

STATE BY LOKAYUKTHA POLICE

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v.

H. SRINIVAS

(Criminal Appeal No. 775 of 2018)

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MAY 18, 2018

[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

Investigation:

General Diary Entry – Concerning preliminary enquiry – Failure – Effect of – Held: Failure to make entry in General Diary Concerning preliminary enquiry would not be per se illegal – There is difference between irregularity and illegality – Obligation of maintenance is part of course of conduct of the concerned officer, which may not itself have any bearing on the criminal trial unless some grave prejudice going to the root of the matter is shown to exist, at the time of trial – CrPC also does not bar any investigation where General Diary entry is not made – Code of Criminal Procedure, 1973 – Police Act, 1861 – s. 44.

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Jurisdiction:

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Writ jurisdiction and inherent jurisdiction – Scope of – Held: High Court is ill-equipped to answer questions of facts in exercise of its writ or inherent jurisdictions – The court cannot convert a mixed question of law and fact concerning the merits of the case, into a pure question of law – High Court

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Judgments/Orders:

Reading of judgment – Held: Judgments are not legislations – They have to be read in the context and background discussions.

Allowing the appeals, the Court

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HELD : 1. The concept of maintaining General Diary has its origin under Section 44 of Police Act of 1861 as applicable to States, which makes it an obligation for the concerned Police Officer to maintain a General Diary, but such non-maintenance

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- A *per se* may not be rendering the whole prosecution illegal. There is also no bar under any provision of CrPC barring investigating authority to investigate into matter, which may for some justifiable ground, not found to have been entered in the General Diary right after receiving the Confidential Information. However, on the other hand, such non-maintenance of General Diary may have consequences on the merits of the case, which is a matter of trial. Moreover, the explanation of the genesis of a criminal case, in some cases, plays an important role in establishing the prosecution's case. The binding conclusions reached in the *Lalitha Kumari* case is an *obligation of best efforts* for the concerned officer to record all events concerning an enquiry. If the Officer has not recorded, then it is for the trial court to weigh the effect of the same for reasons provided therein. A court under a writ jurisdiction or under the inherent jurisdiction of the High Court is ill equipped to answer such questions of facts. The treatment provided by the High Court in converting a mixed question of law and fact concerning the merits of the case, into a pure question of law may not be proper in light of settled jurisprudence. Nothing in *Lalitha Kumari* case justifies the conclusion reached by the High Court. Judgments are not legislations, they have to be read in the context and background discussions. [Paras 17, 18][557-G-H; 558-A-D]

2. CrPC itself has differentiated between irregularity and illegality. The obligation of maintenance of General Diary is part of course of conduct of the concerned officer, which may not itself have any bearing on the criminal trial unless some grave prejudice going to the root of matter is shown to exist at the time of the trial. Conspicuous absence of any provision under CrPC concerning the omissions and errors during investigation also bolsters the conclusion reached herein. [Para 19][558-E-F]

3. Moreover, the requirement of the preliminary enquiry is well established by judicial precedents as a check on mushrooming false prosecution against public servants by persons who misuse the process of law for their personal vengeance. Such preliminary check would be beneficial and has been continuously approved by catena of judgments of this Court. [Para 20] [558-F-G]

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STATE BY LOKAYUKTHA POLICE v. H. SRINIVAS 549

Lalitha Kumari v. Govt. of A.P. & Ors. (2014) 2 SCC 1 : [2013] 14 SCR 713 ; *Smt. Kesar Devi v. Union of India & Ors.* (2003) 7 SCC 427 : [2003] 2 Suppl. SCR 1; *Union of India and Ors. v. T. Nathamuni* (2014) 16 SCC 285 : [2014] 12 SCR 297 ; *Niranjan Singh and Ors. v. State of Uttar Pradesh* AIR 1957 SC 142 : [1956] SCR 734 – relied on. A B

P. Slirajuddin v. State of Madras (1970) 1 SCC 595 : [1970] 3 SCR 931 – referred to.

Case Law Reference C

[2013] 14 SCR 713	relied on	Para 17	
[2003] 2 Suppl. SCR 1	relied on	Para 17	
[2014] 12 SCR 297	relied on	Para 19	D
[1956] SCR 734	relied on	Para 19	
[1970] 3 SCR 931	referred to	Para 30	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.775 of 2018. E

From the final Judgment and Order dated 22.08.2016 of the High Court of Karnataka at Bangalore in CRLP No.7166/2015

WITH F

Criminal Appeal Nos.776-779 of 2018.

Devadatt Kumar, AAG, Joseph Aristotle S., Ms. Priya Aristotle, Rajesh Inamdar, Javedur Rehman, Aditya Bhat, Advs. for the Appellant. G

Siddarth Luthra, Sr. Adv., Purushottam Sharma Tripathi, Gautam Kazanchi, Neelkanth Dhyaneshwar Aher, Ankolekar Gurudatta, P.S. Sudheer, Ms. Shruti Jose, Rishi Maheswari, Bharat Sood, Advs. for the Respondent.

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A The Judgment of the Court was delivered by

N. V. RAMANA, J. 1. Leave granted.

2. These appeals are filed against the common order passed by the High Court of Karnataka at Bengaluru, in Writ Petition No (s). 21782, 38450, 38451 and 38498 of 2014, and Criminal Petition No. 7166 of 2015, wherein the High Court has quashed the proceedings instituted against the accused respondents.

3. There are two separate and distinct crimes alleged to have been committed by the different individuals. Therefore, we would like to note both set of facts so as to understand the issue at hand.

4. The first set of facts pertain to Crime No. 103/2013 registered under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 [PC Act] against one H. Srinivas (respondent in SLP (Crl.) No. 5391/2017). On 25.10.2013, Police Inspector, Karnataka Lokayuktha, Davanagere Division, submitted a Source Report against the Respondent/accused, who was working as Assistant Engineer, Jagaluru Pattana Panchayat, Davangere District, for having acquired disproportionate assets against his known source of income. It may be relevant to extract a part of the source report as under-

It is hereby stated that AE Sri. H. Srinivasa, Assistant Engineer, Town Panchayath, Jagaluru has earned only Rs. 17,25,000 from known source and his disproportionate asset is Rs. 24,54,300-00 and the Percentage of Disproportionate asset is 142.27%. Presently AE residing at Jagaluru Town, J.C.R. Extension in the first floor of Khasim Miyya's (owner of Grocery) house. **This source report is submitted in order to file out more details about additional property details, gold, silver, and lockers in the person's house, (2) and Assistant Engineer office, Town Panchayath, Jagaluru and (3) Smt. Gowramma's sister Smt. Umadevi's house at J.C.R. Extension.**

(emphasis supplied)

It is said that the aforesaid report was prepared basing on a secret information, received from an informant. The Superintendent of Police endorsed taking action against the respondent under Section 13(1)(e), 13(2) of PC Act. Thereafter, the Deputy Superintendent of Police, Karnataka Lokayuktha, Davanagere registered Crime No.

103/2013 u/Sec. 13(1)(e) r/w. Section 13(2) of the PC Act, dated 29.10.2013, against the Respondent herein. In the column No. 3(d) of the FIR, General Diary reference entry No and time is noted as '**04 11:30 AM**'. The State herein has not disputed the fact that there was no entry in the General Diary, during the conduction of the preliminary enquiry. It may not be out of context to note that after completion of the investigation, a Final Report was prepared and filed before the appropriate court. Aggrieved by the manner in which the police have conducted the investigation, the respondent herein, filed a Criminal Petition No. 7166 of 2015, before the Karnataka High Court.

5. The second set of facts reveals that on 21.07.2011, the Karnataka Lokayuktha Police, basing on a confidential information about amassing of the disproportionate assets by one C. Mrutyunjayaswamy (respondent in **SLP (CrI.) No. 5606/2017**), who was working as Secretary to Government, PWD, Vikas Saudha, Bengaluru, prepared a Source Report recommending investigation into the assets of the aforesaid accused. Superintendent of Police, Karnataka Lokayuktha, City Division, Bengaluru by Order No. LOK/INV(G)SP/CITY/01/2011, dated 21/07/2011 ordered his deputy to register a FIR. On the same date, a FIR being Crime No. 28/2011 was registered accordingly. On 22-23.07.2011, the investigating team searched the office, residence, bank lockers and other places of the contesting respondents in this appeal [*arising out of SLP (CrI.) No. 5606-09/2017*]. On 07.05.2013, final Report was prepared after completion of the investigation, wherein disproportionate assets were observed. Being aggrieved C. Mrutyunjayaswamy filed a Writ Petition No. 21782 of 2014, before the High Court of Karnataka, seeking quashing of the preliminary investigation report dated 21.07.2011 submitted by the Police Inspector of Lokayuktha and consequently the FIR dated 21.07.2011 filed by the deputy Superintendent of Police, Karnataka Lokayuktha Police in Crime No. 28 of 2011 and all the subsequent proceedings on the file of the XXIII Addl. City Civil and Special Judge, Bangalore (CCH No. 23). Dr. H.M. Hema (wife of C. Mrutyunjayaswamy) filed a writ petition being W.P. No. 38450 of 2014, seeking *inter alia* quashing of the seizure proceedings in respect of passbooks and also freezing of the accounts etc. One Smt. Sowbagyamma (mother-in-law of C. Mrutyunjayaswamy) filed W.P. No. 38451 of 2014 seeking *inter alia* quashing of the seizure proceedings in respect of passbooks and against

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A freezing of certain bank accounts. One H.M. Prabhu (brother-in-law of C. Mrutyunjayaswamy) filed W.P. No. 38498 of 2014 seeking *inter alia* quashing of the seizure proceedings.

B 6. The main contention raised by the respondents herein, before the High Court as well as this Court, is that the preliminary enquiry and the consequent Source Report filed by the Officer were done without entering the same in the General Diary, which according to them was mandatory and non-compliance of the same resulted in vitiating the entire proceeding.

C 7. The High Court clubbed all the cases as discussed above and framed common questions of law, which are-

- a. Whether there could be a preliminary enquiry conducted by the Police as to whether a cognizable offence had been committed, even in the absence of a complaint, or even prior to the registration of an FIR?
- D b. Whether Complainant could also act as the investigating Officer?
- c. Whether an illegal search and seizure would be fatal to the case of the prosecution?

E 8. By the impugned order the High Court quashed the FIR on the main grounds as under-

- i. That the preliminary report conducted by the police was done without any entries made in the Station Diary- as to the conduction of the preliminary enquiry.
- F ii. Reliance was placed on the **Case of Lalitha Kumari**, (2014) 2 SCC 1, paragraph 120.7 and 120.8, to come to a conclusion that it is mandatory to make entries in the Station Diary and failure of the same would be fatal for the prosecution.
- G iii. That any proceedings conducted after such alleged illegality would be rendered *non-est* in the eyes of law and consequently are liable to be quashed accordingly.

H 9. Aggrieved by the judgment of the High Court, which prematurely terminated the proceedings at the threshold without allowing a full-fledged trial, the State of Karnataka and other authorities are in appeal before this Court.

10. Mr. Devadatt Kamat, learned AAG, appearing on behalf of the State has contended that-

- i. That the impugned order is completely cryptic and without reasoning.
- ii. That the conclusion reached in Para 120.8 of **Lalitha Kumari Case** (Supra), needs to be read in context of earlier discussion, wherein it is clear that for lodging an FIR, entry in the General Diary is not a pre-condition.
- iii. Defect/irregularity in investigation cannot result in quashing of the proceedings.
- iv. That the Lodging of the FIR is not a precondition for initiation of criminal proceedings.
- v. He has placed reliance on catena of judgments, wherein this Court has stamped its approval for conduction of such preliminary enquiry in corruption cases, for safeguarding the interest of the government servants from unwarranted prosecutions.
- vi. The consideration provided by the High Court in the Criminal Petition No. 7166 of 2015 (concerning the case of H. Srinivas) is highly insufficient and would clearly reflect non-application of mind.

11. On the other hand, Mr. Siddharth Luthra, learned senior counsel appearing on behalf of respondent (**H. Srinivas**), has drawn our attention to the fact that the **Lalitha Kumari Case** (Supra), was a declaratory judgment. This Court has time and again emphasised the significance of Station Diary entry for conduction of the preliminary enquiry thereby requiring the strict adherence to the conclusions reached in the **Lalitha Kumari Case** (Supra). He argued that in the present case, the illegality goes to the root of the matter thereby mandating the quashing of the FIR on a pure question of law. We may note that the other respondents have not advanced any arguments concerning the third issue.

12. Heard the arguments advanced by the learned counsels appearing on behalf of the parties and perused the material available on record. At the outset, we are in agreement with the contention of the appellants-State that the consideration provided to the **Criminal**

A **Petition No. 7166 of 2015**, is highly insufficient, which in other cases may have itself mandated a remand for non-application of facts. We refrain from taking such an approach, as lot of time has already been wasted in unnecessary litigation and therefore, we deem it appropriate that we put a quietus this issue herein without remanding the aforesaid case back to the High Court for proper consideration.

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C 13. As both sides have placed excessive reliance on the case of **Lalitha Kumari Case** (Supra), it would be appropriate for us to discuss certain nuances of this case in detail. This Court therein, having noticed certain contradictory judgments concerning the interpretation of Section 154 of CrPC, referred the matter to a larger Bench for providing a mechanism under the criminal justice system imbued with due process.

D 14. In the aforesaid case, this Court while repelling the contention by the learned ASG appearing for the State of Chhattisgarh that recording of the first information under Section 154 in the “book” is subsequent to the entry in the General Diary, held that the concept of General Diary does not flow from the Section 154 of CrPC, 1973 and the same conclusion would be apparent from the departure made in the present Section 154 of CrPC when compared with Section 139 of the Code of Criminal Procedure, 1861. It may be relevant to extract some paragraphs, which may have bearing on the case concerned-

E **64.** The General Diary is a record of all important transactions/ events taking place in a police station, including departure and arrival of police staff, handing over or taking over of charge, arrest of a person, details of law and order duties, visit of senior officers, etc. It is in this context that gist or substance of each
F FIR being registered in the police station is also mentioned in the General Diary since registration of FIR also happens to be a very important event in the police station. Since General Diary is a record that is maintained chronologically on day-to-day basis (on each day, starting with new number 1), the General Diary entry reference is also mentioned simultaneously in the FIR book, while
G FIR number is mentioned in the General Diary entry since both of these are prepared simultaneously.

65. It is relevant to point out that FIR book is maintained with its number given on an annual basis. This means that each FIR has a unique annual number given to it. This is on similar lines as the

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case numbers given in courts. Due to this reason, it is possible to keep a strict control and track over the registration of FIRs by the supervisory police officers and by the courts, wherever necessary. Copy of each FIR is sent to the superior officers and to the Judicial Magistrate concerned. A

66. On the other hand, General Diary contains a huge number of other details of the proceedings of each day. Copy of General Diary is not sent to the Judicial Magistrate having jurisdiction over the police station, though its copy is sent to a superior police officer. Thus, it is not possible to keep strict control of each and every FIR recorded in the General Diary by the superior police officers and/or the court in view of enormous amount of other details mentioned therein and the numbers changing every day. B C

67. The signature of the complainant is obtained in the FIR book as and when the complaint is given to the police station. On the other hand, there is no such requirement of obtaining signature of the complainant in the General Diary. Moreover, at times, the complaint given may consist of large number of pages, in which case it is only the gist of the complaint which is to be recorded in the General Diary and not the full complaint. This does not fit in with the suggestion that what is recorded in the General Diary should be considered to be the fulfilment/compliance with the requirement of Section 154 of registration of FIR. In fact, the usual practice is to record the complete complaint in the FIR book (or annex it with the FIR form) but record only about one or two paragraphs (gist of the information) in the General Diary. D E

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70. If at all, there is any inconsistency in the provisions of Section 154 of the Code and Section 44 of the Police Act, 1861, with regard to the fact as to whether the FIR is to be registered in the FIR book or in the General Diary, the provisions of Section 154 of the Code will prevail and the provisions of Section 44 of the Police Act, 1861 (or similar provisions of the respective corresponding Police Act or Rules in other respective States) shall be void to the extent of the repugnancy. **Thus, FIR is to be recorded in the FIR book, as mandated under Section 154 of the Code, and it is not correct to state that information** G

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A **will be first recorded in the General Diary and only after preliminary inquiry, if required, the information will be registered as FIR.**

(Emphasis supplied)

B 15. On the aspect of the preliminary enquiry the court discussed as under-

C **115.** Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.

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E **117. In the context of offences relating to corruption, this Court in *P. Sirajuddin*[*P. Sirajuddin v. State of Madras*, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] expressed the need for a preliminary inquiry before proceeding against public servants.**

(Emphasis supplied)

16. Thereafter this Court concluded in the following manner-

Conclusion/Directions

F **120.** In view of the aforesaid discussion, we hold:

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G **120.5.** 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.

120.6. 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:

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- (a) Matrimonial disputes/family disputes A
- (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. B

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

120.7. 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. D

120.8. 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. E

(Emphasis supplied)

17. In light of the discussion above, the absence of entries in the General Diary concerning the preliminary enquiry would not be *per se* illegal. Our attention is not drawn to any bar under any provision of CrPC barring investigating authority to investigate into matter, which may for some justifiable ground, not found to have been entered in the General Diary right after receiving the Confidential Information. It may not be out of context to mention that nothing found in the **paragraph 120.8** of the ***Lalitha Kumari Case*** (Supra), justifies the conclusion reached by the High Court by placing a skewed and literal reading of the conclusions reached by the Bench therein. It is well settled that judgments are not legislations, they have to be read in the context and background discussions [refer ***Smt. Kesar Devi v. Union of India & Ors.***, (2003) 7 SCC 427]. F G

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A 18. As the concept of maintaining General Diary has its origin
under the Section 44 of Police Act of 1861 as applicable to States, which
makes it an obligation for the concerned Police Officer to maintain a
General Diary, but such non-maintenance *per se* may not be rendering
the whole prosecution illegal. However, on the other hand, we are aware
of the fact that such non-maintenance of General Diary may have
B consequences on the merits of the case, which is a matter of trial.
Moreover, we are also aware of the fact that the explanation of the
genesis of a criminal case, in some cases, plays an important role in
establishing the prosecution's case. With this background discussion we
must observe that the binding conclusions reached in the paragraph
C 120.8 of Lalitha Kumari Case (Supra) is an obligation of best
efforts for the concerned officer to record all events concerning an
enquiry. If the Officer has not recorded, then it is for the trial court to
weigh the effect of the same for reasons provided therein. A court
under a writ jurisdiction or under the inherent jurisdiction of the High
D Court is ill equipped to answer such questions of facts. The treatment
provided by the High Court in converting a mixed question of law and
fact concerning the merits of the case, into a pure question of law may
not be proper in light of settled jurisprudence.

E 19. Our conclusion herein is strengthened by the fact that CrPC
itself has differentiated between irregularity and illegality. The obligation
of maintenance of General Diary is part of course of conduct of the
concerned officer, which may not itself have any bearing on the criminal
trial unless some grave prejudice going to the root of matter is shown to
exist at the time of the trial.¹ Conspicuous absence of any provision
under CrPC concerning the omissions and errors during investigation
F also bolsters the conclusion reached herein.²

G 20. Moreover, the requirement of the preliminary enquiry is well
established by judicial precedents as a check on mushrooming false
prosecution against public servants by persons who misuse the process
of law for their personal vengeance. Such preliminary check would be
beneficial and has been continuously approved by catena of judgments
of this Court. [refer to P. Sirajuddin Case, (1970) 1 SCC 595, Lalitha
Kumari Case (Supra)]. In light of the discussion, we cannot sustain the
reasoning provided by the High Court on this aspect.

¹*Union of India and Ors. v. T. Nathamuni*, (2014) 16 SCC 285

²*Niranjan Singh and Ors. V. State of Uttar Pradesh*, AIR 1957 SC 142.

21. Therefore, we allow these appeals and, accordingly, set aside A
the order of the High Court. Before we part it may be noted that we
have not expressed any views on merits of the case and the trial court is
to proceed expeditiously uninfluenced by any observations made herein.

Kalpana K. Tripathy

Appeals allowed. B