Circular No. 19/2017


01. It has been brought to our notice that in the FIS of cases, it has been mentioned that “this case being registered after conducting QV / PE, on the basis of QV / PE report of such enquiry”. Once it is written, the report of enquiry is to be produced along with the FIR or thereafter. The effect of non-production of the enquiry report in such cases is that it makes the FIR baseless. The Hon’ble High Court of Kerala in its judgement in Thankamma K Vs. State of Kerala observed the following :-

"When the Final Report shows that a definite complaint lead to an enquiry by the Vigilance, and the FIR is based on the report of such enquiry, the prosecution is bound to prove the said complaint which lead to the crime, and the prosecution is also bound to examine the complainant who made the complaint. The report of enquiry also must be produced in Court".

02. A PE is basically initiated to find out whether a cognizable offence has taken place or not and if a cognizable offence has not taken place and some commissions or omissions are noticed, we recommend departmental action and send it to the concerned department through Government. If a cognizable offence revealed, an FIR has to be registered. But in such PE report which is basically an in-house departmental report, it is desirable that the report is not referred in the FI statement. If the circumstances require that the PE Report is to be
produced before the Court, it is better to produce the same at the time of Final Report u/s 173(2) Cr.PC or even at a later stage during the course of trial, but it should never be produced along with FIR, since it will affect the investigation detrimentally.

03. It is settled law that the First Information Statement is not a substantive piece of evidence. However, FIS cannot be given a complete go-by since it can be used to corroborate the evidence of persons lodging the same by virtue of Section 157 of the Indian Evidence Act 1872. Besides, it can be used to contradict the said witness u/s 145 of the Indian Evidence Act, 1872. In Baldev Singh Vs. State of Punjab (AIR 1991 SC 31) it is categorically held that the FIR can only be used for the corroboration of its maker, but the FIR cannot be used as a substantive piece of evidence or for corroborating the statement of a third party. It is advisable to produce the report of enquiry (PE Report) before the court when asked for by the Court.

04. In short, when a PE reveals cognizable offence, the findings of the PE can be taken as the FIS and case registered suo moto by the competent officer of VACB. There is no need to refer that PE has revealed the cognizable offence and therefore, a case is registered.

Copy to:
1. All Unit Heads
2. ADGP, ADP (Vig), SP(Int), LA, ALAs
3. Circular File
4. CA to Director / ADGP-I & II / SP(Int.) / ADP (Vigilance)