

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Criminal Writ Petition No.566 of 2016

(Smt. Shalini wd/o. Shalikram Dhore .vs. State and Ors.)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions
 and Registrar's orders

Court's or Judge's orders.

Mr.S.Y.Deopujari, Advocate for the Petitioner.
 Mr.M.J.Khan, A.G.P. for Respondent Nos. 1 to 5.

CORAM : B.R.GAVAI AND
 KUM. INDIRA JAIN, JJ.

DATE : 13.2.2017.

Heard.

Perusal of the oral report given by the petitioner to the concerned Police Station would reveal that the First Information Report taken at its face value discloses commission of a cognizable offence. In view of the Judgment of the Apex Court in the case of **Lalita Kumari vs. Government of U.P.** Reported in (2014) 1 SCC 1, preliminary inquiry would be permissible only in respect of some category of cases which have been carved out by the Apex Court in the said Judgment itself. Admittedly, the offence which is alleged in the F.I.R. in question does not come within the purview of these exceptional categories.

In that view of the matter, we do not find that the Sub-Divisional Police Officer

has any propriety to conduct the preliminary investigation and come to conclusion that no offence was conducted. The S.D.P.O. cannot judge the issue as to whether the allegations made in the F.I.R. are correct or not.

If the F.I.R. taken at its face value discloses commission of a cognizable offence, then the Police Officer has no other option but to register the F.I.R. It is different matter if, at the conclusion of investigation, the Investigating agency finds that no case is made out for proceeding further, when it may consider filing of appropriate summary proceeding. However, non-registration of the F.I.R., in our view, is not permissible.

The learned A.P.P. submits that there is delay of three days in lodging the F.I.R. By now it is a settled law that merely delay in lodging an F.I.R. is not always fatal to the prosecution case. It will depend upon the facts and circumstances of each case.

If the matter goes to trial, then the issue as to whether the delayed F.I.R. is fatal to the prosecution case or not would arise. However, that cannot be a ground not to register the F.I.R.

In that view of the matter, the concerned Police Station Officer, Police Station, Brahmapuri is directed to take cognizance of oral report of the petitioner herein dt.3.8.2015 and register the F.I.R. and,

on registration of the F.I.R., he is directed to transfer the investigation to the local Crime Branch, Chandrapur.

With the above observations and directions, the Writ Petition is disposed of.

No order as to costs.

JUDGE

JUDGE

jaiswal