

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 523 of 2018

Sohan Lal Sharma S/o Late Shri Gopal Chand Sharma Aged About 43 Years R/o House No. 123, Ward No. 31, Bhoipara, Durg Tehsil And District Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary Department Of Home Affairs, Mantralaya, Indrawati Bhawan, New Raipur District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Salik Ram S/o Milan Singh Aged About 64 Years R/o Village Pisegaon, Tehsil And District Durg Chhattisgarh, District : Durg, Chhattisgarh
3. Superintendent Of Police District Durg Chhattisgarh, District : Durg, Chhattisgarh
4. Station House Officer Police Station Pulgaon, District Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Rahul Tamaskar, Advocate
For State	:	Shri Chandresh Shrivastava, Panel Lawyer

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

Order On Board

12/09/2018

Heard.

1. The petitioner's grievance is that despite complaint lodged before the Superintendent of Police, Durg alleging commission of cognizable offence against private respondent, no steps whatever has been taken on petitioner's report.
2. Where a report is made in the police station, the police is under an obligation to enquire into the complaint and take necessary steps in

accordance with the law laid down by the Hon'ble Supreme Court in the case of **Lalita Kumari Vs. Government of Uttar Pradesh and Ors.**, (2014) 2 SCC 1. In the said decision, the Hon'ble Supreme Court issued guidelines as below :

“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. After the report is lodged in the police station, the police is required to act in accordance with the aforesaid direction. However, if after enquiry, no case is registered by the police, it will be open for the petitioner to file

complaint before jurisdictional Magistrate and take his remedy as in the law declared by the Supreme Court in the case of **Sakiri Vasu v. State of Uttar Pradesh and ors**, 2008 (2) SCC 409. In the case of **Sakiri Vasu** (supra), it was held :

“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 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. Therefore, with the direction of the police authority to act in accordance with direction issued in the case of **Lalita Kumari** (supra), the petition, at this stage, is disposed off.

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