A to Z
of
CRIMINAL TRIAL

CHAPTER 1

First Information Report (FIR)

Section 173 , BNSS

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1.1 Offence: Definition and Scope

The word "offence", broadly speaking, may be defined as an act which is punishable under the penal code or under any special or local law as defined therein. "cognizable offence" or a "cognizable case" means an offence for which a police officer may, in accordance with the first schedule or under any other law for the time being in force, arrest an accused or offender without warrant.[1] "Non-cognizable offence" means an offence for which, and 'non-cognizable case' means a case in which, a police officer, has no authority or power to arrest without warrant and to start investigation with or without the permission of a Court.[2]

According to **Section 2(q) of BNSS** *[Section: 2(n) of Cr.P.C.]*, 'offence' means an act or omission made punishable by law for the time being in force and include any act in respect of which a complaint may be made u/s 20 of the Cattle Trespass Act, 1871 (1 of 1871). 'Police Station' means a place or post which has been declared generally or specifically by the State Government, being a police station and includes any local area specified by the State Government in this behalf. 'Officer-in-charge of the police station' is the police officer present at the station-house or other who in charge of police station in his absence who is next in rank to such officer and is above the rank of constable or when the State Government so directs, any other officer so present[3] 'Police report' means a report forwarded by a police officer to a Magistrate under **sub-section (2) of Section 193 of BNSS, 2023** [*sub-section (2) of Section 173 of Cr.P.C., 1973*].[4] In the words of Supreme Court, the word "crime" may be defined as "the commission of an act specifically forbidden by the law and it may be an offence against morality or social order, which subjects to doer to legal punishment." Non registration of FIR is dereliction of duty by police officer.[5]

Complainant is not debarred from making second complaint if first complaint not decided on merits and failure to mention about first complaint if dismissed for default, held inconsequential.[6]

1. **Section: 2(o) of BNSS, 2023** *[Section 2(o) Cr.P.C., 1973].*
2. **Section: 2(r) of BNSS** [*Sec. 2(r), Cr.P.C.].*
3. T.K. Gopal v. State of Karnataka, AIR 2000 (SC) 1669: 2000 (2) Crimes 245 (SC).
4. **Section: 193(2) of BNSS** [Sec. 173(2), Cr.P.C.]
5. Gurjant Singh v. State of Punjab, 1998 Cr LJ 588 ; Nagesh v. State, 2012(3) PLJR (SC) 258 ; Lalita Kumari v. Government of U.P., AIR 2014 (SC) 187 (F.B.); State of A.P. v. Punatic Ramutee, AIR 1993 (SC) 2644.
6. V. Ravi Kumar v. State, 2018(4) Crimes 599 (SC).

1.2 FIR: Constituents and Contents

An information regarding any occurrence or offence may be given to the police and the police has the power to investigate the same. According to **section 173(1) of BNSS** *[Section 154(1) of Cr.P.C.,]* every information relating to the commission of a cognizable offence, if given orally to an officer in-charge of police station, shall be reduced to writing by him or under his direction, and be read over to the informant. 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 in the 'station diary' by such officer in such other form as the State Government may prescribe in this behalf. A copy of such FIR has to be given free of cost to the informant.[1] An FIR or complaint signed by two or more persons is bad in law.[2] The police is duty bound to register FIR.[3] FIR need not be encyclopaedia nor details of prosecution case.[4]

Importance of FIR is immense and it is the most potent of weapons in the hands of defence so as to challenging very evidence of witnesses by showing what material departing witnesses had made.[5]

Any person aggrieved by a refusal on the part of an officer in-charge of a police station to record the information under provisions of **Section 173(1) of BNSS** *[Sec. 154(1) of Cr.P.C.]*, may send the substances of such information, in writing or 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 in the Code, and such officer have all the powers of an officer in-charge of the police station in relation to that offence. **Section 173(3) of BNSS** *[Section 154(3), Cr.P.C.].*

Any person aggrieved by the refusal of police to record the First Information Report, may also approach Chief Judicial Magistrate or Metropolitan Magistrate to seek a direction to the officer in-charge **under-section 175(3) of BNSS** *[u/s 156(3)]* of Cr.P.C.. The police officer is bound to lodge an FIR on receipt of such direction by the Magistrate **under section 175(3) of BNSS** *[u/s 156(3), Cr.P.C.]*[6] Magistrate is under legal duty to issue

1. **Section 173(2) of BNSS** *[Sec. 154(2) Cr.P.C.].*
2. The Thavusamy v. Radha Krishan, 2007(2) Crimes 166 (Mad).
3. Sukhvinder Singh v. State, 2006 Cri LJ 4816 ; Lalan Choudhary v. State of Bihar, 2007(1) BBCJ 205; **In Re, Assessment of the Criminal Justice system in Response to Sexual Offences, 2020(1) Crimes (SC) 69.**
4. V.K. Mishra & Anr. v. State of Uttarakhand, 2015(3) Crimes 193 (SC).
5. Tulsi Choudhary v. State of Bihar, 2009(2) BBCJ 496.
6. K.M.K. Haji v. State of Kerala, 2002(2) Crimes 143.

direction **under section 175(3) of BNSS** *[u/s 156(3), Cr.P.C.]* if allegations disclose cognizable offence.[1] No second FIR can be lodged for the same offence.[2] If a police does not investigate a case properly, remedies lie **under section 175(3) of BNSS** *[u/s 156(3), Cr.P.C.]*[3]

Officer in charge of police station has to investigate not merely cognizable offence reported in FIR, but also other connected offences found to have been committed in course of same transaction.[4]

FIRs having common allegations can be clubbed together so that criminal action against accused can proceed at one place.[5]

The provisions of **Section 173(1) of BNSS** [section 154(1), Cr.P.C.] are mandatory and thus officer incharge is duty bound to lodge FIR in cognizable offences.[6] The Hon'ble Allahabad High Court has directed to a penalty of Rs. 75,000/- to SHO in case of non-registration of FIR despite direction of Magistrate issued **under section 175(3) of BNSS** *[u/s 156(3), Cr.P.C.]*[7]

Protest petition against police report should contain material constituting offence and there must be prayer to the court to take cognizance of alleged offences against the accused.[8]

When an information is given to an officer in-charge of a police station of commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribed in this behalf, and refer the information to the Magistrate within 24 hours.[9] All minute details are not necessary for FIR.[10]

No police officer, however, shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.[11] But when a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be cognizable

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1. Phool Singh v. State of U.P., 2007(2) Crimes 682 (All); Mangalsen v. State of U.P., 2010(1) Crimes 670 (All)
2. T.T. Anthony v. State of Kerala, (2007) 6 SCC 181; Kashi Nath Chaudhary v. State of Bihar, (2007) 4 Crimes 459 (Patna).
3. Anandwardhan v. Pandurang,, 2006(2) Crimes 165 (SC).
4. **Dr. Mukesh Kesarawni v. State of U.P., 2019(2) Crimes 232 (All.).**
5. **Salinder Singh Bhasin v. Govt. (NCT of Delhi) and ors., 2019(4) Crimes 215.**
6. Ramesh Kumari v. State, (NCT of Delhi), 2006(2) SCC 677.
7. Sabiya Bengum v. State of U.P., 2016(7) ADJ 299.
8. **Vijay @ Vijay Kumar v. State of Karnataka, 2020(1) Crimes 160 (Kant.).**
9. Section 174(1) of BNSS *[Section 155 (1), Cr.P.C.]*
10. State of M.P. v. Chhaaki Lal, 2018(2) SCC (Cri.) 478.
11. Section 174(2) of BNSS *[Section 155 (2), Cr.P.C.]*

case, notwithstanding that the other offences are non-cognizable.[1] The First Information Report (FIR) may be lodged in a police station even by telephone.[2] There is no bar to club two FIRs lodged for the same offence.[3]

The expression 'First Information Report' (FIR) is not expressly defined anywhere in the Bharatiya Nagarik Suraksha Sanhita [*Criminal Procedure Code*]. These words, however, are understood to mean as 'information' under the provision of **Section 173 of BNSS** *[Section 154 of Cr.P.C.]* The word 'information' occurring in the said section apparently means something in the nature of a complaint or accusation or an information of crime given with the objective of setting the criminal law in motion and the police to initiate an investigation. Two parallel cases for same offence in different court should not be permittted,[4] case and counter case should be tried by one and the same court.[5]

For any information to be construed as First Information Report, the following conditions should be satisfied within the meaning of **Section 173 of BNSS** *[Section 154, Cr.P.C.]*

(i) It must be an earliest information about commission of a cognizable offence;

(ii) It must be given to the officer in-charge of a police station;

(iii) It must ultimately be reduced into writing either by the informant (complaint) himself or on his behalf;

(iv) The information must be read over to the informant if it is written under his direction or on his behalf;

(v) It must be duly signed by the informant, and

(vi) The substance of information should be entered into a book kept by an officer in-charge, viz. Station diary.

The First Information Report may be both oral or in writing. The First Information Report is the earliest information or report made to the police officer[6] and subsequent information given thereafter is not relevant.[7] First

1. Section 174(2) of BNSS *[Section 155(4), Cr.P.C.]*
2. Rajendar Singh v. State, 1980 Cr. L.J. 1397.
3. Upendra Kumar v. State of Bihar, 2014(4) PLJR 1 ; Indrajeet Choudhary v. State of Bihar, 2007(3) BBCJ 515.
4. Sukhjinder v. State (NCT of Delhi), 2002(1) PLJR (SC) 87.
5. Kawal Kishan v. Suraj Bihari, AIR 1980 (SC) 1480.
6. Soma Bhai v. State of Gujarat, AIR 1975 (SC) 1453: 1975 Cr. L.J. 1201.
7. State of Bombay v. Rushy Mistry, AIR 1960 (SC) 391.

Information Report (FIR) is a public document.[1] The question whether or not a particular document would constitute FIR is a question of fact and this fact appears differently depending upon the circumstances of each case.[2] **Section 173(1) of BNSS** *[Section 154(1), Cr.P.C.]* is mandatory and police cannot refuse to lodge an FIR and genuiness or credibility is not a condition precedent.[3]

The statement made by a witness, which instituted into the proceeding, when reduced in writing, shall be deemed an FIR[4]. First Information Report must be in the nature of a complaint or accusation with the objective of getting the law into motion.[5] The following two conditions, therefore, must be satisfied for an information to be treated as an FIR[6]:

(a) It must be an information reduced into writing;

(b) It must relate to a cognizable offence on the face of it and not merely in the light of subsequent events.

It is now well-settled in law that any information given by a telephone also in respect of a cognizable offence to a police officer in-charge of a police station will be treated as FIR provided such information received through the telephone is not cryptic and reduced into writing by the police in-charge of the station and signed by him.[7]

The following information, however, cannot be treated as First Information Report (FIR):

It is not necessary that FIR must be written in own handwriting of informant[8]. FIR is a public document and the accused has right to get its copy[9]

The copies of FIRs, except in sensitive cases like sexual offences, offences pertaining to insurgency and terrorism, should be uploaded on website within 24 hours of registration.[10]

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1. Channappa A. Siddareddy v. State, 1980 Cr LJ 1022; Smt. Krishna Rani v. Chuni Lal Gulati, AIR 1981 (Punj.) 119.
2. Tapinder Singh v. State of Punjab, AIR 1979 (SC) 1566: 1979 Cr CJ 1415
3. Lalita Kumari v. Govt. of U.P., AIR 2014 (SC) 187 (FB); State of Haryana v. Ch. Bhajan Lal, AIR 1992 SC; Lallan Choudhary v. State of Bihar, 2006 (4)Crimes 164; Ramesh Kumar v. State, 2006(1) Crimes 230 (SC).
4. Hari Dev Sharma v. State, 1971 Cr. L.J. 1615.
5. Vinayak Datta v. State, Cr LJ 1970: AIR 1970 (Goa) 96.
6. J.K. Devaiya v. State, AIR 1956 Mysore 15: 1956 Cr. L.J. 904.
7. Raberi Karshan v. State of Gujarat, 1977 Cr. L.J. 107; Randeer Singh v. State, 1980 Cr. L.J. 1397; Mehtabai v. State of Maharashtra, 1983(1) Crimes 116.
8. Himanshu Mohan Rai v. State of U.P., AIR 2017 (SC) 1425
9. Shyam Lal v. State of U.P., 1998 Cr LJ 2879.
10. Youth Bar Association v. Union of India, AIR 2016 (SC) 4136.

Proposed accused has no right to hearing at stage of inquiry **under section 379(1) of BNSS [***u/s 340(1) of Cr.P.C]*.[1]

(i) Unless an information is regard to a cognizable offence is given to a police station officer, orally or in writing that information is not an information as required **under section 173 of BNSS** *[u/s 154, Cr.P.C.]*[2];

(ii) A cryptic message meant to be call for an immediate relief[3];

(iii) A statement of witness or accused made before a police after when he started investigation.[4]

(iv) An anonymous oral message by telephone which did not in terms clearly specify a cognizable offence[5];

(v) An entry in the diary on the basis of telephonic message[6];

(vi) Any confidential information to police regarding assembly some persons of bad character[7];

(vii) A telegram received by an officer in-charge of police station[8];

(viii) The mere entry in the records of Railway Protection Force[9];

(ix) Any vague, undefined and unauthorized information[10];

Section 183 of BNSS *[Section 164, Cr.P.C]* does not put any bar to the making of report to the superior officer and, therefore, FIR can be sent to the Chief Minister of the State or any such superior authority. It is not necessary that FIR should be detailed one as it is not an encyclopaedia of entire facts.[11]

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1. Al Amin Garment Haat (P) Ltd. v. Jitendra Jain 2024 SCC online Cal, 1103.
2. State of Gujarat v. Satar Ibublim, 1984 Cr. L.R. 236.
3. Nemai Adak v. State, AIR 1970 (SC) 1556.
4. K.K. Das v. State, 1959 Cr. L.J. 634: AIR 1959 (Ori.) 342; Ibrahim Hussain v. State, AIR 1969 (Goa) 68; State v. Ram Ayodhya, 1965(2) Cr. L.J. 79; K.K. Puthram v. S.K. Jadav, (1986) 2 Crimes 458.
5. Tapinder Singh v. State of Punjab, 1970 Cri. LJ 1415: AIR 1970 (SC) 1566.
6. Kathucola v. State of Assam, 1981 Cri. LJ 424.
7. Dwarka v. State, AIR 1954 (All) 106: 1954 Cri. LJ 188.
8. Sarup Singh v. State, 1964 (2) Cri. LJ 718: AIR 1964 508; Shailendra Kumar v. U.T., 1959 Cri. LJ 237: AIR 1959 (Tripura) 11; C V. Devassi Kutti v. State, 1953 Cri. LJ 1301; K.S. Nirmal v. State, 1954 Cr. L.J. 678.
9. B.C Saxena v. State, 1983 Cri. LJ 1432.
10. Jay Prakash v. State of Sikkim, 1992 Cri. LJ (N.O.C) 17 (Cal.); State of Kerala v. Samuel, AIR 1961 (Kerala) 99.
11. 2008 (1) Crime 94 (SC); State of U.P. v. Munesh, AIR 2013 (SC) 147.

1.3 *Locus Standi* to Lodge FIR

Unlike a civil proceeding, the question of *locus standi* is of no relevance in a criminal proceeding. Any citizen can set the law into motion by way of filling a complaint or first information report constituting an offence before a Magistrate, who is entitled in law to take cognizance, or send it to the nearest police station.[1] FIR after commencement of investigation is hit by **Section X of BNSS** *[section 162 Cr. P.C.]* and no value can be attached to it.[2]

Locus standi of complainant is a concept foreign to criminal jurisprudence.[3]

In fact, any person in knowledge of commission of cognizable offence is duty bound **under section 33 of BNSS** *[u/s 39, Cr.P.C.]* to report the same and, therefore, an application **under section 175(3) of BNSS** *[u/s 156(3) of Cr.P.C.]* of such person cannot be rejected by Magistrate on the ground that petitioner did not have *locus standi*.[4] Legally, if the petitioner deliberately or without any excuse abstains from giving such information as stipulated **under section 33(1) of BNSS** *[u/s 39(1), Cr.P.C.]*, he virtually commits the offence punishable **under section 211 of BNS** *[u/s 176, I.P.C]*

An accused may also lodge an FIR. The accused may be convicted on the basis of his own FIR if that document proves the presence of accused and his role in the incident.[5] The court cannot find a motive to commit a crime by relying on FIR which was lodged by the accused himself.[6] When the accused has lodged the FIR, the non-confessional portion is admissible against him.[7] In the eye of law, an FIR is not a substantive piece of evidence and can only be used to corroborate the statement of maker u/s 157 of the Evidence Act or to contradict it **under section 148 of BSA** *[u/s 145 of the Evidence Act]*. Such FIR cannot be used as evidence against the maker at the trial if he himself becomes an accused, nor to corroborate or contradict other witnesses.[8]

Personal knowledge of incident is not necessary for lodging the First Information Report.[9] Inspector of Police can lodge an FIR *suo motu* on the basis of newspaper reportings.[10]

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1. Vishwa Mitter v. O.P. Poddar, 1984 Cr. L.J. 1 (SC): AIR 1984 (SC) 5; A.R. Antualy v. R.S. Nayak: AIR 1984 (SC) 719 ; Hallu v. State of M.P., AIR 1974 (SC) 1936.
2. Ganesh Gagoi v. State of Assam, AIR 2009 (SC) 2955.
3. Ratanlal v. Prahlad Jat, 2017(4) PLJR (SC) 167.
4. Badan Singh v. State of U.P., 2005 (3) Crimes 366; Raja Ram v. State of U.P., 2004 (49) A.CC 847.; manoher Lal v. Vinesh Annad & Anr; AIR 2001 (SC) 1320.
5. O.R.I. v. State, 1952 Cri. LJ 824.
6. Sahaj v. State of U.P., AIR 1973 (SC) 618: 1973 SCC (Cri.) 910.
7. Manna Lal v. State, 1967 Cri. LJ 1272: AIR 1967 Cal. 473.
8. Nisar Ali v. State, AIR; 957 (SC) 366: 1957 Cri. LJ 550; A.W. Khan v. State (L) Cri. LJ 751: AIR 1962 Cal. 641.
9. Hallu v. State of M.P., (1974) 4 SCC 309.
10. 2015(2) Crimes (SC) 219.

Any person in knowledge of commission of cognizable offence is duty bound to report the same to Police or nearest Magistrate and, therefore, an application **under section 175(3) of BNSS** *[u/s 156(3), Cr.P.C.]* of such person cannot be rejected by the Magistrate on ground that petitioner did not have *locus standi*.[1]

FIR can be lodged at any police station and police cannot refuse to lodge on ground of lack of jurisdiction.[2] An FIR can be sent to Police by the informant through anybody and it is not necessary that person lodging must be present before officer-in-charge.[3]

1.4 Lodging of FIR: By Whom, Where and How

FIR can be lodged by anybody[4] and at any police station.[5] FIR sent to the Magistrate should have three elements, namely;

(i) The information regarding the commission of a cognizable offence, received by the police, which is usually called the complaint;

(ii) The record of the information as contemplated **under section 173 of BNSS** *[under Sec. 154 of Cr.P.C.]* and

(iii) The report of the police officer in-charge of a police station as per **under section 176 of BNSS** *[Section 157 of Cr.P.C.]*[5]

First information has to be given to an officer-in-charge of a police station within the local limits of which the offence taken place or at any other police station.[6] The information given to the constable cannot be considered to be a valid FIR as the first information has to be made to the officer-in-charge of a police station.[7] Information to police's *patel* or *tehsildar* is not FIR.[8] FIR can be sent to police station by anybody and presence of informant is not necessary[9]

First Information Report may be given by any person who has knowledge or hearsay or any information regarding the commission of an offence.[10] For the sake of lodging an FIR, the personal knowledge about occurrence to the

1. Badan Singh v. State of U.P., 2005 (3) Crimes 366; Seonadan Paswan v. State of Bihar, (1987) 1 SCC 80: 1987 SCC (Cri.) 464: 1978 Cr. L.J. 1380: AIR 1984 (SC) 5.
2. Satvinder Kaur v. State, AIR 1999 (SC) 3596 (Para 10); Y. Abrahim Ajithi v. Inspector of Police, Chennai, (2004) 8 SCC 100.
3. Nand Kishore Singh v. State of Bihar, 2001(2) PLJR 127.
4. Manohar Lal v. Vinesh Anand, AIR 2001 (SC) 1820; A.R. Antulay v. R.S. Nayak, AIR 2001 (SC) 1820; Ramesh Baburao v. State of Maharashtra, 2007(4) Crimes 140 ; Vishwa Mitter v. O.P. Poddar, AIR 1983 (SC) 5 : (1985) 4 SCC 704; Ahmad v. State, 2006(4) BBCJ 185.
5. Satvinder Kaur v. State, AIR 1999 (SC) 3596; State v. Swati Bahera, 2006(4) BBCJ 185; Rasiklal Dalpat Ram Jhakkan v. State of Gujarat, AIR 2010 (SC) 715 (Para 25).
6. Selvanthan @ Raghavan v. State, 1988 Mad LW (Cri.) 503.
7. State v. Swati Bahera, 1976 Cr. L.J. 262.
8. State v. Ram Singh, 1973 Cr. L.J. 150.
9. Nand Kishore Singh v. State of Bihar, 2001(2) PLJR 127.
10. Nardeo Singh v. State, AIR 1953 All 726.

informant is not necessary at all, nor he should be an eye-witness of alleged offence. Where the FIR is lodged by a person who is not a eye-witness, his statement is not required to be recorded. Presence of informant before police officer is not necessary and it can be send also through messenger.[1]

The First Information Report has to be registered in the First Information Book, which is a book prescribed **under section 173 of BNSS** *[u/s 154 of* Cr.P.C.*]*. A copy of the FIR should be given to the informant free of cost and his signature has to be obtained in the first information book. The informant cannot refuse to sign the First Information Report as refusal to sign is an offence **under section 215 of BNS** *[u/s 180 of Indian Penal Code.]*[2] Failure to sign the FIR affects the reliability and credibility of the FIR but it is admissible nevertheless.[3] FIR is not vitiated if not signed by the informant.[4]

Usually four to six copies of FIR are prepared by the officer in-charge and one is retained in the police station, one copy will be sent to the Magistrate, one copy to Superintendent of Police, one copy to the informant and one copy to the Collector or Divisional Commissioner.

The original copy of First Information Report **under section 173 of BNSS** *[u/s 154, Cr.P.C.]* is an important document and this copy has to be dispatched to the Magistrate without delay after recording the statement of the informant. Magistrate is required to put their initial with reference to both time and date of their receipt.[5]

When a Superior Police Officer, who is undoubtedly superior to an officer in-charge of police station receives a phone message, rushed to the spot and also he recorded the statement of a witness as per exhibited "paper 1" and obtained his thumb impression on it and then sent it to the police station, then in that view of the fact, it became an FIR in the eye of Iaw.[6] FIR can be lodged by a person who is lodging under the power of attorney of an aggrieved person.[7] Station House Officer (S.H.O.) can also register his own version as information in order to put the law into motion.[8]

Delhi High Court has directed police to allow registration of FIR with regard to missing persons online by way of sms, emails, whatapp etc so that the valuable time may not be wasted and investigation may be carried out speeding.[9]

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1. Vishwa Mitter v. O.P. Poddar, AIR 1984 (SC) 5; Nanku Singh v. State of Bihar, AIR 1973 (SC) 491; R.S. Devarkar v. State of Maharashtra, 2007 (4) Crimes 1401
2. Nand Kishore Singh v. State of Bihar, 2001 (2) PLJR 127.
3. State of Assam v. Bhabanada Sharma, 1972 Cr. L.J. 1552.
4. A.W. Khan v. State, AIR 1962 Cal. 641.
5. 1974 L.W. (Cri.) 190 (Med.).
6. Sherpa v. State, 1991 Cr. L.J. 2215 (2217); (1990) 3 Crimes 645.
7. Nalla v. State, AIR 1974 (SC) 1936: 1974 SCC (Cri.) 452.
8. State of W.B. v. S.N. Basak, AIR 1963 (SC) 447: 1963 (1) Cri. LJ 244.; K.N. Ahmad v. Emperor, AIR 1945 (PC) 18.
9. Court in Own Motion v. State, W.P.(Cri.) No.737 of 2019, dated 13.5.2019.

Any person having knowledge of an offence may lodge an FIR even through telephone, disclosing his identity and giving particulars of crime. Any cryptic and anonymous oral message, however, conveyed through telephone which did not specifically clarify a cognizable offence cannot be treated as FIR merely on the ground that the information was first in point of time.[1] Similarly when there was a telephonic message that some persons are lying injured at a particular place then it could not be treated as FIR.[2]

But when a telephonic message is given by a person who discloses his identity and if it contains all necessary facts which constitute an offence and is reduced to writing by officer-in-charges, such telephonic information reduced in writing can be treated as FIR.[3] Inspector of Police can lodge FIR *suo motu* on the basis of report of newspaper.[4]

A woman can file matrimonial case, including criminal matters pertaining to cruelty from place where she has taken shelter after leaving or being driven out of their matrimonial name.[5]

1.5 Dispatch of FIR to Magistrate and Superior Officer

It is imperative in law that the original copy of FIR, must be sent **under section 176 of BNSS** *[u/s 157, Cr.P.C.]* to the Chief Judicial Magistrate or Metropolitan Magistrate, as the case may be, without delay within 24 hours.[6] The copy of FIR should be sent to the Superintendent of Police also.

Delay of two days in sending the copy of FIR to the Magistrate causes reasonable doubt on prosecution.[7] Delay in sending the copy of FIR much later than the stated date causes suspicion.[8] So, the police should not cause delay in sending the copy of FIR to Magistrate and the later should also take appropriate notice of it as soon as it is received by him.[9] When the FIR was received by the Magistrate with inordinate delay, then the entire prosecution case must be viewed with suspicion.[10] Delay in sending FIR to Magistrate concerned would

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1. Tapinder Singh v. State of Punjab, AIR 1970 (SC) 1566: 1970 Cri. LJ 1415; State of U.P. v. P.A. Madhu, AIR 1984 (SC) 1523.
2. Sakka Ram v. State of Maharashtra, (1969) 2 SCC 730.
3. Jagdish B. Rao v. Govt. of U.T. of Goa, Daman and Diu, 1976 Cri. LJ 132.
4. Yunus Zia v. State of Karnataka, 2015(2) Crimes 219 (SC): 2015(7) SCC 327.
5. Rupali Devi v. State of U.P., 2019 SCC OnLine 493 (3 Judges).
6. R.B. Devaskar v. State of Maharashtra, 2007(4) Crimes 140 ; Jang Singh v. State, (2001) 9 SCC 704.
7. Kumudanand Mishra v. State of Bihar, 2005 (1) Crime 365 (D.B.); V. S.N. Reddy v. State, 2001 (2) Crimes 163; 1980 Cr. L.J. N.O.C. 51; Ishwar Singh v. State of U.P., AIR 1976 (SC) 2423.
8. Ishwar Singh v. State of U.P., AIR 1976 (SC) 2423: 1976 Cr. L.J.1883.
9. Om Prakash Singh v. State, AIR 1974 (SC) 1983; Swaran Singh v. State of Punjab, AIR 1976 (SC) 2423: 1976 Cr. L.J. 1883.
10. Ishwar Singh (supra).

not in any way affect prosecution case when occular version was worth of acceptance nor they sent FIR can be regarded as a tainted document.[1]

The question of delay is a good defence.[2]

Unexplained delay of 37 hours in sending FIR to the court would be fatal to the prosecutions case.[3] Delay of three days may be fatal.[4]

Mere fact of delay of two days in sending the FIR to the court is not sufficient for throwing out entire prosecution case but it is a material point in terms of defence.[5]

1.6 Situation of delay in lodging the FIR

The prosecution is required to explain satisfactorily the reason for delay in lodging/filling FIR. Delay in setting law into motion by lodging of complaint/ FIR is normally viewed by courts with suspicion because there is possibility of concoction and embellishment of the occurrence. So it becomes necessary for prosecution to satisfactorily explain the delay. Object of insisting upon a prompt lodging of report, is to obtain early information not only regarding assailants but also about part played by accused, nature of incident and names of witnesses.[6]

FIR lodged after unexplained delay that too suppressing the actual FIR filed by debased before his death cannot be considered FIR and it can at best be a statement of the informant **under section 180 of BNSS** *[under section 161, Cr.P.C.]*[7]

FIR in a criminal case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the time of trial. Delay in lodging the first information report often results into embellishment and it is presumed that it a creature of after thought. The delay in lodging FIR should be explained satisfactorily by the prosecution and its failure may be fatal to the prosecution.[8] The object behind prompt lodging of FIR is to obtain earlier information and to rule out possibility of manipulation of through an afterthought story. Preliminary enquiry may be made only in case of matrimonial family disputes, commercial, medical negligence, corruption cases and case of delay over 3 months.[9]

1. Arjun Marik v. State of Bihar, 1994 (2) Supp. SCC 372.
2. Shivlal v. State of Chhattisgarh, AIR 2012 (SC) 280; Arun Kr. Sharma v. State of Bihar, 2010(1) SCC108; Shiv Ram v. State, AIR 1998 (SC) 49; Bhajan Singh v. State of Haryana, AIR 2011 (SC) 2552.
3. V. S. Nanji Reddy v. State of A.P., 2001 (2) Crimes 162 (A.P.).
4. Jang Singh v. State, (2001) 9 SCC 704.
5. Kapil Singh v. State of Bihar, (1990) 1 BLJ 716.
6. Gajanan Dshrath v. State of Maharashtra, 2016 Cr.L.J. 1900 : (2016) 4 SCC 604 : AIR 2016 (SC) 1255.
7. State of M.P. v. Ratan Singh, 2018(3) Crimes 319 (SC).
8. Thullia Kali v. State of Tamil Nadu, AIR 1973 (SC) 501; Bishundas v. State, 1982 Cr. L.J. 493 (Ori.); Jagannath Giri v. State, 1991 (2) BLJ 217: 1991(2)PLJR 358.
9. Lalita Kumari v. Govt. of U.P., AIR 2014 (SC) 187 (FB).

Extraordinary delay in lodging FIR by the police shall be viewed with suspicion and even delay of eleven hours in lodging FIR may raise suspicion.[1]

Delay of even two[2], three[3], four, or eight[4] days may be fatal to the prosecution. Unexplained delay of about ten hours in lodging FIR may be fatal.[5]

Where FIR was lodged after 2 hours since occurrence though the police station was just 3 km from the place of occurrence, then an inevitable conclusion may be drawn that the witness lodging FIR did not actually naturally witness the incident and accused persons were acquitted giving benefit of doubt.[6]

The delay casts shadow on prosecution story and puts the court on guard to possible motive and explanation of delay.[7]

Prosecution case is not free of doubt when no convincing explanation was given for delay of more than twenty four hours in lodging FIR after recording a *fardbayan*.[8] Where FIR was lodged after delay of fourteen hours, the circumstances of delay have to be carefully examined.[9] The typed copy of FIR has no evidentiary value.[10]

Delay of 20 hours in lodging FIR though the police station was only two miles from the place of occurrence, raises considerable doubt.[11]

1.7 Reasonable Explanations of Delay in Lodging FIR

There may be genuine delay in lodging first information report and, therefore, delay in FIR is not always fatal to the prosecution case. It only gives rise to the suspicion which casts shadows on the prosecution story and puts the court on guard to possible motive and explanation of delay.[12] There may be genuine delay and such circumstances of delay causes no suspicion.[13] The question of delay in lodging FIR has to be considered in view of facts and circumstances of each case and the background of human factor involved such as time genuinely required by the person concerned to prepare himself for taking appropriate steps in view of cause of action.[14]

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1. Ramji Surya v. State at Maharashtra,1983 Cr. LR 392 (SC); State of Rajasthan v. Gokulchand, 1984 (1) Crime, 22 (Raj.):
2. Shankar Lal v. State of M.P., 1982 Cr. L.J. 254.
3. Satbit v. State of U.P., 1982 Cr. L.J. 1743: AIR 1982 (SC) 1216.
4. Wala v. State of Rajasthan, 1982 Cr. L.J. 26 (Raj.).
5. Phinder Singh v. State of Rajasthan, 1985 R.L.W. 687.
6. Mrugan v. State, 1994 (1) Crimes 137 (Mad.):
7. Sadara v. State of Haryana, 1985 (1) Crimes 107.
8. Apren Joseph v. State of Kerala, AIR 1973 (SC) 1: 1973 Cr. L.J. 185.
9. Devendra Chaudhary v. State of Bihar, 1987 LJR 734.
10. 1971 Cr. L.J. 1615 (Del.).
11. Bandu Bind v. State of Bihar, 1986 PLJR (NOC) 36.
12. Sadara v. State of Haryana, 1985 (1) Crimes 107.
13. Bishen Singh v. State, (1969) 71 Punj. L.R. 73.
14. State of U.P. v. Manohar Lal, AIR 1981 (SC) 2073.

The delay caused by lodging first information report (FIR) has to be explained by the prosecution.[1] Delay caused due to lodging FIR at wrong police station is not a delay in the eye of law.[2] If there is no enmity between informant and accused, it cannot be presumed that there was deliberate delay to implicate the accused falsely.[3]

There are some circumstances, such as, odd time, distance of police station, non-availability of the conveyance, danger from the accused side armed with gun etc., which may be relevant in deciding whether the delay in lodging the FIR has been properly explained or not.[4] The anxiety of relatives to provide adequate aid to the injured person may be a reasonable ground for delay in lodging the FIR. The shock of grief caused by death of deceased may also be a good ground for 12 hours delay.[5]

1.8 Situation of Lodging Two FIRs for same Incident

It is not permissible to lodge two FIRs for one and the same incident or occurence. However, he registration of two first information reports in the nature of case and counter case for the same incident is not excluded from the purview of **Bharatiya Nagarik Suraksha Sanhita** *[Earlier, Criminal Procedure Code]*.[6]

Any further/second complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited **under section 181 of BNSS** *[u/s 162* of the *Cr.PC]*.[7] So, there cannot be two FIRs against the same accused in respect of the same case. But when there are two rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency as they are in the nature of case and counter case.[8]

Order of dismissal of a private complaint either on merit or for non-prosecution is not a bar for entertaining second complaint on same fact but it will be entertained in exceptional circumstances i.e. when there was a manifest error or apparent miscarriage of justice.[9]

1. State of Kerala v. Samual, AIR 1961 (Ker.) 99 (D.B.); G.B. Patel v. State of Maharashtra, AIR 1979 (SC) 135; Khedu Mahto v. State of Bihar, AIR 1971 (SC) 66.
2. Atruddin v. State of U.P., AIR 1974 (SC) 1901.
3. Jadunath Singh v. State of U.P., AIR 1972 (SC) 116: 1971 MLJ (Cri.) 209.
4. Ramachandran v. State of Rajasthan, 1982 Cr. L.J. 36 (Raj.).
5. Krishna Pillai v. State of Kerala, AIR 1981 (SC) 1237.
6. Upkar Singh v. Ved Prakash, 2004 (4) Crime. 20 (SC).
7. T.T. Anthony v. State of Kerala, 2001 (6) SCC 181; Upkar Singh v. Ved Prakash, 2004 (4) Crimes 21(25) (SC); Amitbhai v. CBI, 2013 (2)PLJR (SC) 374: A.A. Shak v. CBI 2013(2) PLJR (SC) 374; Chirra Shivraj v. State of A.P., 2011(1) BBCJ (SC) 211.
8. Kari Chaudhary v. Mst. Sita Devi & Ors., 2002 (2) SCC 714; Upkar Singh v. Ved Prakash, 2004 (4) Crimes 21 (Para 16) (SC).
9. Tulsamma v. Jagannath, 2004 (4) Crimes 252 (Karr.); Mahesh Chand v. B. Janardhan Reddy, 2002 AIR SCW 5385.

Trial of counter case regarding same occurrences should also be by the same court.[1] Where there are case and counter case, if one is committed to the court of session, then other also should be committed to the court of session even if it is triable by the Magistrate.[2] Where two cases are regarding same incident, slight difference in times and places of occurrence will not make them two separate cases, if commitment enquiry is held in one case, it ought to be held in counter case[3]. Court should try all offences together if they arise out of the same transaction to prevent abuse of the process of court.[4] Second FIR for an offence or different offence committed in same transaction is illegal and also violative of Article 21.[5]

No second prosecution is permissible after grant of acquittal for want of sanction even if second prosecution was after sanction.[6]

It is well known principle that if regarding any occurrence there is a case and counter case, then either one of the version is correct or both the versions are false. But it is never possible that both the versions will be correct.[7] If police refused to lodge a counter complaint, Magistrate may direct police to register the FIR.[8] Two FIRs or more FIRs containing similar allegations may be clubbed togather.[9]

Merely because remedy by way of civil suit has been availed of, is not an impediment in maintaining a criminal complaint if discusses the ingredients of the offence alleged.[10]

A second FIR in respect of an offence or different offences committed in the course of same transaction is not only impermissible but it violates Article 21 of Constitution.[11] a second FIR is unwarranted, instead filing of a supplementary charge-sheet in this regard will suffice the issue.

The two FIRs lodged for the same incident may be clubbed together as lodging of two FIRs is bad in law.[12]

Two criminal proceedings relating to the same offence cannot be continued parallel in more than one criminal court and thus the proceeding pending at one court should be dropped.[13]

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1. Hasim Mia v. Sunder Paswan, 1970 PLJR 236; Sudhir v. State, (2001) 2 SCC 688.
2. Joginder Singh v. State of Bihar, 1972 BLJR 78 (SC); A.K. Singh v. State of Bihar, 2004 (3) Crimes 79.
3. Raman Mandal v. Gulabi Mandal, 1971 PLJR 521.
4. State of Bihar v. Simranjit Singh Mann, 1987 PLJR 417.
5. Amitabha Anilchandra Shah v. CBI, 2013(2) PLJR (SC) 374.
6. Prasant Kumar Sah v. State of Bihar, 1986 PLJR 1034.
7. State of Bihar v. Panchoo Dhayar, 1987 BLJ 644.
8. Upkar v. Ved Prakash, 2004(4) BBCJ 268 (SC).
9. **Satinder Singh Bhasin v. Govt. of NCT of Delhi, 2019(4) Crimes 213 (SC).**
10. M/s. Goel Cold Store Pvt. Ltd. v. State of Bihar, 2009(2) BBCJ 501.
11. Amitabh Anil Chandra Sah v. CBI, 2013(2) PLJR 373 (SC).
12. Indrajeet Chaudhary v. State of Bihar, 2007(3) BBCJ 515.
13. Sukhjinder Singh v. State (NCT of Delhi) 2002(1) PLJR 87 (SC).

1:9 Situation of Joint Complaint signed by two persons:

One complaint cannot be filed by two persons and the same is not in contemplation of **Bharatiya Nagarik Suraksha Sanhita** *[Code of Criminal Procedure]*.[1]

As per law, a complaint can be filed by only one person as then is not provision in the **Bharatiya Nagarik Suraksha Sanhita** *[Code of Criminal Procedure]* for joint compliant.[2]

A joint complaint is not valid and hence all subsequent steps taken by the learned Magistrate on complaint are liable to be quashed.[3]

1.10 Evidentiary Value of FIR

The FIR is one of the most valuable document of prosecution report. It is a valuable piece of evidence being the earliest version, and it can be compared with all the variations and omissions found in the version of witnesses.[4]

The basic object of FIR is to obtain earliest information about the alleged criminal offence and to record the circumstance to save it from being forgotten or embellished.[5] It is not a substantive piece of evidence and it can be used only for the purpose of corroboration **under section 160 of Bharatiya Sakshya Adhiniyam (BSA)** *[u/s 157 of Evidence Act]* or for contradiction **under section 148 of BSA** *[u/s 145 of Evidence Act]* used against the maker of the same.[6]

FIR is the earliest information about an alleged offence on which the investigation is communed.[7] It can be used also as a dying declaration **under section 26 of BSA** *[u/s 32 of the Evidence Act]* as to the cause of informant's death or as part of informant's conduct in the crime.[8] The FIR is of considerable value at the time of trial as it shows that what material the investigation commenced and what story was found thereafter and thus it helps to ascertaining the truth of the case.[9]

When the informant, an illiterate person had admitted in cross-examination that the investigating officer had first heard his version and thereafter he had dictated the report to head constable, then it was held that such FIR cannot be held genuine and valid in law.[10] However, there is no presumption that FIR was false and fabricated merely because it was recorded by investigating officer as narrated by eye-witnesses.[11]

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1. Sashadbar Achaiya v. Sir Charles Tegart, AIR 1931 (Cal.) 646.
2. Narayana swami v. Egappa Reddy; 1961 MWN (Crl.) 129
3. Thethavusamy v. Radhakrishnan; 2007(1) KLT 226:2007 (2) crimes 166 (Mad.)
4. Nagireddi v. State of U.P., 1968 MLJ (Cri.) 131; Tulia Kali v. State of Tamil Nadu, AIR 1973 (SC) 501.
5. Tara Chand v. State of Haryana, AIR 1971 (SC) 1891.
6. Apren Joseph v. State of Kerala, AIR 1973 (SC) 1: 1973 MLJ (Cri.) 429.
7. Narayana Dutta v. State, 1980 Cr. L.J. 264 (Cal.).
8. Damodar Prasad v. State of Maharashtra, AIR 1972 (SC) 622.
9. Mool Chand v. State, AIR 1955 Bhopal 9 (11).
10. Manmant Nath v. State of Rajasthan, 1984 Raj, L.W. 486.
11. Patti Pati Venkaiali v. State of A.P., 1985 Cr. L.J. 2012: AIR 1985 (SC) 1715.

But when the FIR was written after consultation with the investigating officer then conviction is not legally valid.[1]

When FIR was itself anti-dated, then no sanctity can be attached to the statement of the prosecution witness and entire prosecution case becomes doubtful.[2] FIR lodged after commencement of investigation is hit by section **under section 181 of BNSS** *[162, Cr.P.C.]* and no value can be attached to it.[3]

It is duty of Duty Officer at police station to mention the related details, such as name of the assailant, name of witnesses, weapon used etc. in the daily entry and then mention these report while sending the report to the Magistrate along with the name of the constable who took the report, in the absence of these formalities, it was held that FIR was not proved to have been written at the time as claimed by the prosecution.[4]

The fact of "inadmissibility" of the FIR does not affect the evidence of witnesses.[5] The mere fact that the FIR is exhaustive does not obliterate the necessity of proper investigation.[6]

The fact that the time of the lodging the First Information Report has not been mentioned in the check report, it casts a doubt about its authenticity.[7]

When the FIR was not brought on record, then it deprives the accused of his valuable right to cross examine prosecution witness on the basis of FIR.[8]

The receipt and recording of first information report by the police is not a condition precedent for setting the law into motion for a criminal investigation.[9]

The credibility of the prosecution case is under doubt in case of failure of prompt lodging of FIR at the police station.[10]

When the names of the accused were mentioned in the FIR by the eye-witnesses then the question of holding an identification parade does not arise.[11]

When the accused were not named in FIR but they were identified in the court, then it was held that his testimony should not be accepted.[12]

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1. Neera Lal v. State of U.P., 1990 (1) Crimes 626.
2. Mridula v. State of Kerala, AIR 1980 (SC) 638; Brijendra v. State, 1993 A.CR. 106.
3. Ramesh Kumar v. State (Delhi Admn.), 1990 Cr. L.J. 255 (261). Mshu laxman v. State of Gujrat; 1965(2) GLJ 762.
4. Ramesh Kumar v. State (Delhi Admn.), 1990 Cr. L.J. 255 (261).
5. State v. Bhagban Naik, 1985 (6) CL.J. 25.
6. Samsad Ali v. State, (1985) D.L.T. 66.
7. Ismail v. State of U.P., 1993 A.CC. 128.
8. Onkar v. Jeev Raj, 1985 W.L.N. (D.C.) 842.
9. Apren Joseph v. State of Kerala, AIR 1973 (SC) 1: 1973 Cr. L.J. 185.
10. Ganesh Bhawan Patel v. State of Maharashtra, 1978 (4) SCC 371 (384).
11. Dharm Bir v. State of M.P., AIR 1974 (SC) 1156: 1974 SCC(Cri.) 32.
12. Babloo alias Kalyan Das v. State of M.P., AIR 1979 (SC) 1042: 1979 Cr. L.J. 90B; 1979 SCC (Cri.) 743.

If the informant was not examined in the court, then it was held that the use of FIR for corroborating the evidence of prosecution witnesses against the accused in improper.[1] FIR lodged after inquest report in bad in law.[2]

The prosecution is duty-bound to prove the FIR of a cross-case to enable the court to scrutinize the whole facts and circumstances of the case under hearing.

1.11 How to Prove an FIR

The First Information Report is a document which is required to be proved like any other document in the course of trial. The informant being the first person to give information about the offence has to be examined and through him the complaint filed has to be marked as "Exhibit".

The FIR is admissible as evidence **under sections 160 and 148 of BSA** [*u/ss 157 and 145 of the Evidence Act]*. It is usually used to be corroborated or contradicted by its maker. Unless the FIR is legally proved it cannot be admitted in evidence. It should be proved either by the person who wrote it or who had dictated it to the scribe.[3]

It must be proved that FIR contains the signature and thumb impression of the informant and none else.[4] Thus, the FIR cannot be referred to if neither the informant nor the person who wrote it at the police station has been produced as a witness.[5]

The act of recording of FIR at police station is an official act and so presumption of due performance of duty is attached.[6] But if the FIR is not proved in case, it would not vitiate the conviction.[7]

The rejection of FIR, therefore, would not doubt the testimony of the eyewitnesses which will have to be assessed on its witnesses which will have to be assessed on its own mind.[8]

In absence of the original FIR on record, it is not legally permissible to prove the same by proving the copy of the duplicate copy of FIR.[9]

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1. Shankar v. State of U.P., 1975 Cr. L.J. 637 ': AIR 1975 (SC) 765; Jamadar Prasad v. State of Maharashtra, 1972 Cr. L.J. 451: AIR 1972 (Mah.) 558.
2. Ganesh Gagoi v. State of Assam, AIR 2009 (SC) 2955; Balaka Singh v. State of Punjab, 1975 CrLJ 1734; contrary views, Brahm Swaroop v. State of U.P., AIR 2011 (SC) 280; Rajesh @ Raju v. State of Gujarat, AIR 2002 (SC) 1412.
3. Nishat Ranjan v. State of Assam, 1982 Cr. L.J. 2253.
4. Hari Saran Ahir v. State of Bihar, 1985 (1) Crime 690 (Patna).
5. State v. Gajraj, AIR 1953 Raj 66.
6. Sane Lal v. State of U.P., AIR 1978 (SC) 1142: 1978 Cr. L.J. 1122: 1978 SCC (Cri.) 587.
7. Ram Dev Singh v. State, AIR 1959 (All.) 511: 1959 Cr. L.J. 936.
8. Benndhar Rautha v. Raula Alibo Mahantwar Sahu, 1991 Cr. L.J. 220.
9. Nagar Singh v. State of U.P., 1992 (2) Crimes 1081 (All).

If the prosecution wanted to use the FIR as evidence against the accused, then it is bound to call the informant as a witness and prove his information through him.[1]

The FIR should be marked as an exhibit only after the same is examined by I.O. and not before.[2]

The court cannot put reliance on the FIR if the maker of FIR was examined in the court but it was not tendered by the prosecution in accordance with the provision of the Evidence Act.[3]

The provision of **section 94 of BSA** *[Section 91 of Evidence Act*] is attracted since an FIR is required to be reduced to writing. It is, therefore, this very document which may be proved as such or in cases where secondary evidence may be given, then evidence may be adduced in proof of it.[4]

The FIR is not an indispensable requisite for investigation of a crime, specially where the accused was committed to session, the charge was framed and explained to him and the accused was tried on the charged. The lack of FIR, however, in such a case would not and cannot vitiate the trial outright.[5]

It is neither customary nor necessary to mention every minute details in the FIR and the benefit of it cannot be extended to the accused merely because names of two of prosecution did not find place in the first information report. The evidence of witnesses not named cannot be discarded unless otherwise inadmissible.[6]

First information report is not a substantive piece of evidence and it can be used merely by way of corroboration or contradiction and no further.[7]

1.12 FIR in Non-Cognizable Cases

The officer-in-charge or officer-on-duty is required to enter an information about non-cognizable cases into the Station General Diary. An acknowledgement of such information should be given to the party concerned.

If the police officer thinks it necessary to give information to the Magistrate in non-cognizable case, he may make a report to the Magistrate in writing giving details of the facts which constitute such offence under provisions of **Section 210(1) of BNSS** *[Section 190(1) of Cr.P.C].*

A police officer making investigation under appropriate order cannot arrest a person as he can do it in a cognizable case, he can arrest only under authority of a warrant.[8]

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1. Biran Sardar v. Emperor, 1941 Bom. 146: 42 Cr. L.J. 519.
2. Mulu Laxman v. State of Gujrat; AIR 1965 (Guj.) 319: (1965) 2 Cr. L.J. 762.
3. Damodar Pd. Chandrika Pd. v. State of Maharashtra, AIR 1972 (SC) 622.
4. Miyana Hasan Abdula v. State, 1962 (2) Cr. L.J. 55 (Guj.).
5. A.W. Khan v. State, 1962 (2) Cr. L.J. 751: AIR 1962 Cal. 641.
6. Bhagirath Singh v. State of Rajasthan, 2001 (1) Crimes 26.
7. D. Ramalingam v. State, 2005 (3) Crimes 176.
8. Narayan Das Bhagwan Das v. State of W.B., AIR 1959 (SC) 1118: 1959 Cr. L.J. 1363.

Where a non-cognizable case has been lodged and investigation made without an order from a Magistrate and a charge-sheet submitted, cognizance taken and trial proceeded is not vitiated unless a serious prejudice has been caused to the accused.[1]

Where the information lodged related to a non-cognizable offence, the police officer cannot investigate it without obtaining an order of the competent Magistrate.[2]

Where a case is concerning two or more offences of which at least one is cognizable, the whole shall be deemed to be cognizable[3] in view of **Section 2(n) and Section 174(4) of BNSS, 2023** *[Section 2(o) and Section 155(4), Criminal Procedure Code, 1973]*.

If some of the offences in a complaint are non-cognizable and some others cognizable, then Magistrate ordering investigation by police **under section 175(3) of BNSS** *[u/s 156(3) of Criminal Procedure Code]*, commits no illegibility.

1.13 FIR in Cognizable Offences

The offences have been divided into two categories, viz. cognizable and non-cognizable, for the purpose of investigation. When information about commission of a cognizable offence is received or such commission is suspected, the officer in-charge or the appropriate police officer has the authority to make investigation into the same.[4]

An officer-in-charge or appropriate police officer of police station, may, without order of a Magistrate investigate any cognizable offence which a court having jurisdiction over the local area within the limits of such station have power to investigate into or try under the provision of Chapter XIII **under section 175 of BNSS, 2023** [Section 156 of Cr.P.C., 1973].

The police has the statutory right **under section 173 of BNSS** *[u/s 154, Cr.P.C.]* to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this statutory power of the police to investigate cannot be interfered with by the Magistrate in exercise of power **under section 442 of BNSS** *[u/s 401, Cr.P.C.]* or under the inherent power of the court **under section 528 of BNSS, 2023** *[u/s 482 of Cr.P.C., 1973.]*[5]

Once, an investigation by the police has been ordered by a Magistrate, the Magistrate cannot place any limitation on it or direct the officer conducting it as to how or in what manner conduct it.[6] The **Bharatiya Nagarik Suraksha Sanhita** *[Criminal*

1. State of U.P. v. Bhagwant Kishore, AIR 1964 (SC) 221.
2. H.N. Rishibud v. State, AIR 1955 (SC) 196: 1955 Cri. L.J. 526; Arvind Madhukar v. State, 1983 Cr. L.J. 1983.
3. Ram Krishna Dalmia v. State, AIR 1958 (Punj.) 172: 1958 Cr. L.J. 683.
4. H.N. Rishibud v. State, AIR 1955 (SC) 196 SC: 1955 Cr. L.J.526.
5. State of W.B. v. S.N. Basak, 1963 (1) Cr. L.J. 34 00: AIR 1963 (SC) 447; Abhinandan Jha v. Dinesh Mishra, AIR 1968 (SC) 117: 1968 Cr. L.J. 97; N. Sharma v. Nipin Kumar, 1970 Cr. L.J. 764: 1976 S.CC (Cri.) 258.
6. Nirmal Jit Singh Hoon v. State, 1970 Cr. L.J. 799 (Bom.); Jogendra v. State, 1966 Cr. L.J. 1324.