

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO. 1104 2018
WITH
CRIMINAL APPLICATION NO. 125 OF 2019.**

Kailas Rajaram @ Rajendra Dalvi,
Age 22 years, Occ. Agriculture &
Service, R/o. Satephal, Tq. Jafrabad,
District Jalna. ... **Petitioner.**

VERSUS.

1. The State of Maharashtra,
Through The Secretary, Home
Department, Mantralaya, Mumbai.
2. The Superintendent of Police,
Jalna, Dist. Jalna.
3. The Police Inspector,
Police Station Tembhurni, Dist.
Jalna. ... **Respondents.**

...

Mr. Salunke Sudarshan J. Advocate for petitioner.
Mr. A.B. Girase, Public Prosecutor for respondents.

**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**

DATE : 11th MARCH, 2019

JUDGMENT (Per T. V. Nalawade, J) :

1. Rule. Rule made returnable forthwith. By consent heard both sides for final disposal.
2. The proceeding is filed for giving direction to police to register Crime on the basis of the report of the petitioner recorded in the hospital on 30.06.2018. It is submitted that in the incident dated 28.06.2018 three

persons forceably administered poisonous substance to him. He had named two persons like Ankush and Balaji as witnesses who had rushed to the spot due to shouts raised by him. He was shifted to the hospital on 28.06.2018 itself. The record of the government hospital shows that the petitioner was admitted by Ankush in the hospital and treatment was given to him in respect of poisoning.

3. The submissions made by learned Public Prosecutor shows that police station recorded statement of some other persons on 02.07.2018 and on that basis police formed different opinion. The report which was recorded by Kadim Jalna police station on 30.06.2018 was referred to Tembhurni police station but Tembhurni police did not register the crime on the basis of the aforesaid report. Learned Public Prosecutor submits that no external injury was found on the person of the petitioner and most of the villagers had given account of another incident in which the petitioner was noticed in the company of one Ganesh and not in the company of the three accused persons.

4. The Learned counsel for the petitioner placed reliance on the directions given by the Apex Court in case reported as **2013 AIR SCW 6386 (Lalita Kumari Vs. Govt of U.P. and Ors.)** The relevant directions are at para No. 110 and the ultimate directions are at Sr. No. 111 and they are as under:

"110- Therefore, in view of various counter claims regarding

registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the state of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

Conclusion/Directions:

111- In view of the aforesaid discussion, we hold:

- (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 information 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 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/lashes 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.

5. In the present matter there is material like statement of the petitioner recorded in Government Hospital by police on 30.06.2018 and the papers which were shown to this Court which include report that statements of two persons like Ankush and Balaji were recorded by police, though those statements were not shown to this Court. The sum and substance of these two statements mentioned in the report show that these two witnesses are supporting the version of Kailas/petitioner. In view of this circumstance and the fact that the petitioner was given treatment in respect of poisoning for more than two days and he was indoor patient in the hospital, this court holds that it was necessary to register the crime in view of the direction given by Apex Court in case of **Lalita Kumari** cited (**supra**).

6. In the result the petition is allowed. Relief is granted in terms of prayer clause 'C'.
7. Rule made absolute in those terms.
8. Criminal Application No. 125 of 2019 is disposed of.

(MANGESH S. PATIL, J.)

(T.V. NALAWADE, J.)

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