

(17)

THE HIGH COURT OF TRIPURA
AGARTALA
A.B NO. 59 OF 2015

Accused petitioners

- 1. Abdul Kalam alias Kalam Miah,**
S/O. Late Sona Miah
Resident of Yakubnagar,
P.S. Dharmanagar,
District- North Tripura,
Pin- 799251
- 2. Masuk Miah,**
S/O Late Armuj Ali,
Village: Ichairpar,
P.S. Kadamtala,
P.O. Notun Bazar,
District- North Tripura,
Pin- 799260

By Advocates :

Mr. A. Bhattacharji, Advocate
Mr. P. Saha, Advocate,
Mr. R. Sinha, Advocate,

Respondent :

The State of Tripura.

By Advocate :

Mr. R.C. Debnath, Addl. PP.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing : 19.8.2015

Date of Judgment & Order : 03.9.2015

Whether fit for reporting : YES

JUDGMENT & ORDER

In this case the Court had in its order dated 05.8.2015 noted that the incident took place on 07.7.2015 at 8.20 pm. Two persons were injured namely Islam Miah and Abdul Hamid. Abdul Hamid was taken to the Hospital at Kadamtala and then to the Dharmanagar Hospital. No treatment was given to



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Islam Miah. On the last date notice had been issued to Sri Abu Awal, Sub-Inspector (SI) of Kadamtala Police Station to appear-in-person today along with entire record and he was to inform this Court whether he is aware about the judgment of this Court delivered in *Criminal appeal (J) No.04 of 2010* and he was to show cause why proceedings should not be initiated under the Contempt of Courts Act against him for violating the said directions.

(2) Shri Abu Awal has appeared-in-person in Court. He states that he is aware of this judgment. According to him, immediately after receipt of the telephonic information about the occurrence he went to the spot and returned next morning at 11.55 am. He further states that he wrote down the entire incident in the General Diary book and was about to lodge *suo motu* FIR when the complainant himself came and filed a complaint and, thereafter, FIR was lodged.

(3) I have gone through the General Diary book and I find that vide entry Number 286 entered at 2205 hours it is mentioned that telephonic information had been received about some occurrence which had taken place at Ichairpar and the tension prevailing there. Thereafter Sri Abu Awal along with a number of other police officials went to Ichairpar. On questioning Sri Abu Awal stated that he reached Ichairpar at about 10.35 pm. He returned next day at about 11.55 am and has made entry in the GD at serial No. 300 giving details of the incident. He stated that he wanted one Md. Abdul Hekim to lodge the complaint whether oral or writing but that person said that he is more concerned with the treatment of his brother Abdul Hamid and,



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therefore, could not lodge a complaint. Entry No.300 shows that Shri Abu Awal was going to lodge a *suo motu* complaint but in the meantime the complainant came and, therefore, the FIR was lodged. As far as Sri Abu Awal is concerned, I do not find that he has been negligent in his duties.

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(4) However, it is more than apparent that proper training is not being imparted to the Police Officials, by the Department. In a case like the present one when Shri Abu Awal went to the spot, he did not have to wait for anybody to lodge an FIR. He at the spot could have noted down the circumstances which have been noted in GD entry No.300 and after noting down the facts he could have sent this information in writing in a form of a memo through one of the constables who was accompanying him and on that basis an FIR should have been lodged in the Police Station immediately.



(5) Lodging of an FIR is very essential because normally investigation has to start only once the FIR is lodged. Under Section 154 of Cr.P.C, the first information which is received if it reveals the commission of a cognizable offence must be taken down in writing and sent to the concerned Judicial Magistrate forthwith.

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(6) The Police Regulations of Bengal are applicable in the State of Tripura. Regulation 243 of the P.R.B provides that first information of a cognizable crime shall be drawn up by the Officer-in-charge of the police station in Form No.27. This Regulation gives details as to how the FIR is to be recorded. It would be pertinent to refer to Regulation 243 which reads as follows:

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"243 Recording of information under section 154, Criminal Procedure Code.

(a) The first information of cognizable crime mentioned in section 154, Code of Criminal Procedure, shall be drawn up by the officer-in-charge of the police-station in B.P. Form No. 27 in accordance with the instructions printed with it.

(b) The first information report shall be written by the officer taking the information in his own handwriting and shall be signed and sealed by him.

(c) The information of the commission of cognizable crime that shall first reach the police, whether oral or written, shall be treated as the first information. It may be given by a person acquainted with the facts directly or on hearsay, but in either case it constitutes the first information required by law, upon which the enquiry under section 157, Code of Criminal Procedure, shall be taken up. When hearsay information of a crime is given, the station officer shall not wait to record, as the first information, the statement of the actual complainant or an eye-witness."

(d) A vague rumour shall be distinguished from a hearsay report. It shall not be reduced to writing or signed by the informant, but entered in the general diary, and should it, on subsequent information prove well-founded, such subsequent information shall constitute the first information.

(e) A telegram is not a writing given to the police signed by the person making the statement and, therefore, does not comply with section 154, Code of Criminal Procedure. If, however, in the opinion of an officer receiving a telegram reporting the occurrence of a cognizable offence, the circumstances justify action being taken, he should himself lodge a first information on the basis of the telegram. If he does not take such action, he should make an entry in the general diary.

In the case of a telephone message reporting such an occurrence the informant should be asked to come to the police-station to lodge the information, and an entry of the message should be made in the general diary. If it is considered necessary to start investigation on the basis of the message and the informant remains anonymous or cannot be found, the officer receiving the message must himself lodge the information on the basis thereof.

(f) Police officers shall not defer drawing up the information report until they have tested the truth of the complaint. They shall not await the result of medical examination before recording a first information, when complaint is made of grievous hurt or other cognizable crime.

(g) A constable left in charge of a station may accept a written report of a cognizable offence. He shall get the report signed by the person giving it, enter an abstract of it in the general diary and report the fact to the officer-in-charge of the station. If the report of



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a cognizable offence is given to such constable orally, he shall similarly enter the substance of it in the general diary and send the complainant or informant to the officer-in-charge of the station with a note of the case. If the report relates to the occurrence of heinous crime, he shall send immediate information to the Circle Inspector; and if the facts of the case, as may occur in dacoity, murder, etc., require the immediate apprehension of the accused, he shall take all possible steps to effect arrest.

(h) First information reports, once recorded, shall on no account be cancelled by station officers."

(7) Therefore, this Police Regulation itself clearly indicates that whenever the information is lodged in the police station whether oral or written that has to be treated as first information. In fact, the regulation goes on to say that even if the information is given by a person who is not directly acquainted with the facts of the case but is based on hearsay then also the first information report must be recorded and the station house officer shall not await to record the statement of actual complainant or an eye-witness. The only exception is that vague rumours shall be distinguished from hearsay reports under Regulation 243(d). With regard to telegrams and telephonic messages, relevant clause of the Regulation which is *clause (e)* which clearly provides that in the case of a telephonic or telegraphic information, the FIR is not to be recorded at the first instance but in case, the telephonic message or telegram discloses certain facts and circumstances which justify that action should be taken then the police officer should himself lodge the first information report on the basis of the telegram/telephonic information and if he does not taken such action he should make an entry in the general diary.



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(8) Clause (f) clearly lays down that a police officer is not to defer the lodging of the FIR on the ground that the veracity of the complaint has to be tested. The police officer is also not to wait for medical examination report before lodging of FIR.

(9) Regulation 244 (a) reads as follows:

"244(a) A first information shall be recorded in respect of every cognizable complaint preferred before the police, whether prima facie, false or true, whether serious or petty, whether relative to an offence punishable under the Indian Penal Code or any special or local law. This does not apply to cases under section 34 of the Police Act, 1861, or to offences against Municipal, Railway and Telegraph by-laws for which see regulation 254."



This Regulation clearly lays down that a police officer is bound to record the FIR in respect of every cognizable complaint whether *prima facie* false, or true. It is not the job of the police officer at the stage of lodging of the FIR to test the veracity of the complaint. He is not to look into the issue as to whether the complaint gives rise to a serious offence or a petty offence. As long as the offence is a cognizable offence the police officer must perform his duty.

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(10) Regulation 246 provides that after the FIR is lodged it shall be sent without delay to the Sub-Divisional Magistrate and other officials. As far as the present case is concerned even assuming that FIR could not have been lodged on the basis of the telephonic information, once the police official went to the spot he had to record the statement of the injured or the persons accompanying the injured. Even in case these people were unwilling to make a statement or for some reason do not

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make any statement then the police officer on the basis of what he has seen is to lodge the *suo motu* FIR. The proper course in such cases would be that a memo recording the facts which have come to the knowledge of the police officer should be written at the spot itself and the said memo along with a constable should be sent immediately to the police station so that the staff available at the police station can lodge the FIR. Sometimes specially in cases of serious crimes the police official who has gone to the spot may have to immediately start investigation or may have to take some steps which are necessary to apprehend the accused persons. There may be occasions when the Officer-in-charge who has gone to the spot is more busy and cannot reduce everything which he has seen into writing. Even in such cases he should sent the information orally either by wireless or by mobile phone to the police station so that on his telephonic information an FIR can be lodged in the police station.



(11) No proceedings are initiated against Sri Abu Awal because I find that he went to the spot and immediately after coming back he has even taken action and the entry No.300 gives a complete detail of all what happened.

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(12) As far as the present case is concerned the allegation is that when Md. Islam Miah and his younger brother were returning home with Rs.50,000/-(fifty thousand) the accused persons assaulted them with sharp cutting weapons and extorted the amount of Rs.50,000/-(fifty thousand). It is also come out on investigation that the complainant side and the

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accused persons live close to the Indo-Bangla border and there is long enmity between the two sides.

(13) As per the prosecution the accused persons are indulging him smuggling on the Indo-Bangla border and they were expecting that the victims were interfering in that way. The occurrence took place on 07.7.2015. More than 6(six) weeks have elapsed. The investigation should be almost complete. I have seen the injury reports and the injuries are all simple. There is no grievous injury on the person of Abdul Hamid. As far as Islam Miah is concerned there is no record of his treatment produced. Since the injuries are simple in nature I do not feel that this is a case where the accused persons should be denied the benefit of bail.



(14) Therefore, I direct that in the event of arrest of the accused persons namely, Abdul Kalam alias Kalam Miah and Masuk Miah, the accused persons shall be enlarged on bail in connection with Kadamtala P.S Case No.2015 KDL 050 registered against the accused persons under Section 148/149/326/386 IPC on their furnishing bail bonds in the sum of Rs.20,000/- (rupees twenty thousand) with two sureties each in the like amount to the satisfaction of the Arresting Officer subject to the following terms and conditions:-

- (i) That, the accused persons are directed not to tamper with or in any manner influence the prosecution witnesses;
- (ii) That, the accused persons shall ensure that no threat directly or indirectly are given to any of the prosecution witnesses;

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- (iii) The accused persons are further directed not to cause any hindrance in the investigation;
- (iv) The accused persons shall not leave Tripura without permission of the appropriate Court;
- (v) The accused persons shall appear before the trial Court on each and every date of hearing. In case, they absent themselves on any date, then the trial Court shall cancel the bail and the accused persons shall be arrested. Thereafter, the said persons shall have to approach this Court for grant of bail;
- (vi) In case, the accused persons violate any of the conditions or tries to delay the trial the prosecution shall be at liberty to approach this Court for cancellation of bail.



(15) With these observations, the bail application is disposed of.

(16) A copy of this order shall be sent to the Director General of Police who shall ensure that proper training is imparted to the Police Officials as to how FIRs are to be lodged, when the commission of a cognizable offence or the information regarding commission of a cognizable offence comes to the knowledge of the Police Officer at a place outside the Police Station.

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Sd/- Deepak Gupta,
Chief Justice.