

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 554 of 2019

Roshani Sahu, Wd/o. Late Yagya Kumar Sahu, Aged About 23 Years, R/o. Mukam Post - Pawani Tahsil - Bilaigarh, District Baloda Bazar Bhatapara Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through : The Secretary, Department Of Home, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur Chhattisgarh.
2. The Director General of Police, Indrawati Bhawan Second Block 4th Floor, Naya Raipur, District Raipur Chhattisgarh.
3. The Inspector General of Police Raipur, District Raipur Chhattisgarh.
4. The Superintendent Of Police Baloda Bazar, District Baloda Bazar Bhatapara, Chattisgarh.
5. The Station House Officer Police Station, Gidhpuri, Tahsil Palari, District Baloda Bazar Bhatapara Chhattisgarh.
6. The Station House Officer Police Station, Gidhauri, Tahsil Bilaigarh, District Baloda Bazar Bhatapara Chhattisgarh.

-----Respondents

For Petitioner	: Mr. Sandeep Dubey, Advocate
For Respondent/State	: Mr. Shrikant Kaushik, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

29/08/2019

Heard.

1. The instant petition under Article 226 of Constitution of India has been filed for issuance of appropriate direction for lodging of FIR against the accused persons.
2. The petitioner has sought for the following reliefs:-
 - (1) That this Hon'ble Court may kindly be pleased to call for entire records, pertaining to case of petitioner.

- (2) That the Hon'ble Court may kindly be issue writ/writs and lodge FIR against accused persons.
 - (3) That the Hon'ble Court may kindly be pleased to grant any other relief, as it may deem fit and just.
3. It is submitted by the counsel for the petitioner that petitioner is the wife of Yagya Kumar Sahu, who was working as Constable in the Police Department. During his posting at Gidhpuri on 23.03.2018, the husband of the petitioner set himself ablaze in the office campus and died on 31.03.2019 during the course of treatment. It is submitted by the counsel for the petitioner that her husband has committed suicide due to torture and ill treatment given by Ashwani Padwar, A.S.I. and Chowki Incharge- Giraudhpuri and Rajendra Singh Rajput, Incharge of Police Station Gidhpuri. It is further submitted that after the death of the husband of the petitioner, neither any action was taken nor any enquiry was made, therefore, she made an application to the Superintendent of Police and Collector, Baloda Bazar on 05.04.2019. It is further submitted that inspite of the direction issued by Superintendent of Police, Baloda Bazar on 15.04.2019 to enquire into the matter, the respondents/authorities have not made inquiry or not lodged any FIR against the accused persons till date. Hence, prayer is made for issuance of direction to the respondent/authorities to lodge FIR against the culprits.
4. Learned counsel for the State/respondents opposes the submissions made and the grounds raised in the petition.
5. I have heard the learned counsel for the parties and perused the documents placed on record.

6. On perusal of copy of the complaint filed by the petitioner, it appears that there is material in the complaint made by the petitioner, which needs investigation. Hon'ble the Supreme Court in the matter of ***Lalita Kumari Vs. Government of Uttar Pradesh & Others, (2014) 2 SCC 1*** held that:-

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

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.”

5. Therefore, the view is very clearly stated that the police official has bounden duty to lodge FIR, if the, complaint discloses commission of cognizable offence. It is held that the complaint filed by the petitioner has some substance which needs to be inquired. The respondents are directed that complaint filed by the petitioner before the police station be inquired in accordance with law laid down by the Hon'ble Supreme Court in the matter of ***Lalita Kumar Vs. Government of U.P. & Ors.*** (supra) and if any substance is found then FIR be lodged and the case be investigated.
7. Accordingly, the petition is disposed off with direction above mentioned.

Sd/-
(Rajendra Chandra Singh Samant)
Judge