
(2001) 10 MP CK 0053
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4064 of 2000

Giridhari Lal Kanak

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 22-10-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 112, 139, 154, 154(1), 154(2)

Citation : (2002) CriLJ 2113 : (2002) 1 MPLJ 596

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : S.L. Kochar, for the Appellant; V.K. Tankha, A.G. and S.A. Dharmadhikari, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

Invoking the extra-ordinary jurisdiction of this Court the petitioner has prayed for to call for the record and after examination of the same to issue a writ in the nature of mandamus commanding the respondents Nos. 1 to 4 to take cognizance of the complaint filed by the petitioner and after due investigation file chargesheet against the respondent No. 5 for the offence committed by him. The further prayer in the writ petition is to issue appropriate direction to the respondents No. 1 to 4 to provide sufficient protection to the petitioner as there is threat to his life.

The facts as have been undraped are that the petitioner is the Vice President of Harizan Adivasi Bass Udyog Sahakari Samiti Maryadit, Balaghat, having its registration No. 44/449. The said Co-operative Society is committed for the upliftment and development of downtrodden members of Scheduled Castes Community. It is entitled for financial assistance and running its affairs from the Zila Sahakari Kendra Bank, Hoshangabad to avail uninterrupted financial assistance. The petitioner has completed all the formalities and submitted

necessary and relevant documents for sanction of credit limit as directed by the respondent No. 5 and the Chief Observer of the said Bank. It is set forth in the writ petition that despite completion of all formalities the respondent No. 5 acting illegally, deliberately delayed the grant of financial assistance on one pretext or the other. The petitioner contacted the respondent No. 5 time and again and the said respondent informed the petitioner that for the processing of the application of the Society an expense of Rs. 20,000/- would have to be incurred by the Society. Believing the aforesaid representation of the respondent No. 5 the petitioner withdrew a sum of Rs. 20,000/- from the Savings Bank Account of the aforesaid society on 22-9-1999 and delivered the amount to the respondent No. 5 who issued a receipt in his own handwriting as per Annexure P/1. Despite of payment of necessary processing charges, as represented by the respondent No. 5, the Society was not sanctioned the desired credit facility as a result of which the functioning of the Society was paralysed and the members virtually reached the stage of starvation. Perceiving the unjustified inordinate delay in sanctioning the credit facility the petitioner and the other office bearers of the Society enquired into the matter and to their shock and surprise they were informed that no processing charges as recovered by the respondent No. 5 was required to be paid and in fact, the said respondent misappropriated the amount. Realising this, the President of the Society lodged a complaint before the Lokayukt, Chief Secretary, Inspector General of Police Harijan Kalyan and the Collector, Hoshangabad, Copy of the said complaint has been brought on record as Annexure P/2. It is put forth in the writ petition that the society delegated the petitioner to file affidavit on oath regarding the incident and accordingly submitted the affidavit as per Annexure P/3.

According to the petitioner the respondent No. 4, Station House Officer, having received the information/complaint called the petitioner on 6-12-1999 to meet him in the Guest House of the Bank. The respondent No. 5 seeing the petitioner started abusing and insulting him in extremely filthy language and threatened him with dire consequences. The petitioner felt humiliated because he is a member of the Scheduled Caste. The petitioner went to the Police Station, Scheduled Castes and Scheduled Tribes Welfare, Hoshangabad to lodge a report of the incident but the personnel present declined to register the FIR on the ground that the Town Inspector was not available. Thereafter the petitioner approached the authority of the police station but every time his FIR was not recorded on some flimsy excuses. Thereafter the petitioner, under compelling circumstances, submitted a report in writing on 23-12-1999 at the Police Station Scheduled Castes and Scheduled Tribes Welfare, Hoshangabad, as per Annexure P/4. It is alleged in the petition that despite written report by the petitioner the Station House Officer has not taken cognizance of the matter and is avoiding to take action against the respondent No. 5 for his political influence in the area. It is put forth that as the Station House Officer has not taken any steps in the matter the petitioner submitted a written complaint to the Inspector General of Police, Bhopal, as per Annexure P/5 but no action has yet been taken and efforts

are being made to hush-up the matter. It is averred in the writ petition that the respondent No. 5 being the Chairman of the District Co-operative Central Bank is a public servant and the aforesaid acts tantamount to cognizable offence under the provisions of the Indian Penal Code and Prevention of Corruption Act, 1985 and hence, the respondents Nos. 1 to 4 are duty bound to register the FIR against the respondent No. 5 on the basis of the complaint made against him and to take appropriate action in the matter, but the said action is not being taken up though mandated in law. With the aforesaid averments reliefs have been sought, as have been indicated hereinabove.

A counter affidavit has been filed by the answering respondents Nos. 1 to 4 contending, inter alia, that on enquiry it has been found out that the petitioner never delivered the sum of Rs. 20,000/- to the respondent No. 5 and the said respondent never issued a receipt in his own handwriting. It has been put forth that, the letter dated 22-11-1999 and the D.O. letter bearing No. PHQ/AJK/A-4/5233/99, Bhopal dated 14-12-1999 were sent to Shri Mool Chand Bajaj, Police Superintendent, Hoshangabad from Shri Ganesh Prasad Dubey, ADGP (AJK), Bhopal, regarding the complaint of the petitioner. On receipt of the complaint the Town Inspector of the concerned Police Station. Anusuchit Jati Kalyan, Hoshangabad entrusted the enquiry to Shri B.S. Parihar, Sub-Inspector, Hoshangabad who had conducted the enquiry and recorded the statement of the petitioner Girdharilal on 6-12-1999 the statement of complainant, Arjun on 18-1-2000 and the statement of the respondent No. 4, Lakhan Singh Mourya on 26-1-2000 and that of N.R. Mandloi on 29-1-2000. It is put forth that during the enquiry the petitioner even could not produce original receipt which reflects the conduct of the petitioner. Allegations have been made that there has been non-co-operation and inaction on the part of the petitioner. It is also set forth that the report of the enquiry officer which has been marked as Annexure 1-4/R-II is quite clear on each and every point and the said report clearly reveals that the respondent No. 5 has been falsely implicated. As the complaint of the petitioner was found false no offence could be registered against the respondent No. 5. It is put forth that the petitioner had filed a writ petition forming the subject-matter of W.P. No. 4037/99 which was dismissed on 8-9-1999 and thereafter, being aggrieved, he had filed this false complaint. It is also highlighted that enquiries have been made at various levels and the allegations have been found not to be correct. It is also put forth that before lodging of an FIR a preliminary inquiry is necessary as per the decision of the Apex Court rendered in the case of P. Sirajuddin, etc. Vs. State of Madras, etc., :

A rejoinder affidavit has been filed highlighting that the affidavit to the return has been filed by the Deputy Superintendent of Police, Adim Jati Kalyan, Hoshangabad whereas the said authority had no occasion to have personal knowledge of the fact situation and, therefore, the denial made is apparently incorrect. The enquiry conducted by the various authorities have been disputed and it is also stated that the petitioner had never given any statement as contained in Annexure P/5. It is also put forth that no enquiry has been done but

an adroit attempt has been made to show to this Court that enquiry has been conducted. Various discrepancies have been pointed out in the affidavit to show that no inquiry was ever conducted. It is also highlighted that the investigating agency could not have conducted detailed investigation/enquiry without registering the FIR when it disclosed a cognizable offence. Various other aspects have been highlighted in the rejoinder affidavit which need not be stated in detail as the same are not essential for disposal of this writ petition. However, it is worth noting here, it has been stated in the affidavit that there is no connection between the dismissal of the W.P. No. 4037/99 and the present complaint filed by the petitioner. The concept of holding preliminary inquiry has been disputed in the affidavit. Serious criticism has been advanced the manner in which the enquiry has been made.

A return has been filed by the respondent No. 5 contending, inter alia, that because of dismissal of the W.P. No. 4037/99 the present case has been foisted. The allegations made in the petition has been specifically denied. The allegations made in the complaint have been refuted. It is also put forth that if the petitioner is aggrieved/dissatisfied with the preliminary report of the Officer Incharge of the Anusuchit Jati Kalyan, Police Station, Hoshangabad, he can file criminal complaint u/s 200 of the Criminal Procedure Code (hereinafter referred to as "the Code") instead of approaching this Court.

I have heard Mr. S.L. Kochar, learned counsel for the petitioner and Mr. V.K. Tankha, learned Advocate General appearing for the respondents Nos. 1 to 4 and Mr. S.A. Dharmadhikari, learned counsel for the respondent No. 5.

It is submitted by Mr. Kochar that when an FIR is lodged in respect of a cognizable offence it is the duty of the Officer Incharge of the Police Station concerned to register the case and give a prime number and thereafter proceed with investigation. It is put forth by him that without registering a crime number it is inconceivable that an enquiry can be conducted by the Officer Incharge of a police station or any other investigating agency and to arrive at a conclusion that no case has been made out against the respondent No. 5. The learned counsel has not argued and rightly with regard to the merits of the case, but confined his argument with regard to the aspect that it is obligatory on the part of the investigating agency to register an FIR if it reveals a cognizable offence and give a crime number and proceed with investigation and, thereafter do the needful as warranted in law. To substantiate the aforesaid submissions Mr. S. L. Kochar, learned counsel for the petitioner has placed reliance on the decisions rendered in the cases of State of Haryana and others Vs. Ch. Bhajan Lal and others, ; Munna Lal Vs. State of Himachal Pradesh and Others, ; Tulsiram s/o Purushottamji Malani v. State of M.P. 1993 Cri LJ 1165 (Madh Pra); Smt. Gurmito v. State of Punjab 1996 Cri LJ 1254 (Punj & Har); and Suresh Chand Jain Vs. State of Madhya Pradesh and Another, .

Mr. V.K. Tankha, learned Advocate General for the State, combating the aforesaid submissions has contended that registration of an FIR in all circumstances is not

a must as that would give rise to chaos and anarchy. It is canvassed by him that an investigating agency has the duty to conduct a preliminary enquiry whether there has been any truth in the allegations made in the FIR and if it found on the preliminary enquiry that there is no truth and it is founded on falsehood, no FIR should be registered and no number should be allotted. Learned Advocate General has submitted that as a practice here when an FIR is lodged no crime number is given and after the matter is investigated then only a crime number is assigned. Learned Advocate General gave immense emphasis on the concept of preliminary enquiry to highlight that if such a safeguard is not there any person can be booked on frivolous allegations and investigation would be warranted. To support his submissions he has placed reliance on the decisions rendered in the cases of Municipal Committee, Amritsar Vs. Hazara Singh, ; State of West Bengal and Others Vs. Swapan Kumar Guha and Others, ; State of Haryana v. Ch. Bhajan Lal 1992 Cri LJ 527 (SC), Mrs. Vidya Stokes Vs. State of Himachal Pradesh and Another, ; Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, .

Before I advert to the rival submissions raised at the Bar, it is apposite to refer to certain provisions of the Code. Section 154(1) of the Code provides for recording of registration of cognizable offences. The said provision reads as under :

154(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

In this context I may also profitably refer to Sections 156 and 157 of the Code. They read as under :

156. Police-officer's power to investigate cognizable case. (1) Any officer in charge of a public station may, without the order of a Magistrate investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police-officer in any such case shall be at any stage be called in question on the ground that the case was one which such officer was not empowered under this Section to investigate.

(3) Any Magistrate empowered u/s 190 may order such an investigation as abovementioned.

Procedure for investigation- (1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered u/s 156 to investigate, he shall forthwith send a

report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measure for the discovery and arrest of the offender :

Provided that -

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appear to the officer-in-charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in Clauses (a) and (b) of the proviso to Sub-section (1), the officer-in-charge of the police station shall state in his report his reasons for not fully complying with the requirements of that Sub-section and in the case mentioned in Clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

In this context it is also apposite to refer to Section 173 of the Code which deals with filing of chargesheet and Section 190 of the Code which lays down the postulate for taking cognizance. The aforesaid provisions read as under :

173. Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2)(i) As soon as it is completed, the officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating -

(a) the names of the parties :

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without

sureties;

(g) whether he has been forwarded in custody u/s 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed u/s 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer and he may, pending the orders of the Magistrate, direct the officer-in-charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which Section 170 applies the police officer shall forward to the Magistrate along with the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the Statements recorded u/s 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interest of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in Sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer -in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of Sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-section (2).

xx xx xx xx xx Cognizance of offences by Magistrates.-

(1) Subject to the provisions of this Chapter, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf under Sub-

section (2), may take cognizance of any offence.-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or his own knowledge that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under Sub-section (1) of such offence as are within his competence to inquire into try.

Keeping in view the aforesaid provision Mr. S. L. Kochar, learned counsel for the petitioner has drawn the attention of this Court to the decision rendered in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, . Learned counsel has laid emphasis on paragraphs Nos. 29, 30, 31 and 32 of the decision. They read as under :

29. The legal mandate enshrined in Section 154(1) is that every information relating to the commission of a "cognizable offence" (as defined u/s 2(c) of the Code) if given orally (in which case it is to be reduced into writing) or in writing to "an officer incharge of a police station" (within the meaning of Section 2(c) of the Code) and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as "First Information Report" and which act of entering the information in the said form is known as registration of a crime or a case.

At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of a Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer incharge of a police station is statutorily obliged to register a case and then to proceed with investigation if he has reason to suspect the commission of an offence which he is empowered u/s 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested on him and to register a case on the information of a cognizable offence, reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who is satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer

subordinate to him in the manner provided by Sub-section (3) of Section 154 of the Code.

Be it noted that Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, "reasonableness" or "credibility" of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act XXV of 1861) passed by the Legislative Council of India read that "every complaint or information" preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act X of 1872) which thereafter read that "every complaint" preferred to an officer in charge of a police station shall be reduced into writing. The word "complaint", which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word "information" was used in the Codes of 1882 and 1955 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act II of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a First Information Report is that there must be an information and that information must disclose a cognizable offence.

It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

Relying on the decision canvassed by Mr. Kochar that once an FIR is lodged it has to be registered and a crime number has to be given. Learned counsel has also drawn inspiration from the decision rendered in the case of *Munna Lal Vs. State of Himachal Pradesh and Others*, wherein paragraph No. 4 two Judge Bench of the Apex Court held as under :

4. We are not satisfied at all about the manner in which this case is sought to be closed. The provisions of law about the registration of FIR are very clear. When the petitioner approached the police on February 9 1991 and brought the facts which are given in this petition to their notice and prayed for the registration of FIR the police had no option but to register it and thereafter start investigation.

It is another thing that after making investigations as a result where of the police may come to the conclusion that no offence is made out in which eventuality it has to submit a report to the Court for cancellation of the FIR. Making an investigation and thereafter forming an opinion about the non-commission of an offence followed by refusal to register FIR is a procedure not known to law....

The learned counsel has also referred to the Division Bench decision of this Court rendered in the case of *Tulsiram Malani Vs. State of M.P. and Others*, , wherein the Bench after referring to Sections 154 and 157 of the Code held as under :

Where a written report disclosing cognizable offence with sufficient particulars and identity was made before the police, the denial by the police to register the case on the ground of false allegations. After conducting ex parte preliminary enquiry, would be illegal as despite the alleged enquiry, the report is required to be registered in terms of Section 154(1). The prejudicial decision to bury the case without participation of the maker of the report in the enquiry was also violative of the principles of natural justice.

Mr. Kochar has also commended me to a decision of a learned single Judge of the Punjab and Haryana High Court rendered in the case of *Smt. Gurmito Vs. State of Punjab and Others*, . While referring Police Rules of 1938 providing that a Police Officer is not bound to record an FIR, in paragraph 20 held as under :

20. The legal position as emerges from the above discussion is that any information disclosing a cognizable offence if conveyed to officer "in-charge of a police station satisfying the requirement of Section 154(1) of the Code, the said police officer cannot refuse to register a case on the ground that the information is not reliable or credible. On the other hand, he is bound to enter the substance thereof in the prescribed form, i.e. to say, to register a case on the basis of such information. It is only after the registration of a case as envisaged by Section 154 of the Code that the said police officer has been given the option by Section 157 of the Code to make up his mind as to whether he would or would not enter on an investigation.

Learned counsel for the petitioner has also placed reliance on the decision rendered in the case of *Smt. Bachani Devi Vs. State of Haryana and Others*, wherein it has been held that a statutory duty is cast upon police officials to register and investigate the case and they cannot refuse to register the case on the ground that they have conducted a preliminary enquiry.

Mr. S.L. Kochar has also commended me to the recent decision of the Apex Court rendered in the case of *Suresh Chand Jain Vs. State of Madhya Pradesh and Another*, wherein two Judge Bench held as under (para 10) :

Any judicial Magistrate, before taking cognizance of the offence, can order investigation u/s 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to

the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer-in-charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say so in so many words while directing investigation u/s 156(3) of the Code that an FIR should be registered, it is the duty of the officer-in-charge of the police station to register the FIR regarding the cognizable offence disclosed....

In this context I may profitably refer to another two Judge Bench judgment of the Apex Court rendered in the case of Mohindro Vs. State of Punjab and Others, wherein their Lordships expressed thus :

1. The grievance of the appellant is that though she has approached the authority for registering a case against the alleged accused persons but the police never registered a case and never put the law in motion, and, therefore, having failed in an attempt in the High Court to get a case registered she has approached this Court. Pursuant to the notice issued the respondents have entered appearance. Though the learned counsel appearing for the State of Punjab stated that there had been an enquiry, we fail to understand as to how there can be an enquiry without registering a criminal case. On the facts alleged, it transpires that the appellant approached the police for registering a case and get the allegation investigated into and yet for no reasons whatsoever the police failed to register the case, in the aforesaid premises, we allow this appeal and direct that a case be registered on the basis of the report to be lodged by the appellant at the Police Station within a week from today and thereafter the matter will be duly investigated into and appropriate action be taken accordingly.

Presently I shall proceed to deal with the contentions raised by Mr. V.K. Tankha, learned Advocate General for the State. Learned Advocate General has shown concern that there might be frivolous lodging of FIR. He has referred to certain decisions to all of which I need not advert in detail. His main plank of argument is that before an FIR is lodged a preliminary enquiry can be held. To substantiate the aforesaid submission the learned Advocate General has placed heavy reliance on the decision rendered in the case of P. Sirajuddin, etc. Vs. State of Madras, etc., in the aforesaid case their Lordships of the Apex Court expressed the view as under :

17. In our view the procedure adopted against the appellant before the laying of the first information report though not in terms forbidden by law, was so unprecedented and outrageous as to shock one's sense of justice and fairplay. No doubt when allegations about dishonesty of a person of the appellant's rank were brought to the notice of the Chief Minister it was his duty to direct an enquiry into the matter. The Chief Minister in our view pursued the right course. The High Court was not impressed by the allegation of the appellant that the Chief Minister was moved to take an initiative at the instance of a person who

was going to benefit by the retirement of the appellant and who was said to be a relation of the Chief Minister. The High Court rightly held that the relationship between the said person and the Chief Minister, if any, was so distant that it could not possibly have influenced him and we are of the same view. Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the department he belonged to, in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner. The enquiring officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction. The means adopted no less than the end to be achieved must be impeccable. In ordinary departmental proceedings against a Government servant charged with delinquency, the normal practice before the issue of a charge-sheet is for someone in authority to take down statements 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 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 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.

Mr. Tankha has also commended me to the decision rendered in the case of State of West Bengal and Others Vs. Swapan Kumar Guha and Others, wherein three Judge Bench of the Apex Court expressed their view that an FIR which does not allege or disclose that the essential requirement of the penal provision and prima facie, satisfy, cannot form that foundation or constitute the starting point of lawful investigation. The learned counsel has drawn attention to the paragraphs Nos. 21 and 22 of the aforesaid case, which are reproduced :

21. The position which emerges from these decisions and the other decisions which are discussed by Brother A. N. Sen is that the condition precedent to the commencement of investigation u/s 157 of the Code is that the FIR must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation u/s 157 of the Code. Their right of inquiry is conditioned by the

existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR, prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in Khwaja Nazir Ahmed will apply. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the FIR does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as Lald or rceived.

There is no such thing like unfettered discretion in the realm of powers defined by statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of personal freedom. The power to Investigate Into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code, I may, in this behalf, usefully draw attention to the warning uttered by Mathew J. in his majority judgment in Prabhu Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others, at pp 22-23 : Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others, at p. 199, to the following effect :

We say and we think it is necessary to repeat, that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of procedure. Observance of procedure has been the bastion against wanton assaults on personal liberty over the years. Under our Constitution, the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law.

The learned Advocate General has also drawn transpiration from the Division Bench decision rendered in the case of Mrs. Vidya Stokes Vs. State of Himachal Pradesh and Another, , wherein the Court while dealing with the matter relating to quashment of an FIR held as under (para 50) :

Before a public servant is publicly charged with acts of dis-honesty, which amounts to serious misdemeanour some preliminary enquiry must be held into the allegations prior to lodging of FIR. Such preliminary enquiry must proceed in a fair and reasonable manner and the object of holding such enquiry is to avoid causing incalculable harm not only to the officer in particular but to the Department to which he belongs.

From the decisions cited by the learned Advocate General it is deducible that a preliminary enquiry has to be made before an FIR is lodged making allegations against a respectful public servant. The said decisions in no way, create an embargo for registration of an FIR when an FIR is filed. Submission of Mr. Tankha is that before the FIR is registered a preliminary enquiry is warranted by the investigating agencies, namely, Police Department or Criminal Investigation

Department or Central Bureau of Investigation is not acceptable. In the case of P. Sirajuddin, etc. Vs. State of Madras, etc., the Apex Court sounded a note of caution for lodging of an FIR before a preliminary enquiry into the allegations made against a responsible officer in the case. Their Lordships were dwelling upon lodging of an FIR by the concerned Department and the ratio laid down in the said case was followed in other cases cited by Mr. Tankha, learned Advocate General of the State. From the aforesaid decision it is difficult to infer that the Police has Jurisdiction to conduct a preliminary enquiry. On the contrary, the decisions which have been cited by Mr. Kochar, learned counsel for the petitioner, go a long way to show that once an FIR has been lodged as contemplated u/s 154(1) of the Cr. P.C. in respect of cognizable offences the Police is obligated under law to register the same. Mr. Tankha expressed his apprehension that once an FIR is registered the Criminal Law has to be set in motion and the person concerned would be arrested. In my considered opinion, the aforesaid apprehension is not well founded. The Police has to satisfy itself with regard to certain conditions precedent before proceeding with the investigation. In certain cases the Police may refuse to investigate. Investigation into an allegation and registration of an FIR by giving a crime number are two different compartments. In fact, for that reason their Lordships of the Supreme Court in the case of Mohindro Vs. State of Punjab and Others, , expressed their surprise, how there would be an enquiry without registering a criminal case.

Ex consequent!, I am inclined to hold that once an FIR is lodged meeting the requirements as enjoined u/s 154 of the Code, the same has to be registered by the Officer Incharge of the Police Station or any other person in his charge and thereafter, the investigating agency, if an offence is disclosed, investigate into the offence and may take such appropriate steps as per law enshrined under Sections 157 and 173 of the Code. It is further clarified that when an FIR is lodged and the conditions precedent are satisfied, the same has to be registered and a crime number has to be allotted. It does not necessarily follow that the Police is duty bound to arrest the persons named in an FIR, for the FIR has been registered. The police is required to act in accordance with law and the provisions of the Code. It has been brought to the notice of this Court in course of hearing that in the State of Madhya Pradesh when an FIR is lodged, it is not registered and no crime number is given but a preliminary enquiry is carried on. This procedure is totally unknown to the Code. It has to be rectified as per the directions given and sooner it is done, better it is.

Accordingly, it is directed that a copy of this order be sent to the Home Secretary of the State by the Registry of this Court so that, the said Secretary shall circulate it amongst the Superintendents of Police of the State, who shall in their turn, inform the Officers Incharge of the Police Stations to register the FIR, give a crime number, subject to of course, meeting the requirements as enjoined u/s 154 of the Cr. P.C. and proceed thereafter in accordance with the law.

As far as the case at hand is concerned, it is directed that if the FIR in question is

disclosing a cognizable offence, concerned Officer Incharge shall register the FIR giving a crime number and proceed to deal with the same in accordance with the procedure Lald down in the Code.

In the result, the writ petition is al lowed to the extent indicated herein above. However, in the peculiar facts and circumstances of the case, there shall be no order as to costs.