

08.09.2025
Ct.No.3
Sl. No.129
Mujahid

**Calcutta High Court
In The Circuit Bench at Jalpaiguri**

**CRR 69 of 2024
With
CRAN 2 of 2024**

Nisith Pramanik
Vs.
The State of West Bengal & Anr.

Mr. Sudipto Mazumder, Sr. Adv.,
Mr. Rajdeep Mazumder, Sr. Adv.,
Mr. Siddesh Kotwal,
Mr. Avrojoyti Das,
Mr. Soumya Rha

...for the petitioner

Mr. Aditi Shankar Chakraborty, Ld. APP,
Mr. Sourav Ganguly

...for the State

1. Learned counsel for the petitioner submits that in the present case the FIR was lodged by the investigating agency on 16th March, 2019 without conducting any preliminary inquiry. Learned senior counsel has invited the attention of the court to the certified copy of FIR No.124 of 2019 which indicates that the information was received vide GD No.821 on 16th March, 2019 at 0015 hours and immediate thereafter on the same moment the FIR was lodged.

2. Learned senior counsel submits that the same is in teeth of not only the judgment of the Supreme Court in Lalita Kumari vs. Government of Uttar Pradesh, (2014) 2 SCC 1, but also in

violation of the Notification of the State of West Bengal dated 10th September, 2021. Learned counsel submits that in view of the notification of the State of West Bengal, the registration of present FIR without conducting any preliminary inquiry amounts to violation of the procedure set up by the State.

3. Learned counsel for the State has fairly submitted that the preliminary inquiry was not conducted in the present case. However, learned counsel submits that investigating agency is not shy of conducting the preliminary inquiry.

4. The similar issue was raised before the coordinate Bench of this Court in Varun Goenka vs. State of West Bengal & Anr. and Rahul Kr. Shaw & Ors. vs. State of West Bengal & Anr. in CRR 1383 of 2021 and CRR 1534 of 2021. In that case the principal grievances of the petitioner was that the police ought to have registered an FIR, only after a conducting a preliminary inquiry. In that the case, the FIR were based on the matrimonial disputes. The coordinate Bench of this Court vide its detailed order dated 2nd December, 2021, after taking into account, the entire law and the submission of both the parties and the State of West Bengal notification dated 10th September, 2021, inter alia, held as under:-

“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.

.....

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*. 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. 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 preregistration 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 fullfledged 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.”

5. In the present case also it has fairly been submitted by the learned counsel for the State that the preliminary inquiry was not held. Perusal of the FIR indicates that the allegation against the petitioner is that he took the money from complainant assuring the job. The allegations are that the de facto complainant paid the money after the mortgaging his father’s land.

6. It is a matter of record that the petitioner herein is active politician and has remained an ex-Member of Parliament and is former Minister of State in the centre. It has repeatedly been inter alia held by this Court and the Apex Court that in such like cases, the investigating agency instead of rushing to registration of FIR, should conduct a preliminary inquiry. The direct registration of FIR may in such cases be counterproductive to the complainant as well as the proposed accused. The court is conscious of the settled proposition that holding of preliminary enquiry before registration of FIR is not mandatory in all the cases. The requirement of holding of preliminary enquiry will be based on the facts and circumstances of each case. Such inquiry, except in the cases where there is glaring material, is desirable in the cases, where allegations are made against a political person. However, this cannot be taken as a rule. The initial screening of allegation at the first instance, may help in the logical investigation and better administration of justice.

7. In view of the facts and circumstances and the fair submission of the learned counsel for the State that they are open to conduct the preliminary inquiry, it is directed that investigating agency shall conduct the preliminary inquiry within a period of three weeks from today and upon a preliminary inquiry it is found that there exist sufficient grounds to carry out a full-fledged investigation, they shall proceed with the investigation in terms of Section 156 of the Cr.P.C., 1973.

8. In the meanwhile, the FIR No.124 of 2019 shall be kept in abeyance till conclusion of the preliminary inquiry. In case the preliminary inquiry ends in closing of the complaint FIR the de facto complainant should be informed accordingly within a period of one week from the date of conclusion of the preliminary inquiry, indicating the reasons for closing the complaint and not proceeding further. In case the preliminary inquiry finds substance in the allegation, the investigating agency may proceed with the investigation after giving four weeks' notice to the petitioner. The petitioner shall be at liberty to invoke the jurisdiction of this court in that case.

9. Accordingly, CRR 69 of 2024 stands disposed of.

10. Consequently, all pending connected applications, if any, stands disposed of.

11. All parties shall act on the basis of the servicer copy of this order duly downloaded from the official website of this court.

(Dinesh Kumar Sharma, J.)

