

CRM NO. M-39785 of 2014
DECIDED ON: JULY 16, 2015

.....PETITIONER

STATE OF HARYANA & OTHERS

.....RESPONDENTS

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present: Mr. B.S. Thind, Advocate
for the petitioner.

Mr. D.R. Singla, DAG, Haryana.

Mr. Bipan Ghai, Sr. Advocate with
Mr. Bhrigu Dutt Sharma, Advocate and
Mr. Mandeep Kaushik, Advocate
for respondent No.6.

JASPAL SINGH, J (ORAL)

Instant petition has been preferred by Usha Rani under Section 482 of the Code of Criminal Procedure (for brevity 'Code') seeking direction to respondents No.1 to 3 to register First Information Report, as per procedure laid down under Section 154 of the Code on the basis of complaint dated July 09, 2014 (Annexure P-3) lodged by her with respondent No.2 for investigation and inquiry in connection with murder of Rajesh Kumar her husband by respondent No.6.

2. The grouse ventilated through instant petition is that though petitioner approached the authorities for registration of a case by lodging complaint dated July 09, 2014 (Annexure P-3) against the accused persons but the police neither

registered the case nor put law into motion, therefore, having failed in an attempt to get register the case, she approached this Court.

3. The contention of learned counsel for the petitioner is that respondents No.1 to 3 had failed to act and take necessary action on the complaint, as required under Section 154 of the Code. It has further been urged by learned counsel for petitioner that any information relating to commission of cognizable offence is required to be reduced into writing by the police officer/in-charge of police station, which has to be signed by the person giving it and the substance thereof, is required to be entered in the book to be kept by such officer in the prescribed form. Copy of FIR is required to be sent forthwith to the Magistrate empowered to take the cognizance. After recording FIR, officer in-charge of police station either himself or his authorised subordinate is obliged to initiate investigation. Even, no inquiry by the police prior to recording of FIR is necessary. He cannot embark upon an enquiry as to whether the information is reliable or genuine. To buttress this contention, learned counsel for the petitioner has placed reliance upon the judgment passed by Hon'ble Apex Court in the case of **Lalita Kumari vs. Government of UP and others; 2013 (4) RCR (Criminal) 979.**

4. After bestowing due consideration to the submissions made by learned counsel for the petitioners and having meticulously examined the record available on file, this Court is of the considered view that the same does not carry much legal substance in view of latest settled propositions of law in the subject matter.

5. The sole question which arises for consideration is, whether this Court has jurisdiction to intervene in case of failure on the part of police officials, to register the FIR on the allegations that a cognizable offence has been committed, while exercising the powers conferred under Section 482 of the Code. In ***Lalita***

Kumari's case (supra) an identical question arose as to whether police officer is bound to register the FIR on receipt of any information pertaining to the commission of a cognizable offence under Section 154 of the Code or the police officer has power to conduct a preliminary inquiry in order to test the veracity of such information report registering the same. Paragraph no. 111 is relevant and it would be desirable to reproduce the same, which reads as under:

111) In view of the aforesaid discussion, we hold:

- (i) 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.*
- (ii) 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 cognizable offence is disclosed or not.*
- (iii) 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.*
- (iv) 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.*
- (v) 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.*
- (vi) 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.*

(vii) *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.*

(viii) *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.*

6. A glance at the aforesaid paragraph makes it crystal clear that it was not the scope of reference whether the High Court can exercise its jurisdiction under Section 482 of the Code to issue direction to register the FIR in case of failure of police authorities to register the FIR in regard to cognizable offence.

7. Now coming to the question formulated in para 5 of this judgment. By now it is pretty settled, in view of judgments of Hon'ble Apex Court passed in the cases of **Aleque Padamsee and others vs. Union of India and others; 2007 (6) SCC 171 (SC)** and **Sakiri Vasu vs. State of Uttar Pradesh and others; 2008 (1) RCR (Criminal) 392** as well as that of this Court in **Kanhaiya Lal vs. State of**

Haryana and Others; 2010 (1) Law Herald 374; that if any person is aggrieved with the failure or inaction on the part of police officials in registering the FIR, the procedure provided in Section 190 read with Section 200 of the Code are to be adopted. In ***Aleque Padamsee and Others' case (supra)***, Hon'ble Apex Court after having elaborately discussed Sections 154 and 156 of the Code while disposing of the writ petition made following observation in para 8 of the judgment, which reads as under:

“8. The writ petitions are 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.”

8. In ***Sakiri Vasu's case (supra)***, Hon'ble Apex Court observed that instead of rushing to the High Court in case of non registration of FIR by the police in a cognizable offence, an aggrieved person should avail the remedy by lodging a complaint under Section 200 of the Code or could adopt any other alternative remedy. It would be appropriate to reflect paragraph nos. 26 and 27, which are relevant for the determination of question involved in the instant petition. The same reads as under:

“ 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) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. 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) Cr.P.C. instead of rushing to the High Court by way of a writ petition

or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. 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 Cr.P.C. 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 concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.”

9. Similarly in *Kanhaiya Lal's case (supra)*, this Court observed that in case of failure on the part of police officials to register the FIR in a cognizable offence, an aggrieved person may avail the remedy in accordance with law and no interference of this Court is called for while exercising inherent jurisdiction under Section 482 of the Code.

10. In view of the settled propositions of law laid down in *Aleque Padamsee's case (supra)*, *Sakiri Vasu's case (supra)* and *Kanhaiya Lal's case (supra)* it can be safely concluded that while exercising extra ordinary jurisdiction under Section 482 of the Code; no direction for the registration of FIR by this Court is required to be issued. However, an aggrieved person can avail the remedies in accordance with law by adopting modalities containing in Section 190 read with Section 200 of the Code. Accordingly, instant petition stands dismissed,

however, petitioner shall be at liberty to avail appropriate remedy provided under the law. In case any complaint is filed before the Magistrate that shall be dealt with and disposed of without being influenced by various reports or conclusions arrived at by police officers while disposing of complaints earlier moved.

JULY 16, 2015
SHAM

(JASPAL SINGH)
JUDGE