**VVIMP**

**Investigating officers in police department, EOW and ACB are treated as clerks and postman and are obstructed / not permitted to discharge their duty in accordance with section 41, 154, 156(2), 157 CRPC.**

1. The Complainant states with due respect to honest and efficient police officers and without prejudice to his rights and contentions that
2. The officers of the rank of ACP, DCP, Addl. CP , Jt CP in case of EOW and Addl. SP., Addl. CP, Addl. DG. And DG in case of ACB are interfering / directing the I.O. and Sr. PI in complaints disclosing cognizable offences, thereby violating the provision of section 154 and 157 CRPC as to
* Direct conducting illegal enquiry to verify the correctness and reasonableness of the contents in the complaint by calling the accused, witnesses etc. without any authority under CRPC. **(violating the direction of 41, 154, 156(2), 157 CRPC which is not permissible under CRPC)**
* Whether they Shall register FIR or not
* How they Shall conduct investigation
* whether they shall arrest the accused or not

Thereby obstructing / delaying the discharge of official duty of I.O. and Sr. PI and destructing their quality and spirit of investigation and their investigating skills.

1. The I.O. and SR. PI shall exercise their rights / powers entrusted to them u/s 154, 157, without taking written directions of the above mentioned senior officers.
2. Similarly when an application is made u/s 154(3) CRPC, against the I.O. / Sr. PI for not registering FIR in that event, DCP and senior officers without application of mind / mechanically
* Forward the application with note **“ Necessary Action”** thereby violating the proviso of section 154(3) CRPC.
* Do not give specific instructions / directions to be complied with and /or what action is required to be taken.
* Do not give directions to inform the compliance of the directions given u/s 154(3) CRPC, within stipulated / reasonable time.
* Do not verify and confirm the compliance of their orders passed u/s 154(3) CRPC.

Hence, there is need to take appropriate action and remind these senior police officers to bring drastic changes in the working of such senior officers who disobey the directions of section 41, 154, 156(2), 157 CRPC.

1. The Complainant states that this is continuous offence, as the FIR is still not registered on this complaint. The complainant states that by not registering FIR the accused 1, to 4 along with ACB officers Mr. Ravindra Patil and Mr. Anant Rokde, S. Chandekar have committed offence u/s 166(A), (b) amongst others. These officers have disobeyed the direction of
	* + - 1. Section 2G, 154, 156(2), 157 CRPC
				2. Lalita Kumari Judgement para 111
				3. Central Govt Circular dt. 10.5.2013 and 5.2.2014
				4. Direction of Justice Bilal Nazki and A.R.Joshi in CPIL 3 of 2008.

Hereto annexed and marked as **Exh- D** is copy of the judgement passed in CPIL 3 of 2008 by Justice Bilal Nazki and Justice A.R.Joshi

1. The complainant states that all the accused officers were seized with knowledge and information of the above CRPC sections namely 2G, 154, 156(2), 157 CRPC and several judgements of the Hon. Bombay High Court and Hon. Supreme Court. The Hon. Bombay High Court in CPIL 28 of 17 in their order passed on 18.9.2019 in the matter of Kamlakar Shenoy V/s State of Maharashtra and others at page 43 para 29 has categorically stated that

 **“…….The provision for previous approval is aimed at providing a safeguard to a public servant from vexatious prosecution for any bonafide omission or commission in the discharge of duties. It is not a shield to protect officials who do not act bonafide but with ulterior motive.”**

1. The complainant states that the as per the amendment of 2018 and the salient features 2 (I) (J) sanction for prosecution of public servants under Prevention of Corruption act is required to safe guard the honest public servant for act bonafide act of omission or commission. As such the officers of EOW and ACB are police officers, should have followed the procedure u/s 154 CRPC to register FIR for offence committed under IPC in this matter. Thereafter it was duty of these accused police officers to verify the conduct of these public servants against whom complaint was filed and whether these public servants have committed bonafide mistakes while discharging their duty or have indulged in violation of rules and regulations/ malpractices or acted with dishonest intentions and / or ulterior motives causing wrongful loss to the public at large.

**The salient feature of amendment of PC act 2(I), (J) are reproduced .**

1. The Complainant states that these accused police officers during the course of investigation of offences under IPC could have collected sufficient materials to verify and confirm the bonafides acts and conduct of these accused public servants (BMC). These materials collected during the course of investigation would also have helped the competent authority to decide and take decision on the application for approval sanction for prosecution of the public servants received by them from ACB / EOW. The approval under section 17A prevention of corruption ACT, is not blanket plan to protect the public servants who have committed blatant violations of rules and regulations, thereby causing wrongful loss to public authorities / public at large and wrongful gains to others. Such illegal acts of the accused police officers have only facilitated the accused developers and BMC officers to cause disappearance and destruction of evidences.
2. The Complainant states that, in this matter the Complainant has provided ample evidences and has repeatedly reminded the accused BMC officers, which clearly proves the dishonest intentions and ulterior motive to save / shield/ protect the accused BMC officers from punishment and prosecution.
3. The Complainant states that he is prosecuting the police officer --------------------------- for offences committed u/s 166(A), (B) IPC only for which no sanction is required.
4. The Complainant states that he is relying on the (a) para 111 of judgement of Hon. SC in Lalita Kumari v/s State of U.P. (b) central government circular dt. 10.5.2013 and 5.2.2014. The complainant is reproducing the relevant para / information for ready perusal
5. **Para 111 of Lailta Kumari Judgement**

111. In view of the aforesaid discussion, we hold:

“ i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

**iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.**

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. **Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.**

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case.

The categories of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/ laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

**vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.**

**viii) “Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary enquiry must also be reflected as mentioned above…”**

1. **Section 2G CRPC:**

Inquiry means every inquiry, other than trial, conducted under this code by a Magistrate or Court.

1. **CRPC 149: Illegal construction on road and footpath is a serious cognizable offence, along with other consequential offences under IPC, MMC, MRTP act.**

every police officer may interpose for the purpose of preventing and shall to the best of his ability prevent, commission of any cognizable offence.

1. **CRPC 152: Prevention of injury to public property.**

a police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable, immovable or the removal or injury of any public landmark or buoy or other mark used for navigation.

1. **Section 154 (1) CRPC: information in cognizable offences**

Every information relating to the commission of 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: and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State government may prescribe in this behalf.

1. **Section 154(3) CRPC**

Any person aggrieved by a refusal on the part of an officer in charge of police station to record the information referred to in section (1) may send the substance of such information, in writing or by post, to the Supt. 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 the Code, and such officer shall have all powers of an officer in charge of the police station in relation to that offence.

1. **Section 156 (2) CRPC**

No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

1. **Section 44: the word “injury” denotes any harm whatever illegally caused to any person, in body, mind, reputation and property.**
2. **Section 52 IPC: Good faith**

Nothing is said to be done or believed in “Good faith” which is done or believed without due care and attention.

1. **166-A (b). public servant disobeying direction under law**

 Whoever, being a public servant—

Knowingly disobeys, to the prejudice of any person, any other direction of law regulating the manner in which he shall conduct such investigation.

1. **166: Public servant disobeying law with intent to cause injury to any person-**

Whoever, being a public servant, knowingly disobeys any direction of law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

1. **167: Public servant framing an incorrect document with intent to cause injury.**

Whoever, being a public servant, and being, as ( such public servant charged with preparation or translation of any document for electronic record , frames , prepares or translates that document or electronic record) in a manner which he knows or believes to be incorrect , intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

1. **217: public servant disobeying direction of law with intent to save the person from punishment or property from forfeiture**

Whoever, being a public servant, knowingly disobeys any direction of law as to the way in which he is to conduct himself as such public servant, intending thereby save, any person from legal punishment, or subject him to less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any change to which it is liable by law, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

1. **218 : Public servant framing an incorrect document with intent to to save the person from punishment or property from forfeiture.**

 Whoever, being a public servant, and being as such a public servant, charged with preparation of any record or other writing , frames that record or writing in a manner which he knows to be incorrect , with intent to cause or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person or with intent thereby to save , or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely to save, any property from forfeiture or other change to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

1. **219: Public servant in judicial proceeding corruptly making report, etc contrary to law:**

Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years or with fine or with both.

1. **268: public Nuisance:**

A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

1. **Sec: 409: Criminal breach of trust by public servant, or by banker, merchant or agent:**

“whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with (imprisonment for life) or with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.”

1. **431: mischief by causing injury to public road, bridge, river, or channel---**

Whoever, commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying a property, shall be punished with imprisonment of either description for a term which may extend to five years or with fine or with both

1. **CRPC 197: no sanction is required of prosecution u/s 166 A (B)**

For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166-A, 166-B ……………….

1. **Circular no. 15011/35/2013 –SC/ST-W dated 10.5.13.**

**Para 3:** the legal position stated above expects that the police shall register an FIR upon receipt of information of the commission of cognizable offence. Further, if after registration of FIR, upon investigation it is found that the subject matter relates to the jurisdiction of some other police station in which the case falls.

**Moreover, if at the time of registration of FIR, it becomes apparent that the crime was committed outside the jurisdiction of the police station, the police should be appropriately instructed to register “ZERO” FIR, ensure that the FIR is transferred to the concerned police station u/s 170 of the CRPC. It should be clearly stated that the delay over the determination of the jurisdiction leads to avoidable wastage of time which impacts on the victim and also leads to offenders getting an opportunity to slip from the clutches of the law. It should be clearly instructed that failure to comply with the instructions of registering an FIR on receipt of the information about the cognizable offence will invite prosecution of the police officer u/s 166A of the IPC for an offence specified u/s 166A or departmental action or both.**

**Para 4:** it may be emphasized that police service should be sensitized to respond to complaints with alacrity whether is from man or woman. Apprehending the accused must take place immediately after the complaint as there is tendency of the person committing the crime slipping away should there be a delay on extraneous grounds like jurisdiction. The police may also put in place a system of rewarding the personnel for timely response and punishment for wanton lethargy. **Refer page 24 & 25 of the compilation.**

1. **Circular no. 15011/91/2013/SC/ST dt. 5.2.14**

The circular emphasis registration of FIR in cognizable offences and if the investigation officer fails to register FIR in case of cognizable offences he invites prosecution under section 166A IPC. **Refer Page 26 para 2 of the compilation.**

1. **Section 157 CRPC: procedure of Investigation:**

**157(1):** if, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below the rank as the State Government may by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and if necessary, to take measures for the discovery and arrest of the offender:

Provided that

* 1. When information as to the commission of any offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot
	2. If it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case;

ii. **157(2):** in each of the cases mentioned in (a) and (b) of the proviso to sub section (1), the officer in charge of police station shall state in his reasons for not fully complying with the requirements of that section, and, in case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, in fact that he will not investigate the case or cause it to be investigated.

**Sanction to prosecute accused 1 to 4. (Refer page no. 41 to 54 of the compilation.)**

1. **Salient features of the amendment Bill in Prevention of Corruption act**
* **Section 2 (i): …**

**…..“so as to provide a safeguard to a public servant from vexatious prosecution for any bona fide omission or commission in the discharge of his official duties….”**

* **Section 2( j):**

**… “the basic principle behind the protection under section 19 of the Prevention of corruption Act, 1988 and section 6-A of the Delhi Special Police establishment Act, 1946, being the same, namely protection of honest civil servants from harassment by way of investigation or prosecution of things done in bona fide performance of public duty…”**