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HIGH COURT OF TRIPURA
AGARTALA

NO.F.40 (13)-HCT/BENCH/CRL/2015/ 9926-27

From: Deputy Registrar (Judl.)

High Court of Tripura: Agartala-799010

Dated, Agartala the 6th October 2015.

To
1. The Chief Secretary,
Government of Tripura, Agartala,
2. The Director General of Police,
Tripura, Agartala.

Sub: Transmission of copy of the Hon'ble High Court's Judgment & Order dated 24.09.2015 passed in connection with Case No. WP (Crl.) 32 of 2015 (Anal Haque vs. State of Tripura & Ors).

Sir,

In compliance with the Judgment & Order dated 24.09.2015 passed by the Hon'ble High Court in Case WP (Crl.) 32 of 2015 (Anal Haque vs. State of Tripura & Ors), I am sending herewith a copy of the said Judgment & Order dated 24.09.2015 for your information and compliance.

Yours faithfully,

Enclosed: As stated
16 (sixteen) sheets of paper.

Deputy Registrar (Judl.)
High Court of Tripura,
Agartala.

* AS(H)
Pl. process.
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No. 5014(2)/HS/15
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THE HIGH COURT OF TRIPURA
A G A R T A L A
WP (Crl.) No.32 OF 2015

Petitioner :
Sri Anal Haque,
Son of Late Ali Ullah Miah,
Resident of Aralia,
P.S. Sonamura, Sepahijala, Tripura

By Advocates :
Mr. P.K. Biswas, Sr. Advocate.
Mr. P. Majumder, Advocate.

Respondents :
1. The State of Tripura,
Represented by the Secretary,
Department of Home, Government of Tripura.

2. The Director General of Police,
Police Head Quarter at Fire Service,
Ahaura Road, Agartala, West Tripura.

3. The Superintendent of Police,
Bishramganj, P.S.- Sonamura,
Sepahijala, Tripura.

By Advocate :
Mr. A. Ghosh, P.P.

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Asstt. Registrar,
High Court of Tripura,
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B E F O R E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE U.B. SAHA

Date of Judgment & Order : **24.09.2015**

Whether fit for reporting : **YES**

JUDGMENT & ORDER(ORAL)

(Deepak Gupta CJ)

This is another shocking case where the Police Officials in the State of Tripura have totally violated the law laid down by the Apex Court and reiterated by this Court in a number of cases and have refused to register an FIR despite a complaint in

writing being filed to the Superintendent of Police that a cognizable offence has been committed.

[2] The undisputed facts are that one Kamal Haque collapsed on 7th May, 2015 (late night). He was rushed to the hospital and on 8th May, 2015 at 00.55 hours just after midnight the attending doctor sent written information at Sonamura police station that one Kamal Haque aged 27 years was brought dead to the hospital and the doctor, also requested that the body may be subjected to postmortem.

[3] The police registered a U/D Case No.05 of 2015 on 8th May, 2015 under Section 174 Cr.P.C. Proceedings under Section 174 Cr.P.C are only to carry out an inquest on the body to find out the nature of injuries, the nature of the weapon of offence, if any, used and to ascertain the cause of death if possible. The postmortem was conducted and in the postmortem report no external injuries were found on the body of Kamal Haque. Inquest was carried out by SI, Drabajoy Reang and the body of Kamal Haque was identified by his younger brother, Manir Hossain and two other persons of the locality who are also stated to be his relatives. According to the police in the inquest report it is written that the primary evidence reveals that the deceased had died due to a stroke. The inquest report is signed by Manir Hossain, Gulam Hossain, and Jahangir Hossain. Statements of these persons have been allegedly recorded by the officer conducting the inquest.

[4] Be that as if may, the fact of the matter is that on 11th May, 2015 petitioner Anal Haque younger brother of the deceased Kamal Haque went to the Sonamura police station along with a written complaint in which he made allegations that he believed that his brother Kamal Haque had been murdered by Ruma Akhtar (wife of Kamal Haque) and her associates. This information clearly discloses the commission of a cognizable offence. The information may be right or wrong, the information may be false or true but the fact remains that this information alleges the commission of a cognizable offence of murder. It would be expected that in such a case immediately the FIR should have been lodged. If the allegations made in the FIR are found to be false then the police is not remediless. It can take action against the person who lodges a false FIR in accordance with law. It is, however, not the job of the police at the stage of recording of the FIR to decide whether the complaint is genuine or false. That can only be done after completing the investigation at the time of filing report under Section 173 Cr.P.C. Even when a final report under Section 173 is filed and the police is of the view that no case is made out, notice has to be issued to the complainant and he has to be heard in the matter to decide whether the report filed by the police is correct or not. It is for the Magistrate to decide whether he wants further investigation to be carried out or whether he accepts the report filed by the police. The Investigating Authority cannot become the arbiter of the dispute and decide whether the allegation is correct or not that too at the stage when the complaint is filed alone.

[5] This Court has been repeatedly passing judgments that when information is received in the police station with regard to the commission of a cognizable offence, the police has no other option but to lodge an FIR. The first judgment in this regard was passed by a Division Bench of this Court on 18th April, 2013 in ***Mrinal Bhowmik and another Vs. State of Tripura (Crl. A(J) No.04 of 2010)*** wherein this Court had passed a detailed order and had also directed that the copy of the judgment be sent to the Chief Secretary to the State of Tripura, Principal Secretary, Health and the Director General of Police who shall issue instructions along with the copy of the judgment to all concern. Despite this judgment having been issued the law laid down was not followed and thereafter, in ***Criminal Appeal No.33 of 2010 : Junnu Das Vrs. State of Tripura,*** this Court had to reiterate its earlier findings and in this case reference was also made to the judgment of the Apex Court in ***Lalita Kumari Vrs. Government of Uttar Pradesh And Others: AIR (2014) SC 187*** wherein the Apex Court held as follows:

> ***"40. The use of the word "shall" in Section 154(1) of the Code clearly shows the legislative intent that it is mandatory to register an FIR if the information given to the police discloses the commission of a cognizable offence.***
>
> ***xxx xxx xxx***
>
> ***42. It is relevant to mention that the object of using the word "shall" in the context of Section 154(1) of the Code is to ensure that all information relating to all cognizable***

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offences is promptly registered by the police and investigated in accordance with the provisions of law.

43. Investigation of offences and prosecution of offenders are the duties of the State. For "cognizable offences", a duty has been cast upon the police to register FIR and to conduct investigation except as otherwise permitted specifically under Section 157 of the Code. If a discretion, option or latitude is allowed to the police in the matter of registration of FIRs, it can have serious consequences on the public order situation and can also adversely affect the rights of the victims including violating their fundamental right to equality.

44. Therefore, the context in which the word "shall" appears in Section 154(1) of the Code, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these factors clearly show that the word "shall" used in Section 154(1) needs to be given its ordinary meaning of being of "mandatory" character. The provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer in-charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR. It is settled position of law that if the provision is unambiguous and the legislative intent is clear, the court need not call into it any other rules of construction.

45. In view of the above, the use of the word 'shall' coupled with the Scheme of the Act lead to the conclusion that the legislators intended that if an information relating to commission of a cognizable offence is given, then it would mandatorily be registered by

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the officer in-charge of the police station. Reading 'shall' as 'may', as contended by some counsel, would be against the Scheme of the Code. Section 154 of the Code should be strictly construed and the word 'shall' should be given its natural meaning. The golden rule of interpretation can be given a go-by only in cases where the language of the section is ambiguous and/or leads to an absurdity.

46. In view of the above, we are satisfied that Section 154(1) of the Code does not have any ambiguity in this regard and is in clear terms. It is relevant to mention that Section 39 of the Code casts a statutory duty on every person to inform about commission of certain offences which includes offences covered by Sections 121 to 126, 302, 64-A, 382, 392 etc., of the IPC. It would be incongruous to suggest that though it is the duty of every citizen to inform about commission of an offence, but it is not obligatory on the officer-in-charge of a Police Station to register the report. The word 'shall' occurring in Section 39 of the Code has to be given the same meaning as the word 'shall' occurring in Section 154(1) of the Code."

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"110. Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining

as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

The conclusion/directions of the Apex Court are contained in para-111 which reads as follows:-

"Conclusion/Directions:

111. In view of the aforesaid discussion, we hold:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where

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preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/ family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

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(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

[6] On 16th June, 2015 this Court had again made reference to these cases and issued contempt notice to the concerned Police Official who had not recorded the FIR and again notice of the petition was given to the Director General of Police as well as to the Chief Secretary to the State of Tripura vide order dated 16th June, 2015 which reads as follows:

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"16.06.2015

This anticipatory bail application was filed by one Sri Amar Das. On 29th May, 2015 this Court granted ad-interim anticipatory bail to the applicant and he was directed to report to the Investigating Officer at 10.00 am on 01.06.2015.

Sri S. Kar Bhowmik, learned counsel for the applicant submits that on 31st May, 2015 the applicant after collecting the bail order went to Amarpur which is closed to the Birganj Police Station and the same night he was murdered. According to Sri S. Kar Bhowmik as

per the widow of the deceased-applicant he was murdered by his in-laws. She had filed the complaint on 2nd June, 2015 and the FIR was registered at 8.15 hours under Sections 341/302/379/120(D) IPC. According to the allegations made the deceased was beaten up on 31.05.2015 and he was taken to the hospital and in fact the widow went next morning to the hospital and found that he was dead. The postmortem also took place on 1st June, 2015.

This Court for the last more than two years has time and again been clearly laying down the law that when the commission of a cognizable offence is disclosed the police does not have to be wait for the FIR to be lodged. This Court had also given directions to the State Government to circulate its judgments both to the Health Department and to the Police Officials. As soon as an injured who is the subject matter of some untoward happening is brought to a hospital, it is the duty of the doctor to inform the police station that some injured who had suffered from unnatural injuries has been brought to him. In this case the applicant who is now dead after he was beaten up was taken to the hospital. It is not clear who took him to the hospital but according to Sri S. Kar Bhowmik it was the police who took him to the hospital. Thereafter the deceased must have been treated in hospital. He died in the hospital and his postmortem was conducted in the hospital but the FIR has been lodged as per the endorsement of the Officer-in-Charge of the Birganj Police Station on 2nd June, 2015 at 8.15 hours. If these facts be true then the police official is guilty of committing contempt of the orders of this Court.

However, before taking any action in the matter, it is directed that notice be sent to the

Inspector of Police, Sri Sunil Kumar Das, O/C Birganj Police Station, District-Gomati who shall appear before this Court on 16th June, 2015 at 2 pm along with entire records to show when the FIR was lodged. He shall also inform this Court what progress has taken place in the FIR and what is the stage of investigation.

List on 16th June, 2015.

Copy of this order be also supplied to the learned Addl. PP for doing needful by tomorrow."

The Chief Secretary and the Director General of Police have filed affidavits stating that the directions of this Court passed earlier have been complied with and communications have been sent to all the concerned Police Officials to comply with the judgment.

[7] What is even more shocking in this case is that on 27th May, 2015, Shri Anal Haque the petitioner herein, submitted another written complaint to the Superintendent of Police, Sepahijala with a copy to the SDPO, Sonamura praying that proper investigation be done in the case of the murder of his brother. He clearly alleged that Roma Akthar and her associates has strangulated his brother and caused his death. This is a complaint made not to a lowly Official but to the Superintendent of Police who is the head of the police in the District. What the Superintendent of Police did was indeed shocking. Instead of recording an FIR he ordered that inquiry be started under Section 157 Cr.P.C and only a GD entry No.1395 was made. We fail to

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understand how an inquiry under 157 Cr.P.C can be started without first recording an FIR under Section 154 Cr.P.C. There can be no investigation under Section 157 Cr.P.C unless there is information of commission of a cognizable or non-cognizable offence. If the offence is non-cognizable then permission of the Magistrate will have to be obtained before investigating the matter. But if the offence is cognizable then the police officer can start investigating the matter but is required to immediately send the information on which the investigation has started to the Magistrate concern.

[8] This Court is not making reference to the provisions of Section 154(1), 154(3), 157 etc. of the Cr.P.C because these have been dealt with in detail in the earlier judgments, but it would suffice to say that the police authorities have no option in the matter. If the information discloses the commission of a cognizable offence they must record the FIR. In this behalf reference be made to the Police Regulations of Bengal.

[9] 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:

> ***"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.

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> *(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 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."*

Regulation 243(f) makes it absolutely clear 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. He is not to wait for the medical report but must lodge the FIR as soon as he receives the information of the commission of a cognizable offence.

[10] Regulation 244(a) reads 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 complaint alleging commission of a cognizable offence 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.

[11] The Police Regulations of Bengal as well as the Cr.P.C. leave no manner of doubt that as soon as the information is received the Police Official must record the FIR. In this case what is surprising is that even in the reply filed the stand is that since before the doctor and during the time of his inquest it was stated by the relatives that there is no offence committed. It was thought that there is no merit in the complaint made by the complainant and, therefore, the FIR was not recorded. This is totally contrary to the law laid down by the Apex Court. This is totally contrary to the provisions of the Cr.P.C as well as to the Police Regulations of Bengal. Therefore, this cannot be appreciated.

[12] A learned single Judge of this Court in ***Criminal Petition No.71 of 2014 (Sri Birajit Sinha Vrs. The State of Tripura and others)*** decided on 8th May, 2015 has made similar observations. It is, indeed, shocking that senior Police Officials continue to flout the law laid down by the Apex Court, continue to flout the statutory provisions of the Code of Criminal Procedure and the regulations which governs them. This cannot be tolerated any longer.

[13] A copy of this judgment shall be sent to the Chief Secretary as well as to the Director General of Police who are

informed that this is the last case in which a lenient view will be taken. In future, if any such case comes to the notice of this Court, then this Court will not hesitate to initiate action as required both under ***Lalita Kumari's*** case and there will be no excuse for any Police Officials if the FIR is not lodged. As far as the present case is concerned, the Superintendent of Police concerned has appeared in person and he has submitted his apology but that apology is hedged by his explanations. Despite an opportunity having been given on the last date no unqualified apology has been filed. Therefore, we direct that in the service record of the Superintendent of Police Shri Pradip De penalty of censure shall be recorded against him and it is also made clear that if in future it is found that this Police Official Shri Pradip De has not recorded the FIR then we shall not hesitate to initiate criminal action against him.

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[14] As far as this case is concerned since now FIR has been lodged, we dispose of the petition with a direction that the police must investigate the case properly and submit the final report in accordance with law as early as possible.

Sd/- U.B. Saha, Judge.

Sd/- Deepak Gupta, Chief Justice