

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

Date of decision: 06th January, 2016

+ W.P.(CRL) 2462/2014

RAKESH KUMAR & ANR

..... Petitioners

Through

Mr. N.S. Dalal, Advocate

versus

UNION OF INDIA & ORS

.....Respondents

Through

Mr. Ajay Digpaul, CGSC for UOI

Mr. Rajesh Mahajan, Addl. Standing

Counsel (Crl.) for the State

SI Sukhwinder, P.S. Bharat Nagar

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is a petition under Article 226 of the Constitution of India praying for a direction to the police to register an FIR on the basis of the complaint filed by the petitioners herein before the official respondent as well as a direction for constitution of a Special Investigating Team/CBI to conduct investigation into the complaint in the time bound manner.

2. A perusal of the writ petition reveals that the complaint relates to an alleged unauthorized demolition of some dwelling houses as far back as in the year 2006.

3. Admittedly, the petitioners instituted a complaint in this behalf only on 16th October, 2014.

4. In the first instance, it is trite to state that the petitioners cannot be permitted to awake from their deep slumber belatedly.

5. More importantly, if the police did not act as desired by the petitioners herein, on the complaint instituted by the latter, the course of action available to the petitioners is to institute an appropriate application under Section 156(3) of the Code of Criminal Procedure, 1973 before the learned Magistrate concerned in the first instance. Admittedly, that has not been done.

6. Furthermore, it has been held by the Hon'ble Supreme Court in a catena of decisions that no one can insist that an offence be investigated by a particular agency. (Ref: ***CBI vs. Rajesh Gandhi*** reported as (1996) 11 SCC 253).

7. In the present case, the alleged offences were committed by public servants as far back as in the year 2006.

8. A perusal of the reply filed on behalf of the official respondents reveals that the concerned public servants were performing their official duty upon a requisition made in this behalf by the MCD and DDA.

9. In the present case, I am of the considered opinion that the material on record does not disclose a *prima facie* case calling for an investigation by the CBI. A bald assertion on behalf of the petitioners that public officials conspired to demolish the dwellings inhabited by the petitioners herein does not pass muster.

10. In the case of *Sakiri Vasu vs. State of U.P. & Ors.* reported as (2008) 2 SCC 409, the Hon'ble Supreme Court has observed as follows:-

“10. It has been held by this Court in *CBI v. Rajesh Gandhi* [(1996) 11 SCC 253 : 1997 SCC (Cri) 88 : 1997 Cri LJ 63] (vide para 8) that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

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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16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide *State of Bihar v. J.A.C. Saldanha* [(1980) 1 SCC 554 : 1980 SCC (Cri) 272 : AIR 1980 SC 326] (SCC : AIR para 19).

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 *Writ Petition (Crl.) 903/2013* titled *CBI vs. R.K. Yadav*, decided on 23rd December, 2015, this Court has observed as follows:-

“17. In view of the afore-stated, the impugned orders dated 18.02.2013 and 07.05.2014 passed by the Special Judge, CBI are erroneous. The Special Judge has been designated to try the offences under The Prevention of Corruption Act, 1988 which are investigated by the CBI by virtue of Delhi Special Police Establishment Act, 1946. The Special Judge takes the seat of a magistrate as a court of original criminal jurisdiction while dealing with an application under Section

156(3) or 202 of the Code and does not have the power to direct the CBI to investigate into a matter. Further, nothing has been brought to my notice to establish that the present case is exceptional and extra ordinary in nature which requires to be investigated by a specialized agency like the CBI. Merely because the allegations pertain to government officials, does not make it a case which should be investigated by the CBI. The power to direct investigation to the CBI is to be exercised with caution and in select few recherché cases, keeping in mind that the CBI should not be overburdened with matters that do not require such expertise.”

12. In view of the foregoing, the present writ petition is devoid of merit and is accordingly dismissed.

13. Liberty is, however, reserved to the petitioners to approach the concerned Magistrate under Section 156(3) of the Code of Criminal Procedure, 1973, in the first instance.

SIDDHARTH MRIDUL, J

JANUARY 06, 2016

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