NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 543 of 2018

Dalit Kumar Kurre S/o Late Shri Kamdev Kurre Aged About 47 Years R/o House No. 07/183, Sitlapara, Kondagaon, District- Kondagaon, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary Department Of Home Affairs, Secratariat At Mahanadi Bhawan, New Raipur, District- Raipur, Chhattisgarh
2. Director General Of Police Police Headquarter, New Raipur, District- Raipur, Chhattisgarh
3. Inspector General Of Police Bastar Division, Jagdalpur, District- Bastar, Chhattisgarh
4. Superintendent Of Police Kondagaon, District- Kondagaon, Chhattisgarh
5. Town Inspector P.S.- City Kotwali, District- Kondagaon, Chhattisgarh

---- Respondents

For Petitioner : Shri Jaiprakash Shukla, Advocate
For State : Shri Ashish Shukla, Dy.A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

19/09/2018

This petition has been filed by the petitioner alleging inaction on his complaint.

The allegation of the petitioner is that even though the petitioner submitted complaint before the Sub-Divisional Officer of Police, Kondagaon regarding alleged assault, abuse and threat, no action has been taken against the erring colleague police officials. According to the petitioner, he belongs to reserved category. Therefore, the allegations required due enquiry and registration of offence under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The course of action required to be adopted where the report is lodged in the police station has been laid down by the Supreme Court in the case of **Lalita Kumari v. Government of Uttar Pradesh and Ors., (2014) 2 SCC 1** and following

guidelines have been issued -

> **“120.1.** The 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. A report having been lodged, the police authorities are under an obligation to enquire into the same and if it is found to be a case disclosing offence cognizable, offence is required to be registered. However, if upon preliminary enquiry, no case is registered, remedy of filing complaint before the jurisdictional Magistrate would lie as held 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 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."

The petitioner's complaint is therefore required to be examined in the light of the aforesaid judgment, in case, upon preliminary enquiry, the police does not find it to be a case of registration of offence.

4. With the aforesaid observations, this petition is finally disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Deepti