

W.P. No.6398/2015**23.09.2015**

Shri Vijay Assudani, learned Counsel for the petitioner.

Shri Pushyamitra Bhargav, learned Dy. Advocate General for the respondent/State.

This petition has been filed under Article 226 of Constitution of India.

Being aggrieved by the facts that the respondent No.3 Station Officer, Police Station Vijay Nagar, Indore has refused to register the FIR, despite information and complaint dated 13.07.2015 lodged with him and no action has been taken in this regard, whereas notices were issued on the respondents No. 1 to 3 on 24.08.2015.

Counsel for the petitioners prayed that mandatory duty is cast upon the respondents to register the FIR for cognizable offence brought to their notices. Besides the Apex Court in several recent judgments has laid down that in such circumstances the police authorities are bound to register the FIR and in the present case appropriate direction be issued to the respondents.

Learned Deputy Advocate General, Counsel for the respondent/State has however urged the facts that the dispute was basically civil in nature and investigation is not complete and hence the FIR has not been registered. He vehemently urged that the matter pertains to transfer of shares in share holding in the company by the respondents as well as petitioner and the dispute arose subsequently between the parties. Counsel submitted that there was collusion between the respondents No. 4 to 9 and hence it was not proper to register the FIR at this stage. Moreover Counsel for the respondent also urged that since the dispute was civil in nature and the parties should approach the civil Court first for declaration of their title and rights.

Considering the above submissions, I find that however, as per direction by the Apex Court there was a mandatory duty cast on the Police Officers concerned for registering the FIR, primarily if prima facie cognizable offence is made out and there are allegations of forgery, cheating, breach of trust and embezzlement of company property in the present case and collusion seems to have already begun. However, there is no recording of the FIR under the

circumstances. The Apex Court in the matter of **Lalit Kumari vs. State of U.P. [2013 (5) MPHT, 380]** has also observed that :

86. The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice delivery system but also to ensure 'judicial oversight'. Section 157(1) deploys the word 'forthwith'. Thus, any information received under Section 154(1) or otherwise has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the knowledge of the investigating agency but also to the subordinate judiciary." Further

88. "The registration of FIR either on the basis of the information furnished by the informant under Section 154(1) of the Code or otherwise under Section 157(1) of the Code is obligatory."

In view of the above, I find that respondents cannot refuse to register the FIR and it is directed that respondent No.3 shall register the FIR but may not take any coercive action like arrest against the respondents No.4 to 9 without giving prior notices since fundamental rights of the respondents should not be infringed. The Apex Court in the matter of **Arnesh Kumar vs. State of Bihar & another** SLP (CRL.) No.9127/2013 decided on 02nd July, 2014 directed that :

“Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically.” relied on.

And hence under the circumstances the persons should not to be falsely implicated, if any legal process is to be instituted, proper notices to be given to other side.

With the aforesaid observations and directions the petition is partly allowed to the extent herein above indicated.

Cc. as per rules.

(Mrs. S.R. Waghmare)
Judge

Jyoti