

OFFICE OF THE DIRECTOR-CUM- ADDL.D.G. OF POLICE, VIGILANCE
ODISHA, CUTTACK
* * *

CIRCULAR ORDER NO. 4 /2013

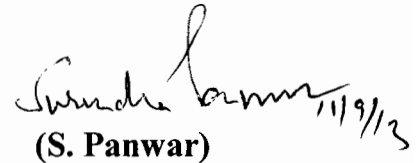
SUB: Informant/ complainant not to be entrusted with investigation of a criminal case.

This is in partial modification of Circular Order No.2/1998 which lays down instruction regarding investigation of Trap cases. The said order provides that the officer who lays the trap should not himself investigate the case. This instruction was issued citing the decision rendered in the case of CBI i.e. H.D. Sharma –vrs- State (CRLJ 1971, P- 1620).

In the case of Megha Singh –vrs- State of Haryana (1996) 11 SCC 709, the Hon’ble Supreme Court while setting aside the conviction and sentence passed against the appellant in a case U/s. 6(1) of the Terrorist & Disruptive Activities (Prevention) Act 1985 and Section 25 of the Arms Act, 1959 held that “ **the complainant should not have carried on the investigation and examined witnesses U/s.161 Cr.P.C. Such practice, to say the least, should not be resorted to, so that there may not be any occasion to suspect fair and impartial investigation**”. It is however held by the Hon’ble Supreme Court in the case of State of Tamilnadu –vrs- V.Jayapaul (2004) 28 OCR (SC) 365, i.e. a case U/s.13(2) r/w.13(1) (d)/7 P.C. Act/465/468 IPC in which the complainant himself took up the investigation and filed charge sheet in the Court, that there is no illegality in the process of investigation set in motion by the Inspector of Police (appellant) and his action in submitting the final report to the Court of Special Judge because before he did so, he did not have personal knowledge of the suspected offences nor did he participate in any operation connected with the offences. His role was that of an investigator- pure and simple.

In most of the Vigilance cases, preliminary enquiry is conducted and after registration of F.I.R., usually the Enquiring Officer is entrusted with investigation of the case for early finalization due to his acquaintance in the matter. Besides, on completion of investigation prosecution is launched largely basing on the documentary evidence and as such there is less possibility on the part of the Investigating Officer to influence the process of investigation owing to his previous knowledge on the offence committed. However, as per the principle of natural justice, an accused is entitled under the law to a fair and impartial investigation.

It is felt that the investigation should be as far as possible be carried out by an officer who is absolutely impartial, unbiased, unmotivated and who has not been associated with the preliminary enquiry in any manner to rule out any alibi for the defence in future. The SP may appropriately decide the modalities at his level in implementing the above decision. As far as Unit is concerned there should not be any difficulty as investigation can be carried out by the Dy.S.P., if the preliminary enquiry is conducted by the Inspector posted to the Unit and vice versa.

Handwritten signature of S. Panwar in black ink, with the date 11/9/13 written to the right of the signature.

(S. Panwar)

Director-cum-Addl. D.G. of Police,
Vigilance, Odisha, Cuttack

**OFFICE OF THE DIRECTOR-CUM-ADDL D.G OF POLICE,VIGILANCE
ODISHA, CUTTACK.**

Circular Order No. 3 of 2013

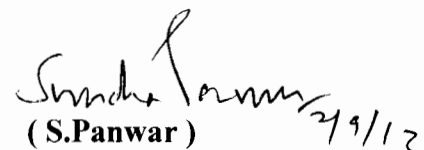
Sub: **Proper verification of the identity, parentage and address of the complainant / witnesses (private persons) in Vigilance cases.**

.....

It has come to notice that some of our Investigating Officers are not mentioning the full name, age, parentage, present and permanent address of the complainant and witnesses in the relevant column of the final form submitted to the Court. As a result, difficulties are being experienced at the time of service of summons and execution of warrants issued by the Trial Courts for detaining their attendance.

In order to overcome such difficulties in future, at the time of examination of the complainants/ witnesses U/s.161 Cr.P.C. **the Investigating Officers should properly verify their identity and mention it in the case dairy as well as in the relevant column of the final form.** In this regard, extra care is to be taken while examining the private persons acting as complainant or witnesses in Vigilance cases. **The photo copy of Voter Identity Card, Aadhar Card or other available documents pertaining to the proof of identity and proof of address of a person including telephone number or mobile phone number, if any, should be collected and kept in the case record for future reference.**

Effort made by the Investigating Officers in this regard will definitely facilitate the service of summons and execution of warrants and ultimately expedite the process of trial.


(S.Panwar)

Director-cum-Addl D.G. of Police,
Vigilance, Odisha, Cuttack.

**OFFICE OF THE DIRECTOR-CUM- ADDL D.G. OF POLICE, VIGILANCE,
ODISHA, CUTTACK**

Circular Order No. 2 of 2013

Sub: Obtaining certified copies of judgment and deposition of witnesses from the Trial Court and submission to Directorate with opinion of Spl.PP./S.P. for filing of appeal.

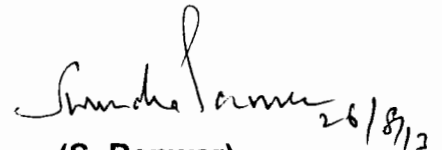
It has come to notice that abnormal delay is caused in obtaining certified copies of judgment as well as deposition of witnesses from the trial Court and forwarding the same to the Directorate with opinion of Spl.P.P. and S.P. Vigilance regarding filing of appeal. As a result, it is becoming difficult to take timely decision on preferring appeal in the higher forum.

In this connection, it is pertinent to mention that a copy of judgment in each case is being made over to the Spl.P.P. by the trial Court soon after the judgment is pronounced which is subsequently sent to the Divisional Superintendent of Police, Vigilance. But abnormal delay is caused in obtaining certified copies of deposition of witnesses from the concerned Court. As per Section 12 of the Limitation Act in computing the period of limitation for appeal, the time required for obtaining the judgment copy shall be excluded but there is no provision in the said Act to exclude the time required for obtaining copies of deposition of witness to compute the period of limitation.

In order to over come the contingency of delay in filing appeals, Spl.P.Ps attached to Vigilance Courts should obtain certified copies of deposition of witnesses soon after recording of their evidence. Deposition copies alongwith free copy of judgment are to be forwarded to the Directorate alongwith the views of Spl.P.P. and S.P. Vigilance regarding filing of appeal in the higher forum. This should be done within fifteen days from the date of pronouncement of the judgment. Besides, application should be filed before the trial court for obtaining certified copies of judgment as well as deposition of witnesses, so that these are available to us by the time a decision is taken at Directorate level for filing of appeal.

P.T.O.

In each case where the Standing Counsel is requested to file appeal before the Hon'ble High Court, it should be followed up properly by the Link D.Ss.P. as well as Prosecution Cell to obtain the appeal reference in time. This is required to prevent abnormal delay in filing of appeals in future.



(S. Panwar)

Director-cum-Addl.D.G. of Police,
Vigilance, Odisha, Cuttack.

**OFFICE OF THE DIRECTOR-CUM- ADDL.D.G. OF POLICE, VIGILANCE
ODISHA, CUTTACK**

CIRCULAR ORDER NO. 1/2013

SUB: SUPPLY OF COPY OF FIR TO ACCUSED.

In Writ Petition (Crl.) No.1096/2011 (Arun Kumar Budhia –Vrs- State of Odisha and another), the Hon'ble Odisha High Court have issued the following directions:-

- (A) An accused is entitled to get a copy of the First Information Report at a stage earlier than prescribed under Section 207 Cr.P.C.
- (B) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative/agent for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within twenty-four hours.
- (C) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the Court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the Cr.P.C.

- (D) Copies of the FIR, unless reasons recorded regard being had to the nature of the offence that the same is sensitive in nature, should be uploaded on the Odisha Police website within twenty-four hours of lodging of the FIR so that the accused or any person connected with the same can download the FIR and file appropriate application before the court as per law for redressal of his grievances.
- (E) The decision not to upload the copy of the FIR on the website of Odisha Police shall be taken by an officer of the rank of Dy. Supdt. of Police or Assistant Commissioner of Police and by way of a speaking order. A decision so taken by the Dy S.P/A.C.P shall also be duly communicated to the Magistrate having jurisdiction.
- (F) The word 'sensitive' apart from other aspects which may be thought of being sensitive by the competent authority would also include concept of privacy regard being had to the nature of the FIR.
- (G) In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person aggrieved by the said action, after disclosing his identity, can submit a representation with the Commissioner of Police/Supdt. of Police of the District who shall constitute a committee of three high officers and the committee shall deal with the said grievance within three days from the date of receipt of the representation and communicate it to the aggrieved person.

- (H) The Supdt. of Police shall constitute the committee within eight weeks.
- (I) In case wherein decisions have been taken not to give copies of the FIR, regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative to file an application for grant of certified copy before the court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned court not beyond three days of the submission of the application.
- (J) The directions for uploading the FIR on the Website of the Odisha Police shall be give effect from 31st January, 2013.

2. In view of the aforesaid direction issued by the Hon'ble High Court, it is considered necessary to issue the following guidelines for implementation.

3. The Dy.Suptd. of Police (System Analyst), Vigilance Directorate, Cuttack will design a software to upload the FIRs on the Odisha Vigilance Website and make it operational before 31st January, 2013 as per the directions of the Hon'ble Odisha High Court. The procedure to deal with the applications received in the Vigilance Police Station or the office of Supdt. of Police of Vigilance Division till such time would be as under :-

- (i) An accused who has reason to suspect that his name may find place in a First Information Report, may submit an application through his representative/agent for supply of a certified copy before the OIC/IIC of a Vigilance Police Station or in the office of Supdt. of Police, Vigilance Division during office hours on all

'A'

working days alongwith a fee of Rs.6/- (Rupees six only) per FIR if it is of one sheet and Rs.2/- (Rupees two only) for each additional sheet only in cash. Cash will be collected under a proper receipt and the same will be entered in the "Certified Copy Register" maintained for the purpose. The fee collected will be deposited in the Treasury under appropriate Head of Account. The application will be submitted in duplicate on the form given at Annexure-'A' which will be available in all the Vigilance Police Stations and office of the Supdt. of Police, Vigilance Divisions.

- (ii) In case, the application is submitted in the Vigilance Police Station, the OIC/IIC shall acknowledge the receipt of such application by putting the stamp of the Police Station, date and time of receipt alongwith his/her full signatures and hand over one copy to the applicant. The OIC/IIC of Vigilance Police Station would locate the relevant FIR, analyze its sensitivity and send a report with his /her recommendation to the Supdt. of Police, Vigilance Division to obtain orders either to supply or refuse to supply the copy of the FIR.
- (iii) The OIC/IIC of Vigilance Police Station has the responsibility to send a specific report alongwith the copy of FIR in "Sensitive" cases immediately after its registration to the Supdt. of Police, Vigilance Division for deciding supply or refusal to supply a copy and not uploading the same on Odisha Vigilance Website.
- (iv) The Supdt. of Police, Vigilance Division or his Designated Officer, not below the rank of Dy.Suptd. of Police will decide whether a copy of FIR should be supplied to the accused or refused on

grounds of sensitivity, including reasons of privacy. The reasons to refuse supply of FIR would be recorded in writing by such authority. The decision of refusal so taken shall also be duly communicated to the Magistrate, having jurisdiction and the concerned OIC/IIC of Vigilance Police station on the same day.

- (v) If the concerned case is not considered to be sensitive in nature, Supdt. of Police of the Vigilance Division or his Designated Officer shall direct the OIC/IIC of Police Station to supply the copy of FIR, duly stamped with the Official Stamp with the words **‘Copy for the accused’ on each page, within 24 hours of the receipt of such application.** Signature/Left thumb impression of the person receiving copy of FIR should be obtained in the relevant column of ‘Certified Copy Register of the Vigilance Police Station.
- (vi) The decision to refuse supply of copy of FIR alongwith the reasons thereof, as recorded by Supdt. of Police, Vigilance Division or his Designated officer shall be communicated by the OIC/IIC of Police Station within 24 hours of communication of such order. In case a copy of FIR not being made available to the applicant, the fees deposited by the applicant for the purpose shall be refunded to him.
- (vii) The communication for refusal to supply copy of FIR should mention that the applicant can make a representation against such orders to the I.G./D.I.G. of Police, Vigilance in charge of the concerned Division who would refer the same to a Review Committee of three senior officers, not below the rank of Deputy Supdt. of Police constituted by him for the purpose.


(viii) The Review Committee would deal with the grievance of refusal to supply copy of FIR to the accused **within three working days** from the date of receipt of the representation and communicate the decision to the aggrieved person.

4. The following categories of cases can be considered by the Competent Authority to refuse supply of copy of FIR to the accused or to upload it in the website of Odisha Vigilance.

- i) Cases registered under section 13(2) r/w.13(1)(d)/7 of P.C. Act, 1988 (Trap Case) and U/s.12 of P.C. Act, 1988 (Reverse Trap Case) including any other section of I.P.C. or other Acts when the disclosure of identity of either complainant or accused before commencement of investigation would adversely affect the process.
- ii) Cases in which huge disproportionate assets are involved or where there is apprehension of the witnesses or the complainant being intimidated.
- iii) Cases in which the nature of FIR is such that it is, in the opinion of the Designated Officer, “sensitive” on grounds of privacy.
- iv) In any other case where disclosure of the F.I.R. may prejudice investigation.

As directed by the Hon'ble High Court, representation preferred by applicant against refusal to supply copy of FIR would be decided on merit by the Review Committee of the State Vigilance Organization comprising of the following members :-

- (i) Inspector General of Police/DIG of Police supervising the work of concerned Division.
 - (ii) AIG of Police, Vigilance Directorate.
 - (iii) Superintendent of Police, Vigilance Coordination.
5. The guidelines contained herein shall be implemented with immediate effect.


31/1/13

(S. Panwar)
Director-cum-Addl.D.G. of Police,
Vigilance, Odisha, Cuttack

ANNEXURE-A

APPLICATION FOR OBTAINING COPY OF FIR FOR THE ACCUSED

1.	FIR No./year/Date (if known)	
2.	Timeframe of Registration of FIR	From to
3.	Vigilance Police Station	
4.	District.	
5.	Name of the complainant	
6.	Name of the accused/ alleged person.	
7.	Applicant's detail	
(i)	Name	
(ii)	Parentage	
(iii)	Address	
(iv)	Contact Phone Number(s)	
(v)	Relation with the accused/alleged person	
8.	Purpose of applying for the copy of FIR	

Signature of applicant

Signature of OIC/IIC with Stamp of Vigilance Police Station/
office of Supdt. of Police, Vigilance in token of acknowledgement