2025 INSC 1100

**Reportable**

**IN THE SUPREME COURT OF INDIA**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. OF 2025**
**(@ Special Leave Petition (Criminal) No. 8494 of 2025)**

**Mohammad Afzal Mohammad Sharif … Appellant**

**versus**

**The State of Maharashtra and others … Respondents**

**J U D G M E N T**

**SANJAY KUMAR, J**

Leave granted.

Law requires, nay, ordains that its sentinels be vigilant, prompt and objective in enforcing and securing its mandate. To what extent the guardians of the law, *viz*., the police, discharge this task without bias and subjectivity is the question that arises in the case on hand. The complaint of the appellant before the High Court of Bombay, Nagpur Bench, was that the police officers concerned had failed in their duty by not registering a first information report apropos the attack and assault on him by four individuals on 13.05.2023. However, by order dated 25.07.2024, a

Division Bench of the High Court dismissed his writ petition, suspecting his bonafides. Hence, this appeal.

3. At the outset we may note that, while reserving judgment in this matter on 19.08.2025, we permitted the learned counsel for the parties to file their written submissions, not exceeding three pages, within three days. However, the State of Maharashtra and its officials chose not to file their written submissions, even though three weeks have passed. To make up for their lapse, perhaps, the learned counsel for the appellant chose to file written submissions running into as many as eleven pages!

4. This litigation has its moorings in the communal riots that broke out in Akola City, Maharashtra, on 13.05.2023 owing to a social media post. In his writ petition filed before the High Court, the appellant stated that, while he was returning at about 10.30-11.00 PM on that day from Mominpura area in Akola to his residence at Ambika Nagar, he passed over Raj Rajeshwar Setu Bridge in Kholeshwar area and saw four unknown persons assaulting one person, who was in an auto rickshaw, with a sword, iron pipe, etc., and the person was screaming. Two of the four assailants accosted him and said that it was his turn next. The appellant claimed that the other two assailants pulled the injured person out of the auto rickshaw and hit him on the face with an iron pipe, whereupon he collapsed. The appellant stated that the four assailants then damaged his vehicle and assaulted him with their weapons on his

head and neck. He stated that he fell unconscious on the road and was taken by two good samaritans to Akola Main Hospital. His father, thereafter, took him to Icon Multispecialty Hospital in Akola, where he underwent treatment.

5. The appellant claimed that, on the second day, the District Collector along with police personnel visited him at Icon Hospital and the police recorded his statement. He claimed to have given all details to them but no action was taken. The appellant asserted that he was an eyewitness to the murderous assault on the person in the auto rickshaw, whose name was revealed to him later as Vilas Mahadevrao Gaikwad. The appellant stated that 'it was well within the knowledge of the people of Akola' that the deceased was plying the auto rickshaw of a Muslim, which bore a sticker with the name 'Garib Nawaz'. The appellant stated that under the mistaken identity/belief that the deceased was a Muslim, the four unknown assailants had caused his death and, thereafter, attacked him. The appellant stated that these facts were affirmed by none other than a leader of the Maharashtra Congress as well as an MLC of the Nationalist Congress Party, whom he named. The appellant claimed that, after waiting for considerable time and as no offence was registered against the unknown assailants, he along with his father lodged written complaints on 01.06.2023 with the Police Station Officer of the Old City Police Station at Akola, respondent No. 4 in the writ petition, and the Superintendent of

Police, SP Office at Akola, *viz*., Sandip Ghuge, who was impleaded *eo nomine* as respondent No. 3 in the writ petition, but except for getting his statement recorded through one of the police personnel of the Old City Police Station at Akola, no other action was taken.

6. The appellant claimed that after a few days, during the festival of Shravan Somwar, he had occasion to go by Raj Rajeshwar Setu Bridge and happened to see a flex board of a politician of Shiv Sena party. Therein, he found that the photographs of one of the four assailants and of the deceased, Vilas Mahadevrao Gaikwad, were affixed. He, thereupon, took a snapshot of the said flex board on his mobile phone. His enquiries thereafter revealed that an offence in FIR No. 152 of 2023 was registered by the Old City Police Station at Akola at the instance of the deceased's relative against members of the Muslim community but there was no mention whatsoever of the appellant, who was an eyewitness to the murder of Vilas Mahadevrao Gaikwad. The chargesheet having been filed in relation to the aforesaid FIR, the case was numbered as RCC No. 954 of 2023 before the Magistrate's Court.

7. However, as no separate FIR was registered in relation to the assault upon him till the date of filing of the writ petition, the appellant prayed for a direction to the police authorities concerned to register an offence under Section 307 read with Section 34 of the Indian Penal Code,

1860[1], against the four unknown assailants, one of whom was now identifiable through the snapshot available with him. He sought a further direction to transfer the investigation in relation thereto to a special investigation team of competent and impartial police officers of integrity to investigate the life-threatening assault upon him and the fatal assault upon Vilas Mahadevrao Gaikwad. He also sought a consequential direction to initiate departmental, civil and criminal proceedings against the erring police officers for dereliction of their duties.

8. Perusal of the impugned order dated 25.07.2024 passed by a Division Bench of the High Court demonstrates that the learned counsel for the appellant did not choose to press his prayer in relation to registration of an FIR under Sections 307 and 34 IPC in relation to the attack upon the appellant but as regards the remaining three prayers, it was asserted that the appellant was an eyewitness to the incident and that the investigation was deliberately moulded to indicate something other than the truth. The High Court took note of the affidavit in reply filed by one Nitin Uttamrao Levaharkar, Police Inspector, Old City Police Station, Akola, who denied that the statement of the appellant had been recorded. He claimed that information had been received in the police station about the admission of the appellant to the hospital, but when an officer went

[1] for short, 'IPC'

there to record his statement, it was certified that he was not in a position to speak. This, as per the said police inspector, happened on 14.05.2023. He further stated that none of the relations of the appellant tried to lodge a first information report with the police. According to him, the investigation in relation to the murder was completed and a chargesheet was filed before the competent Court. He asserted that, as the investigation was complete, there was no question of handing over the investigation to any other ‘forum’.

9. Surprisingly, the High Court found fault with the relatives of the appellant for not trying to lodge a report with the police immediately. Having noted that the case of the appellant was that his statement had been recorded on 15.05.2023 in the hospital and that photographs of that statement were produced, the High Court observed that there were no details as to who was the person who had taken the said statement and there was no signature or mention of the designation of the person taking the statement, Accepting the claim of the police that no such statement was recorded, the High Court chose to disbelieve the statement produced before it. As regards the claim of the appellant that he was an eyewitness to the murderous assault on Vilas Mahadevrao Gaikwad, the High Court observed that the appellant had not explained as to why he did not voluntarily go to the police station to get his statement recorded within reasonable time. In summation, the High Court held that it could not

exercise its power under Article 226 of the Constitution at a belated stage at the request of an alleged eyewitness, after the chargesheet was already filed. The order ended with the observation that it appeared that the writ petition was tainted with some ulterior motive and, therefore, it was not a fit case for exercise of power under Article 226 of the Constitution. Stating so, the High Court dismissed the writ petition.

10. Notice having been ordered in this matter on 23.05.2025, the very same Nitin Uttamrao Levaharkar, Police Inspector, Old City Police Station, Akola, filed a counter affidavit on behalf of the State of Maharashtra. It is surprising that, in a matter involving the State, represented by the Chief Secretary, and its Home Ministry, wherein a serious issue has been raised before the highest Court in the country, no senior official chose to file an affidavit before this Court and left it to an Inspector of the local police station to do the needful. More so, as serious allegations were made against a Superintendent of Police, who was impleaded by name.

11. In his affidavit, the Inspector again affirmed what he had stated before the High Court. According to him, there were eyewitnesses to the fatal attack on Vilas Mahadevrao Gaikwad and pursuant to the investigation undertaken, eleven accused persons were identified by the said eyewitnesses. Three of those accused are stated to have made confessional statements, leading to recoveries under Section 27 of the Indian Evidence Act, 1872. He again reiterated that, when an Assistant

Sub-Inspector of Police visited the hospital pursuant to a mobile call, the appellant was found unfit to give a statement and this was entered in the General Diary. He pointed out that the so-called statement annexed by the appellant bore neither the remark of the attending medical officer regarding his fitness nor the signature of the police officer who recorded it and, therefore, its authenticity was doubtful. He stated that, though the appellant got discharged on 16.05.2023, he did not submit his complaint till after 15 days, i.e., on 01.06.2023, through his father. He concluded his affidavit by stating that the appellant's claim of being an eyewitness was never substantiated during investigation nor was credible material produced to show that the police were aware of his status as such before completion of the investigation.

12. It is relevant to note that the appellant is stated to have been 17 years of age at the relevant time. Before the High Court, being a minor, he was represented by his father.

13. The General Diary maintained by the Old City Police Station, Akola, which was produced before the High Court, reflected that an entry was made therein on 14.05.2023 at 16:03 hours, which read to the following effect: 'At 02:15, Ward Boy of Icon Hospital, Naresh Nandu Nibe, aged 34, brought MLC 5580 that Mohammad Afzal Mohammad Sharif had been admitted in the hospital in an injured condition for medical treatment and his condition was stable. ASI 743 PC 2370 went to record the statement'.

Thereafter, another entry was made at 16:48 hours on 14.05.2023 that ASI 743 PC 2370 came back from Icon Hospital and submitted that the doctor gave in writing that the injured Mohammad Afzal Mohammad Sharif was not in a position to speak.

14. Significantly, it is the case of the appellant that his statement was actually recorded on 15.05.2023, i.e., the next day, when the District Collector came there along with police personnel and one of the policemen recorded his statement. In any event, once the police station was informed of a medico-legal case involving the appellant who was admitted in the hospital in connection therewith, in an injured condition, and as the police would have been well aware of the riots that were taking place, a duty was cast upon the police to register the cognizable offence that had been brought to their notice.

15. Neither the Police Inspector nor the High Court are correct in their assumption and understanding that it was for the appellant or his relatives to pursue the police to take necessary steps in that regard and that the police were not required to take any steps, despite their knowledge of the commission of a cognizable offence. In this regard, reference may be made to Section 154 of the Code of Criminal Procedure, 1973[2], which was holding the field at that time. This provision reads as under:

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[2] for short, 'the CrPC'

‘**154. Information in cognizable cases**.— *(1)* Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a 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:

Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that—

*(a)* in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person’s choice, in the presence of an interpreter or a special educator, as the case may be;

*(b)* the recording of such information shall be video graphed;

*(c)* the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.

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

*(3)* 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 sub-section (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.’

16. It is manifest from a plain reading of the aforestated provision that once information relating to commission of a cognizable offence is given to the officer-in-charge of a police station, the investigative machinery is required to be set in motion. If the information received revealed commission of a cognizable offence, it is mandatory to record the substance of the information in a book to be kept by the officer in the prescribed form. In effect, if the information received disclosed commission of a cognizable offence, it is mandatory to register an FIR. In this context, useful reference may be made to the following observations of a Constitution Bench in ***Lalita Kumari vs. Govt. of U.P. and others***[3]:

> **'120.** In view of the aforesaid discussion, we hold:
>
> **120.1.** The 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.
>
> **120.2.** 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.
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> **120.3.** 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.
>
> **120.4.** 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.

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3 (2014) 2 SCC 1

**120.5.** 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.

**120.6.** 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 category 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.

**120.7.** 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 fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks' time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

**120.8.** 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 inquiry must also be reflected, as mentioned above.'

17. Referring to the above observations in ***Imran Pratapgadhi vs. State of Gujarat and another***[4], a coordinate Bench of this Court observed as under:

'23. Section 154 of the CrPC does not provide for making any preliminary inquiry. However, as held in the case of Lalita Kumari, a preliminary inquiry is permissible if the information received

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does not disclose a cognizable offence and indicates the necessity for an inquiry. A preliminary inquiry must be conducted only to ascertain whether a cognizable offence is disclosed. However, sub-Section (3) of Section 173 of the BNSS makes a significant departure from Section 154 of the CrPC. It provides that when information relating to the commission of a cognizable offence which is made punishable for 3 years or more but less than 7 years is received by an officer-in-charge of a police station, with the prior permission of a superior officer as mentioned therein, the police officer is empowered to conduct a preliminary inquiry to ascertain whether there exists a prima facie case for proceeding in the matter. However, under Section 154 of the CrPC, as held in the case of Lalita Kumari, only a limited preliminary inquiry is permissible to ascertain whether the information received discloses a cognizable offence. Moreover, a preliminary inquiry can be made under the CrPC only if the information does not disclose the commission of a cognizable offence but indicates the necessity for an inquiry. Sub-Section (3) of Section 173 of the BNSS is an exception to sub-Section (1) of Section 173. In the category of cases covered by sub-Section (3), a police officer is empowered to make a preliminary inquiry to ascertain whether a prima facie case is made out for proceeding in the matter even if the information received discloses commission of any cognizable offence. That is very apparent as sub-Section (3) of Section 173 refers explicitly to receiving information relating to the commission of a cognizable offence. Therefore, in a case where sub-Section (3) of Section 173 is applicable, even if the information pertaining to the commission of any cognizable offence is received, an inquiry can be conducted to ascertain whether a prima facie case exists for proceeding in the matter. The intention appears to be to prevent the registration of FIRs in frivolous cases where punishment is up to 7 years, even if the information discloses the commission of the cognizable offence. However, under Section 154 of the CrPC, the inquiry permitted by paragraph 120.2 of the decision in the case of Lalita Kumari is limited only to ascertain whether the cognizable offence is disclosed.

24. Under sub-Section (3) of Section 173 of the BNSS, after holding a preliminary inquiry, if the officer comes to a conclusion that a prima facie case exists to proceed, he should immediately register an FIR and proceed to investigate. But, if he is of the view that a prima facie case is not made out to proceed, he should immediately inform the first informant/complainant so that he can avail a remedy under sub-Section (4) of Section 173.'

18. Some of the aforestated observations were made in the context of Section 173 of the Bhartiya Nagarik Suraksha Sanhita, 2023. However, Section 154 CrPC was in operation at the relevant point of time and the observations made in that context are of relevance presently. Therefore, the inaction of the officer-in-charge of the Old City Police Station, Akola, despite being made aware of Medico-Legal Case No. 5580, involving the appellant, and his admission in the hospital, and the failure in following through by recording his statement at the earliest opportunity and registering an FIR in that regard, clearly manifests total dereliction of duty on his part, be it deliberate or due to sheer carelessness.

19. It cannot be disputed that the appellant was subjected to an assault during the riots, on the night of 13.05.2023, requiring his hospitalization for his head injury. At the very least, the assault upon him would have constituted an offence under Sections 324 or 325 or 326 of the IPC, which are all cognizable, and required decisive and prompt action on the part of the police as soon as they came to know about it. The medical reports from Icon Hospital placed on record by the appellant before the High Court showed that he was admitted on 14.05.2023 at 01.14 AM and was discharged on 16.05.2023 at 11.00 AM. The reports further indicated that the diagnosis was ‘assault with head injury’. The appellant required sutures for his head injury and the treatment/course in the hospital was noted as under:

‘L/E – HEAD INJURY WITH SUTURES +’

‘PT WAS ADMITTED IN ICON IN WARD WITH ABOVE COMPLAINTS HISTORY NOTED
CT BRAIN WAS DONE WHICH S/O SUBGALEAL HAEMATOMA, WITH ACUTE HYPERDENSE SUBDURAL HAEMORRHGE IN VIEW OF THAT NEUROSURGEON OPINION WAS DONE BY DR. U. GADAPAL SIR WHICH ADVICE, INJ LEVERA, MANNITOL,
GENERAL SURGEON OPINION WAS DONE BY DR. AVINASH TELGOTE SIR USG (A+P) WAS DONE WHICH S/O- NAD
ALL OTHER CONSERVATIVE TREATMENT AND MANAGEMENT WAS DONE
NOW ON DATE 16/5/23 PT IS HAEMODYNAMICALLY STABLE AND HAVING NO ANY FRESH COMPLAINTS SO ADVICES CAN BE DISCHARGED.
DRESSING DONE TODAY
BUT RELATIVES WANT TO SHIFT TO DR. ZEESHAN SIR HOSPITAL AKOLA.’

20. What is even more distressing to note is that the appellant made a written complaint to the Superintendent of Police, Akola, on 01.06.2023, through his father, but to no avail. Section 154(3) CrPC permits a person, aggrieved by the refusal on the part of the officer-in-charge of a police station to record the information as per Section 154(1) CrPC, to send the substance of such information in writing to the Superintendent of Police concerned. The provision requires the said Superintendent of Police to satisfy himself as to whether the information received disclosed the commission of a cognizable offence and to either investigate the case himself or direct an investigation to be made by a police officer subordinate to him.

21. There is no denial either in the affidavit filed before this Court or in the counter affidavit filed before the High Court that the complaint dated 01.06.2023 was not received by Sandip Ghuge, Superintendent of Police, Akola, respondent No. 3 before the High Court and before us. There is no explanation forthcoming as to whether he even undertook an enquiry to satisfy himself about the truth or otherwise of the information received, as mandated by the provision. This conduct on the part of a superior police officer of no less a rank than a Superintendent of Police is indeed a cause for great concern.

22. Though the affidavits filed by the police inspector of the Old City Police Station, Akola, tried to attribute motives to the appellant and the same was willingly accepted and acted upon by the High Court, we are not persuaded to agree at this stage. It was for the police to investigate the truth or otherwise of the specific allegations made by the appellant, a 17-year-old boy, who asserted that he was an eyewitness to the murder of Vilas Mahadevrao Gaikwad and was himself assaulted by the very same assailants. If, in fact, the deceased was really murdered under the impression that he belonged to Muslim community and the assailants were not of that community, that was a fact that had to be ascertained after thorough and proper investigation. When the appellant claimed that he could identify one of the four assailants, that claim also required to be followed up with detailed investigation by ascertaining the location of the

person so identified at the relevant time through mobile phone location, call data records, etc.

23. Needless to state, when members of the police force don their uniforms, they are required to shed their personal predilections and biases, be they religious, racial, casteist or otherwise. They must be true to the call of duty attached to their office and their uniform with absolute and total integrity. Unfortunately, in the case on hand, this did not happen. Be it for whatever reason, the police authorities never followed up on Medico-Legal Case No. 5580 involving the appellant, though they had information of the same at 02.15 AM on 14.05.2023 itself, i.e., shortly after the admission of the appellant at Icon Hospital. Neither the officers of the Old City Police Station, Akola, nor Sandip Ghuge, Superintendent of Police, Akola, lived up to the expectation that reposed in them as upholders of the law to take prompt and appropriate action.

24. In these circumstances, we are of the opinion that this is a fit case to direct the Secretary, Home Ministry, Government of Maharashtra, to constitute a special investigation team, comprising senior police officers of both Hindu and Muslim communities, to undertake an investigation into all the allegations made by the appellant, by registering an FIR in connection with the assault upon him on 13.05.2023, and take appropriate action thereon as warranted. Further, the Secretary, Home Ministry, Government of Maharashtra, shall initiate appropriate disciplinary action

against all erring police officials, in accordance with law and due procedure, for the patent dereliction of duties, as has been noted hereinbefore. Measures shall also be initiated to instruct and sensitize the rank and file in the police department as to what law requires of them in the discharge of their duties.

25. The appeal is, accordingly, allowed in the aforestated terms.

26. The investigation report of the special investigation team, to be constituted pursuant to the direction of this Court, shall be placed before this Court within three months from today.

**……...J**
**[SANJAY KUMAR]**

**……...J**
**[SATISH CHANDRA SHARMA]**

**New Delhi;**
**September 11, 2025.**