

DE JURE NEXUS LAW JOURNAL

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2nd Year, BA LL.B.**FIR AS A SOURCE OF EVIDENCE- A CRITICAL ANALYSIS****Abstract**

FIR is one of the preliminary ways in which one sets the criminal law into motion, it is a widely recognized legal concept, all of us might have heard of FIR atleast once in our lives but seldom do we know about its treatment as an evidence in a court of law. The following article aims to highlight the concept of FIR in light of its admissibility as an evidence in the court. The article considers various statutory provisions under the evidence act along with the judicial opinions on the matter. It analyzes every relevant provision and judicial opinion to arrive at a substantive conclusion which illuminates the lex loci on the matter. This article would highlight that how an FIR despite not being a substantive evidence is and important record with evidentiary value. It also discusses the conditions which act like an exception to the general rule that an FIR cannot be a substantive evidence. Moving further on this ground let us have an introduction to the article.

Introduction

An FIR stands for “First information report”, it can be understood as the first-hand information of the commission of any cognizable offence given to a police officer. This information usually documents the victim’s side of the story concerning the crime. The Criminal procedural code requires that an FIR shall be registered only for Cognizable offences i.e., offences which do not mandate a warrant to be present with the police in order to make arrests. Now that we know what an FIR is, we may now understand that given that an FIR is the 1st report given in respect of an offence, it acts as one of the 1st statements given by the applicant to a law enforcement officer and hence it is an intrinsic record which can help lawyers to discredit witnesses, it makes it essential for us to unfurl the provisions, judicial opinions, case laws on the topic in order to unveil the standing of FIR as an evidence in the court of law. Having understood the basics of FIR, let us now move on to the discussion of our topic of the day in lieu of the Indian Evidence Act, 1872.

Admissibility under Evidence Act

Section 157 of the Indian evidence act sheds light on the admissibility of FIR as an evidence in the following words;

“In order to corroborate the testimony of a witness, any former statement made by such a witness relating to the same fact, at or about the time when the offence took place, or before any authority legally competent to investigate the fact may be proved¹”

The ending lines of the section inculcates the police under the meaning of the legally competent investigative authority. Thus, this section hints that the statements given by any witness in the FIR and to the police can be used in order to establish the credibility of his testimony during a trial. An FIR being a record of statements given by witnesses during the investigation can hence be used in order to supplement/ contradict the testimonies of witnesses regarding similar facts as stated in the FIR and such supplementation/ contradiction shall be absolutely valid within the meaning of the said section.

Section 145 of the evidence act also allows substantive value to the FIR; the section reads as follows;

“—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved²”

This section lays down the principle that any old statements made by a witness, be it in an FIR can be used as a statement in order to cross examine and dispute the statement of the witness provided that it has been brought to his attention.

This section once again illuminates the role of FIR as an evidence. But is it an evidence in the real sense? Having considered the above statutory provisions, one may believe it to be a substantial piece of evidence but is it really what it appears? Let us now consider some judicial opinions on the matter in order to have a holistic view.

The FIR isn't substantive evidence, yet it very well may be utilized to validate the witness under Section 157 of the Evidence Act, or to negate him under Section 145 of the Act, if the informant is called as a witness at the hour of trial. Clearly, the FIR can't be utilized for the ratifying or authenticating or repudiating any person other than the one registering the FIR.

Judicial Interpretations

¹ Section 157, Indian Evidence Act, 1872

² Section 145, Indian Evidence Act, 1872

In the case of Pandurang Chandrakant Mhatre v. State of Maharashtra, it was held by the honorable supreme court that;

“It is well known that a first information report isn’t a substantive piece of evidence and that it can only be used to discredit the testimony of the allegor of the report and cannot be used to contradict or discredit the testimony of other witnesses. though the first information report is not meant to be an encyclopedia of events, an information to the police that qualifies as a first information report under Section 154(1) must include some basic and relevant data about the incident. A cryptic information concerning the commission of a cognizable offence, regardless of its nature or contents, may not be treated as a FIR. An FIR documented without wasting time is likely to be free of embroideries, exaggerations, and anyone interfering with it and polluting and adulterating it with liesent. The objective of an FIR is to get the earliest account of a cognizable offence, before the details can be forgotten and exaggerated. It is well established that FIR is not a substantive piece of evidence and may only be used to support or refute the maker's testimony. It is also equally established that trustworthiness of the prosecution story can also be judged from the FIR. Besides first information report is relevant as it may be a part of the res gestae³”

Hence the take away from this landmark judgement is that; The FIR is not substantive evidence, as previously stated; yet, its relevance in transmitting the early information about the incidence of a crime cannot be overstated. Furthermore, if the informant is called as a witness in the trial, it can be used to corroborate the informant under Section 157 of the Indian Evidence Act, 1872, or to contradict the witness under Section 145 of the same Act.

Now that we know that an FIR is usually not considered as a substantial evidence, are there any circumstances when it is considered as the former? The answer lies in affirmation.

Conditions when an FIR is treated as a substantial piece of Evidence

- When a person declaring on the cause of his death died during the statement (that is, a dying declaration). The FIR will then be admissible as a substantial evidence under Section 32(1) of the Indian Evidence Act, 1872, in this circumstance.
- When injuries are sustained in the presence of a Station House Officer in a police station, and the victim submits a statement to the SHO alleging that the accused is the one who wounded him.
- When the informer who wrote or read the FIR is unable to recall those facts from memory but is confident that the facts were correctly represented in the FIR at the time he wrote or read it.

Hence under these above stated circumstances, an FIR would be treated as a substantive piece of evidence.

Conclusion

³ Pandurang Chandrakant Mhatre v. State of Maharashtra (2009) 10 SCC 773

Having discussed all the relevant statutory provisions and the judicial interpretations on the matter, we are now in a position to conclude that an FIR is the first transmission of information regarding a cognizable offence to a police officer, this report includes statements by the informant along with the intrinsic details of the offence. When a case gradually proceeds and moves to a court of law, the same informant can be called as a witness. We read that in such an event, under section 145 and 157 of the evidence act, the FIR can be used to contradict the testimony of the witness, references can be made to the FIR to discredit the authenticity of the witness. Thus, it makes it an important piece of evidence while examining the witnesses, the subsequent case law of Pandurang Chandrakant Mhatre v. State of Maharashtra also held the same view. It established that FIR is not a substantive piece of evidence and shall be only used to corroborate a witness with respect to the statements given by him in the FIR. We then also regarded three situations under which an FIR may be treated as a substantial evidence. Hence, the value of an FIR as an evidence is limited to the purpose of corroborating or contradicting the testimonies of a witness and cannot be used as an evidence for anything else save a few circumstances as discussed above.



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