First Information Report

To,

The Officer-in-charge of the police station

Ram Prakash Singh

Lucknow.

Sir,

       Today at 2 A.M. a group of three people armed with guns entered my house by breaking the main door. Among the three, two persons tied my hand with a rope and put cloths in my mouth, as I was struggling to shout to help. One person beat my wife with gun and she fell unconscious. At the gun point they took the key of almirah from me and took away the cash, silver and gold articles and left the house.

       Description of the property:-

(1).

(2).

(3).

In the early hours, hearing our screaming, milk boy came to in, united me and called the neighbours. After admitting my wife in Apollo hospital. I came to police station to lodge information. I can identify my property and also the culprits if I happen to see.

     I request you to take necessary action to trace out my stolen articles and book the culprits.

       Thanking you,

        Your faithfully,

                                                                             Sd/-

                                                                             y. Ramakanth

                                                                              H.N. 13-2-82/6

                                                                               Lucknow

               Received the information at 8 A.M., upon which i registered a case in crime 12/2k U/s, 380 457IPC and took up the investigation.

                                                                                 Sd/-

                                                                                C.I. of police,

                                                                                Officer-in-charge of P.S.

                                                                                 Ram Singh.

Content of First Information Report

The F.I.R must contain as for as possible the following point:-

Whether the informant is eye witness or hearsay evidence.

The nature of the cognizable offence.

The name and detailed description of the accused person     (his colour, height, approximate age, features, clothing, distinctive marks on his face etc.

The name and identity of the victim of the crime.

The date and time of the occurrence.

The place where the crime was committed.

The motive for committing of the crime.

How the crime was committed (description of the actual occurrence of the crime the part played by the each accused and the weapon used by him)

The name and the address of the witness of the crime.

What traces left behind by the accused, any article belonging to the accused such as footwear, footprint, and finger point. Etc

The description of the culprit should be given as for as possible in detail if the F.I.R is registered on the statement of eye witness.

Essentials of F.I.R.

The word F.I.R has not been define any where under the code of criminal procedure,1973 but it can be define in the fowling way under Section 154 of the code of criminal procedure:-

An information ( given only in writing )

Relating to commission of a cognizable offence.

Given to the officer-in-charge of the police station.

Reduced in writing in the same manner as prescribed in Section 154 of code of criminal procedure 1973

Judicial Approach:-

State of Haryana Vs Chudhari Bhajan Lal

In this case Supreme Court has defined F.I.R. in following way:-

(1)  An information (given only in writing)

  Relating to commission of a cognizable offence.

  Given to the officer-in-charge of the police station.

  Reduced in writing in the same manner as prescribed in sec section 154 of code of criminal procedure 1973.

 Which is earlier in point of time?

Evidentiary value of the First Information Report

 The First Information Report is not a substantive piece of evidence but it can be used for the following purposes:-

(1). It can be used to corroborate under Section 157 of the Indian evidence Act, 1872.

(2). F.I.R can be used to contradict under Section 145 of the Indian Evidence Act, 1872

(3). F.I.R. can be used in cross examination at the stage of trial under Section 145 of Evidence Act, 1872.

(4). F.I.R. does not substantive piece of Evidence but it makes substantive piece of evidence when informant dies and the statement become relevant under the Section 32(1) of the Indian evidence Act under the following conditions :-

On the death of the informant it relates the cause of informant’s death

Circumstances of the transaction relating in informant’s death.

If the informant does not die then the informant’s statement become relevant as a conduct under section 8 of the Indian evidence Act, 1872

(5). A non-confessional First Information Report lodged by the accused can be used against him to prove his admission in regard to certain facts under section 21 of the Indian Evidence Act, 1872  (Nisar Ali v. State of U.P. 1957 550 SC)

(6). Certain proportion of confessional First Information Report lodged by the accused can be used against him if they lead towards the discovery of fact within the meaning of section 27 of the Indian Evidence Act 1872. (Agnoo Nagesia v. State of Bihar 1966 CR.L.J 100 SC)

Corroboration:-

According to section 157 of the evidence Act 1872 “In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place or before any authority legally competent to investigate the fact, may be proved”.

Contradiction:-
According to Section 145 of the Indian Evidence Act “A witness may be cross examined as to previous statement made by him in writing or reduced in writing and relevant to the matters in the question, without such writing being shown to him or being proved, but if it is indented to contradict him by the writing, his attention must, before the writing can be proved, be called to those part of it which are to be used for the purpose of contradicting him.

F.I.R as a dying declaration:-

First information lodged by a deceased is admissible under section 32(1) of the Evidence Act, as the statement of a person (since deceased) relating to the circumstances of the transaction which resulted in his death. (Kapoor Singh v. Emperor reported in AIR 1930. Lahore page 450)

Can be treated as dying declaration if informant after lodging report to the police dies of his injuries in Munna Raja v. state of Madhya Pradesh AIR 1976 SC 2199)

Munna Raja and Chhuttan were tried by the session Judge, chhatarpur on the charge that about 10 a.m. on April, 30th, 1969 they committed the murder of one Bahadur Singh. Two eye witnesses were turned hostile and learned session judge though that it was unsafe to rely on their testimony. Learned judge was also was not impressed by three dying declarations given by the deceased with the result, the appellant s were acquitted by the session court. The State preferred appeal in High court of Madhya Pradesh, which was allowed by a Division Bench. Thereafter the appellants preferred appeal to the Supreme Court.

           In this there were three by Bahadur Singh and the prosecution has placed great reliance on them.

            In regard to this Dying Declaration, the judgement of the court of sessions suffers from a patent infirmity in that it wholly overlooks the earliest of these 0f the dying declaration which was made by the deceased soon after the incident in the house of one Barior Singh. The second statement which has been treated as dying declaration Ex-P14 being the F.I.R lodged by the deceased at the police station.

The learned secessions judge probably assumed that since the statement was recorded as the first information report, it could not be treated as dying declaration. In this assumption, he was clearly in error.

After making the statement before the Police, Bahadur Singh succumbed to his injuries and therefore the statement can be treated as a Dying Declaration and is admissible under Section 32(1) of the Evidence Act, 1872.

The maker of the statement is dead and the statement relates to the cause of death.

It was further held that the statement Ex.P-14 by Bahadur Singh at the police station by way of first information report. It is after the information was recorded, and indeed because of it, that the investigation commenced and therefore it was wrong to say that the statement was made to an investigating officer. The station house officer who recorded the statement didn’t posses the capacity of an investigating officer at the time when he recorded the statement.

Cross examination of F.I.R

Before conducting the cross-examination, the original complaint and the printed F.I.R has to be studies carefully. The following points of the F.I.R. must be examined thoroughly for the purpose of cross examination.

(1). The date and time of lodging of the complaint to the police

       Officer.

(2). The name of the complainant.

(3).   The name of the police officer who recorded the F.I.R.

(4). the date and time of despatch of FIR from the police station to the Magistrate.

(5). the date and time of the receipt of the FIR by the magistrate.

(6). When the informant was given a copy of FIR.

The defence in the cross-examination may vary according to the circumstances, nature and facts of the cases.

The following points are to be examined carefully by the defence during cross examination:-

(1). The delay in lodging complaint.

(2). The delay in recording the F.I.R.

(3). The delay in despatching the FIR by the police officer to the magistrate.

(4). Recording the FIR by an incompetent Police Officer.

(5). The F.I.R was not signed by informant.

(6). The F.I.R recorded on the basis of telephone or telegram    massage.

(7). The Substance of the F.I.R was not entered in the General Diary.

(8). The original information given to the police 0fficer was    suppressed.

(9). The police officer recorded the F.I.R. after the commencement of the investigation.

(10). Omission of names of the accused, witness place of the occurrence.

(11). F.I.R was vague.

(12). The serious discrepancies between the FIR and the evidence     produced by the witness in the court.

(13). Contradiction in the statements of the information in the FIR and later made in Court.

Who can Lodge F.I.R

F.I.R. can be lodged by any of the following persons:-

(1)   Aggrieved person or someone on his behalf;

(2)    Any person who is aware of the commission of an offence;

(3)    Accused himself;

(5)     Under an order of Magistrate under section 156(3), of code of criminal procedure when a complaint is forwarded to Officer-in-charge of the police station without taking cognizance.

(6)    F.I.R can be lodged by the any person who is aware of the commission of the cognizable offence; he need not be victim of the incident.

(7)    If the information is only by a medical Certificate; or Doctor’s intimation about arrival of injured then the officer-in-charge of the police station should enter it in daily dairy and go to the hospital for recording detail statement of injured.

(8)    If the information is only hearsay. Then the officer-in-charge of the police station should registered a case only if a person in possession of hearsay subscribe the signature to it and mention the source of his information so that it does not amount to irresponsible rumour. The information must be definite, not vague, authentic, not baseless gossip, or rumour, clearly making out the making of the cognizable offence.

Object of F.I.R

There are following objects of F.I.R. as under:-

To inform Magistrate of the District Superintendent of police, who are responsible for the peace and safety of the offence reported at the police station.

To make known to the Judicial Officer whom the case is ultimately tried, what are tried, what are the facts given out immediately after the occurrence and on what material the investigation commenced

To safeguard the accused against subsequent variations or additions.

To set the criminal law in motion, this is form the point of view of the informant

To obtain information about the alleged criminal activity so as to able to take suitable steps for tracing and bringing to book the guilty party, this is from the point of view of investigating officer.

Apex Court on the object of FIR

The Apex Court in Sheikh Haseeb @ Tabaraq v. State of Bihar (1972(4) SCC 773), the three Judges Bench had observed on the object, available and use of FIR as under:-

“The principal object of FIR from the point of view of the informant is to set the criminal law into motion and the point of view of the investigating authorities has to obtain information about the alleged criminal activity, so as to be able to take suitable step for trace and bringing to the book the guilty party. The FIR, we may point out, does not constitute substantive evidence though its importance is conveying the earliest information regarding the occurrence cannot be doubted. It can, however only be used as a previous statement for the purpose of either corroborating its maker under section 157 of the Indian Evidence Act, 1872 or in contradicting him under section 145 of the Act. It can be used for the purpose of corroborating or contradicting other witness”.

Delay in FIR

Delay lodging of F.I.R can be of three types:-

(1). Delay in lodging F.I.R. by informant;

(2). Delay in lodging F.I.R by officer-in-charge of the police    station;

(3). Delay in despatching the F.I.R to the Magistrate.

Delay in lodging the F.I.R by Informant:-

 If delay has occurred in lodging the F.I.R by informant, the officer investigating case should obtain explanation from the informant with regard to such delay and incorporate the same in the statement of the witness. If this is done, no adverse presumption against the prosecution would arise against the prosecution case.

Dilip Singh v. State of Punjab, 1953 Cr.L.J 1465 (SC)

In this case it was held that delay in lodging First information report quite often result in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of the advantages, danger creeps  in of the introduction of coloured version, exaggerated or connected story as the result of deliberation and consultation. It is therefore, essential that delay in lodging of the first information report should be satisfactorily examined.

Delay in recording the F.I.R. by officer-in-charge of the police station:-

Section.154 of the code of the criminal procedure code 1973 the officer-in-charge of the police station to record the first information report to a commission of cognizable offence. There should not be any delay on part of the officer-in-charge of the police station in recording of the first information and registering the case upon it. Delay in registering F.I.R renders case to the prosecution suspicious. Any explanation given by the police officer is not unbelievable.

Delay in Despatching the F.I.R to the Magistrate:-

Section. 157 of the Code of criminal procedure mandates that if the information received or otherwise, an officer-in-charge of the police station has reason to suspect the commission of an offence which is empowered to investigate, he shall forth with send a report of the same  to a Magistrate empowered to take cognizance of such offence upon a police report. In other words Sec 167 of the code, directs sending of a report forthwith i.e. without any delay immediately.

Therefore, it is the duty of the officer-in-charge of the police station to send the F.I.R. immediately without any delay to the concerning Magistrate. If there is any delay in sending the F.I.R. to the Magistrate, F.I.R. will become doubtful.

 Delay in rape cases

In Harpal Singh v. State of Himanchal Pradesh, AIR 1981 SC 361,

 it was held that “Delay of 10 days in lodging the first information report stands responsibly explained when the prosecutrix stated that as honour of the family was involved, its member had to decide whether to take the matter to the court or not.

      It is not uncommon that such consideration delays action on the part of the near relation of a young girl who has been raped.

What is not F.I.R.

If the information that was given at the police Station, though first in point of the time, but didn’t disclose commission of the cognizable offence it was held that the said information could not treated as F.I.R of the case. (Jay Prakash Vs State of Sikkim, 1982 NOC 196. Cal)

Where a anonymous caller rang up the police station and merely stated that fire had taken place at Ludhiana taxi stand, it was held that the mere fact of this information, first in point of time didn’t clothe it with the character of F.I.R as the information didn’t in terms clearly specify a cognizable offence (Tapinder Singh Vs State of Punjab 1970 CrLJ 1415 SC)

Whether the first cryptic and any anonymous telephonic call didn’t specify the commission of cognizable offence, it is not F.I.R

A statement casually given by an informant to a sub-inspector is not a F.I.R.

Confidential information received by the police that some bad character was assembled at a particular place is not a F.I.R.

An information given to a police officer-in-charge of the police station cannot consider as FIR, if it is very vague and indefinite and the police officer is thereby necessitated to collect more information before starting the investigation in such situation further information given to him would be more appropriately treated as F.I.R

Vague confidential information given by a doctor to a police officer-in-charge of the police station with disclosing the name of the informer cannot become the basis of the F.I.R.

A doctor in a hospital informing the police about the arrival of injured person in the hospital cannot be consider as F.I.R, since the doctor’s information is vague and does not disclose any cognizable offence and other particulars it cannot be consider as F.I.R. no case can be registered on it. The information should be registered in the daily dairy and officer-in-charge of the police station should go the hospital, record the statement of the injured and there get a case registered on such statement. The second statement made by the injured person becomes the basis of the F.I.R and not of the doctor.

Any statement made to the police officer after starting the investigation will not consider as F.I.R. in other words F.I.R cannot recorded on the basis of information obtained during an investigation. It is forbidden by Section. 162 of the Code of Criminal Procedure 1973.

Immunity against registration of cases

If any complaint is preferred against the President of India, governors of the states while they are holding their office, police officer shall not register F.I.R, because the personality are holing high office in India and directed to enjoy the immunity as per Article 361 of the constitution of India.

          So also no criminal can be registered against any sitting member of the legislature or Parliament for anything spoken or done on the floor of the house. But the police officer shall register a case if it is preferred by the hon’ble speaker of the concerned house or any person authorised by him. These members are having protection under Article 105 and 194 of the constitution of India but they are liable for criminal prosecution for any act committed by them in their private capacity outside the Legislature and Parliament.

Privileges:-

Article 105 of the Constitution of India: - Powers, privileges, etc., of the house of the parliament and of the Member and committees thereof:-

Subject to the provision of this constitution and to the rules and standing orders regulating the procedure of the Procedure of Parliament, there shall be freedom of speech in parliament.

No member of the parliament shall be liable to any proceeding in any court in respect of anything said or any vote given by him in parliament or any committee thereof, and no person shall be so liable in respect of publication by or under the authority of either house of Parliament of any report, paper, votes or proceedings.

In other respect, the power, privileges and immunities of each House of the parliament and of the members and the committees of each house, shall be such as may from time to time defined by parliament by law and until so defined.

The provisions of clause (1),(2) and (3) shall be apply in relation to person who by virtue of this constitution have the right to speak in, and otherwise to take part in the proceeding of a house of parliament or any committee thereof as they apply in relation to member of the parliament.

Article 194 of the Constitution of India: - Powers, Privileges, etc, to the house of legislatures and committees thereof:-

Subject to the provision of the constitution and to the rules and standing order regulating the procedure of the Legislature of every state.

No member of the legislature of a State shall be liable to any proceeding in any court in respect of anything or any vote given by him in the legislature or any committee thereof, and no person shall be liable in respect of the publication by or under the authority of a house of such a Legislature of any report, paper, votes or proceedings.

In other respect, the powers, privileges, and Immunities of a House of such legislature, shall be such as may from time to time be defined by the legislature by law, and, until so defined shall those of that house and if its members and committees immediately before coming into force of Article 26 of the constitution of India.

The provisions of clauses (1), (2) and (3) shall be apply in relation to person who by virtue of the this constitution have the right to speak in, and otherwise to take part in the proceeding of a house of Parliament or any committee thereof as they apply in relation to member of that legislature.

Article 212 of the Constitution of India:-Courts not to inquire into the proceedings in the legislature:-

(1).The validity of a state shall not be called in question on the ground of any alleged irregularity of procedure.

(2). No officer or member of the legislature of a state in whom powers are vested by or under this constitution for regulating procedure or the conduct of business, or for maintaining order, in the legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of these power.

Article 246 of the constitution of India: - subject matter of laws made by Parliament and by the legislature of the States:-

(1). Notwithstanding anything in calluses (2) and (3), parliament has  exclusive power to make laws with respect to any of the matters enumerated in list in the seventh schedule.

(2). Notwithstanding anything in clause (3), Parliament, and subject to clause(1) the legislature of any state also, have power to make laws with respect to any of the matters enumerated in list third in the seventh schedule.

(3). Subject to clause (1) and (2), the legislature of any state has exclusive power to make laws for such state or any part thereof with respect to any of the matters enumerated in list second in the seventh schedule.

(4). Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a state notwithstating that such matter enumerated in the state List.

Article 361 of the Constitution of India: - Protection of President and Governors and Rajpramukhs:-

(1). The president, or the Governor or Rajpramukh of a state, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties.

  Provided that the conduct of the president may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation or a charge under Article 61.

  Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the government of the Government of a state.

(2). No criminal proceeding whatsoever shall be instituted or continued against the President, or the Government of a state, in any court, in any court during his term of office.

(3). No process for the arrest or imprisonment of the president, or the governor of a state, shall issue from any court during his term of office.

(4). No civil proceeding in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of his office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as president, or as the Governor of such State, until the expiration of two months next after notice in writing has been delivered to the president or the governor as the case may be, or left at his office stating the nature of the proceeding, the cause of action therefore, the name, description and the place of residence of the party by whom such proceeding are to be instituted and the relief which he claims.

Quashing of F.I.R.

The High Court may receive petitions under the following provisions to stop further action:-

A writ petition under Article 226 of the constitution of India as follows:-

Writ of mandamus under Article 226 of the constitution of India

Writ of habeas corpus for setting the accused at liberty when the accused is under the custody on the basis of F.I.R

 A petition under the Inherent power of high court under section 482 of the code of criminal procedure 1973

 Quashing of F.I.R under Article 226:-

The power of quashing the criminal proceedings has to be sparingly and circumspection and there too in the rare of the rarest cases and the court cannot be justified in embarking upon an inquiry as to the liability or genionniess or otherwise of allegations made in the fir or complaint and the extraordinary and inherent power of the court don not confer an arbitretory jurisdiction on the court to act according to its whim or caprice. However the court under its inherent powers can be neither intervenes at an uncalled for stage nor it can “soft-pedal the course of justice” at the crucial stage of the investigation/proceedings (State of west Bengal and others Vs Swapn Kumar Guha and others AIR 1988 SC)

In PEPSIFOOD LIMTED VS SPECIEAL JUDICIAL MAZISTRATE AND OTHERS AIR 1998

Similar issue was considered and the Hon’ble Apex Court held that the criminal law cannot be set into motion as a matter of course. The provision of Articles 226,227 of the constitution of India and Section 482 of the code of criminal procedure or a device to advance justice and not to frustrate it. The power of judicial review is descriptiory however it must be exercised to prevent the miscarriage of justice and for correcting some grave errors that might be committed by the Subordinate court as it is the duty of the high court to prevent the abuse of process of law by the inferior courts and to see that esteem of administration of justice remains clean and pure. However, there are no limits of powers of the court but more the power more due care and caution is to be exercised invoking these powers. The apex court held that nomenclature under which the petition is filled is totally irrelevant and does not prevent the courts from exerting its jurisdiction which otherwise it possesses unless there is a special procedure prescribed which procedure is mandatory.

State of Haryana and others

v.

 Bhajan Lal AIR 1992 SC 604

The Hon’ble Supreme Court laid down the guideline for exercising the Inherent power as under:-

Where the allegations made in the first information report or the complaint, even if they are taken at their place value and accepted in their entirely do not prima facie constitute any offence or make out the case against the accused.

Where the allegation made in the first information report and other materials, if any, accompanying the Fir do not disclose the cognizable offence, justifying and investigation by the police officer under Sec. 156 clause(1) of the court except under an order of magistrate within the purview of the Sec 155(2) of the code of criminal procedure.

 Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out as case against the accused.

Where, the allegation in the FIR do not constitute a cognizable offence but constitute only non-cognizable offence, no investigation is permitted by as police officer without an order of magistrate has contemplated under Sec. 155(2) of the code of criminal procedure.

Where the allegation made in the Fir or complaint are so observed and inherently in probable on the basis of which no prudent person can ever adjust conclusion that there is sufficient ground for proceedings against the accused.

 Where there is an express bar engrafted in any of the provision of the code or the concerned Act (under which criminal proceeding is instituted) to the institution and continuance of proceeding and/or where there is a specific provision the code or concerned Act, providing efficacious redress for the grievance of aggrieved party.

Where the criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and the view to spite him due to private and personal grudge.

In Ganesh Narayan Hegde v. S. Bangarappa 7 Ors., (1995) 4 SCC 41, an earlier decision Mrs. Dhanlakshmi v. R. Prasanna Kumar & Ors., AIR 1990 SC 494, has been cited with approval for the proposition that there should be no undue interference by the High Court as no meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at this stage. The High Court should interfere to abuse of process of court or that the interest of justice otherwise call for quashing of the charges.

 In Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque & Ors., AIR 2005 SC 9,

 The Hon’ble Apex Court held that criminal proceedings can be quashed but such power is to be exercised sparingly, carefully with caution with and only when such exercise is justified by the tests specifically laid down in the statutory provision itself. It is to be exercised ex debito justitiae to do real and substantial justice for administration of which alone Courts exists. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. A case where the FIR or the complaint does not disclose any offence or is frivolous, vexatious or oppressive, the proceedings can be quashed. It is, however, not necessary that at this stage there should be meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. The allegations have to be read as a

State of West bengal v. Narayan K. Patodia, AIR (2000) SC 1405

 “The Apex Court observed that lodging an FIR is only the first step of investigation by the police. Premature quashing of the FIR at the initial stage instead of serving the cause of justice harmed it. The inherent powers of the High Court are reserved to be used to give effect to any orders under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

Undoubtedly, the enjoyment of a good reputation is a personal right and, thus, dignity of a person is to be protected as guaranteed under Article 21 of the Constitution of India. Filing FIR and visit by the police for arrest of a person on the basis of false and frivolous FIR/complaint, may, result in incalculable harm to his reputation and self-respect. Such a right has been recognised by the Hon’ble Apex court in Joginder Kumar’s case and Smt. Kiran Bedi & Anr. Vs. Committee of Enquiry & Anr., AIR 1989 SC 714 to be a personal right. However, the law of arrest is one of the balancing individual rights, liberties and privileges, on the one hand and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of doing which comes first- the criminals or society, the law violator or the law abider.

In D.K. Basu Vs. State of West Bengal, (1997) 1 SCC 416, the Hon’ble Apex Court held that when the crime goes unpunished, the criminals are encouraged and the society suffers. The victim of crime or his kith and kin become frustrated and contempt for law develops. The court further observed as under:-

 “………..if we lay too much emphasis on protection of their fundamental rights and human rights, such criminals may go scot free without exposing any element or iota of criminality, the crime would go unpunished and in the ultimate analysis, the society would suffer. The concern is genuine and the problem is real. To deal with such a situation, a balanced approach is needed to meet the ends of justice. This is all the more so, in view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who involved in the crime.”

Quashing of FIR /Complaint/ charge sheet under section 482 of the code of criminal procedure 1973- saving of inherent power of the High Court:

Nothing in this code shall be deemed to limit or effect the inherent powers of the High court to make such orders as may be necessary to give effect to any order this code, OR to prevent abode of the process of any court, or otherwise to secure the end of justice.

The High court must be satisfied either of the following conditions:-

An order passed under the code would be rendered ineffective; or

The process of any court would be abused; or

The end of justice would not be secured.

Explanation:-

The Police officer/ investigating machinery is under obligation to disclose an offence; an investigation of an offence must be necessarily followed in the interests of justice. If, however no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in necessary harassment to a victim. In relating to, the power of High Court to quash a case, or defined in the case of

State of Haryana v. Bhajan Lal AIR 1992 SC 604

In this case the Hon’ble as stated that if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudices to the personal liberty and also property of the citizens, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extend of the breach and pass appropriate as may be called for without leaving the citizens to the mercy of the police authority since human dignity is a dear value of the constitution.

In the same judgement the Hon’ble Supreme Court also states that the high court is entitled to exercise its inherent jurisdiction for quashing the criminal proceeding or an F.I.R. when the allegation made in the same do not disclose the commission of an offence and it depend upon the facts and circumstances of each particular case. The supreme court pointed out certain category of cases by way of illustrations wherein in the inherent power under section 482 of the code of criminal procedure can be exercised either to prevent abuse of the process of any court or otherwise to secure the end of justice.

Here are the categories of the cases in which the High court can its powers to quash a petition:-

Where the allegations made in the first information report or the complaint, even if they are taken at their place value and accepted in their entirely do not prima facei constitute any offence or make out the case against the accused.

Where the allegation made in the first information report and other materials, if any, accompanying the Fir do not disclose the cognizable offence, justifying and investigation by the police officer under sec. 156 cause 1 of the court except under an order of magistrate within the purview of the sec 155(2) of the code of criminal procedure.

 Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out as case against the accused.

Where, the allegation in the FIR do not constitute a cognizable offence but constitute only non-cognizable offence, no investigation is permitted by as police officer without an order of magistrate has contemplated under sec. 155(2) of the code of criminal procedure.

Where the allegation made in the Fir or complaint are so observed and inherently in probable on the basis of which no prudent person can ever adjust conclusion that there is sufficient ground for proceedings against the accused.

 Where there is an express bar engrafted in any of the provision of the code or the concerned Act (under which criminal proceeding is instituted) to the institution and continuance of proceeding and/or where there is a specific provision the code or concerned Act, providing efficacious redress for the grievance of aggrieved party.

Where the criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and the view to spite him due to private and personal grudge.

Can First Information Report or Complaint or Charge Sheet before taking cognizance be quashed by High Court under Section 482 of the code of criminal procedure:-

Gangaram kandaram v. Sunder chikha Amin, 2000(1) ALD (Cr.L.J) 625(FB)

A full bench of this Court observed that “the complaint cannot be treated as a charge-sheet. Based on the complaint, FIRs were issued. Unless further investigation is made and charge-sheet submitted, it is difficult to come to a definite conclusion. The power under Article 226 of the constitution of India. Ought not to be invoked in such cases......unless the investigation is completed, it cannot be presumed that the complaint does not make out offence........it would be wholly improper to exercise jurisdiction under Article 226 even before the investigation is completed and decide these partly legal and partly factual question”. An observation is also made by the full Bench that Section 482 of Cr.P.C cannot be invoked in case where no charge-sheet has been field.

     An analysis of the decision referred to herein above and upon a true and fair construction of the provisions (Sections) 154, 155, 156, 157, 158, 159, 173, 190, and 200 of the Code of Criminal Procedure, 1973, the following propositions emerge.

There is a clear cut distinction between the information relating to the commission of a cognizable given orally or in writing to an officer-in-charge of a police station and cognizance offence  by a  Magistrate, upon receiving a complaint of facts which constitute offence. Such taking of cognizance may be upon a police report of such facts; or upon information received from any other person other than a police officer. The information relating to commission of a cognizable offence is bound to be entered by an officer-in-charge of a police station in the prescribed book. Such are called first information report. Person lodging such information relating to commission of a cognizable offence is an informant, whereas the complaint is the one constituting facts revealing commission of an offence. In the later case, it is called the complaint and if it is filed by an individual other than a police officer, it will be known as private complaint.

Every officer-in-charge of a police station is empowered to investigate any cognizable case without the order of a Magistrate and the proceedings in any such case shall not, at any stage, be called in question on the ground that the case was one which such officer was not empowered to investigate.

 It is also clear that no police officer shall investigate a non-cognizable case without the order of the Magistrate having power to try such cases. The Magistrate is empowered to take cognizance of any offence in exercise of power under section 190 of the code.

  An Officer-in-charge of a police station, upon satisfying himself that there is reason to suspect the commission of an offence which he is empowered under section 156 of the Code to investigate, he shall forthwith proceed to investigate the facts and circumstances of the case, if necessary, to make measures for discovery and arrest of the offender.

The power conferred upon the police officer is coupled with duties. Discretion is, however, given to the Police officer not to investigate the case, it is appears to the officer that there is no sufficient ground for entering on investigation, but that statutory power and discretion is to be exercised fairly and reasonably and in accordance with law. In either case, he is bound to submit a report to the Magistrate under section 158 of the Code. The Magistrate, upon receiving the said report, may direct an investigation or hold a preliminary a preliminary inquiry into the report or otherwise dispose of the same in the manner provided in the Code. It is clear that the jurisdiction where the police officer came to the conclusion that there is no sufficient ground for entering on investigation. This is a limited power conferred upon a Magistrate to compel the police officer to proceed with the investigation. There is no power as such conferred under the code upon any court to otherwise interfere with the process of investigation. The investigating agency is clothed with jurisdiction and freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. The jurisdiction of an investigating agency cannot be interdicted by any court, as no such power is conferred upon any court by the Code. Investigation of an offence is the area exclusively reserved for n officer-in-charge of a police station and once that is completed and the officer submits the report before the Magistrate to take the cognizance of the offence under section 190 of the Code, the duty of the police officer comes to an end. Thereafter, it is within the exclusive domain of the Magistrate for further proceedings. It is to stifle or impinge upon the proceedings in the investigation and it is only in a case wherein the police officer decided not to investigate the offence, the concerned magistrate may intervene and either direct an investigation or in the alternative, he himself can proceed or depute any Magistrate subordinate to him proceed to hold preliminary inquiry or otherwise dispose of the case in the manner provided in the Code.

 It is thus clear that an officer-in-charge of a police station is bound to record the information relating to the commission of a cognizable offence in the prescribed book. Discretion is, however, given to him not to proceed with the investigation, if he has reason to believe that there is no sufficient ground for entering on investigation. Of course, it is power coupled with the duty which is required to be exercised fairly, reasonably and in accordance with law. However, the condition precedent to the commencement of investigation is the existence of reason to suspect the commission of a cognizable offence which has to be, prima facie, disclosed by the allegations made in the FIR.

 Charge-sheet is the one which is filed into the Court by the Police after investigation of the case in accordance with the provisions of the Code. It is the conclusion and final opinion of the Police officer investigating the case.

 Thus there is a clear distinction between the FIR and the complaint. There is also a clear distinction between the FIR; complaint and the charge-sheet. They are not one and the same.

 The FIR cannot be treated as a proceeding pending on the file of any Court as such. Nor can it be equated to that of a process of any court. Even the complaint, unless taken cognizance of by a Magistrate, is not a proceeding on the file of any Court. The first information report registered on reference by a Magistrate after receiving the complaint is also not a proceeding on the file of any court. Such FIR also stands on the same footing as that of the FIR registered by a police officer, upon receiving the information relating to commission of a cognizable offence.

Since no power is conferred upon any Court under any of the provisions of the code, there is no power available in exercise of which this court can quash the registration of the first information report itself relating to the commission of cognizable offence by a police officer-in-charge of the police station. Likewise, there is no provision which empower any Court under the code to interfere with the investigation of any cognizable offence by an officer-in-charge of the police station to investigate the case if the police officer failed to exercise his discretion properly and refused to investigate into a cognizable offence.

For the aforesaid very reasons, even a complaint, before it is taken cognizance of by the Magistrate, it becomes the proceedings on the file of the court.

Charge-sheet is nothing but a report submitted by the Police office after the investigation into a cognizable case. The report even after its submission into the Court does not acquire the character of any judicial proceeding. It is only an administrative act by a police officer in discharge of statutory duty imposed upon him to investigate into commission of a cognizable case. But once it is taken cognizance by the Magistrate, it becomes a proceeding on the file of the court and from that stage, the jurisdiction of a police officer investigating the case comes to an end and the process of Court is set in motion. Therefore, the charge sheet itself cannot be quashed by this court is set in motion. Therefore, charge sheet itself cannot be quashed by this court in exercise of any power under the code including the inherent power under section 482 of the code of criminal procedure.

                    In the circumstances, this Court is of the clear opinion that neither the

              First neither information report nor complaint before it is taken cognizance by the Magistrate nor charge-sheet which is nothing but the result of the investigation can be quashed by this court in exercise of the jurisdiction under section 482 of the code of criminal procedure.

                      The court in appropriate cases, may interfere and quash the proceedings in a criminal case after the case is taken cognizance by the Magistrate and at any stage therefore to prevent abuse of process of any court or otherwise to secure the end of justice.

          This Court in appropriate cases, may quash the complaint in exercise of its jurisdiction under section 482 of  Cr.P.C in order to prevent the abuse of process of the court or otherwise to secure the end of justice, after it is taken cognizance by the magistrate either upon a police report or upon an information received from any person other than a police officer.

      It is well settled that in a society governed by Rule of Law, no absolute power or discretion is conferred upon any statutory authority which includes the police officer exercising the jurisdiction under the code of criminal procedure. The power conferred upon a police officer relating to entering information of commission of cognizable offence and power to investigate cognizable offence and power to investigate cognizable offence and the procedure of investigation, is structured by the provision of the code referred to hereinabove. The does not give the police officer any carte blanche without legal bonds either in the province of investigation or in the area relating to the registration of a case. The action of the police officer even in the field of investigation is not wholly immune from judicial review. It is well settled that no information could be registered by a police officer-in-charge of a police station, unless such information reveals commission of cognizable offence. No police officer shall proceed with the investigation unless he has reason to suspect the commission of an offence. No police officer can refuse to investigate into the commission of cognizable offence unless there is sufficient ground for not entering into an investigation. Therefore, no unfettered discretion is conferred upon the police officer to investigate or not to investigate into a cognizable offence, the power therefore, be exercised on the condition of which it is granted by the code.

       In this case, it is not necessary to reiterate as to on what grounds the decision, action or inaction of police officer could be judicially reviewed by this court in exercise of its jurisdiction under Article 226 of the constitution of India. The principles are too well known and the parameters are well defined in Bhajan Lal’s case.

       For all aforesaid reasons, the first information report registered against the petitioners under sections 420 of Indian penal code cannot be quashed by this court in the petition filled under section 482 of the code of criminal procedure 1973.

Quashing of FIR set aside:-

On 23-7-1996, S, a girl, gave a vivid account as to how she was exploited and sexually harassed by the accused person under threat, coercion, force and allurement. On the basis of her statement, a case was registered in the Vanitha Police station, Ernakulum. The accused filed writ petitions in the Kerala High Court praying that the criminal proceedings against them should be quashed since the allegation levelled against them did not make out any offence. The High Court held that, S, who was over 16 years of age, led an immoral life and that she was not threatened with death or hurt. The High Court also held that her consent had not been obtained by putting her in fear of death or hurt and it was she who exercised her discretion to have sexual intercourse with the accused persons. The High Court accordingly quashed the criminal proceedings against the accused petitioners. Aggrieved by this S and the State appeal to the Supreme Court.

     The Supreme Court held:

The High Court committed gross error in embarking upon an injury by shifting of evidence and exceeded its jurisdiction in coming to a conclusion with regard to S’s age and that she willingly had sexual intercourse with the accused.

The case had already been registered under several provision of the Indian penal code as well as under the Immoral traffic Act, 1956. Hence, the scuttling of investigation by quashing S’s FIR was uncalled for.

The High Court’s ruling was accordingly, set aside and direction was given to the investigation agency to proceed with and conclude the investigation as ex peditiously as possible in accordance with law. State of Kerala v. O.C.Kuttan & anr.(1999) 2 SCC 651