



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.09.2018
DELIVERED ON : 20.09.2018

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CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL OP(MD) No.409 of 2018 and 1003 Other batch Cases.

MUNIYASAMY,
S/O.LATE.MUTHUKRISHNA ASARI,
53/1,RAMASAMIYAPURAM 4TH STREET,
SANKARANKOVIL,
TIRUNELVELI DISTRICT.

... Petitioner(s)

Vs

1 THE SUPERINTENDENT OF POLICE,
TIRUNELVELI, TIRUNELVELI DISTRICT.

2 THE INSPECTOR OF POLICE,
SANKARANKOVIL TOWN POLICE STATION,
SANKARANKOVIL, TIRUNELVELI DISTRICT.

... Respondent(s)

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying this Court to pass an order directing the Respondents particularly the 2nd Respondent to register his complaint dated 11.12.2017 and conduct enquiry in accordance with law and subsequently file the final report forthwith.

For Petitioner(s): Mr.S.Lingarasu

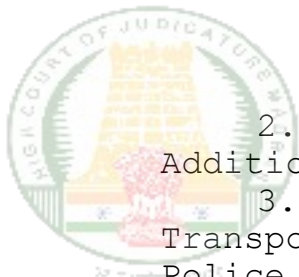
For Respondent(s): Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

COMMON ORDER

M.M. SUNDRESH, J.

On finding two contradictory views of two learned Judges, qua a petition filed seeking a direction to the police to register a cognizable offence, the following reference has been made:

"These Criminal original Petitions have been filed to direct the police to register the complaint of the petitioners lodged before the police."



2. Heard learned Counsel for the petitioners and learned Additional Public Prosecutor for the respondent.

3. A learned single Judge of this Court in Sugeshan Transport Private Limited Vs. Assistant Commissioner of Police, Chennai and another, reported in 2016 (2) LW Criminal 499, has held that such a petition is not maintainable. However this view has not been accepted by another learned single Judge of this Court, in K.Ragupathy Vs. Commissioner of Police, Chennai and another, reported in 2017 (3) MLJ CrL 309.

4. As on date, two contradictory views have been expressed by two learned single judges on this issue. It is therefore important for this Court to settle the law on this issue, in order to remove the ambiguity that prevails as on date.

5. A petition to direct the police to register the complaint is being filed on a regular basis before this Court and therefore, it becomes very important to settle the law and have a clarity as to the maintainability of such petitions.

6. I, therefore, deem it fit that this issue may be directed to be placed before a Division Bench in order to resolve the conflict and to attain a clarity regarding the maintainability of a petition for registration of a complaint by police.

7. Registry is directed to place this matter before the Hon'ble Administrative Judge with a request to constitute a Division Bench in this regard."

Resultantly, all such petitions filed immediately after lodging an information, which was not registered are posted before us. On perusal, we find that in almost all the cases there is no compliance of Section 156(3) Cr.P.C. Prima facie it also appears that most of the complaints involve not very serious offences.

2. The learned counsels appearing for the petitioners made the following submissions:

The decision in Lalita Kumari's case merely deals with the powers and duties of the Police Officer under Section 156(1) Cr.P.C. Thus, it does not take away the power of this Court under Section 482 Cr.P.C. Such a power inheres in the Court. It is also provided in the Constitution of India. A mere alternative remedy per se would not oust the jurisdiction of this Court. Learned Single Judge in Sugeshan Transport Pvt. Ltd. v. The Assistant Commissioner of Police J-2, Adayar Police Station Adyar, Chennai 600 020 and others [2016-2-L.W. (CrL.) 499] has not considered the earlier decisions. More often, the directions of Apex Court in Lalita Kumari's case are not complied with by the police. The procedure under Section 156(3) is more complex. The decision in Sakiri Vasu v. State of U.P. [(2008) 2 SCC 409] has to be seen in its own context. It did not take note the earlier decision in Ramesh Kumari v. State (N.C.T. of Delhi) (SC) [2006 (1) CrL 666]. The power available to the Magistrate under Section 156(3) Cr.P.C. can be exercised under Section 482 Cr.P.C.



The order passed under Section 482 Cr.P.C. is not an executive or administrative one but purely judicial, directing the police to perform its statutory duty. The Registry cannot insist for an affidavit, which is an alien procedure. There is no law that mandates filing an affidavit.

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3. The learned Additional Public Prosecutor appearing for the respondents would submit that circulars have been issued in tune with the Lalita Kumari's case. The power under Section 482 Cr.P.C. has to be sparingly used and it cannot be used to circumvent a specific provision. The power exercised by the Police Officer is executive and administrative in nature and the same cannot be done or directed to be done by this Court. In all the cases compliance under Section 154(3) Cr.P.C. has not been made. Most of the complaints do not have any basis. The Police Standing Order provides for a preliminary investigation.

4. While concluding the learned counsels made reliance upon a number of decisions. As we intend to discuss them separately, we do not wish to make a mention of them at this stage. Also, as the issue is one of law, we do not propose to go deep into the facts of the petitions. The learned counsels also did not address accordingly.

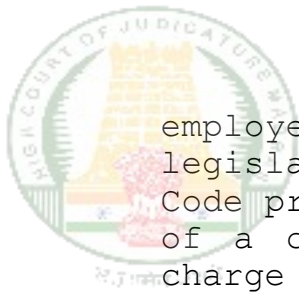
5. We have considered the submissions made by the learned counsels appearing of the petitioners, learned counsels appearing for the private respondents and the learned Additional Public Prosecutor appearing for the State and perused the records, judgments and written arguments.

6. The one and the only issue which was also subject matter before the two learned Single Judges is as to whether the inherent jurisdiction of this Court, which is extra-ordinary in nature be used sparingly occasioned in an extra-ordinary situation, can be invoked as and when a station house officer fails to record an information furnished on cognizable offence. For considering the aforesaid issue, let us consider the various provisions available in the Code of Criminal Procedure.

Section 154 Cr.P.C.:

7. Section 154 of the Criminal Procedure Code comes under Chapter XII, which speaks of the information to the police and its powers to investigate. It would unnecessary for us to discuss the scope and ambit of this provision which has been in extenso dealt with by the celebrated judgment of the Hon'ble Apex Court in Lalita Kumari v. Govt. of U.P. [(2014) 2 SCC 1]. The following paragraph would be apposite:

"44. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. All that we have to see at the very outset is what does the provision say? As a result, the language



employed in Section 154 is the determinative factor of the legislative intent. A plain reading of Section 154(1) of the Code provides that any information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station shall be reduced into writing by him or under his direction. There is no ambiguity in the language of Section 154(1) of the Code.

45. At this juncture, it is apposite to refer to the following observations of this Court in *Hiralal Rattanlal* [(1973) 1 SCC 216] which are as under: (SCC p. 224, para 22)

"22. ... In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear."

46. The above decision was followed by this Court in *B. Premanand*¹³ and after referring to the abovesaid observations in *Hiralal Rattanlal* [(2011) 4 SCC 266], this Court observed as under: (*B. Premanand* case¹³, SCC p. 270, para 9)

"9. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide *Swedish Match AB v. SEBI* [(2004) 11 SCC 641]."

47. The language of Section 154(1), therefore, admits of no other construction but the literal construction.

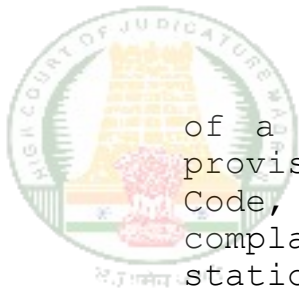
48. The legislative intent of Section 154 is vividly elaborated in *Bhajan Lal* [1992 SCC (Cri) 426] which is as under: (SCC pp. 353-54, paras 30-33)

"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 in charge 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 police officer concerned cannot embark upon an inquiry 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 Sections 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, 1861 (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, 1872 (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 190(c) of the present Code, 1973 (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 information and that information must disclose a cognizable offence.

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." (emphasis in original)

49. Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), 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. The provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of information disclosing a cognizable offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

"Shall"

50. The use of the word "shall" in Section 154(1) of the Code clearly shows the legislative intent that it is mandatory to register an FIR if the information given to the police discloses the commission of a cognizable offence.

51. In *Khub Chand V. State of Rajasthan* [AIR SC 1074], this Court observed as under: (AIR p. 1077, para 6)

"6. ... The term 'shall' in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the



consequences that would flow from the infringement of the direction and such other considerations."

52. It is relevant to mention that the object of using the word "shall" in the context of Section 154(1) of the Code is to ensure that all information relating to all cognizable offences is promptly registered by the police and investigated in accordance with the provisions of law.

53. Investigation of offences and prosecution of offenders are the duties of the State. For "cognizable offences", a duty has been cast upon the police to register FIR and to conduct investigation except as otherwise permitted specifically under Section 157 of the Code. If a discretion, option or latitude is allowed to the police in the matter of registration of FIRs, it can have serious consequences on the public order situation and can also adversely affect the rights of the victims including violating their fundamental right to equality.

54. Therefore, the context in which the word "shall" appears in Section 154(1) of the Code, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these factors clearly show that the word "shall" used in Section 154(1) needs to be given its ordinary meaning of being of "mandatory" character. The provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer in charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR. It is settled position of law that if the provision is unambiguous and the legislative intent is clear, the court need not call into it any other rules of construction.

55. In view of the above, the use of the word "shall" coupled with the scheme of the Act lead to the conclusion that the legislators intended that if an information relating to commission of a cognizable offence is given, then it would mandatorily be registered by the officer in charge of the police station. Reading "shall" as "may", as contended by some counsel, would be against the scheme of the Code. Section 154 of the Code should be strictly construed and the word "shall" should be given its natural meaning. The golden rule of interpretation can be given a go-by only in cases where the language of the section is ambiguous and/or leads to an absurdity.

56. In view of the above, we are satisfied that Section 154(1) of the Code does not have any ambiguity in this regard and is in clear terms. It is relevant to mention that Section 39 of the Code casts a statutory duty on every person to inform about commission of certain offences which includes offences covered by Sections 121 to 126, 302, 64-A, 382, 392, etc. of the Penal Code. It would be incongruous to suggest that though it is the duty of every citizen to inform about commission of an offence, but it is not obligatory on the



officer in charge of a police station to register the report. The word "shall" occurring in Section 39 of the Code has to be given the same meaning as the word "shall" occurring in Section 154(1) of the Code."

After holding so, the significance and compelling reasons for registration of an information is dealt with through the following paragraphs:

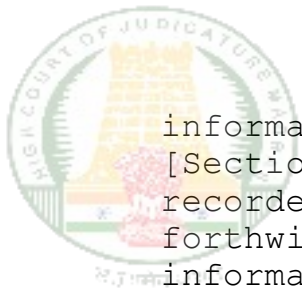
"93. The object sought to be achieved by registering the earliest information as FIR is inter alia twofold: one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment, etc. later.

94. Principles of democracy and liberty demand a regular and efficient check on police powers. One way of keeping check on authorities with such powers is by documenting every action of theirs. Accordingly, under the Code, actions of the police, etc. are provided to be written and documented. For example, in case of arrest under Section 41(1)(b) of the Code, the arrest memo along with the grounds has to be in writing mandatorily; under Section 55 of the Code, if an officer is deputed to make an arrest, then the superior officer has to write down and record the offence, etc. for which the person is to be arrested; under Section 91 of the Code, a written order has to be passed by the officer concerned to seek documents; under Section 160 of the Code, a written notice has to be issued to the witness so that he can be called for recording of his/her statement, seizure memo/panchnama has to be drawn for every article seized, etc.

95. The police is required to maintain several records including case diary as provided under Section 172 of the Code, General Diary as provided under Section 44 of the Police Act, etc. which helps in documenting every information collected, spot visited and all the actions of the police officers so that their activities can be documented. Moreover, every information received relating to commission of a non-cognizable offence also has to be registered under Section 155 of the Code.

96. The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice-delivery system but also to ensure "judicial oversight". Section 157(1) deploys the word "forthwith". Thus, any information received under Section 154(1) or otherwise has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the knowledge of the investigating agency but also to the subordinate judiciary.

97. The Code contemplates two kinds of FIRs: the duly signed FIR under Section 154(1) is by the informant to the officer concerned at the police station. The second kind of FIR could be which is registered by the police itself on any



information received or other than by way of an informant [Section 157(1)] and even this information has to be duly recorded and the copy should be sent to the Magistrate forthwith. The registration of FIR either on the basis of the information furnished by the informant under Section 154(1) of the Code or otherwise under Section 157(1) of the Code is obligatory. The obligation to register FIR has inherent advantages:

97.1. (a) It is the first step to "access to justice" for a victim.

97.2. (b) It upholds the "rule of law" inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.

97.3. (c) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.

97.4. (d) It leads to less manipulation in criminal cases and lessens incidents of "antedated" FIR or deliberately delayed FIR.

...

105. Therefore, reading Section 154 in any other form would not only be detrimental to the scheme of the Code but also to the society as a whole. It is thus seen that this Court has repeatedly held in various decided cases that registration of FIR is mandatory if the information given to the police under Section 154 of the Code discloses the commission of a cognizable offence."

The Hon'ble Apex Court carved out certain exceptions and thereafter made the following conclusions:

"Exceptions

115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.

...

Conclusion/Directions

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 7 days. 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.

121. With the above directions, we dispose of the reference made to us. List all the matters before the appropriate Bench for disposal on merits."

8. After delivering the judgment, the Hon'ble Apex Court by a subsequent order in pursuant to a civil miscellaneous petition filed was pleased to modify clause (vii) of paragraph 111, which is furnished hereunder.

<https://hcservices.ecourts.gov.in/hcservices/>

"Heard Mr. Sidharth Luthra, learned Additional Solicitor



General.

After hearing him and in the light of the grievance expressed in the present criminal miscellaneous petition filed in the writ petition, we modify clause (vii) of paragraph 111 of our judgment dated 12th November, 2013, in the following manner.

(vii) While ensuring and protecting the rights of the accused and the complaint, 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."

To this extent, clause (vii) of paragraph 111 of the judgment is modified.

Criminal miscellaneous petition is, accordingly, disposed of."

9. In tune with the aforesaid decision, which is binding on all Courts under Article 141, with the corresponding duty to act in aid as per Article 144 of the Constitution of India, the Director General of Police issued the following circulars:

(i) C.No.300/DGP-TN/Camp/2013 dated 27.11.2013:

Recently, the Hon'ble Supreme Court of India, New Delhi has given certain directions in the judgment cited.

2. The following are the directions of the Hon'ble Supreme Court of India:-

i) 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.

ii) 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.

iii) 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.

iv) 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.

v) 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.

vi) 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.

vii) 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 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) 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."

3. All the Commissioners of Police in Cities and all Superintendents of Police in District are, therefore, directed to give suitable instructions to all the Station House Officers in their respective Cities/Districts that the directions of the Hon'ble Supreme Court of India should be followed in letter and spirit without any deviation."

(ii) Rc.No.226313/Crime 4(3)/2013 dated 07.07.2016.

"In the reference first and second cited, all the Unit officers were already directed to give suitable instructions to all the Station House Officers in their respective Cities/Districts to the effect that the directions of the Hon'ble Supreme Court in Lalitha Kumari Vs. Government of Uttar Pradesh & Others case (WP (Crl) No.68/2008, dt. 12.11.2013) should be followed in letter and spirit without any deviation.

2) The Hon'ble Madurai Bench of Madras High Court in its order dt. 16.03.2015 in Crl.O.P.(MD) No.4326/15 batch cases) has, among other things, directed that 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 and also recommended to form monitoring Committee and action against erring personnel.

3) Therefore, it is decided to constitute a Monitoring Committee in Cities and District headed by the Additional



Deputy Commissioner (Head Quarters) in Cities and the Additional superintendent of Police (Head Quarters) in Districts to be assisted by the Assistant Commissioner of Police (CCRB) in Cities and the Deputy Superintendent of Police (DCRB) in Districts.?

4) The Monitoring Committee shall review all the cases once in two months whether the Station House Officers in their jurisdiction have followed the guidelines/directions issued by the Hon'ble Supreme Court in Lalitha Kumari case in respect of registering FIR letter and spirit and submit report to the unit officer concerned for taking necessary action."

5) Based on report of the Monitoring Committee, the unit officers concerned shall take necessary disciplinary action against the erring police personal for their failure to adhere to the directions of the Hon'ble Supreme Court in Lalitha Kumari's case.

6) In addition, all the unit officers, are instructed to sensitize all the Station House Officers and the investigating Officers about the directions of the Hon'ble Supreme Court in "Lalitha Kumari" case and the consequences for failure to adhere to the said directions of the Hon'ble Supreme Court.

7) If any complaint is received against any Station House Officers for not adhering to the above instructions it should be viewed seriously and necessary action should be taken against such Station House Officer."

(iii) Rc.No.226313/Crime.4(3)/2013 dated 23.06.2018:

In the reference fourth cited, all Unit officers were already directed to give suitable instructions to all the Station House Officers in their respective Cities/Districts to the effect that the directions of the Hon'ble Supreme Court in "Lalitha Kumari Vs. Government of Uttar Pradesh and others case (W.P (Crl.) No.68/2008, dated 12.11.2013) should be followed scrupulously without any deviation.

2)The Hon'ble Madurai Bench of Madras High Court in its order dated 16.03.2015 in Crl.O.P(MD)No.4326/2015 batch cases has, among other things, directed that 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 and also recommended to form monitoring committee and action against erring personnel.

3)The Monitoring Committee has been constituted in Cities and Districts headed by the Additional Deputy Commissioner (Head Quarters) in Cities and the Additional Superintendant of Police (Head Quarters) in Districts to be assisted by the Assistant Commissioner of Police (CCRB) in Cities and the Deputy Superintendant of Police (DCRB) in District.



4) The Monitoring Committee will review all the cases once in two months with regard to whether the Station House Officers in their jurisdiction have followed the guidelines/directions issued by the Hon'ble Supreme Court in Lalitha Kumari Vs. State of UP case in respect of registering FIR in letter and spirit and submit report to the unit officer concerned for taking necessary action.

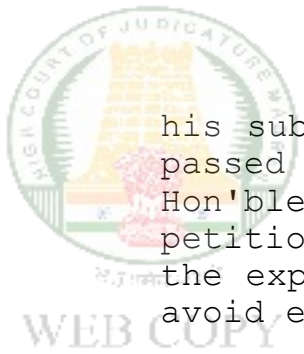
5) In the reference fifth cited, the Additional Advocate General-III of Madurai Bench of Madras High Court informed that, the Hon'ble Mr. Justice D. Krishnamkumar who is dealing with the portfolio of direction petitions under Section 482 Cr.P.C. said that "in spite of categorical pronouncement made by the Hon'ble Supreme Court of India in Lalithakumar Vs. State of UP as reported in 2014(1) SCC 1, the police officials are not following the dictum, hence, the Hon'ble court directed the Director General of Police to issue circular instructions to all police officials to strictly follow the mandate of the said case. The Hon'ble Court also expressed its concern that the mandate was not strictly followed. The Hon'ble Supreme Court has laid down law that the police officer investigating a cognizable offence has an option, discretion or latitude in conducting a preliminary enquiry into the complaints received by them, but they have no option other than to register a FIR, if the complaint or the subsequent enquiry disclosing prima-facie cognizable offence and if the contrary is established, it is open to the Investigation Officer to close the enquiry, but a copy of the same should be served on the complainant to enable them to pursue the same before the competent criminal forum in the manner known to law. But the enquiry must be completed within 14 days.

6. All the Commissioners of Police in Cities and all Superintendant of Police in Districts are, therefore directed to give suitable instructions to all the Station House Officers in their respective Cities/Districts that the directions of the Hon'ble Supreme Court of India should be followed in letter and spirit without any deviation."

(iv) Rc.No.030552/Crime 4(3)/2018 dated 05.04.2018:

"It is communicated by the learned Additional Advocate General - III, Madras High Court in Madurai Bench by his letter dated 05.04.2018, that Hon'ble Mr. Justice D. Krishnakumar called him in the open court and informed that the police officials are not complying with the time bound court orders passed by the Hon'ble Court relating to investigation, filing final report etc and that most of the orders have not been complied with within the time span granted by the Hon'ble Court or no petition is filed seeking extension of time, which amounts to contempt of court.

2) Therefore, all the Commissioners of Police in Cities and all the Superintendents of Police in Districts are requested to monitor and give suitable instructions to all



his subordinate officers, strictly to comply with the orders passed by the Hon'ble Court within the time granted by the Hon'ble Court and in case of any difficulty, time extension petition should be filed enumerating the reasons well before the expiry of the time limit granted by the Hon'ble Court to avoid embarrassment to the department."

(v) and Rc.No.226313/Crime.4(3)/2013 dated 26.07.2018:

"As per the references 1 to 4th cited, all Unit Officers were already directed to give suitable instructions to all Station House Officers in their respective Cities / Districts to the effect that the directions of the Hon'ble Supreme Court in "Lalita Kumari Vs. Government of Uttar Pradesh and others case (W.P (Crl.) No.68/2008, dated 12.11.2013) should be followed scrupulously without any deviation.

2)The Hon'ble Madurai Bench of Madras High Court in its order dated 19.07.2018 in Crl.O.P(MD)No.6493/2018 & 17119/2017 vide in the reference 5th cited have directed to issue suitable instructions to the subordinate officers for the following strict enforcement.

3)Hence, all Unit Officers are instructed to adhere to the following instructions in future without fail:-

i) 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.

ii) 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.

iii) 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.

iv) 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.

v) 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.

vi) 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:

<https://hcservices.ecourts.gov.in/hcservices/>

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.

vii) 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.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, 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.

ix) As seen from several cases, the Investigators have lack of legal knowledge to deal with the complaints viz., civil disputes, money transactions, family disputes etc., Therefore it is useful to extract the following desirable attributes of a good criminal investigator which are described in the book viz., Encyclopedia of Police Law and Crimes:

16. As seen from several cases, the Investigators have lack of legal knowledge to deal with the complaints viz., civil disputes, money transactions, family disputes etc., Therefore, it is useful to extract the following desirable attributes of a good criminal investigator which are described in the book viz., Encyclopedia of Police Law and Crimes:

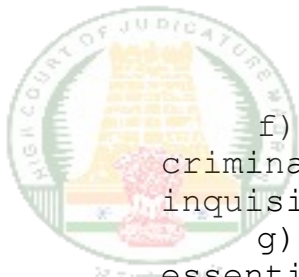
a) Observation powers should be highly developed and specialized.

b) Report writing must be of better quality because the investigator's finished report will determine whether or not the case will go to court.

c) An investigator should be an extrovert, he must have the ability to talk to people he doesn't know and gain their confidence within a short period of time.

d) Motivation-the investigator must feel he is doing a good job and is performing an important and useful function.

e) A good investigator must be confident he has the abilities to do a good job.



f) The investigator must have a real interest in the criminal investigation filed, a natural curiosity, or inquisitiveness.

g) The ability to work without close supervision is essential? An investigator must be able to work and accomplish a task on his own.

h) Open-mindedness - the investigator must not jump to hasty conclusions.

i) Perseverance and patience? usually, an investigator is working on several cases simultaneously and must attend to a great deal of detail. The investigator needs the patience required for details, stakeouts and long drawn-out proceedings.

j) The criminal investigator should have a logical mind so he can reconstruct the sequence of events. The investigator should also have the imagination to conjecture what possibly could have occurred while the crime was being committed.

k) A criminal investigator must have above-average intelligence and learning ability. The investigator needs excellent memory and recall. He should have the ability to identify a method of operation, the similarities among cases, and the value of evidence and information.

l) Resourcefulness? a good investigator investigates crimes as an impartial collector of information without bias or prejudice. He must also have the integrity to reject bribes.

m) The Criminal investigator must possess a considerable amount of knowledge about the legalities involved in charging a suspect with a crime and prosecuting the crime in court.

n) The investigator should have an average, inconspicuous physical appearance. The investigation unit should have a balance of male and female investigators.

o) The Hon'ble High Court of Madras has come across several Criminal Original Petitions, wherein, the Investigation Officers slept over the complaints for several months/year in view of lack of above qualities to decide the complaint, which would cause unnecessary hardship to the complainant in getting statutory remedy before the respondents.

p) The enquiry should be completed upon the complaint within 15 days from the date of receipt of the complaint, in exceptional cases six weeks. Further, the status of the complaint should be communicated to the defacto complainant through RPAD/e-mail or through SMS within the aforesaid period.

q) The Monitoring Committee shall review all the cases once in two months and submit a report to the Unit Officer concerned without any deviation.

4) The Unit Officers shall submit a report to the Director General of Police, Chennai within one month from the date of receipt of a report from the Monitoring Committee,



thereafter, if any deviation is noted, three months time is granted to take further action against the erring officer, after providing opportunity to submit his/her explanation.

5) The periodical training programmes to the Investigating Officers to update their legal knowledge, especially on civil and criminal law and court procedures by utilizing services of retired Judges as well as Senior Advocates who are specialized on the civil and criminal laws.

6) The Monitoring Committee shall review all the cases once in two months whether the Station House Officers in their jurisdiction have followed the guidelines/directions issued by the Hon'ble Supreme Court of India in "Lalitha Kumari" case in respect of registering FIR in letter and spirit and submit report to the unit officer concerned for taking necessary action. Based on the report of the Monitoring Committee, the unit officers concerned shall take necessary disciplinary action against the erring police personnel for their failure.

7. All the Commissioners of Police in Cities and all Superintendant of Police in Districts are, therefore directed to give suitable instructions to all the Station House Officers in their respective Cities/Districts that the directions of the Hon'ble Supreme Court of India should be followed in letter and spirit without any deviation.

8) Receipt of the circular memorandum should be acknowledged. This Circular memorandum should be permanently displayed in Notice Board of all the Police Stations."

10. Having found that the directions of the Hon'ble Apex Court and followed by circulars were not implemented properly an order was passed in CrI.O.P.(MD) Nos.6493 of 2018 and 17119 of 2017 dated 19.07.2018 issuing certain directions with specific emphasise on the time limit prescribed by the Hon'ble Apex Court.

11. Despite above, petitions were filed and are being filed in hundreds every day without waiting for the time limit prescribed by the Hon'ble Apex Court in Lalita Kumari's case. In the meanwhile, a learned Single Judge of this Court in Sugesan Transport Pvt. Ltd. v. The Assistant Commissioner of Police J-2, Adayar Police Station Adyar, Chennai 600 020 and others [2016-2-L.W. (CrI.) 499] after quoting elaborately the law laid down by the Apex Court was pleased to issue certain directions while holding that Section 482 Cr.P.C. cannot be used at will in the petitions filed to register a case. We may quote with profit, the following paragraphs:

"60. A fortiori, in the teeth of the above judgments, Section 482, Cr.P.C. does not confer power on this Court to step into the shoes of the Station House Officer and read the complaint in order to take a decision either this way or that way. Section 482, Cr.P.C. can be invoked only in respect of proceedings pending on the file of a Court and not otherwise. A petition to quash an FIR is entertained under Section 482, Cr.P.C., because, the FIR is sent to the



61. The expression "otherwise to secure the ends of justice" is not akin to the expression "for doing complete justice" used in Article 142(1) of the Constitution of India. That the inherent power of the High Court cannot be invoked in regard to matters which are directly covered by specific provisions in the Code, is no more res integra in view of a catena of judgments of the Supreme Court right from Lala Jairam Das. This principle has been reiterated in Palaniappa Gounder v. The State of Tamil Nadu and others [MANU/SC/0118/1977 : AIR 1977 SC 1323] wherein, it is held as under:

"3. A provision which saves the inherent powers of a Court cannot override any express provision contained in the statute which saves that power. This is put in another form by saying that if there is an express provisions in a statute governing a particular subject matter there is no scope for invoking or exercising the inherent powers of the Court because the Court ought to apply the provisions of the statute which are made advisedly to govern the particular subject-matter."

...

97. Under Article 144 of the Constitution of India, a duty is cast upon this Court to act in aid of the Supreme Court. In Lalita Kumari-IV and V, the Supreme Court has given a time table for the police to act. This is the law declared by the Supreme Court under Article 141 of the Constitution and a duty is cast upon this Court to implement this law under Article 144 of the Constitution. When it is demonstrated to this Court that the police have failed to adhere to the time table in Lalita Kumari - IV and V, this Court derives jurisdiction under Article 144 of the Constitution of India read with Section 482, Cr.P.C. to issue a direction to the police to straightaway register an FIR on the petitioner's complaint, without stepping into the shoes of the Station House Officer and reading the complaint. In other words, breach of duty by the police gives power to this Court to interfere with under Article 144 of the Constitution of India read with Section 482, Cr.P.C. In such an event, the onus will be on the police to demonstrate to this Court that they have not violated the mandates of Lalita Kumari-IV and V. To assume this jurisdiction, it is imperative for the petitioner to wait for the outer limit of 6 weeks prescribed in Lalita Kumari-V to get over and then, approach this Court by filing an affidavit complaining of breach by the police. In the meantime, if there is an emergency, the party can move the Magistrate under Section 156(3), Cr.P.C. He may then approach the High Court, if aggrieved either by inaction or otherwise of the Magistrate, in the aforesaid proceedings.

98. As discussed above, this Court will not shut its door completely and deny access to justice. This Court will entertain an application under Section 482, Cr.P.C. on the



failure of the police to follow the time table in Lalita Kumari-IV and V or not paying heed to the order passed by the Magistrate under Section 156(3), Cr.P.C. At present, the relief under Section 482, Cr.P.C. is being sought by way of a mere petition. Taking cue from the dictum laid down by the Supreme Court in Priyanka Srivastava, this Court is of the view that the complainant must file an affidavit before this Court setting down the dates on which the complaint was given to the Station House Officer under Sections 154(1) and 154(3) Cr.P.C. with supporting proof. This Court is insisting on an affidavit, because, in several instances, it came to the notice of this Court that the complaint sent to the police differed from the copy of the complaint annexed in the typed set of papers. To obviate such sharp practices, this Court directs that a petition under Section 482, Cr.P.C. should be accompanied by an affidavit of the petitioner detailing the steps taken by him to give complaint under Section 154 Cr.P.C. to the Station House Officer and under Section 154(3) Cr.P.C. to the Superintendent of Police with supporting materials. It is made clear that this Court will not entertain complaints addressed to the Hon'ble Chief Minister of the State, Chief Secretary, Home Secretary, Director General of Police and other gubernatorial authorities. The complaint must be addressed to the Station House Officer at the first instance under Section 154(1), Cr.P.C. and thereafter, to the Superintendent of Police/Deputy Commissioner of Police under Section 154(3), Cr.P.C.

99. As a sequel to the aforesaid discussion, the following directions are issued:

"i. A petition under Section 482, Cr.P.C. for a direction to register an FIR on the complaint of the petitioner circumventing the time table prescribed by the Supreme Court in Lalita Kumari-IV and V is not maintainable.

ii. This Court directs all the Station House Officers in the State of Tamil Nadu and Union Territory of Puducherry to receive any complaint relating to the commission of cognizable offence by a common man and if the Station House Officer wants to conduct a preliminary enquiry, he shall immediately issue a CSR receipt (in case of Tamil Nadu) or issue a separate receipt (in case of Union Territory of Puducherry) to the complainant and after making the necessary entries in the Station General Diary, as directed by the Supreme Court in Lalita Kumari-IV and V, conduct preliminary enquiry. In Lalita Kumari-IV, the Supreme Court has directed that after conducting preliminary enquiry, if the police come to the conclusion that no FIR need be registered, a duty is cast upon the police to furnish a copy of the closure report to the complainant. After getting the closure report, it is open to the complainant



to file a petition under Section 156(3) Cr.P.C. or private complaint under Section 190 read with Section 200 Cr.P.C. disclosing the facts and persuading the Magistrate to take cognizance of the offence. Such a petition/private complaint should disclose the closure report of the police. After taking cognizance of the offence, the Magistrate can also order police investigation under Section 202, Cr.P.C. to a limited extent. The closure report cannot be subject to judicial review under Section 482, Cr.P.C.

iii. If the Station House Officer refuses to receive the complaint, the complainant shall send the complaint together with a covering letter to the Superintendent of Police/Deputy Commissioner of Police by Registered Post with Acknowledgment Due under Section 154(3), Cr.P.C.

iv. If there is inaction on the part of the Station House Officer and the Superintendent of Police, the complainant is at liberty to move the jurisdictional Magistrate under Section 156(3) Cr.P.C.

v. The complaint shall be given to the Magistrate either in Tamil or in English in the form of a representation in first person addressed directly to the Magistrate.

vi. The complaint shall be accompanied by an affidavit as mandated by the Supreme Court in Priyanka Srivastava.

vii. On receipt of the complaint, the Magistrate shall pass orders thereon within 15 days, either issuing directions or dismissing the petition.

viii. If the Magistrate decides to order police investigation, he should pass a judicial order to that effect in the record sheet.

ix. A copy of the order, together with original complaint and copy of the affidavit, shall be forwarded by the Magistrate to the jurisdictional police officer for investigation.

x. If the police officer does not register FIR within a period of one week from the date of receipt of the Magistrate's order, the Magistrate shall initiate prosecution against him under Section 21 read with Section 44 of the District Police Act before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be.

xi. If no FIR is registered by the police within one week from the date of receipt of a copy of the order of the Magistrate under Section 156(3), Cr.P.C., the complainant can approach this Court under Section 482, Cr.P.C.

xii. If the police fail to complete the preliminary enquiry within six weeks as mandated by the Supreme Court in Lalita Kumari V, the complainant can approach this Court under Article 144 read with Section 482, Cr.P.C.



xiii. The aforesaid petition under Article 144 read with Section 482, Cr.P.C. must be accompanied by an affidavit sworn to by the complainant with satisfactory materials to show that the police have not completed the preliminary enquiry within six weeks, as mandated by the Supreme Court in Lalita Kumari-V. In such a petition, this Court will not read the complaint, but, issue directions to the police to register an FIR on the complaint for the very failure of the police to follow the mandates of Lalita Kumari-IV and V. The Registry of this Court shall not number the petition filed under Section 482, Cr.P.C. seeking a direction to register an FIR unless it is accompanied by an affidavit containing the above details.

xiv. In suitable cases, this Court shall also direct disciplinary action to be taken against the police officer for the violation of the mandates of Lalita Kumari - IV and V.

xv. If the police officer fails to register the FIR pursuant to the directions of this Court, he will be liable for contempt of Court, besides facing disciplinary action.

xvi. The aggrieved party can also approach the local Legal Services Authority and the Authority shall take immediate steps to ensure that an FIR is registered or CSR receipt issued to the complainant.

xvii. Every police station shall have a board giving the name and telephone number of the local Legal Services Authority."

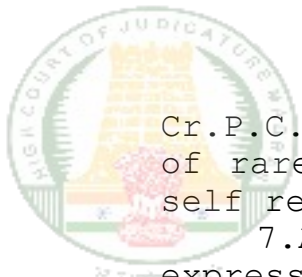
This decision while restricting the invocation of Section 482 Cr.P.C. also contains certain directions such as filing of an affidavit.

12. However, another learned single Judge of this Court deferred with the aforesaid decision in K. Reghupathy v. The Commissioner of Police [2017 (2) MWN (Cr.) 430] inter alia holding that Section 482 Cr.P.C. can be invoked for a direction to the police to register the complaint, though it cannot circumvent the time table prescribed in the Lalita Kumari's case. The following are the relevant paragraphs:

5. For the sake of brevity, Section 482 of the Criminal Code of Procedure, 1973 is extracted:

"482. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

6. The Section begins with a non obstante clause and in view of the inherent powers conferred therein, there cannot be a total ban on the High Courts interminable jurisdiction. In other words, the availability of an alternate remedy under the Code of Criminal Procedure cannot be an embargo for the High Court to exercise its inherent powers to secure the ends of justice in view of the non obstante clause. This Court is conscious of the fact that the powers under Section 482 of



Cr.P.C., must be exercised very sparingly and in the rarest of rare cases and the limitation to exercise this power is self restrained.

7. At the outset, I would like to reiterate the views expressed by my learned Brother Judge in the judgment reported in 2016(5) CTC 577 that there can be no circumvention of the time table prescribed by the Hon'ble Supreme Court in Lalita Kumari's case (supra) and I am in agreement with the proposition. But, in my considered view, the judgments of the Hon'ble Supreme Court in the case of Ramesh Kumari Vs. State (N.C.T. Of Delhi) and others reported in 2006 (1) CTC 666 and Prabhu Chawla Vs. State of Rajasthan and another reported in CDJ 2016 SC 810 are binding on me. In Ramesh Kumari's case, the Hon'ble Supreme Court has held as follows:

"3. 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."

8. From the aforesaid judgment, it is comprehensible that the availability of alternate remedy cannot be a bar for issuance of a direction under Section 482 Cr.P.C., to register a case when cognizable offence is made out before the police officer. The aforesaid judgment came to be considered by my learned Brother Judge and was distinguished holding that the dictum laid down therein arose from the peculiar facts of that case and hence, the proposition laid down therein cannot be made applicable to the facts of the subject cases.

9. On a reading of the facts in the case of Ramesh Kumari (supra), I am of the view that the above finding was based on the legal proposition on the inaction of the Station House Officer from registering a complaint when an information of a cognizable offence was filed before him. The Hon'ble Supreme Court, while narrating the facts, made it clear that they were not entering into the merits of that case. The following is the relevant portion substantiating the same:

"1. The challenge in this appeal is to the order dated 24.01.2002 passed by the Division Bench of the Delhi High Court. The controversy in this appeal is confined to the non-registration of the case by the police pursuant to a



complaint dated 09.09.1997 and 13.09.1997 filed by the Appellant. It is stated that the Appellant was in possession of the land. The stay order was granted by the High Court protecting the possession of the Appellant on 14.08.1997 and it was extended by another order dated 10.09.1997, in the presence of the other side. However, the Respondent Nos. 4 to 9 broke open the lock and removed various articles on 9.9.1997 and 10.09.1997. We make it clear that we are not entering into the merits of the case.

2.The grievance of the Appellant is that an information of a cognizable offence has been filed by the Appellant before the Station House Officer (SHO), Kapashera on 9.9.1997 and 13.09.1997. However, no case was registered by the concerned SHO. Thereafter, the matter was brought to the notice of the Police Commissioner, without any result. This has led the Appellant to approach the High Court by filing Criminal Writ Petition No. 108 of 1998" (Emphasis added)."

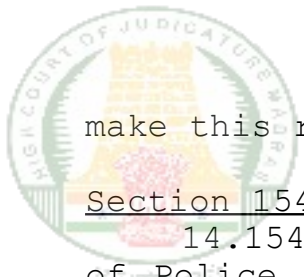
10.In other words, the dictum laid down in Ramesh Kumari's case is a judgment in rem and not a judgment in personam. If that be so, the dictum laid down therein is binding on this Court and therefore the ground of alternate remedy would be no substitute in law to refrain from registering a case when a complaint of a cognizable offence is reported to a police officer.

11.In the latest judgment of the Hon'ble Supreme Court in Prabhu Chawla's case (Supra), a Three Judges Bench of the Hon'ble Supreme Court had held that there is no total bar on the exercise of inherent power where abuse of process of the Court or other extra-ordinary situation excites the Court's jurisdiction. In my view, this finding cannot mean or be restricted to exercise the revisional powers under Section 397 Cr.P.C. alone. Non registration of a complaint of a cognizable offence can be termed to be exercise of inherent powers of the High Court to secure the ends of justice.

12.Since the Hon'ble Supreme Court has held in the aforesaid two judgments that the ground of alternate remedy is not a bar to invoke Section 482 Cr.P.C., and when an extra-ordinary situation excites the High Court's jurisdiction, there cannot be a total ban on the exercise of its inherent powers. These propositions are binding on this Court to the extent that the petition for a direction to register a police complaint under Section 482 Cr.P.C., is maintainable before the High Court.

13.It is made clear though Section 482 Cr.P.C., can be invoked for a direction to the police to register a complaint, such direction cannot circumvent the time table prescribed by the Hon'ble Supreme Court of India in the case of Lalita Kumari Vs. Government of Uttar Pradesh and others [2013 (6) CTC 353]."

13.The aforesaid situation made the learned single Judge to



make this reference and accordingly we are answering it.

Section 154(3) Cr.P.C.:

14.154(3) speaks of an action required from the Superintendent of Police, when there is a refusal on the part of a Station House Officer to record the information mentioned in sub-Section (1). The aforesaid provision is extracted hereunder for better appreciation:

"154(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, is 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."

15. This provision is meant to cover up a failure to record an information by a police officer of a cognizable offence under Section 154(1) Cr.P.C. Thus, it has to be activated only on the refusal of the officer to record. In other words when there is no registration of information by such an officer, then an aggrieved person can approach the Superintendent of Police. This has to be done by sending substance of such information in writing and by post. On receipt of it, the Superintendent of Police concerned will have to read the substance of such information, form a subjective satisfaction that it discloses a commission of cognizable offence and in that event investigate the case either by himself or it be made by any other officer subordinate under him as per the Code. The word 'shall' assumes significance. Therefore, it is a mandatory duty imposed upon the Superintendent to do it. Interestingly this provision merely makes a reference to investigation alone. As there cannot be any investigation without registration the Superintendent of Police is expected to comply Section 154(1) Cr.P.C. either by himself or ask any police officer subordinate to him who is otherwise competent to do so and then investigate.

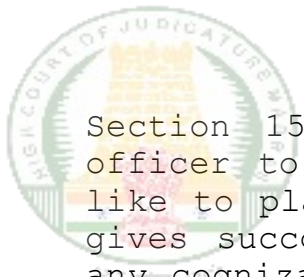
Section 156 Cr.P.C.:

16. "156. Police officer's 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."



Section 156 Cr.P.C. confers power to a police station house officer to investigate a cognizable case. Once again, we would like to place on record the aforesaid provision. This provision gives succor and ammunition to a police officer to investigate any cognizable case with territorial restriction. Therefore, the existence of cognizable case is a foundation upon which the investigation shall take place at the instance of a police officer. Under sub-clause (3) a Magistrate may order such investigation mentioned in sub-section (1). There is no difficulty in holding that such power has to be exercised when there is failure to do so by the police officer under Section 156(1) Cr.P.C. There is a difference between 154(3) and 156(3) Cr.P.C. The earlier sections speak about a cognizable offence whereas later one speaks about a cognizable case. This is for the reason the subsequent section deals with a case where a cognizable offence has been taken note of and thus become a cognizable case. Therefore, recording of an information results in a first information report. Thus, power under Section 156(3) has to be exercised when the mandatory duty imposed under Section 154(1) and (3) is not complied with.

17. A magistrate cannot order investigation without a cognizable case before him. Under Section 156(3), a Magistrate gives a nudge, wake up call, peremptory reminder and intimation to a police officer on his failure to register a case involving a cognizable offence and thus directs investigation and thereafter follows it up till it reaches the destination through a final report. However, under Section 154 Cr.P.C. a police officer and the Superintendent of Police exercise their statutory function, which can be called executive or administrative. The order of the Magistrate, needless to state is a judicial one and thus requires application of mind reflecting through reasons. While doing so, the Magistrate is supposed to consider the relevant materials and act judiciously. Such a power is to be exercised before taking cognizance of offence. He has to keep in mind the directions of the Apex Court in Lalita Kumari's case while passing his order which is inclusive of the need for a preliminary enquiry. This is something the Magistrate has to keep in mind.

18. As stated above, a Magistrate under Section 156 is primarily concerned with the investigation. For such investigation, there has to be a cognizable case. Since such existence of cognizable case is pre-requisite to pass an order under Section 156(3) Cr.P.C., consciously it has not been mentioned therein. Therefore, the very jurisdiction of the Magistrate to order investigation would lie upon registration of a cognizable case. Such a case is the starting point to reach the destination. A criminal case from the point of an investigating officer starts with the registration and ends with the final report facilitated by investigation. This provision has to be read along with Section 154(1) and (3) and 156(1) Cr.P.C. After all, a court will have to interpret a procedural law though criminal, by applying the principal of purposive, constructive, reasonable, fair



and creative interpretation keeping an eye on the object.

19. The following are the judgments on the scope and powers under Section 156(3) of the Criminal Procedure Code:

(i) Vinay Tyagi v. Irshad Ali [(2013) 5 SCC 762]:

"20. Having noticed the provisions and relevant part of the scheme of the Code, now we must examine the powers of the court to direct investigation. Investigation can be ordered in varied forms and at different stages. Right at the initial stage of receiving the FIR or a complaint, the court can direct investigation in accordance with the provisions of Section 156(1) in exercise of its powers under Section 156(3) of the Code. Investigation can be of the following kinds:

(i) Initial investigation,

(ii) Further investigation,

(iii) Fresh or de novo or reinvestigation.

21. The "initial investigation" is the one which the empowered police officer shall conduct in furtherance of registration of an FIR. Such investigation itself can lead to filing of a final report under Section 173(2) of the Code and shall take within its ambit the investigation which the empowered officer shall conduct in furtherance of an order for investigation passed by the court of competent jurisdiction in terms of Section 156(3) of the Code."

Thus, accordingly it was held the investigation required under Section 156(3) is without initial investigation.

(ii) Anju Chaudhary v. State of U.P. [2013 (1) CTC 714]:

35. Investigation into commission of a crime can be commenced by two different modes. First, where the Police Officer registers an FIR in relation to commission of a cognizable offence and commences investigation in terms of Chapter XII of the Code, the other is when a Magistrate competent to take cognizance in terms of Section 190 may order an investigation into commission of a crime as per the provisions of that Chapter XIV. Section 156 primarily deals with the powers of a Police office to investigate a cognizable case. While dealing with the Application or passing an order under Section 156(3), the Magistrate does not take cognizance of an offence. When the Magistrate had applied his mind only for order an investigation under Section 156(3) of the Code or issued a warrant for the said purpose, he is not said to have taken cognizance. It is an order in the nature of a pre-emptory reminder or intimation to the Police to exercise its primary duty and power of investigation in terms of Section 151 of the Code. Such an investigation embraces the continuity of the process which begins with collection of evidence under Section 156 and ends with the final report either under Section 159 or submission of charge-sheet under Section 173 of the Code. Refer Mona Panwar v. High Court of Allahabad, 2011 (3) SCC 496. In the case of Dillawar Singh v. State of Delhi, 2007 (9) SCR 695, this Court as well stated the principle that investigation



begin in furtherance to an order under Section 156(3) is not anyway different from the kind of investigation commenced in terms of Section 156(1).'

(iii) Priyanka Srivastava v. State of U.P. [(2015) 6 SCC 287]: "21. Dealing with the nature of power exercised by the Magistrate under Section 156(3) CrPC, a three-Judge Bench in Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy [(1976) 3 SCC 252], had to express thus: (SCC p. 258, para 17)

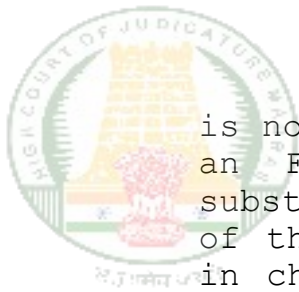
"17. ... It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173."

22. In Anil Kumar v. M.K. Aiyappa [(2013) 10 SCC 705], the two-Judge Bench had to say this: (SCC p. 711, para 11)

"11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed¹¹ examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156 (3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."

23. In Dilawar Singh v. State of Delhi [(2007) 12 SCC 641], this Court ruled thus: (SCC p. 647, para 18)

"18. ... '11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There



is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.' *"

24. In CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd. [(2013) 5 SCC 615], the Court while dealing with the power of the Magistrate taking cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure. And again: (Madhao v. State of Maharashtra^{13a}, SCC pp. 620-21, para 18)

"18. When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3)."

25. Recently, in Ramdev Food Products (P) Ltd. v. State of Gujarat [(2015) 6 SCC 439], while dealing with the exercise of power under Section 156(3) CrPC by the learned Magistrate, a three-Judge Bench has held that: (SCC p. 456, para 22)

"22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where



provisions available, we may touch upon them just to understand the entire gamut of remedies available. Section 190 of the Code comes under Chapter XIV under the head "Conditions Requisite for Initiation of proceedings". For doing so, a Magistrate can take cognizance of an offence on a complaint by invoking Chapter XV with specific reference to Section 200 to 204. This is a mechanism provided to the Magistrate. There is no difficulty in reiterating the settled position of law that Section 190 r/w 200 Cr.P.C. stands on a different footings than Section 156(3) Cr.P.C. qua the power of the Magistrate. Under Section 156(3) Cr.P.C. direction is to be issued only after application of mind by a Magistrate, who while doing so does not take cognizance and thus straightaway direct investigation. However, under Section 190 r/w 200 to 204 Cr.P.C., he seeks a report from the police to decide as to whether there is ground to proceed. Here he is yet to decide the existence of sufficient grounds to proceed. It is needless to state that a Magistrate under Section 190(1) of the Code can either invoke Section 156(3) or 200 Cr.P.C. as the case may be. However, after investigation there is no room for change thereafter. Suffice it to state that Section 156(3) stands apart from Sections 200 to 204 Cr.P.C. Useful references can be made to the following decisions:

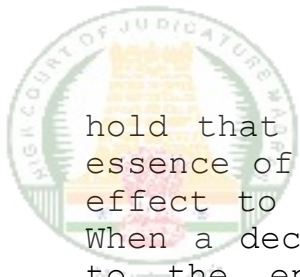
- (i) Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel [(2017) 4 SCC 177].
- (ii) Ramdev Food Products (P) Ltd. v. State of Gujarat [(2015) 6 SCC 439].
- (iii) Sashi Jena v. Khadal Swain [2004 SCC (Cri) 1077].
- (iv) Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel [(2012) 10 SCC 517].
- (v) D.L.Reddy v. V.Narayana Reddy [(1976) 3 SCC 252].
- (vi) Mona Panwar v. High Court of Judicature of Allahabad [(2011) 3 SCC 496].
- (vii) Madhao v. State of Maharashtra [(2013) 5 SCC 615].
- (viii) Shivjee Singh v. Nagendra Tiwary [(2010) 7 SCC 578].
- (ix) Vasanti Dubey v. State of M.P. [(2012) 2 SCC 731] and
- (x) Abhijit Pawar v. Hemant Madhukar Nimbalkar [(2017) 3 SCC 528].

Section 482 Cr.P.C.:

22.Now, let us go to the scope of Section 482 of the Code. Here again, we need not delve much as it has been repeatedly held by the Apex Court that the power is extra-ordinary and pervasive. Once again, let us see the provision before discussing further.

"482.Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

23.The power under this provision "inheres" in the High Courts. It can be exercised normally over a subordinate Court. It can also be to give effect to any order under the Code. When we speak of the order under the Code we can very well interpret the provision to



hold that the intention is to give effect to the very object and essence of the provisions contained in the Code. Thus, the words "to effect to the order" can be read as "to give effect to the Code". When a decision is rendered by the Apex Court making it applicable to the entire country as a binding precedent to be followed mandatory with certain directions by reading down certain provisions of the Code then that takes the character of the law. Therefore, such a decision in tune with Articles 141 and 144 of the Constitution of India become a order which can be given effect by the invocation of Section 482 of the Code. However, such a power has to be exercised with circumspection, care and caution especially when there are specific provisions giving better, effective and efficacious and exhaustive remedy under under the Code. It is nothing but a self-imposed restriction. Any departure would only on exceptional circumstances leading to extra-ordinary cases. Therefore, unless it touches the judicial conscience of the Court, the power is not supposed to be invoked. After all, more the power, more the restraint. There is no difficulty in holding that Section 482 Cr.P.C. merely reiterates the existence of the power to the High Courts. Such a power is also conferred under the Letter Patent, which has specifically provides for exercise of the powers to the High Courts, otherwise exercised by the Courts of first instance.

24. We may refer the following decisions for better appreciation:

(i) Hamida v. Rashid [(2008) 1 SCC 474].

"7. It is well-established principle that inherent power conferred on the High Courts under Section 482 CrPC has to be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities or when some miscarriage of justice is done. The content and scope of power under Section 482 CrPC were examined in considerable detail in Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551] and it was held as under: (SCC p. 555, para 8)

The following principles may be stated in relation to the exercise of the inherent power of the High Court:

(1) that the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) that it should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice;

(3) that it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

8. In State v. Navjot Sandhu [(2003) 6 SCC 641] after a review of large number of earlier decisions, it was held as under: (SCC p. 657, para 29)

"29. ... The inherent power is to be used only in cases where there is an abuse of the process of the court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few

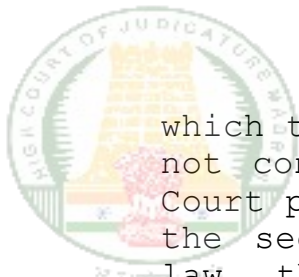


and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out hereinabove fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment."

9. In *Arun Shankar Shukla v. State of U.P.* [(1999) 6 SCC 146] the High Court had entertained a petition under Section 482 CrPC after an order of conviction had been passed by the Sessions Judge and before the sentence had been awarded and further proceedings in the case had been stayed. In appeal this Court set aside the order of the High Court after reiterating the principle that it is well settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code. It was further observed that the High Court overlooked the procedural law which empowered the convicted accused to prefer statutory appeal against conviction of the offence and intervened at an uncalled for stage and soft-pedalled the course of justice at a very crucial stage of the trial. The order of the High Court was accordingly set aside on the ground that a petition under Section 482 CrPC could not have been entertained as the accused had an alternative remedy of an appeal as provided in the Code. It is not necessary to burden this judgment with other decisions of this Court as the consistent view throughout has been that a petition under Section 482 CrPC cannot be entertained if there is any other specific provision in the Code of Criminal Procedure for redress of the grievance of the aggrieved party."

(ii) *Dinesh Dutt Joshi v. State of Rajasthan* [(2001) 8 SCC 570]:

"6. Section 482 of the Code of Criminal Procedure confers upon the High Court inherent powers to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It is a well-established principle of law that every court has inherent power to act *ex debito justitiae* – to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the court. The principle embodied in the section is based upon the maxim: *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* i.e. when the law gives anything to anyone, it gives also all those things without



which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

(iii) Gorice Pentaiah v. State of A.P. [(2008) 12 SCC 531]:

"Discussion of decided cases

13. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. Director of Public Prosecutions* [(1964) 2 WLR 1145] Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *Director of Public Prosecutions v. Humphrys* [(1976) 2 WLR 847] stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the Judge has the power to intervene. He further mentioned that the courts' power to prevent such abuse is of great constitutional importance and should be jealously preserved.

14. In *R.P. Kapur v. State of Punjab* [AIR 1960 SC 866] this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings:

- (i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;
- (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

15. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a *prima facie* decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-



and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage."

(iv) Punjab State warehousing Corpn. v. Shree Durga Ji Traders [(2011) 14 SCC 615].

"10. It is trite law that the inherent power of the High Court ought to be exercised to prevent miscarriage of justice or to prevent the abuse of the process of the court or to otherwise secure the ends of justice. The Court possesses wide discretionary powers under the section to secure these ends. In this behalf it would be profitable to refer to the decision of this Court in Jeffrey J. Diermeier v. State of W.B. [(2010) 6 SCC 243] wherein one of us (D.K. Jain, J.), speaking for the Bench, explained the scope and ambit of inherent powers of the High Court under Section 482 of the Code as follows: (SCC p. 251, paras 20 & 22)

20. ... The section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but is not unlimited. It has to be exercised sparingly, carefully and cautiously, *ex debito justitiae* to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice.

22. In Dinesh Dutt Joshi v. State of Rajasthan [(2010) 6 SCC 243], while dealing with the inherent powers of the High Court, this Court has observed thus: (SCC p. 573, para 6)

'6. ... The principle embodied in the section is based upon the maxim: *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."



25. From the aforesaid decisions we hold that though power is much wider amplitude it has to be used very sparingly, moreso, when specific alternative provisions are available. Section 482 Cr.P.C. is not an alternative remedy but an inherent power to be exercised in a rarest of rare cases. Therefore, such a use is on exceptional cases. Such an exercise involves more restraint especially when sought against administrative or executive order. Similarly, it may also be exercised with an element of flexibility, when the High Court has otherwise got powers under some other provisions as against the specific provisions of the subordinate Courts. This provision can also be exercised when there is a lacuna preventing an aggrieved party to challenge the decision of a subordinate Court.

26. Though submissions have been made by placing reliance on Articles 215 and 225 read with 32 of Constitution of India, we are of the view that they are not relevant for deciding the issue, though there is no difficulty in taking note of them while appreciating the jurisdiction of this Court. We make it clear, our primarily concern is on the exercise of the power under Section 482 Cr.P.C. qua a petition filed to register the complaint.

27. We may hasten to add that a direction to register the complaint is purely a judicial exercise as that of a Magistrate under Section 156(3) Cr.P.C. Though law does not provide for hearing a proposed accused under Section 156(3) Cr.P.C. or 200 as the case may be, there is no implicit exclusion under Section 482 Cr.P.C. We do feel that in as much as High Court is only required to direct the police to register the complaint and the need for the proposed respondent does not arise. But, we must keep in mind the scope under Section 156(3) being much wider which involves a perusal of not only the complaint but documents and presence of a party coupled with the power to order a preliminary enquiry in tune with the decision of the Apex Court in Lalitha Kumari's case. The same is not expected to be exercised in all cases under Section 482 Cr.P.C. After all, Section 156(3) Cr.P.C. is carved out for aforesaid purpose as a sequel to Section 154(1), (3) and 156(1).

Decision under Reference:

28. Now, let us discuss the decisions over which the reference has come into being. In K.Raghupathy's case, the learned Single Judge in his short and brief order has held that there is no bar for invoking Section 482 Cr.P.C. despite availability of Section 156(3) Cr.P.C. Reliance has been made on the two decisions of the Apex Court in Ramesh Kumari v. State (N.C.T. of Delhi) [2006 (1) CTC 666 (SC)] and Prabhu Chawla v. State of Rajasthan [2016 (5) CTC 779 (SC)]. Therefore, it is imperative for us to consider the above said decisions. In Ramesh Kumari's case the facts are different and distinct. The complaint was against the police officer. It was also with reference to the willful disobedience of the order passed by the High Court. There is no discussion on the scope of Section 482 Cr.P.C. viz-a-viz 156(3) Cr.P.C. Therefore, it is not a decision



having force of a binding precedent as the issue was not decided on a conscious consideration. It was also passed on a criminal writ petition. Thus, we have to hold that the said decision is contextual and therefore cannot be interpreted to hold that in all circumstances a party can approach this Court on mere refusal in registering the F.I.R.

29. In Prabhu Chawla's case the Apex Court was merely dealing with the scope of Section 482 Cr.P.C. The issue was the invocation of Section 482 Cr.P.C. when alternative criminal remedy under Section 397 is available before the very same High Court. Reliance has been made by the Apex Court of the earlier decision in Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551]. The said case there was a bar to exercise power under Section 397 Cr.P.C. The Apex Court was merely holding that the bar under section 397(2) Cr.P.C. will not affect the inherent power under Section 482 Cr.P.C. Even there was a caveat, it was specifically held that such cases are few and far between to be exercised very sparingly. After quoting the aforesaid decision the Apex Court was pleased to hold the following:

"6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of the High Court under Section 482 CrPC is unwarranted. We would simply reiterate that Section 482 begins with a non obstante clause to state:

"482. Saving of inherent powers of High Court.—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J.

"abuse of the process of the court or other extraordinary situation excites the Court's jurisdiction. The limitation is self-restraint, nothing more". (Raj Kapoor case, SCC p. 48, para 10)

We venture to add a further reason in support. Since Section 397 CrPC is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 CrPC only to petty interlocutory orders! A situation wholly unwarranted and undesirable."

Therefore, from the aforesaid decision we cannot construe to hold that in all circumstances a petition filed under Section 482 Cr.P.C. to register the complaint is to be entertained. Accordingly, we hold that the reason of the learned Single Judge in K.Raghupathy's case cannot be stated to be a correct position of law. However, we find the learned Single Judge is right in observing that Section 482 Cr.P.C. cannot be invoked to circumvent the time table prescribed in Lalitha Kumari's case.



30. In the earlier judgment rendered in Sugesan's case the learned Single Judge, as recorded the above has passed an order delineating the circumstances under which Section 482 can be invoked. Let us take the necessary directions issued by the learned Single Judge. The first direction is with regard to the time to circumvent the time table prescribed by Lalitha Kumari's case. The learned Single Judge in Ragupathi's case is also of the very same view. Therefore, there is no difficulty in upholding the same. Coming to the other directions, it was accordingly held that in normal cases it is for the informant after failing to get the information recorded leading to an investigation, to invoke Section 156(3) Cr.P.C. We do not find any error in this. There is an explicit provision giving remedy under Section 156(3) Cr.P.C. As Section 482 Cr.P.C. is extra-ordinary, to be invoked very sparingly, we respectfully agree with the view of the learned Single Judge. It was further held that if the police fails to complete preliminary enquiry within 6 weeks, an informant can approach this Court in which case a direction has to be issued to register the complaint. We have some difficulty in appreciating the aforesaid position. A mere inaction or a failure per se will not result in a direction to register the information. It is no doubt true that a preliminary enquiry is an exception to the Registration of a case involving cognizable offence. Therefore, as a natural fall out after the said period a case has to be registered provided the information should disclose a cognizable offence. Therefore, it is incumbent upon this Court to look into the complaint and the other materials available while issuing a direction to register. Otherwise, this Court will be forced to act as a post office. After all, a judicial order requires application of mind.

31. Though on the first blush the directions issued by the learned Single Judge in direction Nos. 3 and 4 on the one side and Nos. 11 to 13 on the other side are mutually contradictory, we do not think so. It is for the reason that the learned Single Judge has rightly invoked Article 144 to be read with Article 141. Therefore, we do not find any inconsistency therein. However, for the reasons stated above, registration is not a matter of default and course. The learned Single Judge has fixed six weeks as the time limit before approaching this Court. We find it difficult to accept this cut of date. The period of 6 weeks applies only to the exceptional cases which require furnishing adequate reasons. Otherwise, what is provided is only 15 days for completing the preliminary enquiry. Therefore, the period of 6 weeks requires to be modified into 15 days. Now within these 15 days procedural compliance of Section 154 (1) and (3) will have to be made. After all, it is for the police to substantiate the need for six weeks before the Court, under the umbrella of investigation.

32. We do find the issue regarding challenge to an F.I.R., which is being registered in pursuant to the direction of this Court is irrelevant. In any case, we are of the view that a direction to



register an F.I.R. is only at the instance of an informant, whereas an order quashing it passed only after hearing both the informant and accused. Therefore, there is no difficulty in entertaining such petitions and thereafter deciding them, on merit.

33. The other directions issued by the learned Single Judge do not warrant any interference. The learned Single Judge has rightly invoked the decision of the Hon'ble Apex Court in Priyanka Srivasthava's case where it is held that an affidavit is required for invoking Section 156(3) Cr.P.C. Though a submission has been made no such procedure is contemplated, when the parties want to avoid the regular remedy, they cannot say that even the procedure shall not be followed. We find, on perusal most of the cases before us, the procedure under Section 154(3) and time limit given as per Lalitha Kumari's case are breached with impunity. In any case, we can safely invoke Section 482 Cr.P.C. itself to insist upon filing such an affidavit to secure the ends of justice. After all it is procedural, with no serious inconvenience to a party especially when it is required for the better dispensation of justice. Such an affidavit will have to clearly indicate the date of the complaint, its receipt by the Station House Officer, the date of the substance of the information sent to the superintendent of Police and its receipt. Without these compliances the registry shall not number it. The observation made by the learned Single Judge with respect to invoking of Section 482 Cr.P.C. when the order passed by the Magistrate under Section 156(3) Cr.P.C. is not complied with stands confirmed.

34. In fact, after deeply analysing the decisions set to be in conflict with each other we find that they are not totally contrary to each other. While in Ragupathi's case it was held that power is available in all circumstances, it was accordingly held that Sughesan Transport's case that it is only maintainable on certain contingencies. An exception was carved out by treating the decision of the Apex Court as law. This we do not find to be wrong. We may also note that circulars referred above clearly mandate the Station House Officers to comply the directions which they are duty bound in law to do so. Thus, when there is a non compliance even thereafter, the aggrieved person can certainly invoke Section 482 Cr.P.C.

35. Accordingly, we answer the references in the following manner, while giving certain directions:

- (i) Section 482 Cr.P.C. cannot be invoked in all circumstances.
- (ii) It is not an alternative remedy to Section 156(3) Cr.P.C. but a repository of inherent power.
- (iii) The normal course of remedy on a failure or refusal to record the information is Section 156(3) of the Code of Criminal Procedure after due compliance of Section 154(3) Cr.P.C.
- (iv) A petition can be filed invoking the inherent jurisdiction of this court only after the completion of 15 days from the date of receipt of the information by the Station House Officer. The



Registry shall not receive any petition before the expiry of 15 days aforesaid.

(v) No petition shall be entertained without exhausting the remedy under Section 154(3) Cr.P.C.

(vi) An informant can send substance of the information to the Superintendent of Police on knowing the decision of the Station House Officer in not registering the case and proceeding with the preliminary enquiry. After conducting the preliminary enquiry, the Station House Officer's decision in either registering the complaint or closing it will have to be intimated to the informant immediately and in any case not later than 7 days. Once such a decision is made, the informant cannot invoke Section 482 Cr.P.C. as the remedy lies elsewhere.

(vii) The directions issued by the Director General of Police in the circulars referred are to be strictly complied with by all the Station House Officers.

(viii) The affidavit to be filed shall contain particulars regarding the date of complaint, receipt and the date of sending substances of the information to the superintendent of Police under Section 154(3) Cr.P.C. and its receipt. The Registry shall not number any petition without due compliance.

(ix) This Court is not bound to direct the police to register the complaint in all cases notwithstanding the breach of time table furnished in Lalitha Kumari's case.

(x) The judicial Magistrates, while dealing the petitions under Sections 156(3) Cr.P.C. are directed to keep in mind the narratives in Lalitha Kumari's case with specific reference to the cases, which might require a preliminary enquiry before issuing a direction to investigate and after careful perusal of the complaint. The other directions issued by the learned Single Judge in Sugesan Transport's case are upheld.

(xi) Eschewing Section 156(3) Cr.P.C. is only on exceptional and rarest of rare cases. Monstrosity of the offence, extreme official apathy and indifference, need to answer the judicial conscience, and existence of hostile environment are few of the factors to be borne in mind to bring a case under the rarest of rare one.

The references stands ordered accordingly.

36. We have perused most of the petitions by spending substantial time. We find that there is no compliance of the time table as delineated above nor the procedure under Section 154(3) Cr.P.C. Therefore, all these petitions stands closed, giving liberty to file fresh petitions if otherwise come within the purview of our decision and subject to compliance of the directions issued. Since the Criminal Original Petitions themselves are closed, no order is necessary in the Miscellaneous Petitions to implead the petitioners in Miscellaneous Petitions as parties and hence, all the Miscellaneous Petitions stands closed. CrI.M.P.(MD) No.10566 of 2016 in CrI.O.P.(MD) No.4854 of 2016 is also closed since there is no valid reason to recall the order of this Court in CrI.O.P.(MD) No.4854 of 2016 dated 12.04.2016.



We place on record the assistance rendered by all the counsels.

Sd/-
Assistant Registrar(T&P)

WEB COPY

/True Copy/

Sub Assistant Registrar(CS)

Note :- Issue individual order copy with cause title and prayer
sd/-

TO

- 1 THE SUPERINTENDENT OF POLICE,
TIRUNELVELI, TIRUNELVELI DISTRICT.
- 2 THE INSPECTOR OF POLICE,
SANKARANKOVIL TOWN POLICE STATION,
SANKARANKOVIL, TIRUNELVELI DISTRICT.

CRL OP(MD) No.409 of 2018
and 1003 Other batch Cases.
dated : 20/09/2018.

ES/26.03.2019/41P/3C