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The First Information Report A tool to set the law in to motion

Vijeta

BA.LLB. LLM. Kurukshetra University

Abstract: **Almost in every criminal case, where law set in to motion through First information Report (FIR for Short) and then investigate upon and accused is Charge sheeted, the attack upon prosecution by defence during the trial commence with the registration of FIR because the delay in setting the law into motion by lodging of complaint in court or FIR at police station is normally viewed by courts with suspicion because there is possibility of concoction of evidence against an accused.**

***Keywords*: FIR, Indian Law, Police**

1. Introduction

When a an information lodges or received, at the earliest opportunity, the police station about the commission of an offence, has to be treated as much important as it is presumed that the story given at the earliest opportunity and first hand to the police may be original without any addition or after – thoughts, padding and concoction. Under the provision of Code of Criminal Procedure, two Courses have been provided for such information:-

1. When the information lodged or received is related to a cognizable offence
2. When the information lodged or received is related to a Non – Cognizable offence.

2. FIR under the Code of Criminal Procedure, 1973

The term FIR is neither defined nor mentioned anywhere in the Code of Criminal Procedure. Under the Code it means information recorded under section 154. Section 154 of the Code provides that 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: it further provides that that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer. Also it provides that in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be; the recording of such information shall be videographed; the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (*a*) of sub-section (*5A*) of section 164 as soon as possible. A copy of the information as recorded under sub-section (*1*) shall be given forthwith, free of cost, to the informant. Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (*1*) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.[1]

Where When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate. No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. Any police officer receiving such order may exercise the same powers in

[1] Section 154, Cr.PC , 1973

respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case. Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.[2] However, as per practice and usage every information whether written or oral, related to the commission of a cognizable offence, received in the police station house is to be reduced to writing in a register which is generally known as the FIR register, signed by informant and the substance of such information is to be entered in a prescribed book daily or general dairy or Roznamcha of a police station. This document which is so prepared is known as the First Information Report. In **Ramesh Kumari v State of NCT Delhi,**[3] in this case it was held that the provision of section 154 is mandatory and the officer concerned is duty bound to register the case on the basis of information disclosing cognizable offence.

3. Object of FIR

The object of recording of an FIR is to ***set the law in to motion*** section 157(1) Cr.PC imposes a duty upon the officer – in - charge of a police station, that on receipt of an information or otherwise he has reasons to suspect the commission of a cognizable offence he shall forthwith send a report of the same to the ilaqua (Area) Magistrate, and shall proceed in person, or shall depute on his prescribed subordinate officer to proceed to the spot to investigate the facts and circumstances of the case, and, if necessary , to take mesure for discovery, arrest of the offender. Section 154 Cr.PC also imposes a duty upon the officer – in – charge of the police station that on receipt of information related to cognizable offence formalities specified in this section must to be complied with.

4. Message versus Information

Cryptic and vague information about the commission of an offence is a message. In black law dictionary a message means any notice, word, or communication, no matter the mode, and matters how sent, from one person to another person. On the other hand word "information" is defined as "an accusation exhibited against a person for some criminal offence without an indictment". The Law Lexicon also has defined "an information is an accusation or complaint exhibited against an person criminal offence, either immediately against the king, or against private person which form its enormity or dangerous tendency public good requires to be restrain or punished"

1.4 What Constitute FIR?

To treat any information as FIR, in its technical meanings, there are 05 conditions specified under section 154 Cr.PC:-

1. Information must to be related to a cognizable offence,
2. It must be given to the officer – in – charge of the police station
3. It must, if oral be reduce to writing by officer – in - charge or by someone else under his direction, and be read over the informant
4. Information whether given in writing or reduce to writing must be signed by informant or writer of the written information
5. The substance pof such information must be entered in the prescribed book, daily or general dairy or Roznamcha of police station.

FIR being the written record of the earliest and first hand version of the story of occurrence of any act or omission, which is begin adjudicated before the court of law to arrive at the conclusion whether the person charged for the offence, allegedly committed and informed, is / are guilty or not, carries heavy weightage for its contents and it affects the result of any case, in either side, to great extent. This status of fir makes it is very crucial document for the prosecution as well as defence or police, FIR is the skeleton of case, which is to be completed by collecting the more information / evidences and proving them beyond all reasonable doubts in the court of law as such the whole case of the prosecution is generally revolves around the information embodied in an FIR.

5. Refusing to recording FIR.

A police officer who refuses to record information as to commission of cognizable ofence or enters different and / or false report, is punishable under section 177 IPC, 1860; as well as liable to be dealt with departmentally. Recently **in Youth Bar Association v Union of India,**[4] it was held by the Supreme Court directed that FIR should be uploaded within 24 hours on Police websites.

6. The Informant

The reason behind this is that because an informant may be:-

1. A victim or aggrieved person
2. An eye – witness
3. A person aware of the occurrence of an offence without having personal knowledge
4. A passerby or hearsay
5. Relative or friend or well wisher of the aggrieved person
6. Accused himself
7. Police officer having knowledge or suspect the occurrence of any crime.

Each informant of above categories is supposed to possess certain information about the occurrence to the extent of his source of information and he should divulge complete information to extent of his caliber and mental standard. Therefore it is not necessary for FIR to contain minute & detailed particulars. In **C.V. Govindappa v. State of Karnataka,**[5] it was observed and held that when a victim was brought to the hospital and the doctor on making preliminary examination of the patient sends the memo in prescribed form to the police station and the police comes to the hospital and

[2] Section 155, Cr.PC , 1973
[3] AIR 2006 SC 1322
[4] 2016 SCC
[5] AIR 1998 SC 792

investigates the case, the said memo is to be treated as a FIR. It is not necessary to mention all the statements made to the doctor by person who brought the patient to him in that memo. But a report sent by one of the eye witnesses which reached the p0olic station only after the investigation was taken up, cannot be regarded as FIR as in the mean time the investigation had been taken up. It would be a statement recorded under section 162, Cr. PC and therefore inadmissible in evidence.

7. Information by accused / Confession

An accused may give an Information about the commission of an cognizable offence on his behalf but any confession, which may form part an FIR, will not be admissible in evidence in view of section 25 of Indian Evidence Act, but those fact which do not amount to a confession and merely go to show the motive perpetration or opportunity for the crime or give information leading to the discovery of facts, can certainly to be provided on behalf of the prosecution under section 7, 8 and 27 of the evidence Act. This however, cannot be treated as evidence against any co – accused since the later is an accused and not a witness. In **Bheru Singh v State of Rajasthan**,[6] it was observed that a confessional statement contained in FIR is not admissible in evidence, except to the extent permissible under section 27 of the evidence Act.

8. Delayed FIR

Delay in setting the law into motion by lodging of complaint in court or FIR at police station is normally viewed by courts with suspicion because there is possibility of concoction of evidence against an accused. Therefore, it becomes necessary for the prosecution to satisfactorily explain the delay. Whether the delay is so long as to throw a cloud of suspicion on the case of the prosecution would depend upon a variety of factors. Even a long delay can be condoned if the informant has no motive for implicating the accused.[7] In **Ram Jag and others v. State of U.P.**,[8] it was held as that witnesses cannot be called upon to explain every hour's delay and a commonsense view has to be taken in ascertaining whether the first information report was lodged after an undue delay so as to afford enough scope for manipulating evidence. In **State of Himachal Pradesh v. Rakesh Kumar,**[9] the Court repelled the submission pertaining to delay in lodging of the FIR on the ground that the first endeavour is always to take the person to the hospital immediately so as to provide him medical treatment and only thereafter report the incident to the police. The Court in the said case further held that every minute was precious and, therefore, it is natural that the witnesses accompanying the deceased first tried to take him to the hospital so as to enable him to get immediate medical treatment. Such action was definitely in accordance with normal human conduct and psychology. When their efforts failed and the deceased died they immediately reported the incident to the police. The Court, under the said circumstances ruled that in fact, it was a case of quick reporting to the police.

9. Conclusion

It is to be understood that the first information report recorded under section 154 of Cr.P.C is a tool to set investigating agencies in to motion, so that they may act thereupon under the shadow of law. At one part it is of the ought most important as it provides some cause of action to the authorities to proceed with but it is not solely base to convict any accused under the law. Also during the course of trial an FIR is not considered as a substantive piece of evidence. But it may be used to corroborate the informant or to contradict him under section 145 of the evidence Act, if the informant appears in the witness box.[10] Also in George v State of Kerala,[11] it was held that the statement of FIR cannot be used as substantive evidence to discredit the testimony of other witness. Recently the Supreme court has held that We are disposed to think so, that omission in the first statement of the informant is fatal to the case. And the omission has to be considered in the backdrop of the entire factual scenario, the materials brought on record and objective weighing of the circumstances. The impact of the omission, as is discernible from the authorities, has to be adjudged in the totality of the circumstances and the veracity of the evidence. The involvement of the accused persons cannot be determined solely on the basis of what has been mentioned in the FIR. Thus it is settled legal proposition now that FIR is not an encyclopedia of the entire case. It may not and need not contain all the details. Naming of the accused therein may be important but not naming of the accused in FIR may not be a ground to doubt the contents thereof in case the statement of the witness is found to be trustworthy. The court has to determine after examining the entire factual scenario whether a person has participated in the crime or has been falsely implicated. The informant fully acquainted with the facts may lack necessary skill or ability to reproduce details of the entire incident without anything missing from the same. Some people may miss even the most important details in narration. Therefore, in case the informant fails to name a particular accused in the FIR, this ground alone cannot tilt the balance of the case in favour of the accused. But above all – all this will not empowered a police officer or a to a person who is having a high degree of responsibility upon his shoulders to sacrifice the interest which he is bound to protect for his mere personal ease. Thus, whatever be the circumstances it is a mandatory condition or obligation upon a police officer to register an FIR.

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[6] (1994) 2 SCC 46

[7] Mukesh & Anr v. State for NTC of Delhi & Ors, Criminal Appeal No : 609 -610 / 2017, Decided on 05.05.2017, Supreme Court of India

[8] AIR 1974 SC 606

[9] (2009) 6 SCC 308

[10] Bheru Singh v State of Rajasthan, (1994) 2 SCC 46

[11] AIR 1998 SC1376

