

JURO LEGAL CRITICAL ANALYSIS OF THE BURKING OF CRIME BY REFUSAL OF REGISTRATION OF FIR IN COGNIZABLE OFFENCE AND ON QUASHING AND OF FIR/ OR CRIMINAL PROCEEDINGS ON THE GROUNDS OF SETTLEMENT BETWEEN CONTESTING PERSON ON LAND BARGAINING CONTRACTS

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Abstract: This provisions concerning FIR registration refusal in cognizable offence and quashing of FIR / criminal proceeding as saving inherent powers of high courts have created great troubles to victims of crimes recently to seeks speedy justice who are most vulnerable body and suffer due to the present day criminal justice administration in India, fall of evils.

Hence this research paper is presented with the object of suitable legislation, to be made by parliament for protecting the ends of justice for victims as early as possible and appropriate suggestions have been also framed here in to be debated and implemented.

Key words: Forged document conspiracy, burking of crimes, quashing FIR/ criminal proceeding, settlement between victims and perpetrators, hazardous law crime in coloured in civil suit.

A - Part

1.0 Introduction

1.1 – Definition Rationale and problem:

These days' non-registration of FIRs by police is a Great critical issue Worthy of considering attention. The problem affects vulnerable – indigents and illiterate – who are most affected victims of crimes. They need grievance - redressal, and the remedy, therefore they approach police, and majority of them are un aware or ignorant about offence committed is whether cognizable or non-cognizable. The registration of FIR ought to be made mandatory for inspiring and generating confidence in the general forlorn victims. Section 157 of CRPC 1973, already empowers discretion to police officers in deciding exact nature of case (cognizable or non-cognizable) as fit, for full investigation or not considering the legal and constitutional aspect of a case. The frivolous / nebulous complaints can always be uprooted/weeded out at the subsequent 2nd stage by conducting a preliminary enquiry into the facts of complain before arrest or conducting an investigation. The police officers should refrain from registration of FIR mechanically. In Francis Carolie Mullins vs Administrator of Union of India¹ Territory of Delhi, supreme court where upholding liberty as the most cherished and prized possession of men/or women in a civilised society, and the supreme court held that instant decision with the decision in Maneka Gandhi vs Union of India² by making rule that “no one shall be deprived of his life and liberty except by procedure established by law and this procedure must be reasonable, fair and just, not arbitrary or whimsical or fanciful and it is for the court to decide in exercise of its constitutional as power or judicial review, whether the deprivation of life or personal liberty in a given cases is by procedure which is reasonable fair and just or it is otherwise.

1.2 Rule making power of legislature requires and make

It is the mandate of Art 21 which police officer enable to protect a person/or citizen from base - less allegations. It does not mean however, that before FIR Registration police officer must fully investigate the case. A delicate balance needs to be maintained between protecting the liberty of individuals and the public inherent of society. So guidelines and para medley therein for police officers must be framed for preliminary investigation is to be conduct ed. The criminal procedural law must be embodied with both, the principles of natural justice and constitutional guarantee must be safeguarded (**Lalita kumari vs State of U.P**)³ “The supreme court held whenever cognizable offence is disclosed, the police officials are bound to register same and in case it is not done the direction to register the same can be given”. In **Binay Kamal Singh vs State of Bihar**,⁴ Apex court categorially stated “The act of OIC of police station is not obliged to prepare FIR on any frivolous, spiteful/or nebulous information received from someone who does not disclose authentic knowledge about commission of cognisable offences”.

“Before registering FIR under Sec 154 it is open to police station officials to hold preliminary enquiry to ascertain, whether there is prima facie case of committing cognisable offence as not. (**Sevi vs State of T.N.**)⁵.”

Actually the word (FIR) Frist Information Report is not defined under Sec. 2 of CRPC 1973 at all.

An FIR is the most important document because it sets in motion, the criminal justice. Hence it is mandatory for police officer to first register a case before they begin investigation in any case. Once FIR is formed no alteration or change is permissible/ and or possible in superintendent of police. (**CBI vs Tapan Kumar Singh**)⁶ The court observed that it is well settled rule that FIR (Report) is not an Encyclopaedia which must disclose all facts/details relating to the offence reported or apprehended to be committed or The Report ought to disclose information that some cognisable offence is committed or apprehended to be committed Under Sec.154 (1) of C.R.P.C 1973 the

parliament has most carefully and consciously used/inserted the term/or expression – “information”, without qualifying the same unlike under Sec. 41 (a) or 41 (g) of C.R.P.C while making arrest of a person without warrant or order of magistrate by police officer. The power to arrest is different thing & its exercise is a different thing. As such the non-qualification of word “information” under Sec. 154 (1) may be for the reason that the police officer should not refuse to register and record (an) information/ or more concerning to commission of cognisable offence and to register a case there upon the grounds that he/she is not satisfied with reasonability or credibility of the imposter. In other words, reasonableness or credibility is not a condition precedent for registration of a case or FIR and further criminal proceedings (**State of Haryana vs Bhajan Lal**)⁷

2.0 Criminal law (Amendment) Act 2013 and FIR (Sec. 154 CRPC) 1973

2.1 Fresh provision:

The criminal law amendment Act 2013 has Amended Sec. 154 and recasted provision now onwards has also to be relied upon, the legislature/parliament has employed the term ‘shall’ under Sec. 154 (1) to reduce the information in writing and preparing and registering FIR and the provisions appended to it, purposively added there to, particularly when it happened that some women police officer or any other women officer that she (should) “shall” record information, when the offender who victimised happens to be a girl/women under sec. 326 (A), 326 (B), (acid attack or injury by acid thrown on women) sections 376, 376 (A) to 376 (E) (enacted for rape) and also sec. 509 of IPC 1860 for (enacting for insulting the modesty of women). These are mandatory provisions. So entire provision must be complied with compulsory covering sub clauses of section 154(1) (a)/(b)/(c) in all and also if Sec. 154 (2) and 154 (3) have been offended, the word “shall” is that effect, it indicates and shows that Sec. 154 is mandatory in nature. What is however ignored is the appropriate monitoring/regulating/implementing this vital and amended provision of the code (CRPC1973) – (post Amdt.) strictly in view of legislative intention. The omission or culpability or disobeying of amended provision must also have been made punishable for 2 years’ imprisonment and fine up to Rs 10,000/ for first neglect/ or error and or up to Rs 20,000/ for repetition of it each time further.

2.2 The abuse of law and legal criminal proceeding cannot be allowed or tolerated any more even if FIR is false or frivolous or nebulous. Of course, FIR if carefully written and prepared it is most helpful as “evidence”. Though the supreme court has held that it is not having priority or preference then the statement of witness Rusi Mistri⁸.

2.3 So it is suggested that if FIR is refused by police officer to be registered many a times due to corrupt motives to gain un - law fully from victims as well as accused both extracting money or other gains from the parties hence parliament must now authorise so to school teachers and universities to share job, of police and with police, to register crime. FIR is of course very first narration/ description/communication concerning facts of commission of cognisable offence, irrespective of identity of informs action to police officer to register and prepare suitable first - information. Hence spontaneously the weightage has to be and ought to be given to it. (**kalyan vs State of U. P**)⁹. The supreme court held that it is one of the most important in evidence to be used as corroborative evidence. The act of giving information and reducing in writing and registration are one and the same transaction (not as distinctly separate transaction). It is public document and a copy of it must/ has to be given to accused free of cost (Sec. 154 (2)). as that is his/ or her fundamental/ as well as human right (**Jayat Bhai, Lalu Bhai Patel vs State of Gujrat**)¹⁰ and to “refuse FIR to give is against natural justice principle and violation of Article 21 of the constitution”. Not to register FIR is burking of crime, being committed by in charge police officer.

Part – B

3.0 Sec. 482 & guilty Appellants

3.1 Now turn our attention to second major part B of present research paper concerning FIR/or criminal proceeding to be quashed under Sec. 482 of CRPC which has become notorious problem these days because vicious person with malicious intention enter in to civil contract. Behind with it, their motive is to cheat, deceive and defrauding the opposite party (sellers of land of having crores of Rupees as to market value and modus operandi they use is very fair and simple in looking out worldly, but in fact it harms the victims. In fact, they ask the court & police to quash the FIR/Criminal proceedings through abusing the provision of CRPC under section 482 which is enacted as saving of inherent powers of High Courts. This is not confined not only to the recent year of 2017 but the problem has a long harassing tale in criminal jurisprudence dispensation of justice, evidenced by **Satyavrat Gosh vs Mugni Ram Bahgur**¹¹. A dispute between coloniser & buyer of plot in instalment (the case infect arose before independence of India at Calcutta when II world war was going on. The population now is increasing by leaps and bond. Now in period of end of (2017), the matter full of tension has become worse most so on 6th Oct, 2017 the Apex court rejected the appeal of seven appellant’s disclosing the prayer to quash the FIR/criminal proceedings under the shadow of Sec 482 CRPC 1973.

The apex court revisited the decisions of the precedent cases decided by the supreme court – as asserted by appellants enlisted as below in detail.

1. **Giansing vs State of Punjab**¹²
2. **Narindu Singh vs State of Punjab**¹³
3. **State of Maharashtra vs Vikram Anant Rai Dosh**¹⁴
4. **CBI of Maninder Singh**¹⁵
5. **State of Tamil Nadu vs R. Vasanthi Stanchey**¹⁶

3.2 This is also to be noted here in that women offenders victimising opposite party and the banks under toes of her husband she signed the document blindly and un aware to tally on what document and subjected - matter dealt with in it, and described in black and white. The apex court held that ‘female’ gender cannot be allowed to be made by the appellant to rescue and seeking discharge or acquit all and use fair procedure modes operandi.

By no means the Apex court could remain dumb. Of course their jurisdiction does not allow to make suitable legislation like parliament, all over the world but they in zeal/judicial Activism framed 10 principles tentatively for the time being through direction. But matter does not end, here. A separate law without wasting time must be made and enacted by parliament where the members sleep in slumber that makes matter ridiculous for our country/or society on the whole and more early step is essential even than Article 44 uniform civil code or GST/ bane on currency or Black money unearthing’s, or digitalisation divide like stormy chaotic schemes are launched.

4.0 The crux and decision of aforesaid case:

4.1 In **Parbat Bhai AAhir @ Parbat Bhai Bhim Sin Bhai Karmur and Others vs State of Gujrat and another**.¹⁷

The latest – Decision of Apex court:

The three members bench comprising C.J. of India Dipak Mishra, justice AM Khanwillkar and justice D.Y. Chandrachud passed the judgement on a petition challenging Gujrat High Court's order where in the plea of appellant has been rejected and struck off on 4 Oct, 2017 (<http://www.livelaw.in/SC/issues/guidelines-quashing-fir-criminal-ground-settlement-parties-read-judgement-leave-granted>).

Held Gujrat H.C. was justified in deciding to entertain the application for quashing the FIR in the exercise of its inherent jurisdiction. The high court has adverted to two significant circumstances. Each of them has a bearing on whether the exercise of jurisdiction under section 482 would sub serve or secure the ends of justice or prevent abuse of the process of the court, firstly, that appellants were absconding and warrants had been issued against them under Sec. 70 of the code of criminal procedure 1973. Secondly, more significant circumstance is that the appellants have criminal antecedents. The High court of Gujrat also adverted to the modus operandi which has been adopted/ followed by appellants in grabbing a valuable parcel of land and noted that in the past as well, they were alleged and complained to have been connected with such nefarious activities by opening bogus accounts in Banks H.C. reached to the conclusion that in view of Matter observed that in a case involving extortion, forgery and conspiracy, where - in all the appellants were involved/ indulged as the active team. It was not in the interest of society and country on the who to quash the FIR on the ground that a settlement had been arrived at with complainants (respondent ii). The present case as the allegations/changes in the FIR would demonstrate is not barely and merely one involving a PRIVATE DISPUTE over a land transaction between two can testing parties. Extortion, Forgery of fabricated documents to effected transfer of title of ownership before the registering authorities and deprivation of complainants (ii respond) of his interest in land on the basis of fabricated power of attorney. such offence cannot be construed to be merely, a private or civil - dispute but implicate social interest in prosecuting serious heinous crime. Declining FIR quashing by H.C. was not at all unjust, rather more glorious is the decision to serve the cause of damage opposite party proved constitutionally fitting and door opening for constitutionalism.

5.0 Conclusion

5.1 To sum up provisions (sacrosanct) as of FIR and also legislate for saving of inherent power of H.C. respectively under Sec. 149 to 176, and Sec. 482 needs a separate legislation at all costs at the earliest, is the best besides framing of direction/ or principle in decision as patch marks does not survive any purpose as such the permanent solution should be adventured by the present ruling govt. if it has to stay further in power since the provisions of burking of crimes by refusal to register FIR in cognisable offence and law on quashing of FIR/ or criminal proceeding on the ground of settlement have lost deterrence altogether in respect to land - grabbing Agreements. The parliament must make a separate law on these both issues as critical crimes connected with FIR. In **Rameshwar vs NCT Delhi State**¹⁸. The apex court has held it is mandatory duty of concerned police officer as binding when cognisable offence is committed on the basis of creditability and reasonability & genuineness. And The word burking, used para associated with secret disposal of proof regarding crimes. The term is named after William – Burk (1792 - 1829) who was an Irish immigrant convicted of murdering 16 people in Edinburgh (Scotland) within a period of only 10 months in 1828, from his method of commitment murders, the word 'Burking' came which means sufficient or smothering and compressing chest of the victims and a derived meaning to suppress something quietly.

5.2 Ten guidelines quoted here as framed by supreme court in **Parbat Bhai AAhir @ Parbat Bhai Bhim Sin Bhai Karmur & others Vs State of Gujrat and Another** (04, Oct 2017) are as below:

1. Sec. 482 is preservator the inherent power of the H. court to prevent an abuse of the process of any court or to secure ends of justice. No new power is conferred.
2. The invocation of the jurisdiction of the H.C. to quash a first information report or criminal proceeding for the purpose of compounding (Sec. 320), even if the offence is not compoundable.
3. The H.C. must evaluate whether ends of justice would justify use of inherent power of H.C.
4. H.C. has a wide ambit and plenitude inspired of inherent powers but limited up to secure the ends of justice and prevent abuse of process of any court.
5. The decision for quashing FIR or complaint on the grounds that offender and victims have settled the dispute revolves finally on the facts/circumstances of each case and no elaboration of principles/guideline can be formulated exhaustively.
6. The heinous offence/ghastly crimes – involving murder, rape, dacoit offences or torts involving mental depravity cannot be quashed by victims or his/her family by the ground of settlement of dispute. These are not civil/ or private cases element of public interest being founded on over riding on punishment of same offence are not private offence and trial has to continue of such case of public/social interest.
7. There may be a different category in which criminal cases fall having predominant or overwhelming power to quash FIR/ or Criminal proceeding.
8. Criminal cases involving offence which arises from transaction like partnership, commercial, mercantile or similar transection. With essentially civil flavour may fall in appropriate circumstances for quashing where parties have settled the dispute.
9. In such a case, the H.C. may quash the criminal proceedings if in view of compromise between the disputants/litigants the possibility of a conviction is remote and contribution of a criminal proceeding would cause oppressional and prejudice.
10. There is yet an exception to the principle framed aforesaid in (vii) & (ix) clause that economic offence involving the financial & economic well fair of state have implication which the beyond the domain of dispute merely between private dispute. The H.C. would be justified to decline to quash detaining where offender is involved in an actively similar/ akin to misdemeanour or economic fraud/ or financial fraud. The consequences/result of the act complained of upon the financial/ or ecosystem will weigh the balance.

5.4 Recently in M.P this worrisome event occurred on Tuesday 31 Oct, 2017 (Night) that a girl student who was returning after her coaching class to her home Rapped by gang near Habibganj Bhopal Railway station, and she approached police station in her broken and forlorn state of her body herself but the attending lady - police officer ridiculed her and laughed all times along in asking vicious harassing obscene questioning to elicit information aid refused to register her FIR. Whereas the Education Minister has reacted and held that coaching classes at fault to convene classes after 8.00 PM. Though lady police officer, Doctors and DSP have been suspended. The suspension is no remedy nor cure nor transfer. What is required is application of proper laws instantly with zeal and honesty which is found rererest of rare among the

government employees and also officers of higher ranks who are legally bound to adopt the law (Amdt. Duly in 2013 CRPC 1973/IPC 1860) and it's follow up being strictly monitored. Even terminating services of in charge police officers of station house or doctors who examined the girl victim is not a solution it will result much dilatorily in their unemployment more as such. Sentence must be given quickly to defaulting officials as far as possible and to members of gang, and some are Juveniles in this gang¹⁹.

Foot notes:

1. 1979 1 SCC 428.
2. AIR 1978 SC 597.
3. (2012) SCC.
4. 1997 (1) SCC 283.
5. 1981 Supp. SCC 43.
6. AIR 2003 SC 4140.
7. 1992 C.L.J. 527 (SC).
8. AIR 1960 SC 391.
9. (2001) 9 SCC 632.
10. 1992 CRLJ 2377 H.C.
11. AIR 1954 SC 44.
12. 2012 (10) SCC 203.
13. (2014) 6 SCC 466.
14. (2014) 15 SCC 29.
15. (2016) 1 SCC 399.
16. State of Tamil Nadu vs R. Vasanthi Stanchey.
17. (Oct 04, 2017) Criminal appeal No. 1723 of 2017
(arising one of SLD (crl)) No. 9549 of 2016
<http://www.livelaw.in>
18. (2006) SCC 677.
19. Bhopal gang rape case (A tragedy) 31 Oct, 2017. Bhopal 'FIR' not registered victim 'Shakti' (real name concealed) this is what burking of crime is.

