



2025:AHC:165371-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. WRIT PETITION No. - 14412 of 2025

Vinod Tripathi

.....Petitioners(s)

Versus

State of U.P. And five
others

.....Respondents(s)

Counsel for Petitioners(s)	: Kirtiman Singh
Counsel for Respondent(s)	: G.A., Rajesh Kumar Mishra

Judgement Reserved on 05.08.2025
Judgement Delivered on 16.09.2025

Court No. - 47

HON'BLE SIDDHARTH, J.
HON'BLE AVNISH SAXENA, J.

1. The petitioner (Advocate by profession) has moved the writ court for issuance of writ of mandamus against respondent nos. 2 and 3, the Commissioner of Police, Prayagraj and Station House Officer, Bahariya, Prayagraj, respectively to punish them for non compliance of this Court's order dated 13.05.2025 passed in CrI. Misc. Writ Petition No. 9518 of 2025 [Vinod Tripathi Vs. State of U.P. and 4 others]. Further direction is sought for issuance of direction to the police authorities to lodge First Information Report (FIR) against private respondent nos. 5 and 6, on false implication of petitioner in criminal case. The reliefs in the writ petition is reiterated underneath :-

“(i) Issue a writ, order or direction in the nature of mandamus directing the respondent no.2 and passed by this Hon’ble court and also punish the respondent nos. 2 and 3 i.e. Police Commissioner, Prayagraj and Station House Officer, Bahariya, Prayagraj for not comply the order dated 13.05.2025 passed by this Hon’ble Court.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondent authorities to lodge a First Information Report against the respondent nos. 5 and 6 at Police Station-Bahariya, District Prayagraj.

(iii) Issue a writ, order or direction in the nature of mandamus directing the respondent authorities to take a necessary action upon the application dated 18.06.2025.

(iv) Issue any other writ, order or direction as this Hon'ble Court may deem fit and proper under the circumstances of the present case."

2. As the relief sought in the petition has its genesis from order dated **13.05.2025** passed in ***Crl. Misc. Writ Petition No. 9518 of 2025 [Vinod Tripathi Vs. State of U.P. and 4 others]***, it would be necessary to reproduce the order passed by a Division Bench of this Court:-

“

3. In pith and substance, the petitioner has confined his prayer for a direction to respondents to register his case pursuant to his application dated 24.04.2025 as per the Government Order dated 19.06.2017.

4. Considering the facts and circumstances of the case, without expressing any opinion on merits of the issue, the writ petition stands disposed of asking respondent no.2- Police Commissioner, Commissionerate, Prayagraj to look into, examine and redress the grievance of the petitioner in accordance with law and in the light of Lalita Kumari v. State of U.P. and others AIR 2014 Supreme Court 187 expeditiously but certainly after giving opportunity to all the stake holders in the matter."

3. The matter in nutshell revolves around the statement of respondent no.5 (victim) in case crime no. 150 of 2025 under Section 376D, 506 IPC and Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. She has lodged the first information report against Bhupendra Pandey (Advocate by profession). The inquiry carried out by the Central Bureau of Investigation (CBI) conducted on the direction of this Court passed inter alia through ***order dated 20.10.2022*** in ***Application U/S 482 Cr.P.C. No. 20438 of 2022 [Nikki Devi Vs. State of U.P. and Another]***, the name of the petitioner was figured out.

4. By the previous order dated 23.07.2025, a date (29.07.2025) has been fixed for the petitioner to appear before the Commissioner of Police alongwith

material to provide the basis for police action. The relevant paragraphs 3 and 4 of the said order is reiterated underneath:-

“3. Learned counsel for the petitioner states that despite the fact that notice was sent to the petitioner to appear before the police officials it has been stated in the instructions which have been sent that the petitioner had not supplied any material on the basis of which the police could take action.

4. If that is the case we provide the petitioner may appear before the Commissioner of Police on 29.7.2025 and on that date the Police Commissioner would record the statement of the petitioner and also look into the grievance of the petitioner.”

5. Sri Rameshwar Prasad Shukla, learned AGA-1st has moved the affidavit of compliance of order dated 23.07.2025 (emphasis supplied supra). The initial paragraph reveals that the petitioner did not appear before opposite party no.2 on the date fixed viz 29.07.2025. Later on, the petitioner was issued notice for getting his statement recorded to Dy. Commissioner of Police, Ganga Nagar Commissionerate, Prayagraj but the petitioner instead of getting his statement recorded submitted his self signed typed statement on 01.08.2025. Learned AGA has drawn the attention of this Court towards paragraphs 6 and 7 of the affidavit and the annexures annexed through the affidavit to show that there is no material, on the basis of which the FIR of the petitioner could be registered. The relevant paragraphs no. 6 and 7 of the affidavit are reiterated underneath:

“6. That apart from above, Deputy Commissioner of Police, Ganga Nagar Commissionerate, Prayagraj also got some query orally from the petitioner about the alleged occurrence as narrated in the application dated 24.04.2025 by the petitioner, but he could not reply about any query, as such Deputy Commissioner of Police, Ganga Nagar Commissionerate, Prayagraj perused the entire version of statement of petitioner viz. Vinod Tripathi, which is in shape of self typed statement alongwith annexures then by recital of entire typed statement of petitioner it revealed that the petitioner therein narrated. about the previous criminal cases, which were registered against each other and as such by perusal thereof nothing could be seemed to make out a prima facie criminal case, as such deputed officer/Deputy Commissioner of Police, Ganga Nagar Commissionerate,

*Prayagraj after perusal of entire record and statement of petitioner as well as on the basis of oral query prepared a detail report on 01.08.2025. in which he was of the opinion that prima facie nothing could be found to lodge a first information report against named persons against whom the petitioner wants to lodge a criminal case and same has been forwarded to Commissioner of Police. Commissionerate, Prayagraj. For kind perusal of this Hon'ble Court, copy of detail enquiry report dated 04.08.2025 by Commissioner of Police. Commissionerate, Prayagraj is being filed herewith and marked as **Annexure No. 3** to this affidavit.*

7. That it is also pointed out here that petitioner and his rivals time to time has got registered the criminal cases against each other. For kind perusal of this Hon'ble Court, copy of list of those cases lodged against each other is being filed herewith and marked as Annexure No. 4 to this affidavit.”

6. Learned counsel for the petitioner has stated that the police authorities have not made the inquiry in true sense and have not paid heed to redress the grievance of the petitioner. The police is harassing the petitioner in the garb of investigation. He relied on the cases of ***Lalita Kumari Vs. Govt. of U.P. & Others*** particularly in paragraphs no. 111 and 112, ***XYZ Vs. State of M.P.*** particularly in paragraph no. 18, ***Imran Pratapgadhi Vs. State of Gujrat*** particularly in paragraphs no. 23, 30, 38, 39, ***Pradeep Nirankar Nath Sharma Vs. State of Gujarat*** particularly in paragraph no. 12, ***A Daniel Vs. Superintendent of Police*** particularly in paragraph no. 2, ***Vinod Kumar Pandey and another Vs. Seesh Ram Saini*** particularly in paragraphs no. 28,34,36,40, ***Amit Kumar and others Vs. Union of India and others*** particularly in paragraph no. 34 and ***Mohd. Afzal Mohammad Sharif Vs. State of Maharashtra and others*** particularly in paragraphs no. 16,17,19,24 are reiterated underneath :-

Lalita Kumari (supra):-

“111. Besides, the Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The section itself states that a police officer can start investigation when he has “reason to suspect the commission of an offence”. Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the

requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

112. Likewise, giving power to the police to close an investigation, Section 157 of the Code also acts like a check on the police to make sure that it is dispensing its function of investigating cognizable offences. This has been recorded in the 41st Report of the Law Commission of India on the Code of Criminal Procedure, 1898 as follows:-

“14.1. Scheme of Chapter.—If the offence does not appear to be serious and if the station house officer thinks there is no sufficient ground for starting an investigation, he need not investigate but, here again, he has to send a report to the Magistrate who can direct the police to investigate, or if the Magistrate thinks fit, hold an inquiry himself. ...

4.2. Function of Magistrate during investigation.—A noticeable feature of the scheme as outlined above is that a Magistrate is kept in the picture at all stages of the police investigation, but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted.”

(emphasis in original)

Therefore, the scheme of the Code not only ensures that the time of the police should not be wasted on false and frivolous information but also that the police should not intentionally refrain from doing their duty of investigating cognizable offences. As a result, the apprehension of misuse of the provision of mandatory registration of FIR is unfounded and speculative in nature.”

XYZ (supra) :-

“18. Whether or not the offence complained of is made out is to be determined at the stage of investigation and/or trial. If, after conducting the investigation, the police find that no offence is made out, they may file a B Report under Section 173CrPC. However, it is not open to them to decline to register an FIR. The law in this regard is clear — police officers cannot exercise any discretion when they receive a complaint which discloses the commission of a cognizable offence.”

Imran Pratapgadhi (supra) :-

“23. Section 154 of the CrPC does not provide for making any preliminary inquiry. However, as held in the case of Lalita Kumari, a preliminary inquiry is permissible if the information received does not disclose a cognizable offence and indicates the necessity for an inquiry. A preliminary inquiry must be conducted only to ascertain whether a cognizable offence is disclosed. However, sub-Section (3) of Section 173 of the BNSS makes a significant departure from Section 154 of the CrPC. It provides that when information relating to the commission of a cognizable offence which is made punishable for 3 years or more but less than 7 years is received by an officer-in-charge of a police station, with the prior permission of a superior officer as mentioned therein, the police officer is empowered to conduct a preliminary inquiry to ascertain whether there exists a prima facie case for proceeding in the matter. However, under Section 154 of the CrPC, as held in the case of Lalita Kumari, only a limited preliminary inquiry is permissible to ascertain whether the information received discloses a cognizable offence. Moreover, a preliminary inquiry can be made under the CrPC only if the information does not disclose the commission of a cognizable offence but indicates the necessity for an inquiry. Sub-Section (3) of Section 173 of the BNSS is an exception to sub-Section (1) of Section 173. In the category of cases covered by sub-Section (3), a police officer is empowered to make a preliminary inquiry to ascertain whether a prima facie case is made out for proceeding in the matter even if the information received discloses commission of any cognizable offence. That is very apparent as sub-Section (3) of Section 173 refers explicitly to receiving information relating to the commission of a cognizable offence. Therefore, in a case where sub-Section (3) of Section 173 is applicable, even if the information pertaining to the commission of any cognizable offence is received, an inquiry can be conducted to ascertain whether a prima facie case exists for proceeding in the matter. The intention appears to be to prevent the registration of FIRs in frivolous cases where punishment is up to 7 years, even if the information discloses the commission of the cognizable offence. However, under Section 154 of the CrPC, the inquiry permitted by paragraph 120.2 of the decision in the case of Lalita Kumari is limited only to ascertain whether the cognizable offence is disclosed.

30. Even while dealing with the performance of an obligation under sub-Section (1) of Section 173, where the commission of the offence is based on spoken or written

words, the police officer concerned will have to keep in mind the fundamental rights guaranteed under Article 19(1)(a) read with an exception carved out under clause (2) of Article 19. The reason is that he is under an obligation to abide by the Constitution and to respect the ideals under the Constitution. The Constitution is more than 75 years old. By this time, the police officers ought to have been sensitized about their duty of abiding by the Constitution and respecting the ideals of the Constitution. If the police officers are not aware of these obligations, the State must ensure that they are educated and sensitized by starting massive training programs.

38. Free expression of thoughts and views by individuals or groups of individuals is an integral part of a healthy, civilised society. Without freedom of expression of thoughts and views, it is impossible to lead a dignified life guaranteed by Article 21 of the Constitution. In a healthy democracy, the views, opinions or thoughts expressed by an individual or group of individuals must be countered by expressing another point of view. Even if a large number of persons dislike the views expressed by another, the right of the person to express the views must be respected and protected. Literature including poetry, dramas, films, stage shows, satire and art, make the life of human beings more meaningful. The Courts are duty-bound to uphold and enforce fundamental rights guaranteed under the Constitution of India. Sometimes, we, the Judges, may not like spoken or written words. But, still, it is our duty to uphold the fundamental right under Article 19 (1)(a). We Judges are also under an obligation to uphold the Constitution and respect its ideals. If the police or executive fail to honour and protect the fundamental rights guaranteed under Article 19 (1)(a) of the Constitution, it is the duty of the Courts to step in and protect the fundamental rights. There is no other institution which can uphold the fundamental rights of the citizens.

39. Courts, particularly the constitutional Courts, must be at the forefront to zealously protect the fundamental rights of the citizens. It is the bounden duty of the Courts to ensure that the Constitution and the ideals of the Constitution are not trampled upon. Endeavour of the courts should always be to protect and promote the fundamental rights, including the freedom of speech and expression, which is one of the most cherished rights a citizen can have in a liberal constitutional democracy. The Courts must not be seen to regulate or stifle the freedom of speech and expression. As a matter of fact, the Courts must remain ever vigilant to

thwart any attempt to undermine the Constitution and the constitutional values, including the freedom of speech and expression.”

Pradeep Nirankar Nath Sharma (supra) :-

“12. The scope of a preliminary inquiry, as clarified in the said judgment, is limited to situations where the information received does not prima facie disclose a cognizable offence but requires verification. However, in cases where the information clearly discloses a cognizable offence, the police have no discretion to conduct a preliminary inquiry before registering an FIR. The decision in *Lalita Kumari* [*Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] does not create an absolute rule that a preliminary inquiry must be conducted in every case before the registration of an FIR. Rather, it reaffirms the settled principle that the police authorities are obligated to register an FIR when the information received prima facie discloses a cognizable offence.”

A Daniel (supra) :-

“2. *The learned counsel appearing for the petitioner submits that the respondent police harassed the petitioner under the guise of enquiry.*”

Vinod Kumar Pandey (supra) :-

“28. *The report of the CBI at best is a preliminary enquiry report submitted before the registration of the FIR. However, such an enquiry is not ordinarily contemplated in law before registration of FIR, and hence is not a conclusive report to be relied upon to oust the power of the Constitutional Court to record its own conclusion about commission of a cognizable offence, if any, on the material or the allegations in the complaints.*

34. *Therefore, if the Constitutional Court has exercised its discretion in entertaining the petitions and directing for the registration of the FIR against the two officers, on being satisfied that the commission of a cognizable offence is prima facie made out against them, we see no good reason to interfere with such discretion. At best, as argued by Mr. Ranjit Kumar, learned senior counsel for the appellants, we can say that the opinion expressed by the High Court in regard to commission of the cognizable offences is only a prima facie opinion and has to be treated as such, so as not to affect the discretion of the I.O., subsequent to the investigation.*

36. It would however, not be a prudent exercise at this stage to scuttle the registration of the FIR or the investigation, when the High Court in exercise of its constitutional powers had opined that prima facie, a cognizable offence is made out against the two officers, that too upon elaborate consideration of the preliminary inquiry report of the Joint Director of CBI.

40. Secondly, in view of the law laid down in Lalita Kumari v. Government of Uttar Pradesh¹¹, and reiterated thereafter to the effect that registration of FIR is mandatory under Section 154 Cr. P.C. if the information discloses commission of a cognizable offence and no preliminary inquiry before FIR is permissible in such a situation; however, if the information received does not disclose a cognizable offence but indicates necessity of an inquiry being conducted, a preliminary inquiry may be conducted only to ascertain facts disclosing cognizable offence, if any. Thus, treating the inquiry conducted by the Joint Director, CBI as a preliminary inquiry, we permit the same to be looked into, if necessary, by the I.O. during the investigation by him, but not to treat it as conclusive. The I.O. would conduct the investigation strictly in accordance with law without being influenced by any finding or observation made by the High Court in the impugned order(s) or by this Court hereinabove and shall conclude the same as expeditiously as possible, preferably within three months as the matter is quite old.”

Amit Kumar and others (supra) :-

“34. The foregoing discussion leads us to the inevitable conclusion that when an informant approaches the police with information regarding the commission of a cognizable offence, the police owes a duty to promptly register an F.I.R. and initiate investigation in accordance with Section 154 of the CrPC. The police authorities are not vested with any discretion to conduct a preliminary inquiry to assess the credibility of the information before registering the F.I.R. Any such practice would be contrary to the established principles of criminal law.”

Mohd. Afzal Mohammad Sharif (supra) :-

“16. It is manifest from a plain reading of the aforestated provision that once information relating to commission of a cognizable offence is given to the officer-in-charge of a police station, the investigative machinery is required to be set in motion. If the information received revealed commission of a cognizable offence, it is mandatory to record the substance of the information in a

book to be kept by the officer in the prescribed form. In effect, if the information received disclosed commission of a cognizable offence, it is mandatory to register an FIR. In this context, useful reference may be made to the following observations of a Constitution Bench in Lalita Kumari v. Govt. of U.P.³:

‘120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes*
- (b) Commercial offences*

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks' time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.'

17. Referring to the above observations in Imran Pratapgadhi v. State of Gujarat⁴, a coordinate Bench of this Court observed as under:

'23. Section 154 of the CrPC does not provide for making any preliminary inquiry. However, as held in the“16. It is manifest from a plain reading of the aforestated provision that once information relating to commission of a cognizable offence is given to the officer-in-charge of a police station, the investigative machinery is required to be set in motion. If the information received revealed commission of a cognizable offence, it is mandatory to record the substance of the information in a book to be kept by the officer in the prescribed form. In effect, if the

information received disclosed commission of a cognizable offence, it is mandatory to register an FIR. In this context, useful reference may be made to the following observations of a Constitution Bench in Lalita Kumari v. Govt. of U.P.[3](#):

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relating to the commission of a cognizable offence. Therefore, in a case where sub-Section (3) of Section 173 is applicable, even if the information pertaining to the commission of any cognizable offence is received, an inquiry can be conducted to ascertain whether a prima facie case exists for proceeding in the matter. The intention appears to be to prevent the registration of FIRs in frivolous cases where punishment is up to 7 years, even if the information discloses the commission of the cognizable offence. However, under Section 154 of the CrPC, the inquiry permitted by paragraph 120.2 of the decision in the case of Lalita Kumari is limited only to ascertain whether the cognizable offence is disclosed.

24. Under sub-Section (3) of Section 173 of the BNSS, after holding a preliminary inquiry, if the officer comes to a conclusion that a prima facie case exists to proceed, he should immediately register an FIR and proceed to investigate. But, if he is of the view that a prima facie

19. It cannot be disputed that the appellant was subjected to an assault during the riots, on the night of 13.05.2023, requiring his hospitalization for his head injury. At the very least, the assault upon him would have constituted an offence under Sections 324 or 325 or 326 of the IPC, which are all cognizable, and required decisive and prompt action on the part of the police as soon as they came to know about it. The medical reports from Icon Hospital placed on record by the appellant before the High Court showed that he was admitted on 14.05.2023 at 01.14 AM and was discharged on 16.05.2023 at 11.00 AM. The reports further indicated that the diagnosis was 'assault with head injury'. The appellant required sutures for his head injury and the treatment/course in the hospital was noted as under:

'L/E - HEAD INJURY WITH SUTURES+'

'PT WAS ADMITTED IN ICON IN WARD WITH ABOVE COMPLAINTS HISTORY NOTED

CT BRAIN WAS DONE WHICH S/O SUBGALEAL HAEMATOMA, WITH ACUTE

HYPERDENSE SUBDURAL HAEMORRHGE IN VIEW OF THAT NEUROSURGEON OPINION WAS DONE BY DR. U. GADAPAL SIR WHICH ADVICE, INJ LEVERA, MANNITOL,

GENERAL SURGEON OPINION WAS DONE BY DR. AVINASH TELGOTE SIR USG (A+P) WAS DONE WHICH S/O- NAD

ALL OTHER CONSERVATIVE TREATMENT AND MANAGEMENT WAS DONE

NOW ON DATE 16/5/23 PT IS HAEMODYNAMICALLY STABLE AND HAVING NO ANY FRESH COMPLAINTS SO ADVICES CAN BE DISCHARGED.

DRESSING DONE TODAY

BUT RELATIVES WANT TO SHIFT TO DR. ZEESHAN SIR HOSPITAL AKOLA.'

24. In these circumstances, we are of the opinion that this is a fit case to direct the Secretary, Home Ministry, Government of Maharashtra, to constitute a special investigation team, comprising senior police officers of both Hindu and Muslim communities, to undertake an investigation into all the allegations made by the appellant, by registering an FIR in connection with the assault upon him on 13.05.2023, and take appropriate action thereon as warranted. Further, the Secretary, Home Ministry, Government of Maharashtra, shall initiate appropriate disciplinary action against all erring police officials, in accordance with law and due procedure, for the patent dereliction of duties, as has been noted hereinbefore. Measures shall also be initiated to instruct and sensitize the rank and file in the police department as to what law requires of them in the discharge of their duties."

10. Learned counsel for the opposite party no.6 has placed the written arguments on record, and further submits that through written arguments the details of the cases have been annexed, which show that the petitioner is involved in getting lodged false and fictitious FIRs for ulterior motive.

11. We have perused the entire record and found that the coordinate Bench of this Court in Crl. Misc. Writ Petition No. 9518 (*supra*) has considered the case of the petitioner and directed the Commissioner of Police, Prayagraj to look into, examine and redress the grievance of the petitioner in accordance with the law laid down in the case of ***Latita Kumar (supra)***, which has been considered and examined and dealt with by the Commissioner of Police (respondent no.2). This court in writ jurisdiction will not go into facts of the case to direct the registration of FIR. As such the writ petition is devoid of merit and liable to be dismissed.

13. Accordingly, the writ petition is dismissed.

(Avnish Saxena,J.) (Siddharth,J)

September 16th, 2025

Abhishek Sri/-