

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 496 of 2018

Miss. Vandana Chauhan D/o Late Madhukar Chauhan Aged About 53 Years
Assistant Professor Presently Posted At Government Nursing College Durg
District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Petitioner

Versus

1. The State Of Chhattisgarh Through The Secretary, Department Of Medical Education, Mahanadi Bhawan Mantralaya New Raipur District Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. The Director, Directorate Medical Education Department Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. The Deputy Director, Directorate Medical Education Department Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. The Principal Government Nursing Collage , Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
5. Shri Arvind Nishad S/o Late Shri Dhruw Singh Nishad, Aged About 38 Years R/o Vidhan Sabha, Post Tarra, Village Tarra, Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
6. Shri Nutan Das S/o Shri Kalvin Das Aged About 52 Years R/o Nurani Chowk Raja Talab, Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Arvind Dubey, Advocate
For State	:	Shri Chandresh Shrivastava, Panel Lawyer

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

07/09/2018

Heard.

1. This petition has been filed by the petitioner alleging that though the

allegation made by the petitioner in her communication addressed to the Director, Medical Education related to commission of offence of misappropriation, no permission is being granted due to which the petitioner is unable to approach the authority for registering FIR and submitting charge sheet in the Court for prosecution of alleged offender.

2. It appears that the petitioner has been making various communications to the Director, Medical Education. The petitioner is seeking permission to lodge FIR. However, it is found that the petitioner has not approached any police authority. It is open for the petitioner to approach the police authority and on such approach being made, the police authority are required to act in accordance with the guidelines issued by the Supreme Court in the case of **Lalita Kumari Vs. Government of Uttar Pradesh and Ors.**, (2014) 2 SCC 1, wherein their Lordships has held thus:

“120. In view of the aforesaid discussion, we hold:

120.1. 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 cognizable 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."

3. Needless to say, matter is required to be inquired into and if despite

preliminary enquiry, offence are not registered, the petitioner's remedy would be to file complaint as held by their Lordships in the Supreme Court in the case of **Sakiri Vasu Vs. State of Uttar Pradesh & Ors.** (2008) 2 SCC 409, wherein it was held thus:

“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 Section 36 and 154 (3) before the police officers concerned, 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.”

4. With the aforesaid, towards compliance of the direction issued by the Supreme Court, this petition is disposed off.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge