

LOCAL ACTS REPORTER

2016

(e-Supplement)

Reports

SUPREME COURT OF INDIA

Before: Dipak Misra & C. Nagappan, JJ.

Writ Petition (Crl.) No.68 of 2016

Decided on: 07.09.2016

Youth Bar Association of India

Petitioner

Versus

Union of India and Others

Respondents

For Petitioner(s): Mr. Sanpreet Singh Ajmani, Adv., Mr. Manohar Pratap, Adv., Ms. Aastha Vashishth, Adv., Mr. Peeyush Bhatia, Adv., Mr. Saurabh Pandey, Adv., Ms. Anjali Chauhan, Adv., Mr. Kuldeep Rai, Adv., Mr. Aneesh Sharma, Adv., Mr. Ajit Sharma, Adv., Ms. Manju Jetley, AOR

For Respondent(s): Mr. Tushar Mehta, ASG, Ms. Manjula Gupta, Adv., Mr. Jayant Mohan, Adv., Mr. B.K. Prasad, Adv.,

State of Odisha: Mr. Uddayam Mukherjee, Adv., Mr. Krishnayan Sen, AOR
Mr. Atul Jha, Adv., Mr. Sandeep Jha, Adv., Mr. Dharmendra Kumar Sinha, AOR

Mr. G. Prakash, AOR, Mr. Joydeep Mazumdar, Adv., Mr. Parijat Sinha, AOR

Mr. Rohit Dutta, Adv., Ms. Reshmi Rea Sinha, Adv.,

State of Meghalaya: Mr. Ranjan Mukherjee, AOR, Mr. K.V. Khaslyngdoh, Adv., Mr. Subhro Sanyal, Adv.,

State of Mizoram: Mr. Shikhar Garg, Adv., Mr. Pragyan Sharma, Adv.,

State of Uttarakhand: Mr. Saurabh Trivedi, Adv., Mr. Aviral Saxena, Adv.,

State of Sikkim: Mr. Yusuf Khan, Adv., Ms. Aruna Mathur, Adv., Mr. Avneesh Arputham, Adv., Ms. Anuradha Arputham, Adv. for Arputham Aruna & Co.

Mr. Nalin Kohli, AAG, Mr. Ankit Roy, Adv., Mr. Rohit K. Singh, AOR

Mrs. Anil Katiyar, AOR

Mr. Saurabh Trivedi, AOR

Mr. Lagnesh Mishra, Adv., Mr. Parikshit Angadi, Adv., Mr. V. N. Raghupathy, AOR



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Ms. Hemantika Wahi, AOR, Ms. Puja Singh, Adv., Ms. Aagam Kaur, Adv.

Mr. Edward Belho, AAG, Ms. K. Enatoli Sema, Adv., Mr. Amit Kumar Singh, Adv., Mr. K. Luikang Michael, Adv., Mr. Elix Gangmei, Adv.

Mr. Anshuman Srivastav, Adv., Mr. Apoorva Bhumesha, Adv.

Mr. Sunil Fernandes, Adv., Mr. Nikesh Tyagi, Adv.

**Code of Criminal Procedure, 1973 (2 of 1974), Section 155, 207 --
First Information Report – Right of accused – Uploading on police
website – Directions issued:**

- (a) An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C.
- (b) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative/agent/parokar for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within twenty-four hours.
- (c) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the Court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the Cr.P.C.
- (d) The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.
- (e) The decision not to upload the copy of the FIR on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post. In case, the States where District Magistrate has a role, he may also assume the said authority. A decision taken by the concerned police officer or the District Magistrate shall be duly communicated to the concerned jurisdictional Magistrate.
- (f) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the FIR. The examples given with regard to the sensitive cases are absolutely illustrative and are not exhaustive.
- (g) If an FIR is not uploaded, needless to say, it shall not enure *per se* a ground to obtain the benefit under Section 438 of the Cr.P.C.



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- (h) In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person grieved by the said action, after disclosing his identity, can submit a representation to the Superintendent of Police or any person holding the equivalent post in the State. The Superintendent of Police shall constitute a committee of three officers which shall deal with the said grievance. As far as the Metropolitan cities are concerned, where Commissioner is there, if a representation is submitted to the Commissioner of Police who shall constitute a committee of three officers. The committee so constituted shall deal with the grievance within three days from the date of receipt of the representation and communicate it to the grieved person.
- (i) The competent authority referred to hereinabove shall constitute the committee, as directed herein-above, within eight weeks from today.
- (j) In cases wherein decisions have been taken not to give copies of the FIR regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative/parokar to file an application for grant of certified copy before the Court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned Court not beyond three days of the submission of the application.
- (k) The directions for uploading of FIR in the website of all the States shall be given effect from 15th November, 2016.

(Para 12)

Cases referred:

1. State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others (2010) 3 SCC 571.
2. Som Mittal vs. Government of Karnataka (2008) 3 SCC 753.
3. D.K. Basu vs. State of West Bengal AIR 1997 SC 610.
4. Court on its Own Motion through Mr. Ajay Chaudhary vs. State (2010) 175 DLT 110 (DB).

ORDER

Issue Rule.

2. In this writ petition, preferred under Article 32 of the Constitution of India, the petitioner, Youth Bar Association of India, has prayed for issue of a writ in the nature of mandamus, directing the Union of India and the States to upload each and every First Information Report registered in all the police stations within the territory of India in the official website of the police of all States, as early as possible, preferably within 24 hours from the time of registration.

3. After the writ petition was entertained by this Court, notices were issued to the Union of India and the States.

4. It is submitted by Mr. Sanpreet Singh Ajmani, learned counsel appearing for the petitioner that after registration of the First Information Report if it is uploaded in the official website of police, that will solve many unnecessary problems faced by the accused persons and their family members. Learned counsel would contend that when the criminal law is set in motion and liberty of an individual is at stake, he should have the information so that he can take necessary steps to protect his liberty. In this context, he

has drawn our attention to a passage from the judgment rendered in ***State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others* (2010) 3 SCC 571**, wherein it has been observed:-

“Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.”

5. In ***Som Mittal vs. Government of Karnataka* (2008) 3 SCC 753**, the Court has ruled thus:-

“The right to liberty under Article 21 of the Constitution is a valuable right, and hence should not be lightly interfered with. It was won by the people of Europe and America after tremendous historical struggles and sacrifices. One is reminded of Charles Dickens novel ‘A Tale of Two Cities’ in which Dr. Manette was incarcerated in the Bastille for 18 years on a mere lettre de cachet of a French aristocrat, although he was innocent.”

6. In ***D.K. Basu vs. State of West Bengal* AIR 1997 SC 610** it has been opined that:-

“The rights inherent in Articles 21 and 22(1) of the Constitution required to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal court of human rights jurisprudence. The answer, indeed, has to be an emphatic ‘No’. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicted undertrials, detainees and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.”

7. Learned counsel for the petitioner has also drawn our attention to a Division Bench decision of Delhi High Court rendered in ***Court on its Own Motion through Mr. Ajay Chaudhary vs. State* (2010) 175 DLT 110 (DB)**.

8. On being asked, Mr. Tushar Mehta, learned Additional Solicitor General appearing for the Union of India, has submitted that the directions issued by the High Court of Delhi can be applied with certain modifications. Learned Additional Solicitor General has also drawn our attention to paragraph 4 of the affidavit filed in an interlocutory application in the present writ petition. The said



paragraph reads as under:-

“4. That is it respectfully submitted that Central Government is supporting all the states to set up a mechanism for online filing of complaints under the protect 'Crime & Criminal Tracking Network & Systems (CCTNS)'.”

9. Mr. Saurabh Trivedi, learned counsel appearing for the State of Uttarakhand has submitted that the First Information Report in respect of certain offences which are registered, like sexual offences and the offences registered under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), may be difficult to be put on the website.

10. Mr. Ranjan Mukherjee, Mr. Shikhar Garg, and Mr. Yusuf Khan, learned counsel appearing for the States of Meghalaya, Mizoram and Sikkim respectively, have submitted that insurgency would be a sensitive matter and, that apart, it may not be possible on the part of the said States to upload the First Information Reports within 24 hours.

11. Mr. Uddym Mukherjee, learned counsel appearing for the State of Odisha has submitted that whether a matter is sensitive or not, the Court may say no reasons should be given because the allegation in the F.I.R. shall speak for itself.

12. Having heard learned counsel for the parties, we think it appropriate to record the requisite conclusions and, thereafter, proceed to issue the directions:-

- (a) An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C.
- (b) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative/agent/parokar for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within twenty-four hours.
- (c) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the Court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the Cr.P.C.
- (d) The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the FIR and file

appropriate application before the Court as per law for redressal of his grievances. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.

- (e) The decision not to upload the copy of the FIR on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post. In case, the States where District Magistrate has a role, he may also assume the said authority. A decision taken by the concerned police officer or the District Magistrate shall be duly communicated to the concerned jurisdictional Magistrate.
- (f) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the FIR. The examples given with regard to the sensitive cases are absolutely illustrative and are not exhaustive.
- (g) If an FIR is not uploaded, needless to say, it shall not enure *per se* a ground to obtain the benefit under Section 438 of the Cr.P.C.
- (h) In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person grieved by the said action, after disclosing his identity, can submit a representation to the Superintendent of Police or any person holding the equivalent post in the State. The Superintendent of Police shall constitute a committee of three officers which shall deal with the said grievance. As far as the Metropolitan cities are concerned, where Commissioner is there, if a representation is submitted to the Commissioner of Police who shall constitute a committee of three officers. The committee so constituted shall deal with the grievance within three days from the date of receipt of the representation and communicate it to the grieved person.
- (i) The competent authority referred to hereinabove shall constitute the committee, as directed herein-above, within eight weeks from today.
- (j) In cases wherein decisions have been taken not to give copies of the FIR regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative/parokar to file an application for grant of certified copy before the Court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned Court not beyond three days of the submission of the application.
- (k) The directions for uploading of FIR in the website of all the States shall be given effect from 15th November, 2016.



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13. Let a copy of this order be sent to all the Home Secretaries and the Director Generals of Police of the States concerned.

14. The writ petition is, accordingly, disposed of.

Order accordingly.



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