



DELAY IN LODGING FIR AND ITS IMPACT ON TRIAL: A CRITICAL STUDY

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ABSTRACT

*The initial step that sets the criminal law in motion is the **First Information Report**. Although it has no evidential value, it can be used to **corroborate** or **contradict** the informant's allegations. Lodging of FIR is a mandate on the police which should be done without charge and with a copy given to the informant. Filing of FIR maybe delayed by the informant or the police officer. The case's credibility is questioned as a result of the delay, and the accused may escape punishment, which would ultimately be unfair to the victim. Such a delay may raise a **suspicion** about the real facts of the case and may be used to embellish and create a concocted story. However, if the delay is justified and a satisfactory explanation is not provided for the delay it may render the prosecution case **doubtful**.*

INTRODUCTION

The Criminal Procedure Code, 1973, does not define the First Information Report, generally known as the FIR. Nonetheless, we can locate a reference to it in the Code's Chapter XII, Section 154. It is police officer who is obliged to record the complaint which is formally known as the FIR.

Information pertaining to the commission of cognizable offences is dealt in section 154. In cases related to cognizable offences a police officer can arrest the accused without a warrant in conformance with the first schedule or any other legislation in affect at the time, as per the provisions of Section 2(c) of the Code. Without the magistrate's permission, the police officer may look into significant offences that are considered to be public wrongs and that are cognizable but not bailable, meaning that no bail may be granted to the offender. Crimes including murder, rape, criminal breach of trust, dowry death, and many others are recognized offences.

The information about a cognizable offence is provided first to the police officer, on this basis an inquiry launched is known as a FIR.

Section 154 of The Criminal Procedure Code, 1973¹-

1. Any details pertaining to the conduct of a cognizable offence may be provided to the police officer verbally or in writing; if provided verbally, it must be reduced to writing and read to the informant before being signed. The information must also be entered in a book required by the state government, with a free copy being provided to the informant.
2. If the information is provided by a woman who has been victim of the crimes such as voluntarily causing grievous hurt by dangerous weapons or means or by use of acid or attempting to throw acid, assault or use of criminal force to woman with intent to outrage her modesty or disrobe her or any kind of sexual harassment , voyeurism or stalking or

¹ Criminal Procedure Code, 1973, § 154, No. 2, Acts of Parliament, 1973 (India).



rape, gang rape and other offences as listed in section 376 to 376E, or section 509 of the Indian Penal Code, 1860, if the woman against whom these offences are committed is temporarily or permanently mentally or physically disabled, then the information shall be obtained at a place convenient to her, in the presence of an interpreter, and shall be documented by a woman police officer or any other woman officer. Such information shall be captured on camera.

3. A person who feels aggrieved by a police officer's refusal to accept information must write and post the information's content to the superintendent of police, who will either conduct an investigation himself or designate a subordinate to do so if he is satisfied that the details given relates to the commission of a cognizable offence.

Objectives of lodging FIR:

1. The primary goal of filing a FIR is to initiate the criminal justice system. The police would only be authorized to launch the investigation, gather evidence, and carry out additional steps if a FIR was filed.
2. By filing a FIR, early information may be gathered as soon as possible, and prompt submission will strengthen the case because complete details of the information would be fresh in the memory of the aggrieved party.
3. It is conceivable for the investigating authorities to take the necessary action to find and imprison the guilty party.

4. To defend and protect the accused against any ensuing additions or modifications.

Evidentiary value of FIR:

1. It cannot be used as evidence since it is insufficient to support a claim.
2. It can be used to support an informant witness in accordance with section 145 of the Indian Evidence Act as well as to refute one in accordance with section 157 of the same law.
3. According to Section 21 of the Evidence Act, a non-confessional FIR may be used as evidence.
4. FIR may be used as a dying declaration, if the informant later passes away as per Section 32(1) of the Evidence Act. The dying declaration was regarded as substantial evidence and sufficient to support the verdict of conviction in "**Macchi Singh v. State of Punjab.**"²

DELAY IN LODGING FIR

Not all FIRs are filed on time. Despite the fact that the informant provided the FIR on time, the police officer in charge may delay lodging it or sending it to the magistrate. In addition to causing fact manipulation, concoction, embellishment, or exaggeration, a delay in filing a FIR also raises concerns about the veracity of the information provided by the informant and whether the victim is actually the victim or is misrepresenting victimhood in order to avoid

² Macchi Singh and Others v. State of Punjab, 1983 AIR 957, 1983 SCR (3) 413



being prosecuted. When either party delays in filing the FIR, it may result in injustice to the victim because the facts at the time of the event and the facts later on may not be the same, and the actual evidence may have been destroyed either intentionally or unintentionally by the accused or by nature, such as rain or other unforeseen circumstances. If the reason for the delay in filing the FIR is unreasonable and inexplicable, it may give rise to suspicion or the prosecution's insertion of a concocted story; if the reason is not clearly explained, the FIR may lose its evidential value. For the interest of justice, a reasonable delay must be tolerated, and the accused should not be permitted to raise procedural irregularities and delays as defences. In the case of **"Bathula Nagamalleswara Rao & Ors. v. State Rep. By Public Prosecutor"**³ the Supreme Court declared that a reasonable delay in filing a FIR is not fatal. Excessive postponement in filing a First Information Report is always suspect, and should be avoided if at all possible.

In **"Thulia Kali v. State of Tamil Nadu"**⁴ the Hon'ble Apex Court emphasised the significance of filing a timely FIR in cases involving Cognizable offences. In a criminal case the first information report is a crucial and priceless evidence piece for validating the oral testimony provided at trial, it was noted. The purpose is to collect information as soon as possible regarding the crime's circumstance, the names of the real offenders and the role they played, in addition to the names of any eye witnesses present when the

incident happened. Therefore, if there is a delay, it must have a plausible justification.

Three types of delay in lodging FIR:

1. In lodging by the informant
2. In recording at police station by the officer-in-charge
3. In dispatching it to the Magistrate

1. Delay in Lodging FIR by the Informant-

A FIR should be filed as soon as possible after the offence is committed, even though there is no time restriction specified in any law or regulation for doing so. The judge's determination of what constitutes an acceptable time will vary on the facts of each case and the reasonable time will vary accordingly. In the matter of **"State of Rajasthan v. Om Prakash,"**⁵ there was an almost 26-hour delay in filing the FIR. The crime was committed at 9 a.m., and the FIR was filed at 11:30 a.m. the next day. The respondent's attorney claimed that the delay resulted in embellishments i.e., adding details to the story, however this did not harm the prosecution case because it entailed rape of a minor, and the name and prestige of the family, as well as the career and life of a young child.

In **"State of U.P. v. Manoj Kumar Pandey,"**⁶ the Apex Court decided that rape cases are exempt from the general requirement that the prosecution must justify the latency in filing a FIR and the absence of

³ Bathula Nagamalleswara Rao & Ors. v. State Rep. By Public Prosecutor, 2008(2) CRIMES 188 (SC)

⁴ Thulia Kali v. State of Tamil Nadu, 1973 AIR 501, 1972 SCR (3) 622

⁵ State of Rajasthan v. Om Prakash, 2002 Lawsuit (SC) 575

⁶ State of U.P v. Manoj Kumar Pandey, AIR 2009 SC 711



prejudice or prejudice produced as a consequence of such a delayed filing.

In “**Raghibir Singh v. The State of Haryana**,”⁷ the Court concluded that delaying the filing of the F.I.R. was justified by the need to rush to the hospital in order to preserve the victim's life rather than going to the police station first.

In the case of “**Vidhyadharan v. State of Kerala**,”⁸ the victim was a married woman with children who was working in the kitchen cooking at 2 p.m. when the accused entered the house and grabbed her hands, attempting to outrage her modesty. The victim filed a FIR the next day. In this case, the court found that delaying the filing of a FIR is normal in a traditional society to avoid shame, which is unavoidable when a woman’s reputation is at stake. In circumstances involving outraging women’s modesty, sexual harassment, or rape, the reputation of women and their families becomes an evident reason for the delay, which is explainable, and so such delays can be allowed.

As a result, if the informant takes a long time to file a FIR and the reason for the delay is clear, there will be no suspicion of the delay, and the case will proceed as if it was filed immediately. However, if the delay is unexplainable, suspicions of embellishment, fabrication, or exaggeration of facts will arise.

⁷ Raghibir Singh v. The State of Haryana, 2000(2) RCR(Criminal) 717(SC).

⁸ Vidhyadharan V. State of Kerala, 1961 AIR 1010 1961 SCR (2) 805

2. Delay in filing FIR by the officer-in-charge of a police station-

As per the details provided by the informant if it discloses the commission of a crime that relates to cognizable offence, a police officer is required to file a FIR. According to section 154(1), the word ‘shall’ used in the phrase signifies that if the facts of the offence as specified relate to the commission of a cognizable offence, the officer-in-charge of the station must mandatorily lodge the FIR.

According to section 154(3), if a police officer refuses to file a FIR, the informant may send the superintendent of the police the substance of the information in writing and by mail. If the superintendent is convinced that a cognizable crime has been committed, he will either conduct his own investigation or assign it to a subordinate. The informant has the legal right to file a complaint with the Judicial or Metropolitan magistrate under Section 156(3) read with Section 190 of the Cr.P.C. if no FIR is filed even after the complaint to the senior officer. This is done in order to request that a FIR be registered by the police and that an investigation into the matter begin. A police officer will receive a one-year prison sentence if they refuse to file a FIR based on jurisdiction.

Section 166A(c) of Indian Penal Code 1860⁹-

Whoever, being a public servant - fails to record any information provided to him under sub-section (1) of section 154 of the Criminal Procedure Code, 1973, in relation to

⁹ Indian Penal Code, 1850, § 166A(c), No. 45, Acts of Parliament, 1850 (India).



cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, [section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509, shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

On behalf of Lalitha Kumari her father petitioned for writ of Habeas Corpus via Article 32 to defend his kidnapped daughter. The petitioner, a little girl, was kidnapped in “**Lalita Kumari v. State of UP and Ors**”¹⁰ The girl’s father went to the police station to report the incident and register a FIR, but the officer-in-charge refused to lodge the FIR. As a result, the father addressed the superintendent, who filed a FIR but did not initiate an inquiry. The defence attorney for the defendant claimed that the officer in charge of the police station is not required by law to file a case upon learning of the conduct of a cognizable offence, but rather to conduct a preliminary investigation in appropriate circumstances to determine the veracity of the claims made in the report. According to the Supreme Court, there is no need for a preliminary inquiry if any information indicates that a cognizable offence has been committed; instead, the police officer must submit a FIR in accordance with Section 154 of the Cr.P.C. The officer in charge is obliged to file a FIR if a cognizable offence is revealed. The Hon’ble Judges also stated that the purpose of a preliminary inquiry is to determine whether a cognizable offence has been disclosed, not to confirm the

truthfulness or otherwise of the information received.

The investigating officer “purposefully omitted to record the FIR despite receiving information regarding to conduct of a cognizable offence,” the Supreme Court said in the case of “**State of AP v. Punati Ramulu**.”¹¹ He reported the FIR after arriving at the scene and after due deliberations, conversations, and consultations. It is risky to rely on such a tainted inquiry since one would not know where the police officer had forged the evidence and created false ones.

In many circumstances, when officer in charge refuses to file a FIR, the case is never brought to court, and the criminal gets away with it. The officer’s refusal to file a FIR is a breach of duty.

3. Delay In dispatching the FIR to the Magistrate

The steps to starting a preliminary inquiry are outlined in Section 157 of the Criminal Procedure Code. When a police officer learns of the performance of an offence cognizable in nature or has reason to think that one has been committed in violation of Section 156, the officer must report the occurrence to the magistrate who has the power to look into the offence based on a police report without delay. A subordinate officer who is not below the rank that the State Government may, by general or specific order, designate, may also be deputised by the officer.

¹⁰ Lalita Kumari V. State of UP and Ors, 2014 2 SCC 1

¹¹ State of AP. v. Punati Ramulu, AIR 1993 SC 2644, 1993



The Supreme Court decided in “**Appukutan v. State**”¹² that the major objective of filing an immediate FIR and reporting it to the magistrate ‘forthwith’ is to avoid any embellishments and to keep the Magistrate informed about the inquiry. The delay cannot be used as a technical justification to claim that the investigation is tainted and the prosecution is unreliable when there is no infirmity brought to the Court’s attention and no harm to the accused. This protection is in place to prevent excessive embellishment, fraudulent prosecution, and police non-investigation at a critical stage.

A copy of FIR is sent to the Magistrate as a part of Internal and External Checks that the Cr.P.C provides. Delay in sending report gives a chance to the prosecution to alter the FIR and hence a suspicion on such delay is raised therefore, to avoid such mistakes it is said that the report of the FIR shall ‘forthwith’ be forwarded to the Magistrate if not it would lead to deterioration of the prosecution’s case.

In the case of “**Friday v. By Advs. Sri. M.R. Sarin**”¹³ the Supreme Court stated that the phrase ‘forthwith’ adopted u/s 157(1) requires in clear terms that the FIR should be sent by the concerned police officer promptly.

The Supreme Court in the case of “**Alla China Appa Rao and Others v. State of A.P.**,”¹⁴ held that the term ‘forthwith’ in this section would definitely mean ‘within a

reasonable time’ and ‘without unreasonable delay.’ The High Court of Madras has acquitted on the basis that there was a ‘unexplained’ and ‘inordinate’ delay in forwarding the FIR to the Magistrate, concluded in “**Nalli v. State**”¹⁵ Despite the fact that the phrase ‘forthwith’ is not included in the CrP.C, courts have looked into its meaning in various cases, and it is obvious from the judgements that it means ‘immediately or without delay.’

IMPACT OF DELAY IN LODGING FIR ON TRIAL

The fact that the FIR was not filed early raises suspicion on the complainant’s story. The prosecution’s case may be fatal in some cases, but the impact of the delay on the trial will differ based on the facts and circumstances of each case. In offences such as rape and sexual harassment, such a delay may not be considered lethal because there are evident causes for such a delay, such as societal reaction and the women’s and family’s prestige. Offences that consist of theft, attempt to murder and other cases the fact of commission needs exact corroboration and need an immediate and speedy FIR to be registered. Any delay that is inexplicable and unreasonable will have an impact on the prosecution’s case, as there may be opportunities to manipulate the facts and the people involved in such an offence.

In “**Dilawar Singh v. State of Delhi**”¹⁶ the Hon’ble Supreme Court stated that where

¹² Appukuttan And Ors. vs The State, 1989 CriLJ 2362

¹³ Friday vs. By Advs. Sri. M.R. Sarin, CRL.A.No. 78 of 2008

¹⁴ Alla China Appa Rao and Others Vs. State of A.P, 2002 AIR SCW 4290; 2002 (8) JT (SC) 167]

¹⁵ Nalli Alias Nallianna Gounder vs The State, 1993 CriLJ 1409

¹⁶ Dilawar Singh v. State of Delhi, MANU/SC/3678/2007



there is such delay either by the informant or the police then the court would always view the allegations with suspicion and a satisfactory explanation if the court is not satisfied it would be fatal for the prosecution's case. Therefore, a possible explanation is a must. In the case of **"Thulia Kali v. State of Tamil Nadu"**¹⁷ the Court held that such delay creates opportunity for exaggerated and concocted story.

However, it should be noted that the law has not fixed any time as to within which the FIR has to be logged hence, delay in lodging FIR is not illegal, it's just that if filed immediately it would lead to commencement of the case as soon as possible and the investigation could be done when the facts of the case are still fresh and this would lead to getting more appropriate evidence which would benefit the prosecution and the other party would not get any chance to object the allegations made just on the reason of delay in filing FIR. However, there is no as such guarantee that the FIR is genuine if filed without any delay, decided in **"Ravinder Kumar v. State of Punjab"**¹⁸ by the Supreme Court.

The Supreme Court ruled in the case of **"Amar Singh v. Balwinder Singh & Ors"**¹⁹ that there is no hard-and-fast rule that any delay in filing a FIR would automatically render the prosecution case doubtful.

As a result, while there is no specific time limit for filing a FIR or for submitting it to the magistrate, it should be done within a reasonable time frame, and mere delay in filing the FIR or forwarding it to the

magistrate is not a basis to acquit the accused. However, such delays do not necessarily affect the trial proceedings; in other cases, it is simply the suspicion of embellishment, concoction, or exaggeration of facts that is raised, and it is on to the prosecution to provide a satisfactory explanation that must be supported by evidence if necessary. The gathering of evidence to prove that there was a reasonable delay would require more time and many hearings, as well as perhaps include some expenses. This would result in lengthy proceedings and delayed justice for the victim; in the meantime, there is a possibility that the accused may flee, or that the facts will change or become unavailable as a result of the delay, and that the facts will not be proven at a later stage. This is how the delay in lodging FIR by the informant or the police or forwarding it to the magistrate would affect the trial proceedings. This is how the delay in the informant or police filing a FIR or transmitting it to the magistrate can affect the trial.

SUGGESTIONS

The informant's fear of the police, the investigation, and other considerations may be the primary causes of the delay in filing a FIR. There are some people who are unfamiliar with FIRs, their submission procedures, and the appropriate filing times. When someone enters a police station, they shouldn't be left alone; there should be someone there to guide them through the process. A normal person would only feel at ease and be able to discuss minute details without worry if such things were done.

¹⁷ Thulia Kali vs The State Of Tamil Nadu, 1973 AIR 501, 1972 SCR (3) 622

¹⁸ Ravinder Kumar v. State of Punjab, 2001 (3) ACR 2497 (SC)

¹⁹ Amar Singh v. Balwinder Singh & Ors, (2003) 2 SCC 518



Inconsiderate behaviour on the part of the officer-in-charge or other members of the police station staff may delay the filing of a FIR when a person enters a police station but is left unattended, leading him to decide it is not worth the wait and leaving without filing a FIR. The police officer may require the informant to pay a significant fee to register it, but it should be filed and a copy delivered to the informant free of charge. When such activities take place, the informant may take some time to secure funds since he is ignorant that the FIR should be filed for free and he lacks the necessary means to do so. This further delays the FIR filing process. The worry is that the police may be uncooperative when someone approaches them, preventing or delaying the registration of the FIR. An awareness programme that teaches individuals about the filing process and other crucial matters that won't create delays should be implemented to allay this worry. Police personnel who engage in illegal activity, cause delays, or fail to register a case should receive the necessary punishment. There's no doubt that such strong judicial intervention would be enough to dissuade the negligent cop. Additionally, the Cr.Pc does not define a deadline for submitting a FIR to the magistrate; as a result, if a deadline is specified by law, police officials will be more adamant about resolving the issue. The law should be stricter in this regard, requiring police officers to provide an explanation for any delays in transferring reports to the magistrate and imposing penalties for undue delays.

CONCLUSION

FIR being the initial step in putting the law into action, there should be no unnecessary delay in the process that denies the victim

justice. Every step of the legal procedure is critical since, in criminal instances, it can either save or destroy lives. The administrator of justice should use their authority in the public interest and not jeopardise the public's trust. It is not required for only the victim or a relative to register a FIR; any anyone who has witnessed a cognizable offence, or if the police officer himself witnesses an offence and has sufficient grounds to believe it is cognizable in nature, he can file a FIR and begin the investigation.

There are several reasons why someone might delay filing a FIR. The delay may or may not be reasonable, depending on the facts and circumstances of each situation. When there is a risk of fabrication of evidence due to a delay in filing a FIR, it is the prosecution's responsibility to present a rationale for the delay. However, in the event of a reasonable delay, the trial may continue, such a delay may have an impact on the trial or not. Furthermore, after the prosecution has proven the suspect's guilt beyond a reasonable doubt, the time taken to file a FIR is irrelevant. However, if the prosecution is unable to establish the accused's guilt, a delayed FIR will add to the decision against the prosecution.

The lack of a definition of the phrase 'forthwith' in section 157(1) of the law frequently leads to lengthy court battles and, at times, injustice to the victims. This clause should be amended to properly define the term 'forthwith' and provide a timeframe for doing so.
