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

\+ **CRL.REF. 1/2021**

COURT ON ITS OWN MOTION ..... Petitioner

versus

STATE ..... Respondent

Through: Ms. Nandita Rao, ASC (Criminal) for State.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

<u>O R D E R</u>

% **28.03.2022**

The present criminal reference petition under Section 395 of Code of Criminal Procedure, 1973, raises the following questions of law for adjudication by this Court:-

> *"Q1. Whether registration of FIR, if made out otherwise as per law, can be made conditional upon requirement of approval from senior police officers?*
>
> *Q2. Whether Cr. P.C. or any other law for the time being in force admits such standing orders to be issued as would override the express statutory provisions as well as mandates of the courts higher above regarding registration of FIR by adding a pre-condition for seeking approval from senior police officers?*
>
> *Q3. Whether every offence involving a monetory transaction such as cheating, criminal breach of trust, forgery etc falls withing the ambit of the definition of "commercial disputes" as referred to in Lalita Kumari V. State of U.P. S.L.P.(Crl.) No.5986 of 2006 necessitating conducting of a preliminary enquiry prior to registration of FIR and whether such preliminary enquiry includes within its scope a prerequisite of seeking approval of the higher police officials before registration of FIR.*

Q4. In case the answers to question no.l, 2 and / or 3 are in the negative, whether the police officials involved are liable to be proceeded against for contempt of the mandate enunciated in Lalita Kumar V. State (supra) and if so, how would such reference for contempt be routed?"

We have heard Ms. Nandita Rao, learned Additional Standing Counsel (Criminal) appearing on behalf of the GNCTD, at length.

Our attention has been invited by Ms. Nandita Rao to the decision of the Constitution Bench in ***Lalita Kumari Vs.Government of Uttar Pradesh and Others*** reported as ***(2014)2 SCC 1***, and in particular paragraphs 93, 96 and 120 thereof, to urge that the issues of law raised in the present criminal reference are no longer *res-integra.*

We, therefore, consider it appropriate to extract the aforementioned paragraphs, which read as follows:-

"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.

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xxxx xxxx xxxx xxxx

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.*

xxxx xxxx xxxx xxxx
xxxx xxxx xxxx xxxx

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 enquiry 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."

A conjoint reading of the paragraphs extracted hereinabove, leave no manner of doubt that registration of an FIR is compulsory forthwith, not only to ensure transparency in the criminal justice-delivery system, but also to maintain "judicial oversight"

Having said that, however, the dictum enunciated by the Hon'ble Supreme Court in ***Lalita Kumari (Supra)*** also carves out an exception to the above principle by holding that a preliminary inquiry may be conducted by the police authorities concerned – not to verify the veracity or otherwise of the information received – but to ascertain whether the information received reveals the commission of a cognizable offence. The Constitution Bench goes on to elaborate the type of cases in which a preliminary inquiry is required to be conducted by holding that, these may include the category of cases such as: (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.

Needless to state that, the Hon'ble Supreme Court has clearly and unequivocally observed that the aforesaid category of cases, where a preliminary inquiry may be made are only illustrative and not exhaustive of all conditions which may warrant a preliminary inquiry.

A plain reading of the dictum of the Hon'ble Apex court in ***Lalita Kumari (Supra)*** as well as the settled legal position *qua* registration of FIR under Section 154 Code of Criminal Procedure, 1973, in cognizable offences leaves us with not even an iota of doubt that police authorities are duty-bound to register an FIR, no sooner than they receive credible information about the commission of a cognizable offence within their territorial jurisdiction.

The other issue that requires our consideration is the question as to whether the police authorities are justified in law, in issuing departmental instructions *qua* the oversight, to be carried out by a senior Police Officer of the rank of DCP, as has been done *vide* Standing Order No. 173/2021 dated 21.01.2021- *Procedure/ Guidelines for enquiry of complaints and investigation of cases related to economic offences* - which is the subject-matter of the instant reference.

In this behalf, Ms. Nandita Rao, learned Additional Standing Counsel has invited our attention to the decision of the Hon'ble Supreme Court in ***Joginder Kumar Vs. State of U.P and Others*** reported as ***AIR 1994 SC 1349***, and in particular paragraphs 23 and 24 thereof, to urge that the said issue is already covered, by the dictum of the Hon'ble Supreme Court.

For the sake of completeness, the paragraphs relied upon are extracted *in extenso*, which read as follows:-

> *"23. In India, Third Report of the National Police Commission at page 32 also suggested:*
> *"....An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:-*
>
> *(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.*
>
> *(ii) The accused is likely to abscond and evade the processes of law.*

(iii) The accused is given to violent behavior and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines…….”

24. The above guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. ***It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest.*** *Denying a person of his liberty is a serious matter. The recommendations of the Police*

> *Commission merely reflect the constitutional concomitants of the fundamental right to a personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave Station without permission would do."*

A plain reading of the above-extracted paragraphs leaves no manner of doubt that, it is desirable to understand through departmental instructions that the Police are at liberty to issue guidelines, so as to safeguard personal liberty guaranteed under the Constitution of India.

The next issue flagged in the instant reference is that, whether every disputed monetary transaction tantamounts to commercial dispute and commends for a preliminary inquiry by the police authorities prior to registration of FIR in accordance with the exception carved out in the decision of ***Lalita Kumari (supra)***, to which the answer is in negative. Commercial disputes involving monetary transaction arising in the ordinary course of business cannot be by default treated as criminal offence requiring registration of FIR, rather such disputes needs to be resolved by an efficacious remedy available as per statutory law in civil court rather than converting a dispute of civil nature involving tortious liability into the criminal liability in the garb of labelling it as 'commercial dispute'. Needless to state, that no straight-jacket formula can be applicable to every commercial dispute, and invocation and involvement of criminal liability and fraudulent element, need to be ascertained depending upon the facts and circumstance of each case.

In view of the detailed discussion in the foregoing paragraphs, we answer the issues that arise for consideration in the present Reference in the affirmative.

No further issues arise for consideration in the present reference.

The above criminal reference is answered and disposed of accordingly.

A copy of this order be sent to concerned District Judge, South-West, Dwarka, New Delhi-110075, for information and compliance.

SIDDHARTH MRIDUL, J.

RAJNISH BHATNAGAR, J.

MARCH 28, 2022/at

Click here to check corrigendum, if any