

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

CLAIM PETITION NO. 54/SB/2018

Ashish Gosain, S/o Sri Ram Singh Gosain, aged about 38 years, presently posted as Sub Inspector , P.S. Doiwala, Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Circle, Dehradun.
3. Senior Superintendent of Police, Dehradun.

.....Respondents.

Present: Sri V.P.Sharma, Counsel for the petitioner.

Sarvsri U.C.Dhaundiyal & V.P.Devrani, A.P.Os., for the Respondents.

JUDGMENT

DATED: DECEMBER 18, 2018

Justice U.C.Dhyani(Oral)

By means of present claim petition, the petitioner seeks following reliefs:

- “(i) To quash the impugned order dated 20.03.2017(Annexure No. A-1) by which an adverse entry has been awarded by the respondent no.3 in the service record of the petitioner as well as appellate order dated 24.07.20-17 (Annexure: A-2) by which appeal of the petitioner has been rejected by the respondent no.2.
- (ii) Any other relief, which the Hon’ble Court may deem fit and proper in the circumstance of the case.
- (iii) To award the cost of this petition to the petitioner”

2. Facts, giving rise to present claim petition, are as follows:

On 04.02.2017, a show cause notice was given to the petitioner, along with 'draft censure entry'. Petitioner replied to the same on 18.02.2017. Complainant Rishipal, resident of Shyampur, Rishikesh, gave a complaint to the delinquent-petitioner on 20.09.2016 at Police Chowki, Shyampur, P.S. Rishikesh, District Dehradun, with the allegation that somebody took out a sum of Rs.4,49,397/- from his account through ATM, between 04.08.2016 to 05.09.2016. The petitioner, allegedly, did not lodge the FIR. The complaint was given on 20.09.2016 at Police Chowki, Shyampur. When the petitioner, in the capacity of Chowki In-Charge, did not lodge FIR, the complainant wrote a letter to the higher Police Officer. Had the petitioner lodged the FIR on 20.09.2016, The complainant would not have given such complaint to higher Police Officer.

The petitioner submitted an explanation, mentioning therein, that the complainant disclosed to the petitioner that the ATM card was lying with his relatives, but he did not make any endeavour to retrieve the same from his relatives or demanded the money, which was withdrawn with the help of that ATM card. No complaint was written against those relatives. The money was illegally withdrawn from the account of the complainant on different dates from different places. The petitioner tried to collect documentary evidence, as preliminary inquiry, but, since the complainant did not co-operate with the petitioner, therefore, he did not lodge FIR, on the basis of complaint given by him.

The disciplinary authority-SSP found it to be a case of 'misconduct'. According to such authority, there was negligence and carelessness on the part of the petitioner in not lodging the FIR, relating to a cognizable offence. In a nutshell, the allegation is that the delinquent-petitioner did not lodge FIR against the wrong doer, therefore, 'censure entry' was awarded to him *vide* order dated 20.03.2017.

Aggrieved against such an order dated 20.03.2017 of 'censure entry' (copy Annexure: A 1), the delinquent-petitioner preferred departmental appeal, which was dismissed by the appellate authority-DIG, Garhwal Range, *vide* order dated 24.07.2017 (copy Annexure: A 2). Hence, present claim petition.

3. Ld. A.P.Os. submitted, at the very outset, that the orders impugned do not warrant any interference. The Court should not interfere with the punishment of 'censure entry' awarded to the petitioner by the appointing authority/ disciplinary authority, which has been upheld by the appellate authority.
4. In reply, Ld. Counsel for the petitioner submitted that the complainant Rishipal never made a request to the petitioner to lodge FIR. Complainant's only prayer to the Police Officer was to help him in returning his money, which had been withdrawn from his Saving Bank Account through ATM. Ld.Counsel for the petitioner drew attention of this Court towards Annexure: A 5 to show that the petitioner has made an entry in General Diary (GD) to the effect that the complainant is not interested in lodging FIR. It has also been mentioned in the GD that the complainant was interested in retrieving his money, which was withdrawn from his Saving Bank Account through ATM card and, therefore, the petitioner made an endeavour to collect documents, so that the FIR could be lodged after collecting reliable evidence from Bank. In other words, the petitioner, as per his version, started doing preliminary inquiry, before registering the FIR.
5. Such a plea was not accepted either by the disciplinary authority or the appellate authority and, therefore, orders impugned were passed against the petitioner.
6. Ld. A.P.Os., on the other hand submitted that the petitioner had no option but to lodge FIR in relation to cognizable offence.
7. Let us see what is the law on the point?
8. Section 154 CrPC provides that every information relating to the commission of cognizable offence, shall be reduced to writing, by or under the direction of an Officer In-Charge of a Police Station and shall be read over to the informant. Every such information shall be signed by the person giving it and the substance thereof shall be entered in a book (known as GD). Sub-section (2) of Section 154 CrPC also provides that a copy of such information shall be given forthwith, free of cost, to the informant. Sub-section (3) of Section 154 CrPC stipulates that any person,

aggrieved by refusal on the part of Officer In-Charge of a Police Station to record the information, may send the substance of such information to the Superintendent of Police concerned, who, if satisfied that such information discloses the commission of a cognizable offence, shall direct an investigation to be made by any Police Officer.

9. Section 155 CrPC relates to information as to non-cognizable cases and investigation of such cases. Section 156 CrPC provides for Police Officer's power to investigate cognizable case. Procedure for investigation has been prescribed in Section 157 of the Code.
10. Copy of the complaint (Annexure: R 1) has been supplied by Ld. A.P.Os with Counter Affidavit of Smt. Nivedita Kukreti, S.S.P., Dehradun. A perusal of the complaint would indicate that the complainant Rishipal made a request to the Chowki In-Charge, Shyampur, Rishikesh, District Dehradun to help him in getting his lost money recovered and take necessary action in respect thereof. The allegations were levelled against Punjab & Sindh Bank, Shyampur also. The complainant was deprived of Rs.4,49,397/-. The money was allegedly withdrawn from Delhi and Rohtak through ATM card. It was also disclosed that the maximum amount which could be withdrawn in a day, was Rs.25,000/-, but Rs.1,50,000/- were withdrawn from his bank account on single day. The contents of the complaint would, therefore, show that cognizable offence was reported to the Police Officer, who was legally bound to reduce the same to writing (in the form of FIR), which was not done in the instant case.
11. Now the question arises whether there was any discretion on the part of the petitioner not to have lodged the FIR and proceed to conduct preliminary inquiry, before lodging FIR?
12. The reply is in negative, in view of the decision of Hon'ble Apex Court in Lalita Kumari vs. State of U.P. and others, AIR 2014 SC 187. The word "shall" used in Section 154 leaves no discretion in police officer to hold preliminary inquiry before recording FIR. Use of expression "information" without any qualification also denotes that police has to record information despite it being unsatisfied by its reasonableness or credibility.

13. The legal mandate enshrined in Section 154(1) is that every information relating to the commission of a "cognizable offence" (as defined Under Section 2(c) of the Code) if given orally (in which case it is to be reduced into writing) or in writing to "an officer incharge of a police station" (within the meaning of Section 2(o) of the Code) and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as "First Information Report" and which act of entering the information in the said form is known as registration of a crime or a case.
14. The use of the word 'shall' coupled with the Scheme of the Act leads 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 the officer in-charge of the police station. Reading 'shall' as 'may', 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.
15. The Code of Criminal Procedure contemplates two kinds of FIRs. The duly signed FIR under section 154 (1) is by the informant to the concerned officer at the police station. The second kind of FIR could be which is registered by the police officer on any information received or other than by way of an informant under section 157(1) and even this information has to be duly recorded and the copy has to be sent to the Magistrate forthwith.
16. The important issue, in the decision of Lalita Kumari (*supra*), was whether "a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 or the police officer has the power to conduct a "preliminary inquiry" in order to test the veracity of such information before registering the same?

17. Hon'ble Apex Court, by discussing the law on FIR, in detail, observed that, at the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the police officer concerned cannot embark upon an inquiry as to whether the information laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation, if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157 thereof. In case an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned, who, if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.
18. It is, manifestly clear that the police has the statutory right and duty to "register" every information relating to the commission of a cognizable offence. The police also has the statutory right and duty to investigate the facts and circumstances of the case where the commission of a cognizable offence is suspected and to submit the report of such investigation to the Magistrate having jurisdiction to take cognizance of the offence upon a police report. These statutory rights and duties of the police are not circumscribed by any power of superintendence or interference by the Magistrate; nor is any sanction required from a Magistrate to empower the Police to investigate into a cognizable offence. This position in law is well-settled.
19. Just as it is essential that everyone accused of a crime should have free access to a Court of justice, so that he may be duly acquitted if found

not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would be an unfortunate result if it should be held possible to interfere with those statutory rules by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the Courts to intervene in appropriate cases, according to Hon'ble apex Court.

20. 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 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 concerned Judicial Magistrate.
21. 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 superior police officers and/or the court in view of enormous amount of other details mentioned therein and the numbers changing every day.
22. The law on registration of FIR has, appropriately, been summarized by Hon'ble Apex Court in Para 111 of Lalita Kumari Case (*supra*), as under:

“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 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.

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."

23. Since the complaint filed by Rishipal, in the instant case, undoubtedly discloses the commission of cognizable offence, therefore, FIR ought to have been registered by or under the direction of the delinquent-petitioner, who was Chowki In-Charge of P.S. Shyampur,

Rishikesh, District Dehradun. No Police Officer can avoid his duty of registering FIR, if cognizable offence is disclosed. Hon'ble Apex Court has given a direction in Lalita Kumari's case (*supra*) that action must be taken against erring officers who do not register FIR, if information received by him discloses a cognizable offence. The same has been done against the petitioner in the instant case. The complainant had to approach Director General of Police for getting his FIR registered and, only then, the criminal law could be set into motion.

24. The petitioner has, therefore, rightly been held guilty of 'misconduct' by S.S.P., Dehradun, whose order has been affirmed by D.I.G., Garhwal Range (appellate authority).
25. This Tribunal is, accordingly, of the view that 'due procedure of law' has been followed while holding the delinquent guilty of 'misconduct'. No infirmity has successfully been pointed out in the same. The Tribunal is unable to take a view contrary to what was taken by two authorities below. No interference is called for in the same
26. The claim petition, therefore, fails and is dismissed.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: DECEMBER 18, 2018
DEHRADUN

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