

**HIGH COURT OF TRIPURA
AGARTALA**

WP(Crl.) No.05 of 2023

Arsad Rahaman

..... Petitioner(s).

V E R S U S

The State of Tripura & others

.....Respondent(s).

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Dipjyoti Paul, Advocate.

For Respondent(s) : Mr. Raju Datta, P.P.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Order

08/01/2024

Petitioner has approached this Court with twofold reliefs:

"(i) Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order(s) and/or direction(s) of like nature shall not be issued whereby directing the Respondents to treat & register the complaint, dated 13.11.2023, as FIR under Section 395/447/326/34 & any other relevant Sections of IPC and conduct investigation into the matter.

(ii) Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order(s) and/or direction(s) of like nature shall not be issued whereby transferring the investigation of the matter inferred from the complaint, dated 13.11.2023, to a Special Investigation Team consisting of officers not below the rank of Superintendent of Police or Crime Branch, Tripura, or any other higher competent authority."

At paragraph-11 of the writ petition, he has averred that for an incidence of dacoity which occurred at around 1.30 a.m. in the intervening night of 04/05.11.2023 he approached the Superintendent of Police, Sepahijala District to take cognizance under Section 156(3) of the Cr.P.C., i.e. Annexure-4 dated 30.11.2023. Though averments in the writ petition do not indicate as to in which mode it was sent but learned senior counsel for the petitioner has referred to a track consignment report at page-45 of speed post which, according to him, is the mode of delivery of this complaint upon the Superintendent of Police,

Sepahijala District. The complainant is stated to be the son of one Fajlu Miah who had entered into an agreement for sale with Abu Taher for a purchase of 0.60 acres of land in Sonamura, Mouja-Aralia, Khatian No.-875 for a value of Rs.18,00,000/- against which partial consideration price of Rs.12,00,000/- was paid to the second party by the first party. The agreement for sale appears to be unregistered and the payments alleged in the complaint appear to be in cash. Be that as it may, learned senior counsel for the petitioner submits that in view of the judgment rendered by the Apex Court in the case of *Lalita Kumari vrs. Government of Uttar Pradesh and others* reported in (2014) 2 SCC 1 when a cognizable offence has been disclosed, it was mandatory under Section 154 of the Cr.P.C. for the Investigating Agency to register an F.I.R. and investigate the matter. The petitioner has in his representation before the Superintendent of Police, Sepahijala at the end stated that he had lodged written complaint to number of authorities but no step was being taken against the accused persons. He tried lodging a complaint at Sonamura P.S. but the Police Officials denied to take cognizance of the matter as the complaint is against themselves. Therefore, as per Section 156(3) of Cr.P.C., he was sending the complaint to the Superintendent of Police, Sepahijala by registered post.

Mr. Raju Datta, learned Public Prosecutor appearing for the State, submits that from the annexures to the writ petition, it appears that the agreement for sale is an unregistered document between two other persons, not the complainant who is one Arsad Rahaman. It is further submitted that the complaint had failed to disclose any cognizable offence.

Be that as it may, we do not intend to make any comments on the allegations made and whether they make out a cognizable offence or not at this stage. The petitioner appears to have invoked Section 156(3) of Cr.P.C. while

approaching the Superintendent of Police, Sepahijala District for registration of an F.I.R. and investigation into the matter. It needs to be observed here that Section 156(3) of Cr.P.C. is the power of the Magistrate to direct investigation in a matter by the Investigating Agency on complaint being lodged in the Court of such Magistrate. It does not appear that the petitioner has approached the competent Court of Judicial Magistrate having criminal jurisdiction invoking the provisions under Section 156(3) of the Cr.P.C. or for proceeding with the complaint in the manner provided under Chapter-XV of the Cr.P.C. Be that as it may, since it appears that petitioner has approached the Superintendent of Police alleging that the Officer-in-Charge of the Police Station refused to record the information submitted by him apparently under Section 154(3) of Cr.P.C., the respondent No.4 is required to look into the information/complaint submitted by the petitioner keeping into mind the principles laid down in case of *Lalita Kumari* (supra).

Petitioner is also at liberty to approach the competent criminal Court of Judicial Magistrate for invoking Section 156(3) of the Cr.P.C. in respect of the matter. However, at this stage, this Court is of the view that no directions in respect of the prayer No.(ii) need to be granted since the matter is first required to be looked into by the statutory authority.

As observed hereinabove, the writ petition is disposed of.

Pending application(s), if any, shall also stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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