

respondents to register FIR against Constable Ravinder (Driver), Delhi Police on the complaint of the Petitioner which was filed before the respondent No.3 SHO, Police Station Narela, Delhi as no action has been taken on the said complaint till date.

2. Smt. Seema (married), sister of the Petitioner, had come to her mother's house on 14th June, 2006 when at about 8.30 AM, Constable Ravinder posted at Parliament Street, New Delhi outraged her modesty and also forcibly took away her gold chain and one ear ring which Smt. Seema was wearing at that time. Constable Ravinder is alleged to have thrown bricks and stones on the house of the Petitioner. Despite receipt of information, the local police did not register any FIR against Ravinder being a Constable in Delhi Police. Efforts made by the Petitioner for registration of the FIR with the senior police officers also in vain. This resulted into filing of the present writ petition.

3. The maintainability of this writ petition has been challenged by the State in view of "**Aleque Padamsee and Ors. vs. Union of India & Ors', 2007 (9) SCALE**

275”.

4. Mr. N.S. Dalal, learned counsel for the Petitioner had urged that about few days back another judgment of the Hon’ble Supreme Court has come which gives him right to press this writ petition. However, when asked, he admitted that only a Special Leave Petition was filed which was dismissed by the Supreme Court.

5. Learned counsel for the Petitioner while submitting on the maintainability of the present writ petition referred to ***‘Ramesh Kumari Vs. State (NCT of Delhi) & Ors., 2006 (2) SCALE 457***, and has urged that the present writ petition is maintainable and this court can direct the respondents to register a case against Constable Ravinder Kumar and proceed with the investigation. In Ramesh Kumari’s case (supra) it was viewed that provision of Section 154 of the Criminal Procedure Code (hereinafter referred to as ‘Code’) are mandatory and the concerned police officer is duty bound to register a case on the basis of such an information disclosing cognizable offences.

6. Ramesh Kumari’s case (supra) was also considered

in Aleque Padamsee's case (supra) and it was observed that in Ramesh Kumari's case (supra) the basic issue did not relate to the methodology to be adopted in such like matters where despite receipt of information, the police fails to register an FIR. In Aleque Padamsee's case (supra), the provisions contained in Section 154, 156 of the Code were taken into consideration and it was observed:-

“5. When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate, after recording evidence, finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and could issue process to the

accused. These aspects have been highlighted by this Court in All India Institute of Medical Sciences Employees' Union (Reg.) through its President v. Union of India and Others [(1996) 11 SCC 582]. It was specifically observed that a writ petition in such cases is not to be entertained."

7. Reliance was also placed on 'Gangadhar Janardan Mhatre v. State of Maharashtra [(2004) 7 SCC 768], Minu Kumari and Another v. State of Bihar and Others [(2006) 4 SCC 359] and Hari Singh v. State of U.P. (2006 (5) SCC 733) and it was further observed that the police officials ought to register the FIR whenever facts brought to its notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted by the complainant are as set out in Sections 190 read with Section 200 of the Code. The writ petition was finally disposed of with the following directions:-

"(1) If any person is aggrieved by the inaction of the police officials in registering the FIR, the modalities contained in Section 190 read with Section 200 of the Code are to be adopted and observed.

(2) It is open to any person aggrieved by the inaction of the police officials to adopt the remedy in terms of the aforesaid provisions.

(3)

(4)”

8. Therefore, in view of Aleque Padamsee’s case (supra), the petitioner has to adopt modalities contained in Section 190 read with Section 200 of the Code.

9. Hence, the present writ petition is hereby dismissed being not maintainable. The Petitioner is at liberty to adopt and observe the modalities as laid down under Section 190 read with Section 200 of the Code.

**ARUNA SURESH
(JUDGE)**

**April 28, 2008
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