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# The Counter Information of an Offence

**Atal kaushik**

BALLB , LLM, Kurukshetra University

***Abstract:*** **Section 154, Cr.P.C, made it mandatory to officer in charge of a police station to reduce into writing information, received in the police station house, related to the commission of a cognizable offence. Police has no option but to reduce into writing information received in the Police station related to a cognizable offence. Refusal for the same is a grave dereliction of his official duties. But many a time it happens that more parties may involve in one occurrence and their version may different to each other and there may be allegations and counter allegations making separate case against each party. Thus it results in registration of two FIR of the same incident or an FIR and complaint cases. When a an information lodges or received, at the earliest opportunity, the police station about the commission of an offence, has to be treated as much important as it is presumed that the story given at the earliest opportunity and first hand to the police may be original without any addition or after – thoughts, padding and concoction. In the event of counter Information it became challenging to ascertain the truth.**

***Keywords: FIR*, Evidence, Rules and safety**

## I. INTRODUCTION

Today it a general tendency among public or we can say it become a fashion that in every other case there will be another cross version of the same incident either be in form of a separate FIR or a separate Complaint Case. Though some times the cross version represents the truth but in most cases the cross version are found to be false, they have been raised only to impede speedy trial or to defeat prosecution and secure acquittal by making the trial complicated and confusing. Under the Code of Criminal Procedure, two Courses have been provided for recording of Information. Firstly when the information lodged or received is related to a cognizable offence and other is when the information lodged or received is related to a Non – Cognizable offence.

## II. PROCEDURE TO BE FOLLOWED IN CASE OF COUNTER INFORMATION

When conflicting information given by each of opposite party are registered by the police, separate reports under section 173, Cr.P.C. may be submitted by the police. it was observed that investigating officer is expected to file charge-sheet only for the case where offence appears to have been committed, and having sufficient evidence to send the case for trial. It is open to the aggrieved party to prefer a private complaint for being tried as a counter case. Under the provisions of the code of the Criminal Procedure it is contemplated that investigating officer should himself assess the evidence collected during the investigation and he must form his Opinion regarding the complicity of a particular person in respect of the offence alleged. Police officer is empowered to release the accused on execution of bond with or without sureties and submit a final report under Section 169, Cr.PC., when the evidence is deficient, as well as to forward the accused, in custody, under section 170, Cr.P.C., to the Magistrate, when the evidence is sufficient and the accused is failed to furnish security in a bailable offence. Neither the Court nor the Complainant can challenge that power to force a police officer to submitted charge-sheet. In a rival and conflicting version of the occurrence and injuries have been caused on both sides, the investigating officer can form his opinion as to which of the parties has committed of what offence and to decide whether both or any one or more to be charge-sheeted to face the trial and against whom final report under Section 169, Cr.PC., is to be forwarded. Party aggrieved from such action of non-filing charge-sheet may file a Private complaint under Section 190, Cr.PC. to the Magistrate or a Protest Petition requesting Magistrate to reject the final report and to take the cognizance of offence alleged and issue process. Such Complaint or Protest Petition will form counter case to the charge sheet filed by the police and may be tried as such. In *Unioun Public Service Commision v S. Papaiah*,[1] the Supreme Court of India observed that while dealing with a situation arises out of the report of the police under section 173 (2)(i), stating that no offence is made out Magistrate can adopt one of the three courses i.e (1) he may accept the report and drop the proceedings, (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, cognizance of

[1] 1997 Cr.L.J 4636

 

the offence and issue process, (3) he may direct further investigation to be made by the police under sub-section (3) of section 156, Cr.P.C. Dealing with the first option of dropping the proceedings the Supreme court further observed. There can therefore, be no doubt that when, on a consideration of the report made by the officer-in-charge of a police station under sub-section (2) (i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report so that he can make his Submission to persuade the Magistrate to cognizance of the offence and to issue process.

## III. INFORMATION GIVEN BY THE ACCUSED

An accused may give an Information about the commission of an cognizable offence on his behalf but any confession, which may form part an FIR, will not be admissible in evidence in view of section 25 of Indian Evidence Act, but those fact which do not amount to a confession and merely go to show the motive perpetration or opportunity for the crime or give information leading to the discovery of facts, can certainly to be provided on behalf of the prosecution under section 7, 8 and 27 of the evidence Act. This however, cannot be treated as evidence against any co – accused since the later is an accused and not a witness. it was observed that a confessional statement contained in FIR is not admissible in evidence, except to the extent permissible under section 27 of the evidence Act.[2]

## IV. PROCEDURE TO BE FOLLOWED DURING TRIAL

The Supreme Court of India ruled that procedure for trial of counter Cases - One complaint case and another police case (on police report) arose out of the sane transaction there may be a risk of two courts coming to conflicting findings. To obviate such risk, it is ordinarily desirable than the two *cases* should be tried separately but by the same Court. Cross cases should he heard by the same Judge in quick succession and judgment should not be pronounced until both cases are heard. [3] Each case has to be decided on the basics of evidence recorded in it and the evidence recorded in the one case cannot be basis for judgment of the other case.[4]Though both the *cases were* tried as case and the counter case, it was not open to the Magistrate to make reference to the case diary in another case. The material in one case cannot be referred to and relied upon in another. Magistrate accepted the report of police and ordered cancellation of FIR Magistrate may take cognizance of the offence and issue process in a complaint case on similar facts and allegations. Principles of Res Judicata do not apply to criminal proceedings. Explanation to section 300, Cr.PC. The dismissal of a complaint, or the discharge of the accused, is not acquittal for the purpose of this Section makes the Position very clear on this point. In M.P V Mishrilal,[5] in relation the trial of Cross Cases the Hon'ble Supreme court has held as that it would have been just fair and proper to decide both the cases together by the same Court in View of the guidelines devised by this Court in Nthilal's case. The Cross – cases should be tried by the same court irrespective of the nature of offence involved. The rationale behind this is to avoid the conflicting judgments over the same incident because f the cross cases are allowed to be tried by two separate courts there is likely hood of conflicting judgments. In *Nathi Lal & ors v State of UP*,[6] the procedure to be followed in such a situation has been succinctly describe by the Supreme Court that the fair procedure to adopt in a matter like the present where there are cross cases is to direct that the same learned Judge must try both cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be Influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.

## V. CONCLUSION

The object of recording of an FIR is to set the law in to motion section 157(1) Cr.PC imposes a duty upon the officer – in - charge of a police station, that on receipt of an information or otherwise he has reasons to suspect the commission of a cognizable offence he shall forthwith send a report of the same to the ilaqua (Area) Magistrate, and shall proceed in person, or shall depute on his prescribed subordinate officer to proceed to the spot to investigate the facts and circumstances of the case, and, if necessary , to take mesure for discovery, arrest of the offender. Section 154 Cr.PC also imposes a duty upon the officer – in – charge of the police station that on receipt of

[2] Bheru Singh v State of Rajasthan, (1994) 2 SCC 46
[3] AIR 1954 Mad 442
[4] Naresh Rai v State of Bihar, 1994 Cr.L.J. 978
[5] (2003) 9 SCC 426
[6] (1990) Supp SCC 145

 

information related to cognizable offence formalities specified in this section must to be complied with. This is to be kept in mind that there is no provision in Cr P C or in the Evidence Act dealing exclusively with trial of cross cases. There may be two FIR of the same incident with different versions but there can be no 2nd FIR and consequently there can be no fresh investigation on receipt of every subsequent investigation in respect of the same cognizable offence[7]. The practical reasons for adopting a procedure that such cross cases shall be tried by the same court is that it staves off the danger to an accused being convicted before his whole case is before the court. It deters conflicting judgments being delivered upon similar facts. It is to be understood that the first information report recorded under section 154 of Cr.P.C is a tool to set investigating agencies in to motion, so that they may act thereupon under the shadow of law. At one part it is of the ought most important as it provides some cause of action to the authorities to proceed with but it is not solely base to convict any accused under the law. Also during the course of trial an FIR is not considered as a substantive piece of evidence. But it may be used to corroborate the informant or to contradict him under section 145 of the evidence Act, if the informant appears in the witness box.[8]



[7] T.T. Antont v State of Kerala, 2001 (3) Crimes 276 SC

[8] Bheru Singh v State of Rajasthan, (1994) 2 SCC 46

 