

JAYANTIBHAI LALUBHAI PATEL

VS

THE STATE OF GUJARAT

JUDGE: B C PATEL

*13/03/1992*

**JUDGMENT:**

The Order of the Court is as follows

Rule. Mr. Divetia, learned Addl. Public Prosecutor waives service of rule. At the request of learned counsel, application is heard today

Petitioner has filed these application as his application for obtaining certified copy of complaint was not entertained by Judicial Magistrate, First Class, Patan. The facts relevant for deciding these applications are as under

One complaint has been registered by Patan Taluka Police Station as C.R. No. 34 of 1992 on 25-2-92. Some allegations were made in the complaint against the petitioner and therefore petitioner wanted to approach this Court for obtaining orders under S. 438 of the Criminal Procedure Code (hereinafter referred to as the "Code"). With a view to present his case before this Court, the petitioner applied for certified copy of First Information Report (hereinafter referred to as FIR for brevity) referred to above and also deposited Rs. 10/ on 5-3-92. However, his application was rejected and order was passed to the effect that the amount be refunded and application may be filed. Being aggrieved by that order the petitioner has approached this Court

2. Mr. Nitin Amin, learned advocate for the petitioner submitted that when a document is tendered before the Court either in evidence or not, certified copy of that must be supplied to the concerned person. It was also pointed out to the trial Court that the same is required or producing before the High Court and it was submitted that for obtaining judicial orders from this Court, the trial Court ought to have supplied the certified copy of the FIR. Mr. Amin, learned advocate submitted that some of the Courts are supplying certified copy of FIR but some Courts are not supplying the same and that causes undue hardship to the litigants. He therefore submitted that whenever there is a bona fide requirement, the copy should be supplied and directions be given by this Court to that effect

3. Word "complaint" is defined in S. 2(d) of the Code which reads as under

"complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report

Explanation : A report made by a police officer in a case which discloses, after

investigating, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

Words "inquiry", " investigation"and" police report" are defined in S. 2(g), (h) and (r) respectively, which reads as under

(g) "inquiry" means every inquiry, other than a trial conducted under this Code by a Magistrate or Court;

(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;

(r) "police report" means a report forwarded by a police officer to a Magistrate under sub-sec. (2) of S. 173;

So far as information to the police and their powers to investigate are concerned, the same are found in chapter XII. S. 154 reads as under

154. (1). Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf;(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-sec. (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned, who if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence

Thus it is very clear that the information relating to the commission of a cognizable offence is required to be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. That is known as FIR. Under S. 157 of the Code it becomes the duty of the investigating officer to send forthwith a report to a Magistrate empowered to take cognizance of such offence. So far as documents are concerned, word "documents" is defined as under in the Indian Evidence Act

"Document" means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or

which may be used, for the purpose of recording that matter

Section 74 of the Indian Evidence Act refers to "Public documents", which reads as under

The following documents are public documents :- (1). Documents forming the acts or records of the acts -

(i) of the sovereign authority

(ii) of official bodies and Tribunals, and

(iii) of public officers, legislative, Judicial and executive, of any part of India or of the Commonwealth, or of a foreign country(2) Public records kept in any State of Private documents

Section 76 pertains to certified copies of public documents, which reads as under

Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal; and such copies so certified shall be called certified copies

Explanation

Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section

It was submitted that when a police officer records the FIR as referred to in the Code and when a copy of the same is forwarded to the Magistrate under provisions of the Code, it becomes a public document as defined under Indian Evidence Act. Therefore a submission was made that certified copy of a public document should be made available to a citizen on payment of legal fees as contemplated in S. 76 of the Indian Evidence Act

4. Mr. Amin drew my attention to a reported judgment of Calcutta High Court in the case of Panchanan Mondal v. The state reported in 1971 (77) CrLJ 875, wherein similar situation arose. There, an application for certified copy of the FIR was submitted before the Sub Divisional Magistrate who rejected the application and therefore petition was preferred by the accused. Considering the submissions, the Court directed that certified copy of the FIR be granted to the accused on payment of legal fees thereof. The Court held the FIR is a public document and the concerned party is entitled to certified copy thereof under Ss. 74(1)(iii) and 76 of the Evidence Act read with Criminal rules and the orders of the High Court, Calcutta. In the instant case, no rules have been brought to the

notice of this Court but suffice it to say that there exists a right of the accused to have a certified copy of the public document like FIR. If once it is held that a document is a public document and the accused has a right to inspect the same because there are allegations made against him, then certainly he is entitled to have inspection of the same and therefore certified copy ought to have been given on payment of legal fees. Learned Additional Public Prosecutor also could not deny the right of an applicant to have certified copy of the FIR. In the case referred to above, the Court also considered the ground of prejudice and held as under The question of prejudice of the accused on account of denial of the copy of the FIR at the earlier stage therefore assumes greater importance and on a proper consideration thereof, I hold that it is expedient in the interest of justice that a certified copy of the first information report, which is a public document, should be granted to the accused on his payment of the legal fees therefore at any stage even earlier than the stage of S. 173(4) of the Code of Criminal Procedure. At the later stage, the accused will have the right to have a free copy but the same would not take away the right he already has in law to have a certified copy of the first information report on payment of the legal fees .....

*"It is to be noted that it was considered particularly in view of provisions contained in Art. 21 of Constitution of India. Denial of the same would be clearly against the principle of natural justice and violation of Art. 21 of Constitution of India. FIR is a document which is of considerable value to the accused because it shows on what materials the investigation commenced and what was the prosecution case in the first flux and in view of his, Mr. Amin's contention that he is entitled to have certified copy of the FIR requires to be accepted and the trial Court has seriously erred in not granting the application*

*5. When the FIR is forwarded to the Magistrate as contemplated in the Code, then it is certain that a regular endorsement is made in the public document, viz., general diary regarding the case as contemplated u/S. 154 of the Code. It also makes it clear that after registration the report has been forwarded u/S. 157 of the Code and that would raise a legal presumption that there is an official act and the same has been duly performed. Therefore also it becomes a public document, viz. forwarding a report to the Court under the Code and therefore when a person against whom the report is made asks for a copy, the same should be supplied to him without any hesitation on charging legal fees. Mr. Amin, learned advocate submitted that Karnataka High Court in the Case of Channappa Andanappa Siddareddy v. State reported in 1980 Indlaw KAR 48 has held that at para 3" \**

the FIR being a record of the act of the public officers prepared in discharge of official duty is a public document ..... and every officer having the custody of a public document, which any person has a right to inspect is bound to give such person on demand a copy of it on payment of the legal fees ..... The accused having been produced before the Magistrate with the report of the police, the Taluka Executive Magistrate was legally bound to give the copy asked for by him. He had no authority to refuse it. The refusal, therefore, is illegal and reprehensible." Mr. Amin, learned advocate therefore submitted that in view of this position of law, it is the duty of every public officer to supply certified copy of public documents on tendering legal fees

6. From the aforesaid discussions, it clearly appears that whenever FIR is registered against the accused, a copy of it is forwarded to the Court under provisions of the Code; Thus it becomes a public document. Considering (1) the provisions of Art. 21 of the Constitution of India, (2) First Information Report is a public document in view of S. 74 of the Evidence Act; (3) Accused gets right as allegations are made against him under provisions of S. 76 of the Indian Evidence Act, and (4) FIR is a document to which S. 162 of the Code does not apply and is of considerable value as on that basis investigation commenced and that is the first version of the prosecution, as and when application is made by accused for a certified copy of the complaint, the Court to which it is forwarded should give certified copy of the FIR, if the application and legal fees thereof have been tendered for the same in the Court of law. The application is therefore allowed. The trial Court is directed to supply certified copy of the FIR on payment of charges by the petitioner at the earlier

Rule made absolute