Rajasthan High Court
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HIGH Court OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 7343/2024
CNR: RJHC020925772024 | URN: CRLMP / 15032U / 2024

Vivek Sharma S/o Shri Satyapal Sharma, Aged About 43 Years, R/o B-568, Murlipura Scheme, Jaipur, Rajasthan 302039.

----Petitioner/Complainant

Versus

1. State Of Rajasthan, Through P.P.
2. Director General, Anti Corrution Beaureau, Rajasthan.
3. Bajrang Singh, Additional Superintendent Of Police, Anti Corrution Beaureau, Rajasthan.
4. Sachin, Deputy Superintendent Of Police, Anti Corruption Beaureau, Rajasthan.
5. Raghuveer Sharan, Police Inspector, Anti Corrution Beaureau, Rajasthan.

----Respondents

For Petitioner(s)	:	Mr. Mohit Khandelwal with Dr. Pranav Sharma, Mr. Keshav Dadhich and Mr. Aditya Gupta
For Respondent(s)	:	Mr. Vijay Singh Yadav, PP with Mr. Onkar Singh Rajpurohit, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

05/10/2026

1. The instant criminal miscellaneous petition is preferred by the petitioner/complainant under Section 528 of BNSS for quashing of closure report No. 236 dated 1st August 2023 filed by the respondent No.4 on a complaint filed by petitioner under the Prevention of Corruption Act and further fair and impartial investigation by the Central Bureau of Investigation or any other

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specialized investigating agency upon lodging of FIR on the complaint of the petitioner.

2. Learned counsel for the petitioner while placing reliance judgments in case of **Mahabir Prasad Verma Vs. Dr. Surender Kaur : (1982) 2 SCC 258, State of Karnataka Vs. T.N. Sudhakar Reddy: 2025 SCC OnLine SC 382, Pradeep Nirankaranath Sharma Vs. State of Gujarat & Ors. : (2025) 4 SCC 818 and Pradeep Nirankaranath Sharma Vs. State of Gujarat & Ors. : 2024 SCC OnLine Guj 767**, has submitted that in 2009, when the complainant was serving as Chief Manager of the State Bank of India Branch Bhiwadi, he detected a fraud involving a fake housing loan of ₹51,00,000/-, which has been sanctioned to Mr. Supratik Mitra in September 2015, by the then SBI officials posted in the Branch. He also submitted that the complainant has filed a complaint on 15th November 2022 on the ground that certain senior officials being annoyed from the detection of fraud has lodged FIR No. 524/2020 dated 09.09.2020 at police station Bhiwadi against him and on this ground the petitioner got suspended but after investigation, when police has submitted a closure report, then only the suspension was revoked, but the petitioner was harassed at the instance of senior officers of the Bank and in order to drop all the charges against the petitioner ₹40,00,000/- has been demanded by the senior bank officers from the petitioner and a complaint of the same has been filed to the CVC, CVO and Chairman of SBI. He also submitted that the complainant has recorded the version of said officers and submitted the complaint with sufficient proof to the ACB. He also submitted that a verification process was conducted by the Deputy

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Superintendent of ACB and in verification the facts were established and pursuant to said fact, the ACB has organized a trap. He further submitted that the ACB has found that there was a difference in the voice and without any reason, with connivance the accused persons, the ACB has not only declined registration of criminal case as FIR but also dropped the proceedings against the accused. He further submitted that rather acting against corrupt official, the ACB has proposed a criminal complaint against the present petitioner and same is sufficient to show that the ACB is trying to protect and shield higher officials of SBI. Learned counsel has further submitted that SBI is a Central Government Bank, therefore, it is necessary that the CBI may be directed to register a case and investigate the matter.

3. Aforesaid contentions were opposed by learned Public Prosecutor and he submitted a report received from Additional SP, ACB, Jaipur and also submitted that the ACB has declined to register an FIR on the complaint of complainant as the facts were found to be false. He also expressed that he has nothing to say in case the investigation is handed over to the CBI.

4. Heard learned counsel for the petitioner and learned Public Prosecutor. Perused the material placed on the Court.

5. In case of **State of Karnataka Vs. T.N. Sudhakar Reddy** (supra), Hon'ble Supreme Court while considering the judgment in case of **Lalita Kumari versus Government of Uttar Pradesh : (2014) 2 SCC 1**, has observed as under:-

> "17. However, the authoritative pronouncement of law in respect of registration of the FIR emerges from the decision of the Constitution Bench in Lalita Kumari (supra) wherein, the issue before the Court was whether a police officer is obligated to register an FIR

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upon receiving information regarding the commission of a cognizable offence under Section 154 of the CrPC (corresponding Section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023) or whether it is essential to conduct a preliminary inquiry to verify the information before registration of the FIR. This Court held that under Section 154 of the CrPC, a police officer is required to register an FIR when the information received by him discloses the commission of a cognizable offence, without undertaking a preliminary inquiry. However, the Court was also cognizant of the possible misuse of the criminal law resulting in the registration of frivolous FIRs. To address this concern, it outlined specific 'exceptions' to the general rule, which mandates the immediate registration of FIR upon receiving information about a cognizable offence. The Constitution Bench in Lalita Kumari (supra) held: -

"119. **Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory.** However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. **But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith.** Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. **At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence.** If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

(emphasis supplied)

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18. The following guidelines were laid down by the Constitution Bench governing the issues:-

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

120.1. The 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.

120.2. If the information received does not disclose a cognizable offence but indicates the Criminal Appeal No. 5001 of 2024 necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. 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.

120.4. 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.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. **As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:**

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) **Corruption cases**

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(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without Criminal Appeal No. 5001 of 2024 satisfactorily explaining the reasons for delay.

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

(emphasis supplied)

19. It was held that a preliminary inquiry is not mandatory if the information received by the police officer/Investigating Agency discloses the commission of a cognizable offence. However, if the preliminary inquiry is conducted, its scope is limited to determine whether the information prima facie reveals commission of a cognizable offence and does not extend to verifying its truthfulness. The necessity of a preliminary inquiry depends on the specific facts and circumstances of each case. For instance, corruption cases fall into a category where a preliminary inquiry 'may be made'.

23. A three-judge bench of this Court in *Thommandru Hannah Vijayalakshmi* (supra) extensively discussed the judicial precedents and legal principles governing the requirement of conducting a preliminary inquiry before registration of an FIR. The Court affirmed the view taken by the two-judge Bench in Managipet (supra), holding that a preliminary inquiry may not be necessary if the officer recording the FIR possesses relevant information which discloses the commission of a cognizable offence. The relevant extracts from *Thommandru Hannah Vijayalakshmi* (supra) are reproduced herein below: -

"**32. [..]... we hold that since the institution of a Preliminary inquiry in cases of corruption is not made mandatory before the registration of an FIR under the CrPC, PC Act or even the CBI Manual, for this Court to issue a direction to that affect will be tantamount to stepping into the legislative domain.**

39. **The precedents of this Court and the provisions of the CBI Manual make it abundantly**

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clear that a preliminary inquiry is not mandatory in all cases which involve allegations of corruption. The decision of the Constitution Bench in [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] holds that if the information received discloses the commission of a cognizable offence at the outset, no preliminary inquiry would be required. It also clarified that the scope of a preliminary inquiry is not to check the veracity of the information received, but only to scrutinise whether it discloses the commission of a cognizable offence. Similarly, Para 9.1 of the CBI Manual notes that a preliminary inquiry is required only if the information (whether verified or unverified) does not disclose the commission of a cognizable offence. **Even when a preliminary inquiry is initiated, it has to stop as soon as the officer ascertains that enough material has been collected which discloses the commission of a cognizable offence. A similar conclusion has been reached by a two-Judge Bench in** Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] as well. Hence, the proposition that a preliminary inquiry is mandatory is plainly contrary to law, for it is not only contrary to the decision of the Constitution Bench in [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] but would also tear apart the framework created by the CBI Manual."

(emphasis supplied)"

6. Aforementioned principle clearly indicate that even in case of offence relating to the Prevention of Corruption Act, a preliminary inquiry is not mandatory, if the information received by the police officer/investigating agency discloses the commission of a cognizable offence, however, if a preliminary inquiry is conducted, its scope is limited to determine whether the information prima facie reveals commission of a cognizable offence and does not extend to verifying its truthfulness.

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7. Again, in case of **Pradeep Nirankaranath Sharma Vs. State of Gujarat & Ors.** (supra), Hon'ble Supreme Court has considered Section 154 of CrPC in relation to scope of preliminary inquiry and observed as under:-

> "13. We have carefully considered the submissions of the appellant and perused the records. The legal position regarding the registration of FIRs in cases of cognizable offences is well settled. This Court, in Lalita Kumari, has categorically held that the registration of an FIR is mandatory under Section 154 CrPC if the information discloses the commission of a cognizable offence. The relevant paragraphs from the judgment of this Court in Lalita Kumari (supra) are reproduced below:
>
> > "114. It is true that a delicate balance has to be maintained between the interest of the society and protecting the liberty of an individual. As already discussed above, there are already sufficient safeguards provided in the Code which duly protect the liberty of an individual in case of registration of false FIR. At the same time, Section 154 was drafted keeping in mind the interest of the victim and the society. Therefore, we are of the cogent view that mandatory registration of FIRs under Section 154 of the Code will not be in contravention of Article 21 of the Constitution as purported by various counsel.
> >
> > Exceptions
> >
> > 115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.
> >
> > Conclusion/Directions
> >
> > 120. In view of the aforesaid discussion, we hold:
> >
> > 120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and

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no preliminary inquiry is permissible in such a situation.

120.2. 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.

120.3. 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."

(Emphasis supplied)

14. The scope of a preliminary inquiry, as clarified in the said judgment, is limited to situations where the information received does not prima facie disclose a cognizable offence but requires verification. However, in cases where the information clearly discloses a cognizable offence, the police have no discretion to conduct a preliminary inquiry before registering an FIR. The decision in Lalita Kumari (supra) does not create an absolute rule that a preliminary inquiry must be conducted in every case before the registration of an FIR. Rather, it reaffirms the settled principle that the police authorities are obligated to register an FIR when the information received prima facie discloses a cognizable offence."

8. In case of **Mahabir Prasad Verma Vs. Dr. Surender Kaur** (supra), Hon'ble Supreme Court has considered Section 7 of the Indian Evidence Act and held that tap recorded conversation can only be relied upon as corroborative evidence of conversation deposed by any of the party to the conversation and in absence of evidence of any such conversation, the tap recorded conversation is indeed no proper evidence and cannot be relied upon. The observation is reproduced as under:-

"22. Before we proceed to consider the main question involved in this appeal, namely, whether the existence of sub-tenants in the premises after

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> the expiry of the term of contractual tenancy, necessarily renders the subletting illegal and furnishes a ground for eviction within the meaning of Section 13(2)(ii)(a) of the Act, we propose to dispose of the other question as to whether there was any subletting by the tenant in the month of May. On a careful consideration of the report of the Rent Controller on the issue remitted to him by this Court, we are of the opinion that the finding of the Rent Controller that the tenant had sub-let one bed room in the flat portion and the barsati portion in the month of May, 1974 is not justified, as there was no proper evidence or material before the Rent Controller to come to the said finding. This finding of the Rent Controller is based essentially on the tape-recorded conversation between the tenant the husband of the landlady. Tape recorded conversation can only be relied upon as corroborative evidence of conversation deposed by any of the parties to the conversation and in the absence of evidence of any such conversation, the tape recorded conversation is indeed no proper evidence and cannot be relied upon. In the instant case, there was no evidence of any such conversation between the tenant and the husband of the landlady; and in the absence of any such conversation, the tape-recorded conversation could be no proper evidence. We may further add that the tape-recorded conversation, even if the same could be relied upon, would be of no particular help to the landlady, as the tape-recorded conversation clearly indicates that the landlady on the expiry of the term of tenancy had not merely accepted the rent but had manifested the intention of continuing the tenancy, notwithstanding the expiry of the terms; and the tape recorded conversation goes to show that the husband of the landlady was asking the tenant to induct suitable persons as sub-tenants under him."

9. Now comes to the facts of the case. The material on record clearly indicate that the petitioner-complainant has lodged a complaint and preliminary complaint No.10/2023 was registered. Pursuant to said complaint, a verification was conducted and after

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verification, when the substance was found as true, then a trap was planned. The complaint was for demand of bribe from the complainant (petitioner) by the named officers of the State Bank of India. The report dated 1st August 2023 (Annexure-10) submitted by Deputy SP, ACB to Additional SP, ACB also indicate that from the verification proceedings, the substance in the complaint made by petitioner-complainant were found as true and trap was planned accordingly. It indicate that a preliminary inquiry was already conducted and now comes a question whether after trap can the matter be closed based upon the findings in preliminary inquiry, without registration of FIR.

10. The material as placed on record indicate that a Constable named as Hira Lal has submitted a note sheet to doubt the whereabouts of the complainant and thereafter one Deputy Director (Prosecution-I) has opined that it is necessary to procure voice sample of Avadesh Pratap Singh (accused). This also indicate that the then DG on 21st February 2023 has also directed for registration of PE. The note sheet as referred during course of argument also indicate that instead of registration of FIR, a PE was registered and a closure report is proposed alongwith a complaint under Sections 182 and 211 of IPC against the petitioner.

11. The principle of law as discussed hereinabove clearly indicate that after the verification of complaint, the ACB was under an obligation to register an FIR and undertake investigation pursuant to FIR but not in PE. This indicate that the ACB has made efforts to shield the proposed accused, therefore, considering the principle of law, it is necessary that the FIR be registered and a

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full-fledged investigation be undertaken. The matter cannot be closed on basis of a report of PE.

12. The material as placed on record indicate that the ACB has not registered FIR though it has entertained the complaint of the petitioner and considering the facts and circumstances of the case and also the settled law, the ACB is under a legal obligation to register a case under the Prevention of Corruption Act against the erring officials of the Bank, therefore, we are not inclined to direct and hand over the investigation by the Central Bureau of Investigation (CBI). Since the complaint is made to the ACB, and PE has been conducted by ACB therefore it is appropriate that the investigation be carried by the ACB. Moreover, the ends of justice will be served with direction for registration of FIR with fair and impartial investigation.

13. In view of discussion made hereinabove, the criminal miscellaneous petition under Section 528 of BNSS is hereby allowed and findings recorded in PE No. 10/2023 dated 24th February 2023 is set aside and quashed alongwith recommendation to prosecute the petitioner-complainant under Sections 182/211 of IPC. The ACB is directed to register FIR under Section 175 of BNSS and undertake a full-fledged investigation, and conduct free, fair and impartial investigation on the basis of allegations made by petitioner-complainant.

14. Needless to say that no observation made by this Court be treated prejudicial to any of the party, including proposed accused, or those who are named by the complainant as an accused. The investigating agency is free to investigate the matter and submit

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its findings in accordance with law to the Court of competent jurisdiction.

15. Stay application and miscellaneous application, if any, stands disposed.

(ASHOK KUMAR JAIN),J

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