence or not, he must be convinced or satisfied that cognizable offence has been disclosed in the information. If he has reasons to suspect on the basis of information received that a cognizable offence may have been committed, he is bound to record information and conduct an investigation. The emphasis is that the police officer has reasons to suspect commission of a cognizable offence. Of course, it is not the requirement of law that a police officer has to verify the truthfulness of the allegations preregistration, if taken on its face value, the information discloses a cognizable offence. In the case of Lallan Chaudhary (supra) also the Supreme Court held that reliability, genuineness and credibility of information are not the conditions precedent for registering a case under Section 154 of the Code.

69. There is hardly any judgment, which in express terms has taken the view that any kind of inquiry by the officer in charge of a Police Station is forbidden and prohibited under the law. It is

one thing to say that it is mandatory duty or obligation of the Police Officer to register the FIR when the information provided to him is in relation to the commission of a cognizable offence but still another thing to say that after noting the information brought to his notice and before recording the substance thereof in the notified book (i.e. FIR Register) the law prohibits in express terms to make any inquiry in relation to the commission of that offence. The paramount condition attached to exercise of duty under Section 154 is that it should be performed bona fide, fairly and without any undue delay.

70. The provisions of Section 154 of the Code impose an absolute obligation and duty upon the officer in charge of a police station to record information in the prescribed book of a cognizable offence (FIR register), but it is difficult for the Court to construe in absence of any express language that this provision forbids any kind even preliminary inquiry prior to registration of the FIR. We are unable to notice anything in the language of the section which by necessary implication debars in law such an inquiry. The Supreme Court in the case of *Bhagwant Kishore Joshi (supra)*, a judgment which was delivered by a three Judge Bench, took the view that such an inquiry, of course for a very limited purpose and bona fide object, was not debarred under the provisions of Section 154. Again, a three Judge Bench of the Supreme Court in the case of *Jacob Mathew (supra)*, in unambiguous terms declared that pre-registration inquiry would be permissible, but again for a class of persons i.e. Medical Practitioners. The investigating agency was cautioned in that case not to cause harassment to the Doctors in furtherance to a private complaint unless some prima facie evidence of rash and negligent act on the part of the accused Doctor was brought on record before the investigating officer. The principle enunciated in both these judgments,

particularly in the case of Bhagwant Kishore Joshi (supra), is not subject matter of a detailed discussion by any of the subsequent Benches of the Supreme Court, except in the case of Rajinder Singh Katoch (supra), a judgment pronounced by a two Judge Bench of the Supreme Court after declaration of law in Prakash Singh Badal's case (supra) which also specifically noticed Ramesh Kumari's case (supra) and declared the principle that some kind of preliminary inquiry would be permissible prior to registration of the case. It needs to be noticed at the cost of repetition that judgments of the Supreme Court delivered by two Judges Bench have taken the view that there is no option with the police officer in charge of a police station but to register the FIR. The view is obviously relateable to the facts of those cases and in all those cases the conduct of the investigating agency had been deprecated and the Court took the view that reliability, genuineness and credibility of information are not the condition precedent for registration of a case under Section 154 and provisions of Section 154 are mandatory and officer in charge of police station is duty bound to register the case on receiving the information disclosing a cognizable offence. (See Lallan Chaudhary (supra) and Ramesh Kumari (supra)). However, in the case of Mohindro (supra), the Court observed on facts of that case that for no reason whatsoever the police had not registered the case and proceeded to pass the appropriate direction.

71. Thus it is evident that information must relate to 'commission of a cognizable offence'. If the information given ex facie is so absurd or lacks essential ingredients of the allegedly committed cognizable offence, the investigating officer after making a due entry in the prescribed books like daily diary, general diary or station diary or daily roznamachar, could step into the limited preliminary inquiry and then within a very short

time and most expeditiously register the FIR unless the information does not disclose commission of a cognizable offence. Such exercise has to be bona fide, fair and must stand to the test of judicious exercise of power. Such cases would be by and large very few and rare cases where the police officer has to conduct preliminary inquiry pre- registration of a FIR for a very limited period. Taking an example of such rare and exceptional cases, an informant by a telephone makes a call that there has been a blast at a railway station causing injury and death of number of persons and names the persons who has alleged to have effected the bomb blast. A police officer is obliged to make an entry in the daily diary register and at least would verify the same by ringing up the nearest police station or the railway authority in charge of the railway station where such an incident is informed to have been occurred. If no incident has occurred at the railway station, the question of registering the FIR would hardly arise and he could proceed in accordance with law on the basis of the entry made in the daily diary register/station diary/roznamachar. In the case of Tapan Kumar Singh (supra), the Supreme Court has even held that an entry in the daily diary/station diary or roznamachar itself can be a FIR.

72. Another aspect which the Court may have to examine is avoiding absurd results while ensuring compliance to the provisions of Section 154 of the Code. In a given case, where a person of public importance or a public figure is stated to be abroad by print and press media, thus information is given to everybody and the informant goes to the police station and lodges a report that he was assaulted or legally confined by that person (public figure) in Mumbai. Such information may not demand instant registration of the FIR and after making due entry in the daily dairy register, the police officer may be within his rights at least to verify that fact reflected in the media before

actually registering a first information report in the prescribed book which ultimately then must lead to entire investigation process, collection of evidence and presenting a report in terms of Section 173(2) of the Code. Still further, there might be cases where information given by the informant may not indicate or suspect commission of a cognizable offence but some verification or some further information may bring those cases within the ambit of commission of a cognizable offence thus instantaneously registerable in accordance with the provisions of Section 154 of the Code. We have already said that such cases would be exceptional and rare. As a normal course the police officer in charge of a police station is bound to register the information in relation to commission of a cognizable offence and this is an absolute duty on the part of such officer.

73. One of the arguments is that whosoever furnishes false or incorrect information to the police or a public servant commits an offence punishable under Sections 177 and 180 of the Indian Penal Code. Thus no matter how absurd incorrect or false information might have been furnished to the police officer, the FIR should be registered forthwith. We are unable to find much merit in this submission for the reason that this will only generate more and more litigation which is not the object of any law much less a procedural law. The scheme of the Code does give element of very limited discretion to the investigating/police officer and a concept of preliminary inquiry within the very limited scope afore- indicated is not forbidden in law. Thus, it will achieve a greater object if in those exceptional and rare cases the investigating officer makes an entry in the daily diary register/station diary or roznamachar and upon a very limited criminal inquiry registers the FIR within two days or even otherwise proceeds in accordance with the provisions of the Code.

74. The scheme of the Criminal Procedure Code examined in conjunction with the provisions of the Indian Penal Code also provides an inbuilt safeguard against non registration or undue delay in registering the FIR. Firstly, in terms of Section 154(3) of the Code, an informant or complainant has a right to approach the higher authorities in the case of non registration praying not only for registration but even investigation by a higher authority. In addition to this, a public servant who disobeys law or direction of law is liable to be proceeded against and punished in terms of Sections 166 and 217 of the Indian Penal Code. This approach will draw equilibrium between the triangular protection projected under the scheme of the Code i.e. protection to victim/complainant, accused and the society at large. On the one hand, non registration of a FIR instantaneously results in harassment to the victim, avoidance of obedience of law as well and adversely affects the society as it ultimately results in deterioration in law and order. On the other hand, registration of a cognizable offence can lead to instant arrest of the suspect and various other consequences which are contemplated in law. Some times they can even become irreversible and jeopardize the interest and protection of the suspect and also result in social resentment which adversely affects the administration of criminal justice."

Here it would also be useful to refer to the recent ruling of the Apex Court in the case of Ashok Kumar Todi vs. Kishwar Jahan & Ors. 2011(3) SCALE 94 where the Court while dealing with the unnatural death of a person re emphasized the steps involved in investigation and accentuated the importance of registration of FIR in the following paras:

"23. Section 2(h) of the Code defines investigation which reads as under:

(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf Under the scheme of the Code, investigation commences with lodgment of information relating to the commission of an offence. If it is a cognizable offence, the officer-in-charge of the police station, to whom the information is supplied orally has a statutory duty to reduce it to writing and get the signature of the informant. He shall enter the substance of the information, whether given in writing or reduced to writing as aforesaid, in a book prescribed by the State in that behalf. The officer-in-charge has no escape from doing so if the offence mentioned therein is a cognizable offence and whether or not such offence was committed within the limits of that police station. But when the offence is non-cognizable, the officer-in-charge of the police station has no obligation to record it if the offence was not committed within the limits of his police station. Investigation thereafter would commence and the investigating officer has to go step by step. The Code contemplates the following steps to be carried out during such investigation:

(1) Proceeding to the spot;

(2) ascertainment of the facts and circumstances of the case;

(3) discovery and arrest of the suspected offender;

(4) collection of evidence relating to the commission of the offence which may consist of -

(a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit,

(b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial; and (5) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and, if so, to take necessary steps for the same by the filing of a charge-sheet under Section 173. [Vide H.N. Rishbud and Anr. v. State of Delhi: AIR 1955 SC 196, State of M.P. v. Mubarak Ali : AIR 1959 SC 707 and Navinchandra N. Majithia v. State of Meghalaya and Ors. : (2000) 8 SCC 323]

24. When the final report is laid after conclusion of the investigation, the Court has the power to consider the same and issue notice to the complainant to be heard in case the conclusions in the final report are not in concurrence with the allegations made by them. Though the investigation was conducted by the CBI, the provisions under Chapter XII of the Code would apply to such investigation. The police referred to in the Chapter, for the purpose of investigation, would apply to the officer/officers of the Delhi Police Establishment Act. On completion of the investigation, the report has to be filed by the CBI in the manner provided in Section 173(2) of the Code. [Vide Hemant Dhasmana v. Central Bureau of Investigation and Anr. : (2001) 7 SCC 536]

25. In view of the same, the Division Bench failed to appreciate the order dated 16.10.2007 passed by the learned single Judge directing the CBI to investigate into cause of unnatural death of Rizwanur Rehman. We have already noted that as per Section 2(h) of the Code investigation includes all the proceedings under this Code for collection of evidence conducted by a police officer. The direction to conduct investigation requires registration of an FIR preceding investigation and, therefore had to be treated as casting an obligation on the CBI to first register an FIR and thereafter proceed to find out the cause of death,

whether suicidal or homicidal. In order to find out whether the death of Rizwanur Rahman was suicidal or homicidal, investigation could have been done only after registration of an FIR. Therefore, CBI was justified in recording FIR on 19.10.2007 in terms of the order dated 16.10.2007 passed by the learned Single Judge."

13. The Apex Court in Lalita Kumari v. Government of U.P.& Ors.(2008) 7 SCC 164 expressed its utmost displeasure on the failure of the police authorities of the country in not registering FIRs unless directions are given by the Chief Judicial Magistrate or the High Courts or the Supreme Court. The case before the Apex Court concerned the kidnapping of a minor child for which the police did not register an FIR till the matter was reported to the senior officials of the police and then sat over the investigation. Recommending initiation of contempt proceedings against the delinquent officials and to punish them for violation of the orders if no sufficient cause is shown the Honble Apex Court held that:

"6. In view of the above, we feel that it is high time to give directions to the Governments of all the States and Union Territories besides their Director Generals of Police/Commissioners of Police as the case may be to the effect that if steps are not taken for registration of FIRs immediately and copies thereof are not made over to the complainants, they may move the Magistrates concerned by filing complaint petitions to give direction to the police to register case immediately upon receipt/production of copy of the orders and make over copy of the FIRs to the complainants, within twenty-four hours of receipt/production of copy of such orders. It may further give direction to take immediate steps for apprehending the accused persons and recovery of kidnapped/abducted persons and properties which were the subject- matter of theft or dacoity. In case FIRs are not registered within the aforementioned time, and/or aforementioned steps are not taken

by the police, the Magistrate concerned would be justified in initiating contempt proceeding against such delinquent officers and punish them for violation of its orders if no sufficient cause is shown and awarding stringent punishment like sentence of imprisonment against them inasmuch as the disciplinary authority would be quite justified in initiating departmental proceeding and suspending them in contemplation of the same."

After the decision the Honble Apex Court by a subsequent order reported as Lalita Kumari vs. Government of Uttar Pradesh (2008)14 SCC 337 has referred the issue to a Larger Bench to ascertain as to whether upon receipt of information by the officer in charge of the police station disclosing cognizable offence, it is imperative for him/her to register a case under Section 154 of Cr.P.C., 1973 or there lies a discretion with him/her to make some sort of preliminary inquiry before registering the FIR. However, while referring the same to the Larger Bench, the Honble Apex Court did not grant any stay to the earlier directions given by the Apex Court in the said case, the Apex observed as under:

"5. In view of the conflicting decisions of this Court, referred to above, we feel that it is necessary to refer the matter to a larger Bench.

6. Let this petition be placed before the Honble Chief Justice of India for passing appropriate orders to list the case before a larger Bench.

7. In view of the interim order passed by this Court, we feel that it would be expedient to hear this petition at an early date."

However, as of date, the matter is still pending before a three Judge Bench.

14. From an analysis of the aforesaid judgments the clear legal position which emerges is that the officer incharge of a police station has no option or discretion not to register an FIR once the information relating to the commission of cognizable offence is laid before him. The intendment of the legislature in using

the expression "shall" in Section 154 of the Code of Criminal Procedure cannot be whittled down so as to read the same as "may" and such an interpretation if taken would defeat the very legislative intent behind the spirit of the said Section. Section 154 thus clearly postulates that once any information even if given orally to an officer incharge of the police station relates to the commission of a cognizable offence, then the said officer has no choice or alternative left with him but to register the FIR. The word "relating" in the said Section also denotes that the said expression is a of very wide connotation and had the intention of the Legislature been different then in place of the word "relating" the word "disclosing" could have been used in the said Section. This Court has not come across any judgment where it has been held that even if an information clearly discloses commission of a cognizable offence, then also the police can refuse to register an FIR. The Courts have rather gone to the extent of saying that even if the police officer has reason to suspect, on the basis of the information received that a cognizable offence may have been committed, then he is bound to record the information and conduct an investigation. It is thus not the prerogative, free will or privilege of the police officer to whimsically decide that in what cases to register an FIR or not.

The provision of Section 154 of the Code is thus mandatory and the concerned police officer is duty bound to register the case on the basis of information disclosing commission of a cognizable offence and police officer cannot refuse to register the FIR simply because he does not like the face of the complainant or the complainant approaching him is a commoner or he is not in a good mood to register the same. There cannot be seen to be any temperamental twists in the approach of the police officer not to register an FIR once information relating to the commission of cognizable office is laid before him. However, the question of pre-registration inquiry or preliminary inquiry no doubt can arise in certain cases such as where the concerned I.O. based on the information laid before him seriously doubts the commission of any cognizable offence on its bare perusal or where the complaint lodged is a vague, uncertain or unspecific or ex facie absurd or the complaint appears to be false on the very face of it or the same appears to have been lodged with some apparent ulterior motives; but otherwise the concerned police officer is not supposed to transgress the mandate of law as envisaged

under Section 154(1) Cr.P.C.

15. Reliance was placed by the respondent State on the judgment of the Apex Court in the case of *Rajinder Singh Katoch v. Chandigarh Administration & Ors*(2007)10 SCC 69, where the Honble Apex Court clearly took a view that the officer in charge of the police station is legally bound to register a First Information Report in terms of Section 154 Cr.P.C. if the allegations made in the complaint give rise to commission of a cognizable offence. The Apex Court, however, held that in a given case the competent officer can make a preliminary enquiry in order to ascertain whether the first information sought to be lodged has any substance or not. It cannot be lost sight of the fact that in this case the dispute was between two brothers and both of them were claiming possession in respect of the property which was in their joint possession and hence an observation in the peculiar facts of the case. Reliance was also placed on *Binay Kumar Singh v. State of Bihar*, (1997)1 SCC 283 where the Honble Apex Court took a view that in a case of nebulous information which is hardly sufficient for discerning the commission of any cognizable offence it is open to the officer in charge to collect some more information by holding preliminary enquiry. Similarly, the case of *Tapinder Singh v. State of Punjab & Anr.* 1970(2) SCC 113 on which reliance was placed relates to a cryptic and anonymous telephone message which did not in any terms specify a cognizable offence. In the said case the Apex Court took a view that such a message cannot be treated as First Information Report merely because this information was first in time. Another judgment cited by the State was *Satish Kumar Goel v. State & Ors* 84(2000) DLT 199, in which case the Division Bench of this Court took a view that where the information recorded in the complaint is uncertain, indistinct and not clearly expressed which creates a doubt as to whether the information laid before the incharge of the police station discloses commission of a cognizable offence therefrom and therefore some inquiry should proceed before the registration of an FIR. In *Guruduth Prabhu vs. Ms. Krishna*, 1999 CRI.L.J 3909, a judgment of the Karnataka High Court relied upon by the respondent would not be applicable to the facts of the present case as there the court took a view that the Magistrate cannot order an investigation under section 156(3) without applying his mind, where the allegations in the compliant did not disclose any cognizable offence.

16. As would be thus seen that in all the aforesaid judgments, which were relied upon by the State, where the court felt that a preliminary inquiry or pre-registration inquiry can take place were those cases where the information was cryptic, without any substance, uncertain or vague which could create a doubt in the mind of the I.O. that the information laid before him does not clearly disclose commission of a cognizable offence and there is a need to conduct a further inquiry before registration of an FIR. Mostly in cases where such preliminary inquiry seems to be required are those which are akin to civil disputes relating to movable or immovable properties, benami transactions or the cases where economic offences are involved or the same relate to fraud and cheating or the cases which require close scrutiny of some documentary evidence etc and hence would not be of any help to the case set up by of respondent State. But it is pertinent to note that in all the above cases the court nowhere held that the I.O. should not register an FIR even in a case where the information provided by the complainant at least prima facie discloses commission of a cognizable offence, which is in fact the position in the case at hand. It is a settled legal position that the reliability, genuineness and creditability of the information is not to be tested by the I.O. at the stage of lodging of a complaint. The concerned police officer cannot embark upon an inquiry so as to ascertain whether the information laid before him is truthful, reliable, genuine or credible. Any officer who refuses to register an FIR even in a case where the information laid before him prima facie discloses commission of a cognizable offence undoubtedly violates the statutory duty cast upon him and deserves suitable punishment as held by the Apex Court in Lalita Kumari's case (Supra).

16. Turning to the facts of the present case and applying the aforesaid principles of law enunciated by the Honble Apex Court and various High Courts, this court is of the considered view that there was no perceptible or genuine reason for the concerned I.O. to hold a preliminary inquiry into the alleged offence of murder before registering an FIR in the present case. A brief recapitulation of facts is that a young boy of 22 years with no history of previous bodily ailment was found dead on the morning of 6.8.2007 under mysterious circumstances; his body was found lying in a water logged park with his face downwards; the sister of the boy and his mother had reached the spot and they themselves had seen the dead body lying

in the park. It is an admitted case of the State that the I.O. had not reached the spot and the body was removed by the PCR officials with the help of one Constable Beg Raj; the said Constable had taken the photographs of the deceased with the help of his mobile phone camera, but no proper steps were taken by the police to examine the site or the surroundings of the site before lifting the body from the spot. The State also admitted that from 7.8.2007 to 29.5.2008 the petitioner made several complaints to the police and the higher authorities; even copy of one such complaints dated 9.8.2007, which has been placed on record by the State, clearly states that the family had witnessed injury marks on the head and back of the deceased. In the complaint it was stated that they had told the police on the spot itself that the wrist watch and mobile phone 9818546606 of the deceased which he had when he was leaving home were missing from the spot. The complainant further attributed the hand of one Mr. Michael behind the said murder who wanted to befriend a girl who was a friend of the deceased. The complainant also stated that the said Michael had physical scuffle with the deceased and he had also threatened to kill him.

17. In the face of the aforesaid clear and explicit allegations leveled by the complainant what more was required to register an FIR by the concerned police officials is beyond the comprehension and understanding of this court. The dead body lying in mysterious circumstances is there; the complaint with precise facts is there; the complainant has even named a person who could be the culprit ; and in the background of these apparent facts if the police takes a stand that there was a need to conduct a preliminary enquiry then nothing else can be inferred by this court but to believe that the police right from the inception had the intention to scuttle the investigation instead of apprehending the culprit of the crime after conducting a proper investigation. I find the justification given by the Delhi Police through the affidavits filed by its senior officers and their written submissions that the allegations as were available did not disclose the commission of a cognizable offence for the registration of an FIR is opposed to even commonsensical logic, what to talk about being opposed to the law. The Delhi Police has utterly failed in carrying out a proper investigation as it even failed to follow the proper norms of investigation when it visited the spot where the dead body of the victim was lying. The police during the investigation did not find that the deceased was carrying any

item or article in his pocket or any money as it would be inconceivable that the deceased would not have been carrying anything with him or had empty pockets. The polygraph test of some other suspects was conducted by the police between 24th March to 30th March, 2009 i.e. almost after a period of 1 1/2 years. The mobile phone of the deceased could be recovered by the police on 09.08.2008; again after a gap of about one year. The presence of alcohol of 150.1 mg in 100 ml blood of the deceased as per the postmortem report could not have proved fatal to result in complete disorientation of the brain of the deceased due to which he could lose his senses that he himself fell down resulting in his death. As per the status report filed by the Delhi Police, the deceased had first taken beer with Neelam Sharma and thereafter at least 6-7 persons had shared whisky from one bottle. This again would show that the deceased had not consumed so much of alcohol to render him totally disoriented and in any case there appears to be a wide gap between the time when he had consumed the liquor and when he was left at the spot of death by Neelam Sharma. There are so many questions which remain unanswered and without commenting upon them, this court is of the opinion that it is quite apparent that the concerned officials of the Delhi Police have conducted themselves in a most irresponsible manner and in fact have clearly acted in flagrant and blatant violation of the law of the land envisaged under Section 154 Cr.P.C. and various authoritative legal pronouncements of the Apex Court and other High Courts, some of which have been referred above. In the case of Laxminarayan Gupta vs. Commissioner of Police 130(2006) DLT 490 , this court in the circumstances where an FIR was not being registered by the police brought to record the practicality of the functioning of the police forces in the right earnest , and the relevant excerpt of the same is reproduced as under :

"Bearing in mind the legal position which emerges from the above decisions this court must hold that a statutory duty is cast upon the police to register and investigate the case on receipt of an information relating to the commission of a cognizable offence and it cannot be left to the sweet will or the so called discretion of the police officer to register or not to

register a case or to undertake a preliminary inquiry even before registration of the case. The Police Officer cannot embark upon an enquiry in regard to the correctness or veracity of the facts/allegations disclosed from the information. It would be hazardous to give such sweeping power or discretion to the police in the matter of registration of FIR which would go contra to the very scheme of the Code of Criminal Procedure and Criminal Justice delivery system in the country. Such a situation may play havoc more particularly so when the matter is left in the hands of unscrupulous police officer(s) who are not acting bona fide or who fail to approach the matter with the desired objectivity and sensitivity as may be required in the matter.

14. This court can take judicial notice of the factual scenario as to how the provision of Section 154 is being worked out by the police officers in practice at the ground. Filing of a large number of petitions under Article 226 of the Constitution complaining inaction on the part of the police authorities to register the crime despite information given/complaint made to the concerned police authorities is a clear indication that the concerned police officers are generally loath to register a crime more particularly so in disclosing certain trivial cognizable offences and economic offences. The reasons for doing so are not very difficult to understand. One reason may be to keep the crime graph low in the Metropolis of Delhi and the other could be to save itself from the botheration of investigation in a large number of cases. None of these reasons can be said to afford justifiable ground for not registering the crime. The very object of having a strong and large police force in any State is to register, detect and investigate the crimes and prosecute the violators of law besides of course maintaining the law and order etc.. Law and order can only be maintained if the commission of crime is prevented and when the crime is committed, the same is thoroughly and properly investigated and criminals brought to

the book. For these reasons also it is incumbent upon the police officer to make strict compliance of the provisions of Section 154 Cr.P.C. rather than to embark upon a kind of preliminary enquiry in order to ascertain the correctness and veracity of the allegations made in the complaint."

Delhi is no doubt progressing but so is its crime rate making it the crime capital of the country. The police cannot contain the crime rate by not registering the crimes being reported to them. The crime graph of the city can be kept low only if the police act fast in apprehending criminals and not by manipulating the data or by avoiding registration of cases wherever required. The number game is thus no viable justification for the loutish behaviour of the police which is resulting in the complainants giving up on the police. It cannot be forgotten that the police force has a predominant duty to follow the mandate of law, but it is distressing to note the reality that despite the stringent directions from the portals of law, there is a mammoth difference in the theory and praxis in the functioning of the Police which has undoubtedly bedeviled the common man.

18. The police in the present case has consumed a miserably long time in the inquest proceedings. The purpose of holding the inquest as per section 174 C.r.P.C is very limited; it is to ascertain whether the person has committed suicide or has been killed by an animal or by accident or murdered or has died by some other reason raising reasonable suspicion that some other person has committed the offence. The inquest proceedings under the scheme of Code of Criminal Procedure cannot take place of an investigation. This court in the case of Mahabir Singh v. State 1979 Cri LJ 1159 has clearly held that if the inquest report is unreasonably delayed then begins the scope for questioning the genuineness of the FIR both qua its contents and the time of its recording. The Delhi Police thus cannot take refuge of the said inquest report to say that based on the observations of the inquest, postmortem and the initial findings, the Investigating Officer did not think it appropriate to register a case of murder. The case in hand clearly depicts the insensitivity of the Delhi Police and its pachydermatous indifference to the suffering of a common man. This court is constrained to observe that had this case been not of a an ordinary citizen then the state of affairs would certainly have been

different, as for the rich and mighty the police makes room and invariably registers an instant FIR even where the case may not clearly disclose the commission of any cognizable offence. The Police have bedaubed itself with the dubious distinction of being partisans of the power yielding somebodies and has on the way belittled the value of human life. The trust quotient of the police therefore definitely has come to naught as the ordinary citizen is made to feel like a worthless entity, a part of a faceless citizenry whenever they approach their so called protectors.

19. Another unfortunate wounding fact is that even the concerned Magistrates also showed their soulless approach in not taking prompt steps to direct the police to register an FIR, once an application was moved by the petitioner under Section 156(3) Cr.P.C. and kept on calling for one status report after the other. The Apex Court has categorically held that the Magistrate while ordering an investigation under section 156(3) should order the registration of FIR to set the investigation by the police in motion (Madhu Bala vs. Suresh Kumar & Ors 1997(8) SCC 476.). It is also has also been held that even if the Magistrate orders investigation under section 156(3) for investigation and does not in so many words order the registration of an FIR, it is the duty of the police officer in charge to register an FIR, after all it sets in motion the investigative machinery (Mohammed Yousuf vs. Afaq Jahan 2006(1) SCC 627). However, this would not culminate to mean that the Magistrate would not make any effective order once an application under section 156(3) is filed before him. He has to either direct the police to start investigation or proceed to examine the complainant on oath. There is not contemplated in the Code any middle path to shirk from the duty; he has to set the ball rolling for the case to proceed and cannot leave the complainant high and dry in a case where there is sufficient material at least to direct the police to register an FIR. Hence, in a case like this where prima facie material was laid by the complainant disclosing commission of a cognizable offence, that too an offence of such a heinous nature which does not involve probing any document or some kind of rival claims of the parties, the Magistrates are equally expected to act with all promptitude to pass the necessary directions under Section 156(3) Cr.P.C. instead of granting long adjournments in the matter. One cannot lose sight of the fact that right to speedy investigation and right to speedy trial are not only mandated by provisions of

Cr.P.C. but are the fundamental rights guaranteed to every person under Article 21 of the [Constitution of India](#), as held by the Honble Supreme Court in the case of *Raghubir Singh v. State of Bihar* AIR 1987 SC 149. It would also be pertinent to refer, while on the issue, the judgment of the Full Bench of the Patna High Court in the case of *Madheshwardhari Singh & Anr. v. State of Bihar* AIR 1986 Pat 324 which is to the same effect and where it was held that the right to speedy trial is applicable not only to actual proceedings in court but includes within its sweep the preceding police investigation in a criminal prosecution as well. It was also held that a speedy investigation and trial are equally mandated both by the letter and spirit of the Code of Criminal Procedure. The right to a speedy trial is the polestar of the justice dispensation system of our country and we cannot let any malfunctioning of any aegis of the forces be an impediment for securing it.

20. It is a misconception that the registration of an FIR must necessarily lead to an arrest of the suspect of the crime as it entirely depends on each case as there may be cases where the arrest of the accused maybe essential and others where the police may require more incriminating evidence for apprehending the accused. It is thus a settled law that mere registration of an FIR in every case may not result into arrest of a person accused of the offence. It would be useful to refer here to the recent pronouncement of the Apex Court in *Siddharam Satlingappa Mhetre vs. Maharashtra* (2011) 1 SCC 694 where while laying down parameters for anticipatory bail the court regarding arrest held that:

"129. In case the arrest is imperative, according to the facts of the case, in that event, the arresting officer must clearly record the reasons for the arrest of the accused before the arrest in the case diary, but in exceptional cases where it becomes imperative to arrest the accused immediately, the reasons be recorded in the case diary immediately after the arrest is made without loss of any time so that the court has an opportunity to properly consider the case for grant or refusal of bail in the light of reasons recorded by the arresting officer."

Hence, in the given facts of the case, the police can always postpone the arrest of the person accused unless it is prima facie satisfied that the accused named in the complaint or the accused/suspect of a crime under the given circumstances cannot at all be involved in the commission of the crime or in a case where prompt action to arrest if not taken will result in jeopardizing or sabotaging the course of investigation. But certainly the police cannot postpone the registration of an FIR where the information laid by the complainant before it clearly discloses commission of a cognizable offence. The police is expected to take fair, impartial and sincere steps whenever any crime is committed as the prime function of the police is to protect the lives of the people and also to maintain the law and order situation to ensure a crime-free society. It would be useful here to refer to the observations of the Honble High Court of Punjab & Haryana in the case of Amrik Singh vs. The State of Punjab 1983 CRI.L.J 1405 where it was held as under:

"17. The duty of the police is to prevent and detect crime and to bring the accused to justice. Lord Denning, Master of the Rolls in his book titled "The Due Process of Law", 1980 Edn., in Chap. I of Part Three, has observed about the role of the police as follows: - "In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of police whom it can trust; and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice. The police of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants,"

The investigation in the present case had been tainted and aimed at to save the appellant and not to bring him to justice. Under the law the investigator is enjoined upon to unearth the crime and as soon as he receives the information about the crime, he is to proceed to the spot, ascertain the facts and circumstances of the

case and arrest the suspected offender, collect the evidence relating to the commission of the offence, examine various persons including the accused, reduce their statements into writing, to search the places and take into possession the things considered necessary for the investigation and to be produced at the trial and then to form his opinion as to whether on the material collected any accused is to be placed before a Magistrate for commitment and to file a charge-sheet under. Section 173, Cri. P.C. In the nature of things, an investigator has to have and is clothed with many powers by the Law for the purpose of conducting investigation and where a murder has taken place, it is the duty of the investigator to send the special report to the illaqa Magistrate at once."

Thus, the conduct of the concerned officials of the Delhi Police in the present case is highly deplorable and an astonishing spectacle was the action of the senior officers upto the rank of the Commissioner of Police who came out in defence of the shoddy inquiry instead of coming forward to rectify their reprehensive conduct of not registering an FIR in such a case involving murder of a young boy of 22 years. It is a harsh reality that despite numerous police reforms yet the common man shirks and hesitates to freely walk into the police station to lodge a complaint as he is still afraid and fearful that he will not be treated well and perhaps would be subjected to harassment for reporting any crime, which otherwise is his legitimate right. It is the notion that the police procedures are veiled, slow paced and uncertain in outcome which has further plummeted the public trust in the police. The Delhi police motto states "Citizens First" and a part of its Mission statement reads as:

"The objective of Delhi Police is to Uphold the law fairly and firmly; To prevent crime; to pursue and bring to justice Those who break the law; To keep the peace in partnership with the community; To protect, help and reassure the people; "

But these promising words seem to have no verisimilitude. They seem so hollow especially in the present case, where they have whittled down to become nothing but a teasing mirage.

21. In the light of the above discussion, where the petitioner has borne the harrowing brunt of a tardy investigation, this court is of the considered view that this is a fit and deserving case where the investigation needs to be transferred to the CBI. No doubt the CBI, which is considered to be a premier investigating agency of this country is already burdened with many important investigations involving huge scams, but keeping in view the fact that the death of a young boy of 22 years and the slack investigation conducted by the Delhi Police and also the shamble justifications given by the senior officers of Delhi Police in not registering an FIR, the CBI is the only other agency which can be looked upto to carry on the investigation in this case. The CBI is therefore directed to complete the investigation as early as possible but not later than a period of three months from the date of this order.

22. Since in the present case the petitioner and the entire family of the deceased are the hapless victims who not only had to pass through the galling and traumatic period due to the sudden death of their beloved but they were further forced to file one case after the other just for seeking the registration of a simple FIR into the alleged murder case, therefore, the cost of Rs.2 lac is imposed upon the Delhi Police for their illegal, contemptuous and defiant approach in not following the law of the land. The said amount shall be paid by the Delhi Police to the petitioner within a period of one month from the date of this order.

23. With the above directions, the present petition stands disposed of.

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