LALITA KUMARI V. GOVT OF UTTAR PRADESH: TOUCHING UPON UNTOUCHED ISSUES

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I. INTRODUCTION

The matter relating to the mandatory nature of registration of FIR has plagued and perplexed the judicial mind in Lalita Kumari case.In this case the matter has been referred to constitutional bench of SC.

This case comment aims to analyze *Lalita Kumari v. Govt. of UP and Others*[1], in which a three judges bench of Supreme Court opined for non-mandatory registration of First Information Report (hereinafter FIR). The rationale for the judgment was that,

> *"In the light of Article 21, provisions of Section 154 of Code of Criminal Procedure must be read down to mean that before registering an FIR, the Station House Officer must have a prima-facie satisfaction that there is commission of cognizable offence as registration of an FIR leads to serious consequences for the person named as accused and for this purpose, the requirement of preliminary enquiry can be spelt out in Section 154 and can be said to be implicit within the provisions of Section 154 of Code of Criminal Procedure."*

The author tries to unpack the judgment to understand the legal and socialdilemmas attached with the consequence of non-mandatory

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[1] Lalita Kumari v. Govt. of UP AIR 2012 SC 1515.

registration of FIR. This case raises issues apart from established statutory rules including the issue of preliminary investigation. The article argues that non mandatory registration of FIR is unconstitutional. The article concludes that the judgment ends up showing intentions of giving dictatorial power to police and takes away many rights essential in seeking criminal remedy,thus, defeating the very purpose of people approaching the police for enforcement of their rights, and nullifying the purpose of criminal justice system.

II. LALITA KUMARI V. GOVT. OF UP AT HAND

Facts in Brief

In this case the petitioner Bhola Kamat filed a missing report at the police station as Lalita Kumari, his minor daughter did not return for half an hour and he was not successful in tracing her.[2] Even after registration of the FIR against some private respondents who were the chief suspects, the police did not take any action to trace Lalita Kumari. According to the allegation of Bhola Kamat, he was asked to pay money for initiating investigation and to arrest the accused persons.[3] Ultimately, the petitioner filed this petition under Article 32 of the Constitution before this Court. The court on 14.7.2008 passed a comprehensive order expressing its grave anguish on non-registration of the FIR even in a case of cognizable offence.[4]

The Key Considerations

The counsel for petitioner submitted that it is a settled principle and reiterated by the apex court time and again that whenever a cognizable offence is disclosed, the police officials are bound to register the same and in case it is not done, directions to register the same can be given.[5] Section 156(3) of the Code contemplates the registration before investigation into the case.[6] The use of the word *"shall"* in section 154 is indicative of the

[2] Ibid ¶ 3.
[3] Ibid ¶ 5.
[4] Ibid ¶ 6.
[5] Ibid ¶10, See also Ramesh Kumari and Bhajan Lal cases.
[6] Ibid ¶26.

mandatory nature of the registration of FIR.[7] Also, the word *information* in section 154(1) is not qualified as *'reasonable complaint'* and *'credible information'* as it is in section 41(1)(a) or (g) of the Code.[8] In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. The concept of preliminary investigation is alien to the criminal law regime except in Prevention of Corruption Act and in respect of the offence under which was to be investigated by the Central Bureau of Investigation (CBI).[9] There would be great temptation in preliminary inquiry.[10]

The counsel for the respondent submitted that the registration of an FIR being an administrative act requires the application of mind, scrutiny and verification of the facts as no administrative act can ever be a mechanical one.[11] This is the requirement of rule of law. Further, the word "shall" used in the statute does not always mean absence of any discretion in the matter.[12] In fake cases, the FIR would become a useless lumber and a dead letter. The police officer would then submit a closure report to the Magistrate.[13] Also, for the receipt and recording of information, the report is not a condition precedent to the setting in motion of a criminal investigation.[14] An illustration was given of preliminary investigation in case of medical negligence.[15] Non-registration of an FIR does not result in crime going unnoticed or unpunished.[16] If he is debarred from holding such a preliminary inquiry, the procedure would then suffer from the vice of arbitrariness and unreasonableness.[17] The provisions of Article 14 which are an anti-thesis of arbitrariness and the provisions of Articles 19 and 21 which offer even a pre-violation protection require the police officer to see that an innocent person

[7] Ibid ¶12.
[8] Ibid ¶32.
[9] Ibid ¶41.
[10] Ibid ¶ 38.
[11] Ibid ¶ 49.
[12] Ibid ¶82-89.
[13] Ibid ¶ 79.
[14] Ibid ¶54.
[15] Ibid ¶ 47.
[16] Ibid ¶53.
[17] Ibid ¶ 93.

is not exposed to baseless allegations and, therefore, in appropriate cases he can hold preliminary enquiry.[18] If an innocent person is falsely implicated, he not only suffers from loss of reputation but also mental tension and his personal liberty is seriously impaired.[19]

III. ANSWERING UNANSWERED QUESTION

Legislative Certainty as a Constitutional Norm

'Certainty' is an essential aspect of rule of law. Vague laws and the resulting uncertainty inevitably lead to misuse and arbitrary exercise of executive power, and therefore fall short of the requirements of Article 14 of the Indian Constitution which guarantees equity, fairness, and reasonableness. There is strong jurisprudence supporting the *'void for vagueness'* doctrine [emphasis supplied], directed at laws that either forbid or require the doing of an act "in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application."[20] Where a provision of law is in boundless sea of uncertainty and the law prima facie takes away a guaranteed freedom, the law must be held to offend the Constitution as was done in the case of Goonda Act.[21] This is not application of doctrine of due process. The invalidity arises from the probability of the misuse of the law or the detriment of the individual.[22] Vague laws may trap the innocent by not providing a fair warning.[23]

While courts would therefore be obliged, first, to look for alternate constructions to the wording of the legislation in order to provide a workable structure for the operation of the statute without distorting the intention of the legislature, in cases where the provision itself is incapable of such alternate constructions, it could be struck down on the ground of being *void for vagueness*.

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[18] Ibid ¶ 61.
[19] Ibid ¶ 57.
[20] Justice Sutherland in Connally v. General Construction Co., 269 U.S. 385 (1926).
[21] State of Madhya Pradesh and Anr v. Baldeo Prasad, 1961 AIR 293; See also KA Abbas v. Union of India AIR 1971 SC 481.
[22] KA Abbas v. Union of India AIR 1971 SC 481.
[23] Kartar Singh v. State of Punjab (1994)3 S.C.C.569.

In US jurisprudence, the void for vagueness doctrine is treated as an integral part of dueprocess requirement under US Constitution. In *Greyned v. City of Rockford,*[24] the court has held that vague laws offend several important values. First, laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing a fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.

The nature of criminal statute calls for a more vigorous application of doctrine owing to the widespread application of the statute and the consequences to ordinary citizens. Non mandatory registration of FIR is a serious concern owing to the potential for abuse.

As per the void for vagueness doctrine, a citizen, being entitled to clear notice as in what circumstance the registration is mandatory under the law, the sole method of such a determination cannot be an ex post facto declaration by the authorities resulting in consequent liability. This proposition finds support in the dicta of the Supreme Court in *Kartar Singh v State of Punjab*.[25] A law would be rendered constitutionally void if it uses vague standards and does not provide the executive with sufficient guidelines since it would result in arbitrary and discriminatory enforcement.

Curbing Excessive Discretionary Powers

The fundamental right to equality guaranteed under Article 14 of the Constitution of India acts as bar against arbitrary or unguided exercise of discretionary powers conferred upon authorities by statute.[26] Notwithstanding the presumption in favor of legislative wisdom and authorities exercising powers in good faith, conferment of unfettered discretion upon government authorities by the employment of wide and ambiguous language in the provisions of a statute, strikes against the very

[24] 408 U.S. 104, 108-.
[25] (1994)3S.C.C. 569.
[26] State of Punjab v. Khan Chand, (1974) 2 S.C.R 768, See also KT Moopil Nair v. State of Kerala, (1961) 3 S.C.R. 1.

basis of fairness, non-arbitrariness and equality. Vesting discretionary powers in an administrative authority may not per se attract the prohibitive sweep of Article 14. It is only when discretion conferred upon the authority is so wide and unguided that it allows for a high probability of arbitrary exercise that the sanction of Article 14 is attracted.

This issue of excessive discretion was enunciated significantly in the case of *Shri Ramakrishna Dalmi v SR Tendolkar*[27] where the Supreme Court held that the prohibitive sweep of Article 14 may act at two different levels: First, its assails the very conferment of excessive discretionary powers to authorities unguided by appropriate rules or policies. Secondly, where there is discretion conferred upon an authority by a statute, the exercise of such discretion, if unguided by reason or sound justification, may be struck down. The legislative practice of conferring wide discretionary powers has consistently been subject to judicial disapproval with instance of the Supreme Court and High Courts applying the *doctrine of severability* and striking down statutory provisions conferring such provisions.

The High Courts have made no exception to this principle of law and have followed a similar trend of disclosing legislative conferral of wide discretionary powers. The position has been followed *Dhirajlal Vithalji v.Dy Custodian of Evacuee Property, South Kanara, Manglore;*[28] *Balabhaumanaji v.Bapuji Satwaji Nandanwar and Ors;*[29] *State of Punjab and Ors. v. S Kehar Singh and Ors.;*[30] and in *SM Nawab Ariff v. Corporation of Calcutta and ors.*[31]

While the scope of discretionary powers conferred upon the government may necessarily be wide in certain matters,[32] even such discretion must be guided by appropriate rules and principles that would prevent an unfettered

[27] 1958 A.I.R. 538.
[28] AIR 1955 Mad 75.
[29] AIR 1957 Bom 233.
[30] AIR 1959 P H 8.
[31] AIR 1960 Cal 159.
[32] Khandige Sham Bhat v. The Agricultural Income tax officer, 1963 AIR 591.

exercise of power.[33] Therefore, while limited discretionary powers conferred upon government officials may be permissible, unguided discretion may be struck down under Article 14. Closely connected to the constitutional norm of legislative guidance is another important principle restricting the excessive delegation of core judicial functions.

Registration of FIR v. Arrest

The counsel for the respondent submitted that mandatory registration of FIR is violative of Article 21 of the Constitution. It may be noted that the right to life and personal liberty can be curtailed by the procedure established by law in the interest of society. The expression "procedure established by law" means that procedure by which a person is deprived of his life or liberty must be just, fair and reasonable. In *Abhinandan Jha v. State of Bihar,*[34] the SC gave the stages that once an FIR has been lodged, one of them is of arrest of the suspect(s). The word *suspect* itself suggests that the arrested person is not put behind bars without use of any administrative mind. In this way, the liberty of the person is curtailed with the procedure established by law; it is not made in isolation. Thus, mandatory registration of FIR is in no circumstances violative of Article 21 of the Constitution.

Further, even if mandatory registration of FIR is violative of Article 21, the question must be raised on the issue of *arrest* rather than on registration of FIR, which has the direct nexus with the argument of the counsel for the respondent. Also, the SC court has time and again given guidelines regarding arrest.

Speedy Justice

In a number of cases the apex court has established the proposition that the right to speedy trial is a fundamental right implicit in Article 21 because no procedure can be fair unless it ensures speedy determination of guilt of

[33] Purushottam Govindji Halai v. BM Desai, 1956 AIR 20.
[34] AIR 1968 SC 117.

accused.[35] In USA also, it has been held that apart from the specific guarantee in the 6th Amendment,[36] the guarantee of due process requires that criminal justice should be as speedy as the circumstance permit.[37] Speedy trial is the essence of criminal justice and there can be no doubt that delays in trial by itself constitutes denial of justice.[38] Speedy justice is, therefore, necessary in the interest of both the accused and the society. Delay is the enemy of justice. Delay frustrates the very purpose of the criminal justice system even when the prosecution is justified because of the waning interest of not merely the society, but also the witness with the passage of time which ultimately dilutes the prosecution evidence and facilitates acquittal of guilty.[39] In this way unnecessary preliminary investigation causes hardships for needy people.

Bar on Delegation of Essential Judicial Functions

It is the essential judicial function at the first stageof a criminal case to see whether or not any prima facie case has been made. Making registration of FIR and giving police the power of preliminary investigation in effect, it delegates the essential judicial power. It is a settled principle that purpose of 'Policisation' is mere procedural one. Police cannot be granted authority to go on the merits of any case. It is the judiciary which decides upon the merits of the case. Such provision impermissibly delegates basic policy matters to policemen.

Mere Possibility of Abuse

It is an established principle of law that the mere possibility of abuse is hardly a ground for striking down a law as established by apex court in *Anwar Ali Sarkar v. State of West Bengal*[40] and later on affirmed in

[35] Hussainara v. Home Secy. (I) AIR 1979 SC 1360. See also Kadra v State of Bihar AIR 1981 SC 939 (§ 2), Mansukhlal Vithaldas Chauhan v. State of Gujrat AIR 1977 SC 3400.
[36] 3 S.C.W 74.
[37] Klopfer v. N. Carolina (1967) 386 U.S. 213.
[38] Hussainara v. Home Secy. (I) AIR 1979 SC 1360.
[39] Delays in Indian Judicial Syetem-remedies-the fifth Bhilwara Orative by Justice J S Verma, former Chief justice of India, and compiled in the book, "The New Universe of Human Rights", p 350.
[40] AIR 1952 SC 75.

Maganlal Chaganlal v. Municipal Corporation of Greater Bombay[41]. It can be logically deduced that the non-registration of FIR in cases concerning illiterates, indigents and oppressed persons as a far greater evil than a temporary garnishment of reputation of high officials in government. Further, as far as loss of reputation is concerned speedy justice would be an adequate deterrent to vexatious litigation.

IV. CONCLUSION AND SUGGESTIONS

In sum, while discussing the nature of registration of FIR, one should not loose sight that firstly, in most of the criminal cases people do not even approach the police and secondly, if the registration of FIR is made non-mandatory the situation would get worse. Undoubtedly, it will cause procedural hardship for the needy people. Non-mandatory registration of FIR can only be argued only at the stage of accountable police system. It is a serious concern owing to the potential for abuse. On account of above arguments i.e. non-mandatory nature of registration of FIR creates legal uncertainty as, in the absence of appropriate guidelines; it is against the constitutional norm. It gives excessive discretionary powers to an administrative body which tends to arbitrariness. Further, mandatory registration of FIR is not violative of Article 21 as it is just, fair and reasonable according to the procedure established by law and a person is not arrested in isolation. Making registration non mandatory, in effect, gives the police essential judicial function which is against the rule of law, purpose of criminal justice system and violates the right to fair trial. Also, a provision cannot be made derogatory in nature merely on account of possibility of abuse.

The author gives the following suggestions regarding the registration of FIR and issues surrounding-

i. To protect the personal liberty of a person, judiciary should touch upon the aspects of arrest rather than registration of FIR.

[41] AIR 1975 SC 2009.

ii. Top police officers can be authorized to quash the FIR in case it is found to be fabricated or mischievous after investigation with some accountable measures.

iii. The FIR copies should be sent to the SP and Area Magistrate only after investigation. The old practice can be abandoned.

iv. The complainant should be given a copy of the pre-investigation report.

v Online FIR registration can also be explored with suitable safeguards.