

GAHC020004742022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.L.P./5/2022

SHRI. IMKONGKUMZUK
S/O SHRI. JAKJEMTIBA, PERMANENT RESIDENT OF CHUNGTIA
VILLAGE, MOKOKCHUNG, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 8 ORS
KOHIMA NAGALAND

2:THE SUPERINTENDENT OF POLICE
MOKOKCHUNG NAGALAND

3:THE OFFICER-IN-CHARGE
POLICE STATION-II
MOKOKCHUNG NAGALAND

4:CHUNGTIA VILLAGE COUNCIL
THROUGH THE CHAIRMAN N.BENDANG
MOKOKCHUNG NAGALAND

5:SHRI. MOAYANGER
S/O LATE LONGRITEMJEN
VILLAGE CHUNGTIA
MOKOKCHUNG NAGALAND

6:SHRI. SENTIYANGER
S/O LATE RONGSENWATI
CHUNGTIA VILLAGE
MOKOKCHUNG NAGALAND

7:SHRI. IMSUNUNGBA
CHUNGTIA VILLAGE
MOKOKCHUNG NAGALAND

8:SHRI. IMTIZACHET
CHUNGTIA VILLAGE
MOKOKCHUNG
NAGALAND

9:SHRI. RONGSENNUNGBA
CHUNGTIA VILLAGE
MOKOKCHUNG NAGALAN

Advocate for the Petitioner : V ANNE THERIE

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

For the petitioner : 1. Mr. Sentiyanger, Adv.

**For the respondent(s) :1. Mr. K. Angami,
Public Prosecutor, Nagaland.
2. Mr. Wati Jamir, Adv.**

Date of judgment : 05/03/2024

JUDGMENT AND ORDER (CAV)

1. Heard Mr. Sentiyanger, learned counsel for the petitioner and also heard Mr. K. Angami, learned Public Prosecutor, for the State of Nagaland and Mr. Wati Jamir, learned counsel for the respondent No. 4.

2. This application under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioner Imkongkumzuk Longchar praying for a direction for registration of the FIR lodged by the petitioner

on 10.07.2022 before the Officer-In-Charge of PS-II, Mokokchung, Nagaland and to conduct necessary investigation as per law.

3. The facts relevant for consideration of the instant criminal petition, in brief, are as follows:-

3.1. That the petitioner is a police personnel holding the rank of Habildar in 2nd NAP battalion Alichen, Mokokchung and presently attached to the office of Director General of Police, Nagaland. In the month of July, 2022, the petitioner obtained 8 (eight) days of casual leave from 07.07.2022 to 14.07.2022 to visit his family members at Mokokchung and his aged father at his native village, Chungtia. On 09.07.2022, while the petitioner was sleeping at his aunt's place, a group of 20 to 30 men belonging to a self-styled political party, namely, Senso Party, Chungtia came inside the residence of the aunt of the petitioner at around 10:30 to 11:00 PM and physically assaulted the petitioner without any rhyme or reason. The intruders also threatened the petitioner to leave the village next day before 8:00 AM.

3.2. It is stated by the petitioner that the whole incident was witnessed by Mr. Ngangenchiba, Mr. Chemtsung, Mr. Imliwapang, Mr. Rongsenlemba and Mrs. Pangitsungla, who were present at the place of occurrence.

3.3. Subsequently, on the next day, i.e. on 10.07.2022, the petitioner filed a complaint before the Officer-In-Charge of PS-II,

Mokokchung, Nagaland, narrating the whole incident and requesting to take appropriate steps according to law.

3.4. It is also stated by the petitioner that after submitting the said FIR the statement of the petitioner was recorded by the police on 13.07.2022 and on 25.07.2022, the accused persons were summoned to appear before the police on 26.07.2022. However, the FIR lodged by the present petitioner was not registered by the police even after lapse of 15 days of filing of the same, therefore, on 26.07.2022, the petitioner made an application before the Superintendent of Police, Mokokchung, requesting the Superintendent of Police to take steps under the provisions of Section 154(3) of the Code of Criminal Procedure, 1973.

3.5. In the meanwhile, on 27.02.2022, the Chungtia village council wrote a letter to the petitioner directing him to withdraw the complaint before the Officer-In-Charge of Mokokchung Police Station-II, Mokokchung. However, despite of the said application, no steps were taken to register the FIR which was lodged by the present petitioner on 10.07.2022.

4. Mr. Sentianger, learned counsel for the petitioner has submitted that though the complaint lodged by the petitioner on 10.07.2022, clearly discloses the ingredients of the offence under Section 323/326/451/457/452/458/506/34 of the Indian Penal Code and it was mandatory on the part of the Officer-in-Charge of Mokokchung Police Station-II (respondent No. 3) to register the FIR, however, by not doing so

he violated the mandatory provisions of the law.

5. Learned counsel for the petitioner has also submitted that though the petitioner had lodged the complaint on 10.07.2022 itself, however the Officer-In-Charge of PS-II, Mokokchung, did not register any police station case and only made a General Diary entry on 12.07.2022, i.e. GDE No.03/2022 dated 12.07.2022.

6. It is also submitted by the learned counsel for the petitioner that the police acted in connivance with the accused persons and waited until a false FIR was filed against the present petitioner by some persons of Chungtia village purported to be a counter FIR, however, it is submitted by the learned council for the petitioner that in the said FIR, no cognizable offence was disclosed against the present petitioner and certain vague allegations were levelled in the said purported FIR which was promptly registered by the respondent No. 3.

7. The learned counsel for the petitioner has submitted that since the FIR filed by the present petitioner clearly disclosed a cognizable offence upon plain reading of the FIR itself, it was not necessary to conduct any inquiry on the said FIR as per the guidelines of the Supreme Court of India in the case of “***Lalita Kumari v. State of UP &Ors,***” reported in “**(2014)2 SCC 1**” wherein, it has been observed as follows,

“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 recognizable offence is disclosed or not.

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.

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 7 days. 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."

8. The learned counsel for the petitioner has also cited a ruling of the Apex Court of India in "***Sindhu Janak Nagargoje v. State of Maharashtra &Ors.***" reported in "***2023 8 Supreme 330***," wherein the Apex Court relying on its own ruling of "***Lalita Kumari v. State of Uttar Pradesh & others***"(supra) has observed that where the FIR discloses commission of a cognizable offence, it is mandatory to register the FIR and the police officer cannot avoid his duty of registering the FIR in such cases.

9. It was also observed that the scope of preliminary inquiry is not to verify the veracity or otherwise of the information received, but only to ascertain, in certain cases, whether information reveals any cognizable offence or not.

10. The learned counsel for the petitioner has also submitted that the respondent authorities not only violated the guidelines of the Apex Court as well as violated the provisions of Code of Criminal Procedure, 1973 it also failed to comply with the advisory issued on 10.05.2013 by Government of India, Ministry of Home Affairs regarding the compulsory registration of the FIR, if such FIR discloses cognizable offence.

11. The learned counsel for the petitioner has submitted that even after filing of the application by the petitioner under Section 154(3) of the Code of Criminal Procedure, 1973 to the Superintendent of Police, Mokokchung, the respondent No.3 failed to register the FIR lodged by the petitioner and only conducted a preliminary inquiry, which was not

warranted in the facts and circumstances of the case as the bare perusal of the FIR filed by the petitioner revealed commission of cognizable offence.

12. On the other hand, Mr. K. Angami, learned Public Prosecutor, Nagaland, as well as Mr. Wati Jamir, learned counsel for respondent No. 4, has submitted that the respondent No. 3 received the complaint filed by the petitioner on 12.07.2022 only and a General Diary entry, i.e. GDENo.03/2022 dated 12.07.2022 was made thereon and a preliminary inquiry was done to ascertain whether any cognizable offence has been disclosed in the case or not and after preliminary inquiry, it was found that no cognizable offence has been disclosed.

13. It is also submitted by the learned counsel for respondent No. 4, as well as learned Public Prosecutor, Nagaland, that on the same matter, a counter FIR was filed by some youths of the Chungtia village on the basis of which GDE No. 04/22 was registered.

14. It is also submitted by learned Public Prosecutor that the respondent No. 3 had received the application dated 26.07.2022 filed by the petitioner under Section 154(3) of the Code of Criminal Procedure, 1973 which was endorsed to him and against the same a report was submitted by the respondent No. 3, wherein it was reported that there was no sign of physical assault on the body of the petitioner and the medical report produced by the petitioner also does not reveal any physical assault. As there was a counter FIR filed by some youths of Chungtia village, a Non-FIR case was registered and same was forwarded to the Executive Magistrate for furnishing of bonds by the parties so as to

prevent any breach of peace and public tranquility in the area as from the inquiry conducted by ASI Wati Jamir, no cognizable offence could be established on the basis of the FIR lodged by the petitioner and therefore no regular case was registered and the petitioner was informed about the status of the case on 01.08.2022 by the respondent No. 3.

15. Learned Public Prosecutor, Nagaland has also submitted that the petitioner could have approached the Magistrate under Section 156(3) of the Code of Criminal Procedure, 1973, in case he felt that the complaint filed by him was not registered as FIR and he ought not to have approached this court by invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure as alternative remedy was available for him. In support of his submission, Learned Public Prosecutor, Nagaland has cited a ruling of the Supreme Court of India in the case of “**Sakiri Vasu v. State of Uttar Pradesh and others**” reported in “**(2008)2SCC409**,” wherein it was observed as follows: -

“25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 CrPC. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, first under Section 154(3) and Section 36 CrPC before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154 (3) CrPC or other police officer referred

to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere."

16. In view of above submissions, the learned Public Prosecutor, Nagaland as well as learned counsel for respondent No.4 has prayed for dismissing the criminal petition filed by the present petitioner.

17. I have considered the submissions made by learned counsel for both the sides and have gone through the materials available on record carefully.

18. In view of the decision rendered by the Constitution Bench of the

Supreme Court of India in the case of “***Lalita Kumari v. State of Uttar Pradesh and others***”(supra), this court is of the opinion that the registration of an FIR is mandatory under Section 154 of the Code of Criminal Procedure, 1973 if the FIR lodged by the petitioner discloses the commission of cognizable offence on its plain reading.

19. In the instant case if we peruse the written information dated 10.07.2022 filed by the petitioner before the Officer-In-Charge of PS-II, Mokokchung, it appears that it has been categorically mentioned that on 9th July 2022 at around 10 to 10.30PM, when the petitioner along with some of his friends was in his aunty's place, around 20 to 30 persons in a group led by Mr. Moa Yanger came there and beat them up without any rhyme or reason and threatened the petitioner to leave the village before 8:00AM or to face dire consequences. A bare perusal of the contents of the FIR shows that the accused persons trespassed into the house of the aunt of the petitioner in the night and assaulted the petitioner and his friends which itself constitutes a cognizable offence and it also appears that the written complaint/information filed by the petitioner not only discloses the commission of cognizable offence, but also names some of the alleged offenders out of the 20 to 30 persons, who are alleged to have trespassed into the residence of the aunt of the petitioner and assaulted him. As the written information filed by the petitioner before the Officer-In-Charge of the Police Station-II, Mokokchung, discloses the commission of a cognizable offence, no preliminary inquiry is permissible in such a situation as per the guidelines laid down by the Apex Court in the case of “***Lalita Kumari v. State of Uttar Pradesh and others***”(supra).

20. Under such circumstances, the Officer-In-Charge of Police Station-II, Mokokchung, (respondent No. 3) has violated the guideline of the Apex Court in laid down in the case of “***Lalita Kumari v. State of Uttar Pradesh and others***” (supra), by merely making General Diary entry No.3/2022 and by not registering a regular police station case and after registering the FIR. The circumstances under which a preliminary inquiry can be made has been clearly enumerated in the guidelines laid down by the Apex Court in the case of “***Lalita Kumari v. State of Uttar Pradesh and others***” (supra).

21. Thus, if the written FIR discloses a cognizable offence the Officer-In-Charge cannot initiate a preliminary inquiry, at his own sweet will, to verify the veracity or otherwise of the information without registering it and without registering a regular police station case. It is only after registering the FIR, during the course of investigation, the veracity of the truth or otherwise of the content of the FIR may be found out and accordingly either the final report or the charge-sheet may be laid before a Magistrate empowered to take cognizance of the offence on a police report.

22. In the instant case the petitioner not only filed the written information on 10.07.2022, which the respondents have claimed to have received on 12.07.2022, but he had also written to the Superintendent of Police as per Section 154(3) of the Code of Criminal Procedure, 1973. However, in spite of that also the FIR was not registered and a regular police station case was not registered. When the Apex Court has laid down the guidelines in the case of “***Lalita Kumari v. State of Uttar***

Pradesh and others” (supra), as to the circumstances under which a preliminary inquiry may be carried out before registering an FIR and a regular police station case, it was not open, under the facts and circumstances of the instant case for the respondent No. 3 to embark upon a preliminary inquiry when the written information filed by the petitioner clearly discloses commission of cognizable offence against the present petitioner by the accused persons, some of whom were also named in the written information filed by him.

23. The contention of the learned counsel for the respondent No. 4 as well as learned Public Prosecutor that another FIR was lodged by some youths of the Chungtia village on 12.07.2022 against the present petitioner cannot be a reason for not registering the FIR filed by the present petitioner when both the FIR are in connection with different incidents. The FIR lodged by the present petitioner clearly mentions that about 20 to 30 accused persons led by one Moya Yanger trespassed into the house of the aunt of the petitioner, at night, and assaulted the petitioner and his friends. As the FIR lodged by the petitioner clearly discloses the commission of cognizable offence, the respondent No. 3 has violated the guidelines laid down by the Apex Court in the case of “***Lalita Kumari v. State of Uttar Pradesh and others***” (supra), by not registering the same as a regular FIR and a regular police station case and conducting the investigation as per the provision of the Code of Criminal Procedure.

24. Though in the case of “***Sakiri Vasu v. State of Uttar Pradesh***” (supra), it was observed that that on not registering an FIR by police the

aggrieved person should not rush to High Court under Section 482 of the Code of Criminal Procedure, 1973 and should explore the alternative remedies provided under Section 154 (3)/156(3)/200 of the Code of Criminal Procedure, 1973, however, in the instant case, it appears that petitioner has not immediately approached this court after refusal of the respondent No.3 to register the FIR on the basis of written information filed by him rather he filed an application to the Superintendent of Police, Mokokchung under Section 154(3) of the Code of Criminal Procedure, 1973. However, even when the said application was forwarded to respondent No. 3 by the respondent No. 2, the FIR filed by the petitioner on 10.07.2022 was not registered and a preliminary inquiry was embarked upon by the respondent No.3, which was not warranted under the facts and circumstances of this case.

25. Though, the petitioner could have approached the Jurisdictional Magistrate, under Section 156 (3) of the Code of Criminal Procedure, 1973 or could have also filed a complaint case against the accused persons. However, as the petitioner was not relegated at the initial stage of this criminal petition for pursuing the alternative remedy and as sufficient time has lapsed since the filing of the instant criminal petition, it would be unjust under the facts and circumstances of this case to decline the relief to the petitioner only on the ground that he did not exhaust all the alternative remedy available to him. Moreover, mere availability of alternative remedy does not operate as an absolute bar for exercising the inherent power of this court under Section 482 of the Code of Criminal Procedure, 1973.

26. As in the instant case, the written information dated 10.07.2022 submitted by the petitioner did disclose the commission of cognizable offence and also disclosed the name of some of the alleged offenders, the respondent No. 3 is legally bound to register the said FIR and register the regular police station case and conduct the investigation as per law and take it to its logical conclusion according to the provisions of law. Therefore, the respondent No. 3, is hereby directed to register the FIR lodged by the petitioner on 10.07.2022 as a regular police station case and conduct the investigation in accordance with law and take it to its logical conclusion.

27. This criminal leave petition is accordingly allowed.

JUDGE

Comparing Assistant