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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 9th March, 2016

+ **W.P.(CRL) 757/2016 and Crl. MA No. 4239/2016**

JINDAL KUMAR & ANR. Petitioners
Through Mr. M.K. Gahlot, Advocate along with
petitioners
versus

STATE & ORS. Respondents
Through Ms. Richa Kapoor, ASC (Crl.)

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J. (ORAL)

CRL.M.A. No. 4239/2016 (Exemption)

1. Exemptions allowed subject to all just exceptions.
2. The application stands disposed of.

W.P. (CRL.) 757/2016

1. The present is a petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 seeking a direction in the nature of mandamus to the police to register a criminal case against respondent nos. 3 to 8 herein.
2. Notice.
3. Ms. Richa Kapoor, learned Addl. Standing Counsel (Crl.) accepts notice on behalf of the official respondent and has handed over a status report in the

matter. The same is taken on record.

4. Although the commission of the offence is alleged to have taken place on 29th February, 2016, it is an admitted position that the petitioners did not immediately approach the police authorities in this behalf.

5. Interestingly, the first time the petitioners took any action in this behalf was when a representation dated 4th March, 2016, admittedly drafted by the petitioners' lawyer on their instructions, was dispatched to the police authorities by post.

6. A perusal of the status report reveals that petitioner no. 1 is stated to be an alcoholic who has a propensity to disturb his neighbours after consuming alcohol. It is further stated in the status report filed on behalf of the SHO, Police Station- Nihal Vihar, Delhi that the said petitioner is not co-operating in the inquiry into the alleged incident.

7. Learned counsel appearing on behalf of the petitioners relies on a decision of the Supreme Court in the case of ***Ramesh Kumari vs. State NCT of Delhi & Ors.*** reported as ***AIR 2006 SC 1322*** in order to buttress his submission to urge that it is mandatory for the concerned officer to register a case on the basis of an information disclosing the commission of a cognizable offence.

8. In this behalf, it is suffice to observe that in ***Ramesh Kumari (supra)***, the complaint was directed against a police officer and it was considered appropriate, in the facts and circumstances thereof, and in the interest of justice,

by the Supreme Court to refer the investigation to an independent agency like the CBI.

9. In a landmark decision of the Supreme Court in *Sakiri Vasu vs. State of U.P. & Ors.* reported as (2008) 2 SCC 409, the Hon'ble Supreme Court was concerned with the vexed question of whether it would be appropriate for the High Court to interfere in matters concerning non-registration of an FIR.

10. The Supreme Court delineated the scope and the ambit of interference by the High Court thus:-

“11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

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17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will

include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.

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24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) CrPC to order registration of a criminal offence and/or to direct the officer in charge of the police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) CrPC, we are of the opinion that they are implied in the above provision.

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.”

11. In view of the dictum of the Hon’ble Supreme Court in *Sakiri Vasu (supra)*, particularly the direction that the High Court should not encourage the practice of complainants rushing to it and filing writ petitions without insisting for the alternative remedy under the Code; it is incumbent upon this Court that the present petition be dismissed at this stage whilst reserving liberty to the petitioners to follow the procedure prescribed by law as enunciated in *Sakiri Vasu (supra)*.

12. With the above directions, the writ petition is disposed of accordingly.

MARCH 09, 2016
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SIDDHARTH MRIDUL, J