

What is FIR ?

- FIR is per se not defined in the code of criminal procedure.
- From Section 154, it can be understood that
 - A FIR means the information, by whomsoever given, to the officer in charge of a police station in relation to the commission of a cognizable offence and which is first in point of time and on the strength of which the investigation into that offence is commenced.
- FIR is not an encyclopedia. It is only to set the law in motion. It need not elaborate but should contain necessary allegations to constitute cognizable offences

- An F.I.R. recorded without any loss of time is likely to be free from embroideries, exaggerations and without anybody intermeddling with it and polluting and adulterating, the same with lies.
- The purpose of F.I.R. is to obtain the earliest account of a cognizable offence before there is an opportunity for the circumstances to be embellished.

- A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.
- 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 subsection (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.

- Substantive Aspect – Substantive evidence is **the evidence on the basis of which a fact is proved and which requires no corroboration**. Substantive evidence is either direct or circumstantial or both.
- is FIR a relevant fact or substantive
- Procedural Aspect

Evidentiary Value of FIR

- Supreme Court judgement in Baldev Singh & Another V. State of Punjab, wherein the following observations were made, *“FIR is not a substantive piece of evidence, it is only relevant in judging the veracity of prosecution case and the value to be attached to it depends on the facts of each case. Only the essential or broad picture need be stated in the FIR and all minute details need not be mentioned therein. It is not a verbatim summary of the prosecution case.”*
- The FIR is not substantive evidence, but it can be used to corroborate the informant under Section 157 of the Evidence Act, or to contradict him under Section 145 of the Act, if the informant is called as a witness at the time of trial. Obviously, the FIR cannot be used for the purposes of corroborating or contradicting any witness other than the one lodging the FIR.

Main reasons why FIR does not have any substantive evidentiary value:

1. Because the statements in the FIR are not made on oath.
2. Because the statements in the FIR are not made during the trial or at the time of proceedings.
3. Because the statements recorded in FIR has no cross-examination in the Court.
4. Because the statements recorded by the police officers are not admissible in court.

Reasons why FIR are treated as an important piece of evidence:

1. For corroborating the statements made by the person who recorded the FIR.
2. For cross-examination of the statements made by the person in the FIR.
3. For refreshing informer's memory.
4. For impeaching the creditworthiness of the informer.
5. For the purpose of ascertaining the general facts like the identity of accused, witnesses, time of offences etc.

- FIR can also be used to test and measure the trustworthiness of the prosecution story as a whole.
- When the case of prosecution was that accused caused injury on the cheek of the informant and when the F.I.R. did not disclose such fact, then such omission in the F.I.R. would seriously impeach credibility of informant

Non-mention of name of witness in FIR

- In *Bhagwan Singh and Others v. State of M.P.*¹³ the honorable Supreme Court decided that non-mention of name of witness in FIR is not relevant.
- A First Information Report is not supposed to be a detailed document. The F.I.R. is a document which sets the criminal law into motion, and it has to be appreciated keeping in mind the facts and circumstances of each individual case.

FIR & Conduct

- Provision for conduct is given under section 8 of IEA. Basically, it is referred to show the conduct of an accused or informant as to commission of a cognizable offence.
- Points to be considered :-
 1. Time of giving information
 2. Conduct of informant
 3. *Gulshan Kumar v. State*, 1993(2) Crimes 239 (Delhi), in which Court held that FIR can be used under section 8 to show and establish the conduct of an informant.

FIR & Admission

- **Any FIR which is lodged by an accused can be used against him. Section 25 of the Evidence Act and Section 162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the courts under Section 21 of the Evidence Act shall permit.**
- **Paddi v. State of M.P., A.I.R S.C. , The Apex court held that Admission of an accused can be proved against him under the provision of Section 21 of IEA**

F.I.R. AND AN ADMISSION UNDER SECTION 21 OF THE INDIAN EVIDENCE ACT

- F.I.R. is admissible under Section 157 of the Evidence Act, as corroborating the testimony of the informant or for contradicting him under Section 145 or under Section 8 of the Evidence Act as evidence of his conduct.
- It may also be admissible as his admission when the accused himself makes the first information report. Section 25 of the Evidence Act lays down that if it is in the nature of a confession, being made to a police officer, it is admissible, and it cannot be proved as against him. If it is not a confession, but contains admissions made by the accused, F.I.R. is admissible in evidence under Section 21 of the Evidence Act.

FIR CAN BE USED FOR THE FOLLOWING PURPOSES

- It can be used to corroborate the maker under S. 157 of Evidence Act, but not to corroborate the other witnesses. Apex Court has gone so far to say that the prosecution case cannot be thrown out on the mere ground that if the first information reports an altogether different version was given by its maker.
- F.I.R. can be used to contradict only the maker of it under section 145 and Section 155 of Evidence Act and not other witnesses.
- FIR can be used by the defence to impeach the credit of the maker under section 155(3) of the Evidence Act.⁵⁹
- A non-confessional First Information Report lodged by the accused can be used against him to prove his admissions in regard to certain facts under Section 21 of Evidence Act.⁶⁰
- Certain portion of confessional First Information Report lodged by the accused can be used against him if they lead to the discovery of a fact within the meaning of Section 27 of Evidence Act.⁶¹
- FIR can be used as substantive evidence on the death of the informant if it relates to the cause of informant's death or circumstances of the transaction resulting in informant's death within the meaning of section 32(1) of Evidence Act.⁶² In other case, it cannot be used as substantive evidence.⁶

FIR & Dying Declaration

- ❑ Omission of important facts like a Dying Declaration in F.I.R. would be relevant under Section 11 of the Evidence Act to judge the veracity of prosecution case.
- ❑ FIR can be used as substantive evidence on the death of the informant if it relates to the cause of informant's death or circumstances of the transaction resulting in informant's death within the meaning of section 32(1) of Evidence Act. In other case, it cannot be used as substantive evidence.
- ❑ When the declarant who was also the maker of the F.I.R. had died and there was no direct enmity between the deceased and accused and scribe certified that he had written the F.I.R. in the words as stated by deceased and when F.I.R. was dictated by the deceased unaided from any quarter and F.I.R. had implicated the accused in unambiguous terms, then it was held that such F.I.R. had to be regarded as Dying Declaration and is sufficient by itself to fix the guilt upon the accused. It is desirable to have mention of dying declaration in F.I.R. After the registration of the case, the rest of the story has to be reconstructed or logically worked out to establish the entire chain of events, corpus delicti i.e. the body of the murder. This means a continuity of the chain from contemplation to culmination, has to be established, and in cases of murder, from motive to death.

WHEN THE F.I.R. WAS, LODGED OR RECORDED AFTER PREPARATION OF INQUEST REPORT

- F.I.R. loses all authenticity if it is written after inquest report.
- When there is discrepancy of distance in F.I.R. and inquest report, then it must give rise to an inference that the F.I.R. is ante-timed and attached to the statement of F.I.R. and eye-witnesses whose names find place in F.I.R

DEATH OF INFORMANT ? VALUE OF FIR

- There is no law that the FIR cannot be taken into consideration on the death of Informant
- The case will have to be proved on the basis of evidence collected by the Prosecution during the course of investigation and FIR is no evidence in the case, it is only a piece of information with the police records with which the system comes into motions and investigation is stopped.

FIR & Confession

- A non-confessional First Information Report lodged by the accused can be used against him to prove his admissions in regard to certain facts under Section 21 of Evidence Act.
- Certain portion of confessional First Information Report lodged by the accused can be used against him if they lead to the discovery of a fact within the meaning of Section 27 of Evidence Act.

FIR and Section 145, 157 of Indian Evidence Act

- FIR can be used to corroborate the maker under S. 157 of Evidence Act, but not to corroborate the other witnesses. Apex Court has gone so far to say that the prosecution case cannot be thrown out on the mere ground that if the first information report an altogether different version was given by its maker. This position has not, however been maintained in toto in subsequent cases of the apex court
- Section 145 talks about Cross- examination as to previous statement in writing. F.I.R. can be used to cross examine the informant and for contradicting the maker of it. this is possible by relying on Section 145. Krishna Kumar v. State, it was held that when the F.I.R. is clouded with suspicion as it was product of undue deliberation and consultation, then F.I.R. loses its corroboration value.

F.I.R. is not a substantive piece of evidence

- FIR can only be used to corroborate the statement of the maker under Section 157, Evidence Act or to contradict it under Section 145 of the Evidence Act.(Bir Singh v. State of H.P.)
- It can only be used for corroboration or contradiction purposes that too when F.I.R. was lodged by a person having direct knowledge about the occurrence. The value of F.I.R. must always depend on the facts and circumstances of a given case (Dharma Rama Bhargava v. State of Maharashtra, 1973)

- The records maintained by the Police during the course of their investigation cannot really be considered as substantive evidence and cannot be taken as proof the facts stated therein.
- This was held in **SRI SRI. RAVI @ RAVINDRA V. THAMMANNA & ors and UNITED INDIA INSURANCE COMPANY LIMITED v. SRI. RAVI @ RAVINDRA & ors.**[M.F.A.No.6863/2014 & M.F.A.No.1541/2015] in the High Court of Karnataka by single bench consisting of *Justice N.S.SANJAY GOWDA*.

F.I.R. IS A PUBLIC DOCUMENT

- Whenever there is a bona fide requirement, the Court to which F.I.R. is forwarded by the Police, can grant certified copy of F.I.R. on payment of legal fee by the accused as it is a certified copy of a public document
- An accused is entitled to get a copy of the FIR only under the orders of the Court after the Court has taken cognizance of the case and not before

Delay in filing FIR

- If there is difference between fir and the version narrated in the Court, it is always a matter of gave suspicion to the Court.
- Where there is no mention of certain important facts in the FIR which are later brought to the Court as substantial evidence, the Court would be right in disbelieving that part of the evidence. There is no consequence on account of minor discrepancies between the statements of the case as given in the FIR and appearing in the evidence of eye witnesses. Where the facts stated in the FIR are based on hearsay much importance cannot be attached to the discrepancies which are to be found in it. The statements of the FIR which in many cases are given under circumstances of haste and at times without proper knowledge of the true facts, ought not to be reviewed too narrowly.

DEFENCE AND CROSS-EXAMINATION OF FIRST INFORMATION REPORT - Before conducting the cross-examination, the original complaint and the printed FIR has to be studied carefully. The following points of the FIR must be examined thoroughly for the purpose of cross-examination.

- The date and the time of the lodging of the complaint to the Police Officer.
- The name of the complainant.
- The name of the Police Officer who recorded the FIR.
- The date and time of dispatch of FIR from the Police Station to the Magistrate.
- The date and time of the receipt of the FIR by the Magistrate.
- When the informant was given a copy of FIR. The defence in the cross-examination may vary according to the circumstances, nature and facts cases

The following points are to be examined carefully by the defence during cross-examination:

- The delay in lodging complaint.
- The delay in recording the FIR.
- The delay in dispatching the FIR by the Police Officer to the Magistrate.
- Recording the FIR by an incompetent Police Officer.
- The FIR was signed by informant.
- The FIR recorded on the basis of telephone or telegram message.
- The Substance of the FIR was not entered in the general diary.
- The original information given to the police officer was suppressed.
- The Police Officer recorded the FIR after commencement of the investigation.
- Omissions of names of the accused, witnesses place of occurrence.
- FIR was vague.
- The serious discrepancies between the FIR and the evidence produced by the witnesses in the Court.
- Contradicts in the statements of the informant in the FIR and later made in Court

PROVING OF FIR

- The FIR is a document and had to be proved like any other document.
- The informant must be produced in the court during the trial and must be examined by the prosecution and cross-examined by the defence and FIR should be marked as exhibit. When the maker of the FIR was examined in the court, but the FIR is not tendered by the prosecution in accordance with the provisions of Indian Evidence Act, a court is debarred from relying on it.