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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 17th December, 2019

+ W.P.(C) 9449/2018

TAJINDER SINGH & ANR Petitioners

Through: Petitioners in person

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Ajay Digpaul, CGSC for UOI
Mr. Anjum Javed, ASC with Mr. Devendra
Kumar, Mr. Faran Ahmed & Ms. Priti, Advs. for
R-2 & R-3

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

D.N. PATEL, Chief Justice (Oral)

1. This writ petition has been preferred with the following prayers:

*“i) Issue an order or direction in the nature of writ or pass any other appropriate order thereby directing the respondents to implement online FIR/ e-FIR services in all cognizable & non-cognizable offences in NCT of Delhi apart from the conventional method for registration of FIR by Delhi Police;
ii) Issue an order, direction or writ in the nature of mandamus or any other appropriate writ to direct respondent No.3 to apply changes with regard to e-FIR on their websites with immediate effect and also to create awareness among public;
iii) Issue an order, direction or writ in the nature of mandamus or any other appropriate writ to create a body comprising of specialised persons including petitioners to give recommendations;*

iv) Pass any such further order, which this Hon'ble Court deems fit and proper in the circumstances of the case."

2. Having heard the learned counsel for both sides and looking to the facts and circumstances of the case, it appears that these petitioners are in search of a policy decision to be taken by the respondents for lodging e-FIR against both cognizable and non-cognizable offences.

3. Leaned counsel appearing for respondent No.3 submitted that in response to this writ petition, a detailed affidavit dated 10th September, 2018 has been filed. Learned counsel appearing for respondent No.3 further submitted that in certain cases, filing of e-FIR has now been permitted by the respondents. This fact has been mentioned in paragraph 6 as well as in the further paragraphs of the said affidavit.

4. It is also submitted by learned counsel for respondent No.1 as well as by the learned counsel for respondent No.3 that for most of the offences, filing of e-FIR is not permissible at all viz. murder, dacoity etc., mainly for the reason that the victim might not know the fine niceties of the law. All ingredients of the offences are required to be incorporated in an FIR to avoid the probable difficulties which might be faced by an aggrieved person while seeking quashing of an FIR under Section 482 Cr.PC. Therefore, in all types of offences, filing of an e-FIR cannot be allowed.

5. We have perused the counter affidavit dated 10th September, 2018 filed by respondent No.3, particularly paras 6, 6.02 and 7, which read as under:

"6. That it is respectfully submitted that the answering respondent is conscious and aware about the issue of registration of online FIRs. The system of e-F.I.R. was

introduced as a facility to public and ensuring that avoidable inconvenience is not caused to the public at large. At present, the facility of lodging of the online F.I.Rs. is limited to the offences where identity of the accused is not known and there is no anticipated problem/loss to any other person from the lodging of online FIRs on account of any vested interest of the complaining party. Such cases generally include Theft cases, including M.V thefts, loss of property or documents etc. Online facility for registration of non cognizable reports is also available. However, due to peculiar demographic and socio-economic conditions, the system of lodging reports by way of e-F.I.R is, however, fraught with certain practical problems. Some of the problems are submitted below for the kind consideration of this Hon'ble Court:-

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6.2 That still the omission, particularly concerning important issues/facts in F.I.R., is likely to prejudice the prosecution/victim and attract an unwarranted favour to the accused. The first version, disclosed in a complaint, is always important for adjudicating as to whether an accused has committed a particular offence or not. A layman, not familiar with the intricacies of law, may not be in a position to lodge an effective F.I.R which during trial may be adverse to the prosecution. For example the information in the complaint, lodged through e-F.I.R., may be lacking even the basic facts which are absolutely necessary for making out an offence. Similarly, there may be cases where the informant, despite being aware of the identity of the accused, inadvertently fails to mention his name in the e-F.I.R. It also cannot be ruled out that the victim does not even mention the basic features of the accused, whose identity was not known. Again the informant/victim may fail to mention the details of the witnesses present at the time the alleged crime was committed. Although provisions do exist to cure the defects by way of supplementary statements, the likelihood of occurrence of omission in F.I.R can be avoided. Besides, if such a course is permitted, it may also give undue latitude as well as opportunity to unscrupulous complainants to nail others by hook or by crook in spite of the fact that their initial complaint does not make out the offence complained of. Such a course

would be utter abuse of the process of law. Moreover, the view of this Hon'ble Court has been that supplementary statement cannot fill the lacunas in F.I.R. Kind attention of this Hon'ble Court is drawn to "W.P.(CRL) 3083/2016 GAYATRI @ APURNA SINGH Vs. STATE & ANR."

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7. The Hon'ble Supreme Court of India in the landmarked judgment "*LALITA KUMARI VERSUS GOVT. OF UTTAR PRADESH*" (2014) 2 SCC1 while allowing the preliminary enquiry before registration of FIR has held;

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

As to what type and in which cases preliminary enquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary enquiry 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/latches in initiating criminal prosecution, for example, over three month 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 enquiry.

While ensuring and protecting the rights of the accused and the complainant, a preliminary enquiry 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"

It is submitted that, a layman may not be aware of these legal intricacies and once registration of F.I.R by way of e.F.I.R in all cases is allowed, it may cause extremely high investigative burden on police apart from curtailing

its power to conduct preliminary enquiry in appropriate cases under a clear mandate of the Hon'ble Apex Court. Besides, once such a system is introduced, other provisions of Cr.P.C, particularly Section 157 Cr.P.C will also be affected.”

In view of the aforesaid counter affidavit of respondent No.3, it appears that for several offences like (a) Theft cases; (b) Motor Vehicle Act cases; (c) Loss of property; (d) Loss of documents; (e) For missing persons, where the accused are unknown, e-FIR is permissible as per the policy decision taken by the respondents.

6. It ought to be kept in mind that in all cases e-FIR cannot be permitted mainly for the reason that sometimes a victim who has to file an FIR may not be aware of the fine niceties and therefore the ingredients of the offences may not be incorporated in e-FIR. If at all it is permitted, in that eventuality if in any proceedings initiated by the accused under the inherent powers of the High Court, the same is granted on account of any such infirmity, the very purpose of lodging of an FIR will be frustrated. There can be e-FIR for such other type of cases for which e-FIR is not permissible as per policy decision taken by the respondents.

7. Counsel appearing for the petitioner has submitted that in other types of offences also, e-FIR should be permitted by this Court.

8. We are not in agreement with this contention mainly for the reason that the methodology of lodging the FIR is already pointed out in the Code of Criminal Procedure, 1973. The Court is concerned with the interpretation of the law and not with the amendment of the law. As per the theory of Positivism, the Court is mainly concerned with the law “as it is” and not

with “the law as it ought to be”. This difference ought to be kept in mind except in exceptional cases. Where there is an extreme urgency and necessity, the Court would rarely fill up the gap, otherwise it is the function of the Legislature to amend the law and in the absence of the law as per the provisions of the Constitution, it is for the Executive to take the policy decision on the law looking into the Schedule of the Constitution and the List thereunder.

9. In view of the aforesaid facts and reasons, we see no reason to entertain this writ petition at this stage. For several types of offences, as stated hereinabove, e-FIR is already permitted by the respondents but we do not want to allow e-FIR to be filed in all type of offences.

10. With the aforesaid observations, this writ petition is hereby dismissed.

CHIEF JUSTICE

REKHA PALLI, J

DECEMBER 17, 2019

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