

NEED TO CURB POLICE POWER TO REGISTER F.I.R.

The words of Sir William Blackstone that “ It is better that ten guilty persons escape, than that one innocent suffer” is always a guiding principle for a Judge to dispense justice. The Code of Criminal Procedure empowers the police to register a criminal case in the form of First Information Report,

commonly called F.I.R. But every time, this power is mis-used and abused with impunity. In criminal jurisprudence, FIR means the first information report about the occurrence of a crime, which sets the criminal law in motion. It usually forms the basis of whole of criminal trial to ascertain the guilt of the accused. The accusation, arrest and trial based on such accusation in the FIR will certainly affect the right to personal liberty of the citizen, guaranteed under Constitution of India. It is therefore, most essential in the interest of probity and fairness that the duty to register the F.I.R. must be given to a most reliable and knowledgeable wing of the justice delivery system. Section 154 of Cr.P.C. defines the F.I.R. as “the writing of information relating to the commission of a cognizable offence”. This document ultimately becomes the most important part in the framing of the charge and conduct of trial against the accused. At present the power to register the F.I.R. rests with a matric pass MHC(Munshi Head Constable/Clerk of the Police Station) who is neither a technical person lacking any legal knowledge of related laws nor a reliable authority and is ordinarily immuned to greed and fear. With this important power in the hands of incompetent and non-technical person, harassment and highhandedness by the police makes a mockery of the Criminal Justice System. Legal luminaries and Judges at lower level upto apex court waste their wisdom and knowledge to find the validity of the document called F.I.R. and go on writing lengthy judgements for and against the document, which is, in most cases badly drafted by, an undergraduate clerk having no special training or knowledge to author it.

The power to register the F.I.R. given to the Police has done more harm than good to the Criminal Justice System. Burdening the Courts with false and fabricated F.I.R.'s and then cancelling it “in Public Interest” has been seen by Legal experts as an explosive in a child's hand. Exercising discretion by the Police such as, implication of innocent people in false criminal cases on the one hand and denial to register the F.I.R. in case of Custodial crime on the other, have established beyond reasonable doubt that there is urgent necessity to curb the police power to register the F.I.R. Today the dubious role in recording false F.I.R. has certainly brought the Police force in the dock. Investigations into many criminal cases where F.I.R. had been registered by the incompetent and dis-honest policemen have brought to fore that while a person is picked up for one crime, he is booked for another crime by framing a concocted story in the F.I.R. Showing the recovery of arms or ammunition in order to book a person under arms act or planting a small quantity of some narcotic drug like poppy husk or opium for booking a person under N.D.P.S. Act is a favourite modus operandi of the Police. In most of the Punjab jails, hundreds of poor migrant labourers or villagers are languishing without trials for years, on charges of possessing few grams of opium or

poppy husk, a local narcotic, simply because the courts are reluctant to order bail to the accused booked under N.D.P.S.

In December, 1998 three british Nationals on a tourist visa in India were arrested and booked under Arms Act and N.D.P.S. by Chandigarh Police. Detailed investigations and after the matter being taken by the British High Commission with the highest authority exposed the mis-deed of Chandigarh Police of falsely implicating the three youth. One D.S.P.one, Inspector and three Sub-Inspectors were suspended for their role in fabricating evidence and registering false F.I.R.

Virsa Singh, a 55 years old, baptized agriculturist of a village near Nawansheher in Punjab alleges from behind the iron bars of Central Jail Ludhiana that he was booked under N.D.P.S. by the Police simply because his wife had refused to withdraw a complaint against the Police officials in the Punjab State Human Rights Commission. While he was going in his village for some household work, he was picked up and five bags of poppy husk was planted upon him and a false F.I.R. was registered against him in Police Station Phillaur, Distt. Jalandhar on 15th February, 2000. Narain Singh, another agriculturist of a village near Dera Baba Nanak in District Gurdaspur of Punjab also has a similar story to tell. According to a representation sent by him to the Director-General of Police and the Chief Minister, Punjab last year, an F.I.R. registered against him on 4.5.1999 at P.S. Dera Baba Nanak has been wrongly registered and that he has been falsely implicated in the case under Section 324/34 I.P.C. He has sought a high level inquiry into the false registration of the F.I.R. and action against the guilty police officials responsible for fabricating false document.

Not only that the accused against whom the F.I.R. is registered pleads innocence and makes out a case of false implication by the police, but the Law courts are also vigilant enough to judiciously scrutinize as to whether the prosecution case stands the litmus test of making out a case beyond reasonable shadow of doubt ? In a particular case of its kind, Ld. Additional Chief Judicial magistrate, Chandigarh Mr. Harmohinder Singh Madan, in his eight page lengthy judgement in the case of State- U.T. Vs. Head Constable Tirath Singh, Chandigarh Police, took the Chandigarh police to task. He wrote that, "The police later on fabricated a concocted /cooked up story, got registered case FIR no.148 dated 1.1.1996 under Sec.4/5 of Noises Control Act. This demolishes the prosecution story totally and it comes out that the prosecution story is a sheer concoction without any element of truth. Their such action deserves severe condemnation, since such types of acts are not expected from responsible police officers of such ranks. Nevertheless, they can be better dealt with for such acts at departmental level, but the hollowness of the prosecution story stands exposed totally."

Another aspect of the matter that needs pointing notice is that for various reasons, such as greed, political or monetary influence over the Police, many complaints relating to cognizable offence go without registration of any First Information Report. Complaints of Custodial deaths, illegal detention and harassment of innocent people by the policemen and custodial torture are often rejected summarily and dumped into the dustbin by the concerned police officer. At the first instance no complaint is accepted from the victim or his relative and if at all the complaint is

received, neither any receipt is given nor any F.I.R. is registered what to say of any action being taken on that complaint, perhaps for the reason that the offender is the man of their own force.

Kuldip Singh, a young resident of Village Geege Majra in Distt.Ropar in his complaint to the Punjab State Human Rights Commission, alleging violation of his human right to life and liberty at the hands of Punjab police has stated that he was illegally detained and subjected to inhuman third degree torture from 18.4.1999 till 28.4.1999 at Banur Police Station, a township in Distt.Patiala. But all his efforts in getting an F.I.R. of illegal detention and custodial torture, registered against the guilty police officials have failed and even the Senior Police officials advised him to compromise with the guilty police officials if he wants to save himself from implication in false criminal cases. Harpal Singh Sahni, a computer engineer of SAS Nagar, Mohali was badly beaten and harassed during his day long illegal detention in October, 1999 by a Sub-Inspector Balwant Singh Majitha in Police Station, Phase VIII, Mohali. When he dared to bring this inhuman treatment to the Court in Ropar, he was falsely booked for a cheating case and was made to run from pillar to post for his safety. Gurpartap Singh Walia, a Chandigarh resident also faced a similar legal problem in getting the complaint of his custodial torture at the hands of Chandigarh Police registered even with the indulgence of the Court.

A large number of persons arrested and shown to be involved in cases relating to theft and dacoity and publicised through media are framed in false cases. Similarly, cases of eve-teasing in which persons are accused of eve-teasing, contain the same statement of the official eye-witness that "the accused passed particular objectionable remarks on a female passer-by". It is highly improbable that different persons on different occasions had uttered the same words and teased the woman in the same manner. It is certainly a matter of shame for the Chandigarh Police that it has the largest number of acquittals in cases of eve-teasing.

From the above instances, the argument that the power to register F.I.R. must be withdrawn from the police, holds a solid ground. Instead, a "special cell" from among the Litigation and Prosecution department of the State administration with persons having sufficient legal knowledge only in Criminal laws should be created and power granted under Section 154 of Cr.P.C. should be delegated to this cell. The complainant should be dealt with by persons with complete legal knowledge who also understand the psychology of the complainants. If a cognizable offence is prima facie made out from the complaint, this "special cell" should register the F.I.R. and direct a Police officer not below the rank of a Sub-Inspector to investigate the complaint by recording the statements of both the parties and submit his report to the "cell". The ultimate power to order arrest and prosecute a person for any cognizable offence should rest with the "special cell" and the police officer should be empowered only to detain a person on either the order of the Court or the Special cell. In this way, not only that the cases of Police highhandedness and false implication of innocent persons could be effectively checked but transparency and responsibility to exercise one's authority could be built in the Police force. Division of power to another cell with limited role of the Police being an investigating agency and not a wild force that always transgresses one's fundamental right to life and liberty, will help to some extent in restoring the faith of the people in

the already out-dated criminal justice system.