

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble **Justice Kausik Chanda**

C.R.R. NO. 1383 OF 2021

With

C.R.A.N. NO. 1 OF 2021

With

C.R.A.N. NO. 2 OF 2021

VARUN GOENKA

-VERSUS-

THE STATE OF WEST BENGAL AND ANOTHER

AND

C.R.R. NO. 1534 OF 2021

RAHUL KR. SHAW AND OTHERS

-VERSUS-

THE STATE OF WEST BENGAL AND ANOTHER

In C.R.R. No. 1383 of 2021

For the petitioner

: Mr. Rajdeep Mazumder, Adv.,

Mr. Pritam Roy, Adv.,

Ms. Arushi Rathore, Adv.

For the opposite party no. 2 : Mr. Kallol Mondal, Adv.,
Mr. Krishan Ray, Adv.,
Ms. Amrita Chel, Adv.,
Mr. Souvik Das, Adv.,
Ms. Anamitra Banerjee, Adv.

For the State : Mr. Saswata Gopal Mukherjee, Adv.,
Mr. Ranabir Roy Chowdhury, Adv.,
Mr. Rudradipta Nandy, Adv.

In C.R.R. No. 1534 of 2021

For the petitioners : Mr. Rajdeep Mazumdar, Adv.,
Mr. Pritam Roy, Adv.,
Ms. Arushi Rathore, Adv.

For the opposite party no. 2 : Mr. Ayan Bhattacharya, Adv.

For the State : Mr. Sukanya Bhattacharyya, Adv.,
Mr. Mirza Firoz Ahmed Begg, Adv.

Hearing concluded on : 01.09.2021 and 23.09.2021

Judgment on : 02.12.2021

Kausik Chanda, J.:-

In view of similar facts and law points involved, these two applications are disposed of by this common judgment. In both the cases, the police have registered the F.I.Rs in connection with the matrimonial offences without embarking upon any preliminary enquiry. The principal grievance of the petitioners in both the cases is that the police ought to have registered an F.I.R. in these cases only after conducting a preliminary enquiry as mandated by the Supreme Court in ***Lalita Kumari*** case reported at **(2014) 2 SCC 1 (*Lalita Kumari v. Government of Uttar Pradesh*)**.

2. Opposite party no. 2/de facto complainant in C.R.R. No. 1383 of 2021 married the petitioner/accused on January 28, 2011. It has been alleged by opposite party no. 2 in her F.I.R. that she along with her minor daughter were driven out of her matrimonial house where she was tortured by her in-laws and the petitioner.

3. She lodged a complaint before the police on June 10, 2021, and admittedly, on the very same date without embarking upon any preliminary enquiry of the police station case no. 82 of 2021 was registered under Sections 498A/323/406/506 of the Indian Penal Code, 1860 against the petitioner and other accused persons.

4. The marriage between the opposite party no. 2 and the petitioner no. 1 in C.R.R. No. 1534 of 2021 was solemnized as per Hindu rites and customs.

5. In this case, after about ten years of marriage on July 20, 2021, opposite party no. 2 lodged a written complaint with the police alleging, *inter alia*, that though initially there was no marital discord between the parties, subsequently there was increased pressure on demand of dowry by the petitioners. Since the opposite party no. 2 failed to fulfil their demand, she was subjected to torture by petitioner no. 1 and her in-laws. Finally, on July 23, 2020, being physically assaulted by petitioner no. 1 she left the matrimonial home on July 24, 2020.

6. She lodged the complaint on July 20, 2021. In this case also, the police registered an F.I.R. under Sections 498A/323/406/506/34 of the Indian Penal Code, 1860 read with Section 3/4 of the Dowry Prohibition Act, 1961, on the same date without conducting any preliminary enquiry.

7. Mr. Rajdeep Mazumder, learned advocate appearing for the petitioners in C.R.R. No. 1534 of 2021 and C.R.R. No. 1383 of 2021, submits that, opposite party no. 2 in C.R.R. No. 1534 of 2021 had left the matrimonial home on July 24, 2020, but she lodged the complaint against the petitioner only on July 20, 2021, and the first information report does not disclose any reason for such delay. The police also on the very first

date without conducting any preliminary enquiry registered the F.I.R. in violation of the mandate of ***Lalita Kumari (supra)***.

8. Mr. Mazumder, further, submits that the Supreme Court in the judgment reported at **(2010) 7 SCC 667 (*Preeti Gupta v. State of Jharkhand*)** has observed that the tendency of implicating the husband and his relatives is very common. The Courts have to be extremely careful and cautious in dealing with the complaints related to matrimonial cases and must take pragmatic realities into consideration. The allegations of the complaint are required to be scrutinised with great care and circumspection.

9. He has placed reliance on the case reported at **(2014) 8 SCC 273 (*Arnesh Kumar v. State of Bihar*)** where the Supreme Court noted a phenomenal increase in matrimonial disputes in the country. The Supreme Court noted that the criminal cases relating to matrimonial offences account for 4.5 per cent of total crimes committed under different Sections of the Penal Code, more than any other crimes excepting theft and hurt. The rate of charge sheet in cases under Section 498A is as high as 93.6 per cent, while the conviction rate is only 15 per cent, which is the lowest across all heads.

10. Mr. Mazumder, therefore, submits that such observation of the Supreme Court emphasises the need of conducting a preliminary enquiry

in the cases lodged under Section 498A of the Code of Criminal Procedure, 1973.

11. Mr. Mazumder also referred to the case reported at **(2021) 5 SCC 469 (Charansingh v. State of Maharashtra)** to suggest that the police ought not to have undertaken a full-fledged investigation without conducting the preliminary enquiries in these two cases.

12. Mr. Kallol Mondal, learned advocate appearing for opposite party no. 2 in C.R.R. No. 1383 of 2021, submits that from the judgment of **Lalita Kumari (supra)** it is apparent that the purpose of a preliminary enquiry is to ascertain as to whether any cognizable offence has been disclosed in the first information report and not to test the veracity of the allegation or otherwise. If the police have a reason to suspect that the commission of the offence is a cognizable one, the police must proceed with the investigation. The investigation of an offence is exclusively within the domain of the State over which the Courts cannot have any control or power to stifle or impinge upon the proceedings as long as the investigation is carried out in conformity with the Code of Criminal Procedure, 1973.

13. Mr. Mondal relies upon a judgment of the Supreme Court reported at **(2021) SCC OnLine SC 315 (Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra)** to submit that it is only in cases where no cognizable offence or offence of any kind is disclosed in the first

information report that the Court will not permit an investigation to go on; while examining an F.I.R./complaint, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R./complaint and ordinarily, the Courts are barred from usurping the jurisdiction of the police since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.

14. The judgment reported at **(2021) 5 SCC 469 (Charansingh v. State of Maharashtra)** has also been relied upon to argue that if a cognizable offence is disclosed in the F.I.R, it is imperative for the police to initiate an investigation.

15. Mr. Mondal has argued that in the instant case since the F.I.R. discloses the commission of a cognizable offence which has been lodged at the earliest possible opportunity, the same cannot be set aside or quashed and when the investigation has already commenced, the same should be allowed to continue.

16. Mr. Mondal suggests that the use of the word “may” used in paragraph 120.6 of **Lalita Kumari (supra)** indicates that it is the discretion of the investigating officer either to lodge a first information report or to conduct a preliminary enquiry. Once the investigation has proceeded the question of preliminary enquiry ceases to exist and there cannot be any looking back. The Court should not quash the investigation

by interfering with the discretion exercised by the police in initiating an investigation.

17. Mr. Ayan Bhattacharya, learned advocate appearing for the opposite party no. 2 in C.R.R. No. 1534 of 2021, has submitted before this Court that it has been clarified by the Supreme Court by the judgment reported at **(2019) 19 SCC 87 (*State of Telangana v. Managipet alias Mangipet Sarveshwar Reddy*)** that for the registration of an F.I.R. in matrimonial offences, a preliminary enquiry is not imperative.

18. Mr. Bhattacharya, further, submits that the Code of Criminal Procedure, 1973 does not mandate that the registration of an F.I.R. in matrimonial offences has to be preceded by a preliminary enquiry and the Court cannot direct the investigating agency to act in a manner which is not required by the statute. In support of such proposition, Mr. Bhattacharya relies upon the judgment reported at **(1991) 3 SCC 239 (*U.P. State Road Transport Corporation v. Mohd. Ismail*)**, **(1996) 4 SCC 453 (*Union of India v. Kirloskar Pneumatic Co. Ltd.*)** and **(2011) 6 SCC 216 (*Central Bureau of Investigation v. Keshub Mahindra*)**.

19. Mr. Bhattacharya, further, argues that the discretion exercised with regard to a directory provision is not justiciable. In this regard, Mr. Bhattacharya relies upon a judgment reported at **(1985) 3 SCC 398 (*Union of India v. Tulsiram Patel*)**.

20. Mr. Bhattacharya, further, argues that the requirement of conducting a preliminary enquiry is merely procedural and for the breach of a procedural requirement, the investigation should not be interfered with. In this regard, Mr. Bhattacharya has relied upon the judgments reported at **(2008) 9 SCC 31 (*Haryana Financial Corporation v. Kailash Chandra Ahuja*)**, **AIR 1960 SC 444 (*Rani Drigraj Kuer v. Raj Sri Amar Krishna Narain Singh*)** and **AIR 1961 SC 200 (*L. Hazari Mal Kuthiala v. Income Tax Officer, Special Circle, Ambala Cantt.*)**.

21. Mr. Saswata Gopal Mukherjee, learned advocate appearing for the State supports the arguments as advanced by the opposite parties in these two cases. Mr. Mukherjee suggests that conducting a preliminary enquiry is not mandatory and it is the discretion of the police. He also relied upon the judgment of the Supreme Court reported at **(2019) 19 SCC 87 (*State of Telangana v. Managipet alias Mangipet Sarveshwar Reddy*)** in this regard.

22. Mr. Mukherjee further placed reliance upon a judgment reported at **(2017) 2 SCC 779 (*State of Telangana v. Habib Abdullah Jeelani*)** to argue that if no cognizable offence is made out in the information given, the police may 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 F.I.R. forthwith. Whether the information is falsely given or credible is not relevant at the stage of registration of F.I.R., what is to be seen is merely whether the information given ex-facie discloses the commission of a cognizable offence.

23. From the arguments advanced by the respective parties the point of law that falls for consideration is whether in matrimonial offences the investigating agency should conduct a preliminary enquiry before registration of the F.I.R. even if the first information discloses cognizable offence.

24. To answer the issue it is necessary to advert to the directions issued in ***Lalita Kumari (supra)*** which read as follows:

“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.”

25. By a later pronouncement, the Supreme Court clarified that a preliminary enquiry should be made time-bound and in any case, it should not exceed 15 days in general and in exceptional cases it has to be conducted within a period of six weeks by providing an adequate reason. The relevant part of the said judgment of the Supreme Court is quoted below:

“(vii) 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 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, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an enquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary enquiry must also be reflected, as mentioned above.”

26. The direction contained in paragraph 120.1 as quoted above makes it clear that it is the duty of the investigating agency to mandatorily register an F.I.R. if the information discloses commission of cognizable offence. An exception to the aforesaid proposition has been carved out in paragraph 120.6 for the cases like matrimonial disputes/family disputes, commercial offences, medical negligences, corruption cases and the cases where there is an abnormal delay in lodging the F.I.R. without giving any proper explanation.

27. The Supreme Court in dealing with the scope of preliminary enquiry in a case under the Prevention of Corruption Act, 1988, reported at **(1970)**

1 SCC 595 (P. Sirajuddin v. State of Madras) held as follows:

“**17.**In ordinary departmental proceedings against a Government servant charged with delinquency, the normal practice before the issue of a charge-sheet is for some one in authority to take down statements of persons involved in the matter and to examine documents which have a bearing on the issue involved. It is only thereafter that a charge-sheet is submitted and a full-scale enquiry is launched. When the enquiry is to be held for the purpose of finding out whether criminal proceedings are to be restored to the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the delinquent officer and

documents bearing on the same to find out whether there is *prima facie* evidence of guilt of the officer. Thereafter the ordinary law of the land must take its course and further inquiry be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report.”

28. The Supreme Court, in my view, has carved out the exceptions with the objective to ward off false complaints and save the accused persons from unnecessary harassment. The judgment of the Supreme Court casts an obligation upon the investigating agency to conduct a preliminary enquiry in matrimonial offences to satisfy the investigating agency that the allegations in the FIR along with the materials collected during the preliminary enquiry would, *prima facie*, constitute the alleged commission of offence. The scope of preliminary enquiry is restricted only to come to a *prima facie* finding as to the truth or otherwise of the allegations made in the FIR in order to determine whether a full-fledged investigation should be initiated.

29. It has been strongly suggested by Mr. Mondal placing reliance upon paragraphs 120.2 and 120.5 of ***Lalita Kumari (supra)*** that a preliminary enquiry has to be conducted only where the information received does not disclose a cognizable offence and since the F.I.R in the present case discloses cognizable offences, a preliminary enquiry was not necessary. I am unable to accept such contention. The direction in paragraph 120.1 lays down that an FIR must be registered under Section 154 of the Code where the information discloses the commission of a cognizable offence

without preliminary enquiry. Paragraphs 120.2 and 120.6 indicate the cases where the preliminary enquiry is to be conducted. Paragraph 120.5 cannot be read to mean that scope of a preliminary enquiry is only to ascertain whether the first information received reveals any cognizable offence. The words “information received” in the said paragraph imply the information received in course of a preliminary enquiry.

30. It is needed to be mentioned that in course of the hearing, this Court on September 6, 2021, passed an order directing the Joint Commissioner of Police (Crime), Kolkata Police to file a report as to whether like some States in the country, the State of West Bengal has issued any circular to follow the mandate of the ***Lalita Kumari*** case. In response, a report was filed before this Court on September 14, 2021, disclosing the fact that after the said order dated September 6, 2021, the department of West Bengal Police Directorate, Bhabani Bhavan, Alipore, Kolkata, issued a circular on September 10, 2021. The circular reads as follows:

“Memo No. 378 /Law Cell
Adm/CR-339-08

Dated 10 /09/ 2021.

To

1. Superintendents of Police of all districts and police districts in West Bengal
2. Commissioners of all Police Commissionerates in West Bengal
3. All Superintendents of Railway Police in West Bengal

4. Director General of Police, Enforcement Branch/Additional Director General of Police, CID West Bengal/ / Directorate Economics Offence Wings/Deputy Inspector General of Police, Anti Corruption Branch
5. All Range Deputy Inspectors General of Police in West Bengal
6. All Zonal Inspectors General of Police/Additional Director General of Police in West Bengal

Sub: Guideline issued by the Hon'ble Supreme Court of India relating to conducting of Preliminary Enquiry to ascertain whether the information reveals any cognizable offence in certain cases.

Ref: In compliance with the order dated 12.11.2013 of Hon'ble Supreme Court of India passed in connection with W.P.(CRL) No. 68 of 2008 Lalita Kumari – Vs – Govt. of UP & Ors.

With
 SLP(Crl) No. 5986 of 2006
 SLP (Crl) No. 5200 of 2009
 Criminal Appeal No. 1410 of
 2011
 Criminal Appeal No. 1267 of
 2007
 And
 Contempt Petition (C) No.
 D26722 of 2008 In Writ Petition
 (Crl) No. 68 of 2008.

While adjudicating the above matter Hon'ble Apex Court has been pleased to direct:-

Quote “ 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.” **Unquote**

Pursuant to the above direction and in continuation to this office earlier memo no. 114/Law Cell dated 13.08.2008 it is directed that all

SSs/SPs/CPs/SRPs under West Bengal Police shall sensitize the field functionaries once again to strictly comply with the order of the Apex Court.

The copy of the order of Hon'ble Supreme Court of India dated 12.11.2013 is enclosed herewith in entirety.

Enclo: As stated above.

Sd/-
Additional Director General of Police, (Administration-II)
West Bengal"

31. The argument of Mr. Ayan Bhattacharya that in absence of a statutory provision the police cannot be asked to conduct preliminary enquiry, therefore, becomes redundant since the police, by the said administrative circular, have been asked to follow the mandate of ***Lalita Kumari*** case.

32. The judgment reported at **(2019) 19 SCC 87 (State of Telangana v. Managipet alias Mangipet Sarveshwar Reddy)** does not indicate that preliminary enquiry pertaining to matrimonial disputes, medical negligence, corruption cases need not be conducted. The relevant part of the said judgment is quoted below:

“30. It must be pointed out that this Court has not held that a preliminary inquiry is a must in all cases. A preliminary enquiry may be conducted pertaining to matrimonial disputes/family disputes, commercial offences, medical negligence cases, corruption cases, etc. The judgment of this Court in *Lalita Kumari* does not state that proceedings cannot be initiated against an accused without conducting a preliminary inquiry.

31.

32. The said judgment does not help the learned counsel for the accused officer. The scope and ambit of a preliminary inquiry being necessary before lodging an FIR would depend upon the facts of each case. There is no set format or manner in which a preliminary inquiry is to be conducted. The objective of the same is only to ensure that a criminal investigation process is not initiated on a frivolous and untenable complaint. That is the test laid down in *Lalita Kumari*.

33. In the present case, the FIR itself shows that the information collected is in respect of disproportionate assets of the accused officer. The purpose of a preliminary inquiry is to screen wholly frivolous and motivated complaints, in furtherance of acting fairly and objectively. Herein, relevant information was available with the informant in respect of prima facie allegations disclosing a cognizable offence. Therefore, once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused even without conducting any inquiry or by any other manner on the basis of the credible information received by him. It cannot be said that the FIR is liable to be quashed for the reason that the preliminary inquiry was not conducted. The same can only be done if upon a reading of the entirety of an FIR, no offence is disclosed. Reference in this regard, is made to a judgment of this Court in *State of Haryana v. Bhajan Lal* wherein, this Court held inter alia that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused and also where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

34. Therefore, we hold that the preliminary inquiry warranted in *Lalita Kumari* is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and

informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient.”

33. Paragraph 30 of the said judgment only suggests that preliminary enquiry is not must in all cases. The facts involved in the said report shows that, in that case, relevant information was available with the informant in respect of, *prima facie*, allegations disclosing a cognizable offence. In that view of the matter, it was held by the Supreme Court that there was no need to conduct a preliminary enquiry.

34. The judgment reported at **(2017) 2 SCC 779 (State of Telangana v. Habib Abdullah Jeelani)** is not applicable in the present case since in that case the F.I.R. was registered under Sections 147,148,149 and 307 of the Indian Penal Code, 1860. The said case, therefore, did not come within the purview of paragraph 120.6 of the **Lalita Kumari** case. In fact, the said case was covered under paragraph 120.1 of the **Lalita Kumari** case.

35. The judgment reported at **(2021) 5 SCC 469 (Charansingh v. State of Maharashtra)** has followed **Lalita Kumari** case and held as follows:

“ **15.1.** Thus, an enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income. After the enquiry/enquiry at pre-registration of FIR stage/preliminary enquiry, if, on the basis of the material collected during such enquiry, it is found that

the complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged. However, if the material discloses prima facie a commission of the offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and the further investigation will be carried out in terms of the Code of Criminal Procedure. Therefore, such a preliminary enquiry would be permissible only to ascertain whether cognizable offence is disclosed or not and only thereafter FIR would be registered. Therefore, such a preliminary enquiry would be in the interest of the alleged accused also against whom the complaint is made.

15.2. Even as held by this Court in *CBI v. Tapan Kumar Singh*, a GD entry recording the information by the informant disclosing the commission of a cognizable offence can be treated as FIR in a given case and the police has the power and jurisdiction to investigate the same. However, in an appropriate case, such as allegations of misconduct of corrupt practice by a public servant, before lodging the first information report and further conducting the investigation, if the preliminary enquiry is conducted to ascertain whether a cognizable offence is disclosed or not, no fault can be found. Even at the stage of registering the FIR, what is required to be considered is whether the information given discloses the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage, it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. Despite the proposition of law laid down by this Court in a catena of decisions that at the stage of lodging the first information report, the police officer need not be satisfied or convinced that a cognizable offence has been committed, considering the observations made by this Court in *P. Sirajuddin* and considering the observations by this Court in *Lalita Kumari* before lodging the FIR, an enquiry is held and/or conducted after following the procedure as per Maharashtra State Anti-Corruption & Prohibition Intelligence Bureau Manual, it cannot be said that the

same is illegal and/or the police officer, Anti-Corruption Bureau has no jurisdiction and/or authority and/or power at all to conduct such an enquiry at pre-registration of FIR stage.”

36. Though paragraph 120.6 does not suggest that preliminary enquiry is to be mandatorily held with regard to the types of cases mentioned therein, the investigating agencies should not be allowed to do away with the preliminary enquiry in such types of cases without any justifiable reason.

37. The investigating agency in such cases ordinarily should conduct a preliminary enquiry unless it is not shown that immediate registration of FIR would defeat the very purpose of investigation or conducting a preliminary enquiry will be an empty formality.

38. In view of discussions above and having regard to the facts involved in these two cases, I am of the opinion that the State has failed to justify the registration of the F.I.Rs without conducting the preliminary enquiry in both the cases.

39. Accordingly, it is directed that the concerned police shall conduct the preliminary enquiry, in both the cases, within a period of three weeks from the date of communication of this order and upon preliminary enquiry if it is found that there exists sufficient grounds to carry out a full-fledged investigation, they shall proceed with the investigation in terms of Section 156 (1) of the Code of Criminal Procedure, 1973. The two F.I.Rs shall be kept in abeyance till conclusion of the preliminary enquiry. In

case the preliminary enquiry ends in closing of the complaint, the F.I.R. makers should be informed accordingly within a period of one week from the date of the conclusion of a preliminary enquiry indicating the reasons for closing the complaint and not proceeding further.

40. The revisional application being **CRR No. 1383 of 2021** along with the connected applications being **CRAN No. 1 of 2021, CRAN No. 2 of 2021** and the revisional application being **CRR No. 1534 of 2021** are accordingly disposed of.

41. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)