

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION NO.24163 of 2017

ORDER :

Heard both sides.

2. The present writ petition came to be filed to declare the action of the respondents in filing a final report, without serving the referred notice on the petitioner, as illegal and arbitrary.

3. It is to be noted here that a final report came to be filed closing the case as civil in nature. The grievance of the petitioner is that without giving notice, filing of a final report is illegal and improper. It is to be noted that the police ought to have issued a notice before filing of a final report, so as to enable the petitioner to avail the remedies available in law. In fact, a duty is cast on the Court as well, to inform the informant, before accepting the final report. In the absence of any such notice, the petitioner, who is the informant, is **always** at liberty to file a protest petition now or a private complaint under Section 200 of Cr.P.C. and then proceed in accordance with law, in view of the observation made in paragraph No.9 of ***Kishan Lal Vs. Dharmendra Bafna and another***¹, which reads as under:

“9. It is now a well settled principle of law that when a final form is filed by any Investigating Officer in exercise of his power under sub-section (2) of [Section 173](#) of the Code, the first informant has to be given notice. He may file a protest petition which in a given case may be treated to be a complaint petition, on the basis whereof after fulfilling the other statutory requirements cognizance may be taken. The learned Magistrate can also take cognizance on the basis of the materials placed on record by the investigating agency. It is also permissible for a learned Magistrate to direct further investigation.

The Investigating Officer when an FIR is lodged in respect of a cognizable offence, upon completion of the investigation would file a police report. The power

¹ 2009(7) SCC 685

of investigation is a statutory one and ordinarily and save and except some exceptional situations, no interference therewith by any court is permissible.”

4. Having regard to the above, if the petitioner intends to file a private complaint before the concerned Court, she shall do the same, in which event, the concerned Court shall deal with the said complaint, in accordance with law.

5. Accordingly, the writ petition is disposed of. No costs.

Consequently, miscellaneous petitions, if any pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

21.07.2017

vhb

