

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(Cr.) No. 974 of 2019

- Ishwar Prasad S/o Late Shri Vanshroop Aged About 43 Years Sarpanch Of Gram Panchayat Podipa, Tehsil And District Surajpur Chhattisgarh, R/o Village Podipa, Post Kalyanpur, P. S. Jainagar, Tehsil And District Surajpur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home (Police), Mahanandi Bhawan, Naya Raipur Revenue And Civil District Raipur Chhattisgarh
2. Inspector General Of Police Surguja Range, Ambikapur, District Surguja Chhattisgarh
3. Superintendent Of Police Surajpur District Surajpur Chhattisgarh
4. Station House Officer Jainagar, District Surajpur Chhattisgarh

---- Respondents

For Petitioner	: Mr. Surfaraj Khan, Advocate.
For State/respondents	: Ms. Akanksha Jain, Dy.G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

30-09-2019

Heard.

1. This petition has been brought under article 226 of the Constitution of India for praying for issuance of appropriate writ and directions.
2. Learned counsel for the petitioner submits that the petition has been brought seeking direction for respondent No.4 for lodging F.I.R. on the complaint given by the petitioner. The complaint was filed by the petitioner against Kimlesh Kumar Singh and Pradeep Kumar making allegation that these applicants had broken the lock of the Govt. fair price shop under the control of the petitioner and placed their own lock.

At that time, the petitioner did not lodge any F.I.R., but on 03.09.2019 said persons had started hunger strike against him, and were raising insulting slogans for the petitioner and also using abusive words for him. The complaint was filed again to the I.G. Police vide Annexure P/1 on which no action was taken.

3. Reliance is placed on the judgments of ***Lalita Kumari Vs. Government of Uttar Pradesh*** reported in **(2014) 2 SCC 1** and in the judgment of this High Court in ***Bhushan Singh Rathiya Vs. State of Chhattisgarh & Ors.*** in ***W.P.Cr. No.09/2016 decided on 26.08.2016***, ***Rajesh Kumar Murarka Vs. State of Chhattisgarh & Ors.*** in ***W.P.Cr. No.134/2016 decided on 01.06.2016***, ***Nanda Ram Sinha Vs. State of Chhattisgarh*** in ***W.P.Cr. No.180/2016 decided on 08.08.2016***, ***Amit Kumar Duhlani Vs. State of Chhattisgarh & Ors.*** in ***W.P.Cr. No.294/2017 decided on 22.08.2017*** and in ***Smt. Vidya Devi Saraf Vs. State of Chhattisgarh & Ors.*** in ***W.P.(Cr.) No.16/2018 decided on 11.01.2018***.
4. Learned counsel for the State opposes the application and submits that the petitioner has not proceeded in accordance with Section 154(1) of Cr.P.C. as he never approached respondent No.4 praying for lodging of F.I.R. Subsequent to which, in accordance with Section 154(3) of Cr.P.C. the petitioner had opportunity to inform the immediate superior, i.e. respondent No.3. It is nowhere provided that any complaint has to be given directly to I.G. police. Subsequent to that, the petitioner had option to file an application under Section 156(3) of Cr.P.C. or file a complaint under Section 200 of Cr.P.C. in spite of taking recourse to the available remedy, this petition has been directly filed which cannot be entertained.
5. Placing reliance on the judgment of Supreme Court in ***Sakiri Vasu Vs. State of U.P. & Ors.*** reported in **(2008) 2 SCC 409**, it is submitted that it

has been clearly held in this judgment that having remedy available, filing of writ petition or a petition under section 482 of Cr.P.C. should be discouraged by the High Court. Reliance has also been placed on the judgment of this High Court in ***Vinod Kumar Das Vs. State of Chhattisgarh Ors.*** in ***W.P.(Cr.) No.249/2015*** decided on **08.04.2019** and judgment of this High Court in ***R.K. Pandey Vs. State of Chhattisgarh & Ors.*** in ***W.P.(Cr.) No.136/2017*** decided on **19.04.2017**, in both the judgments of this Court, a distinction has been drawn between the judgment of Supreme Court in ***Lalita Kumari (Supra)*** and the judgment of Supreme Court in ***Sakiri Vasu (Supra)*** and ***Aleque Padamsee & Ors. Vs. Union of India & Ors.*** reported in **(2007) 6 SCC 171**, it was held that the directions given in ***Lalita Kumari (Supra)*** does not pertain to create entitlement to writ of mandamus or for compelling the police to perform statutory duties under Section 154 of Cr.P.C. without resorting to the alternative remedy under Section 154(3), 156(3), 190 and 200 of Cr.P.C. There is no direction in these judgments to entertain writ petitions under Section 226 of the Constitution of India. Therefore, having the remedy available, the petitioner should first exercise the same and subsequent to that, he may approach this Court if there is necessity.

6. Heard learned counsel for both the parties and perused the documents.

7. Hon'ble the Supreme Court in ***Lalita Kumari*** (supra) it was 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.”

8. In ***Bhushan Singh Rathiya (Supra)***, the Single Bench of this Court has on the basis of the directions issued in ***Lalita Kumari (supra)*** has made observations in Paragraph no. 12 and 13 as under:-

12. Recording of an FIR is necessary as soon as a cognizable offence is disclosed. The police official has no jurisdiction whatsoever to make an entry only in the G.D. entry register and not record an FIR. Directions are hereby given to all police officials in the State that in case they do not record an FIR when they come to know of a cognizable offence, then serious disciplinary action shall be taken against them and if necessary, action under the Contempt of Courts Act shall also be taken against them for violating the judgment of the Apex Court and of this Court.

13. Copy of this judgment shall be sent to the Chief Secretary and the Director General of Police who are directed to ensure that these instructions are followed in letter and spirit. It shall be the duty of the Superintendent of Police to check the G.D. Registers of all the police stations falling in their jurisdiction and if it is found that FIRs are not being registered then action should be taken against the erring officials. If that is not done, then this Court shall not hesitate to take action against the senior police officials who are negligent in the performance at their duties.

Similar orders have been passed by the Single Bench of this Court in ***Rajesh Kumar Murarka (Supra)***, ***Nanda Ram Sinha (Supra)***, ***Amit Kumar Duhlani (Supra)*** and ***Smt. Vidya Devi Saraf (Supra)***.

9. There is a thin line of distinction, the directions in the judgment of ***Lalita Kumari (Supra)*** are very clear in this respect that when the information given is disclosing the commission of a cognizable offence and no preliminary inquiry is permissible, in such a situation registration of F.I.R. is mandatory. But where the information received does not disclose a cognizable offence but indicates the necessity of an inquiry, then a preliminary inquiry may be conducted to ascertain whether cognizable offence is made out or not. It has to be the decision of the person

receiving the information whether there is a necessity of preliminary inquiry or not. In this case, the petitioner had never approached the respondent No.4, who has the authority for lodging F.I.R. under Section 154(1) of Cr.P.C. and thereafter he never made any complaint to respondent No.3, who is the authority to receive complaint under Section 154(3) of Cr.P.C. thereafter the petitioner had option available under Section 156(3) of Cr.P.C. and Section 200 of Cr.P.C. which he has not availed.

10. The Hon'ble Supreme Court has observed in the case of **Sakiri Vasu** (*Supra*) in paragraph 25 and 26 which is reproduced as under:-

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

11. The Coordinate Bench of this Court in the case of **Vinod Kumar Das**. (*Supra*) has observed in Paragraph no.14 and 15 as under:-

14. Apart from this, a Division Bench of the M.P. High Court in the matter of Shweta Bhadoria v. State of M.P. and Ors. has held that if FIR is not registered on the basis of complaint which discloses a cognizable offence, remedy available to the aggrieved person is to take recourse to the provisions under Sections 154(3), 156(3), 190 and 200 of the CrPC, and observed as under: -

"6. Before parting the conclusion arrived at based on the above discussion and analysis is delineated below for ready reference and convenience :-

(1) Writ of mandamus to compel the police to perform its statutory duty u/s 154 of Cr.P.C. can be denied to the informant/victim for non-availing of alternative remedy u/Ss. 154(3), 156 (3), 190 and 200 Cr.P.C., unless the four exceptions enumerated in decision of Apex Court in the case of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors, (1998) 8 SCC 1, come to rescue of the informant/victim.

(2) The verdict of Apex Court in the case of Lalita Kumari v. Government of U.P. & Ors. reported in (2014) 2 SCC 1 does not pertain to issue of entitlement to writ of mandamus for compelling the police to perform statutory duty under Section 154 Cr.P.C. without availing alternative remedy under Sections 154(3), 156(3), 190 and 200 Cr.P.C.

(3) Subject to (1) supra the informant/victim after furnishing first information regarding cognizable offence does not become functus officio for seeking writ of mandamus for compelling the police authorities to perform their statutory duty under Section 154 Cr.P.C. in case the FIR is not lodged.

(4) Subject to (1) supra the proposed accused against whom the first information of commission of cognizable offence is made, is not a necessary party 5 2017 (I) MPJR 247 W.P.(Cr.)No.249/2015 to be impleaded in a petition under Article 226 of the Constitution of India seeking issuance of writ of mandamus to compel the police to perform their statutory duty under Section 154 Cr.P.C. "

15. The principle of law laid down in Shweta Bhadoria (supra) was subsequently followed by another Division Bench of that Court in the matter of Dharmendra Sonkar V. State of M.P. and Others and in that case, the Division Bench speaking through Hemant Gupta, CJ, (as then His Lordship was) clearly held that in Lalita Kumari (supra), there is no mandate that writ Court under Article 226 of the Constitution of India, should issue a direction for registration of FIR and observed as under: -

"7. The Constitution Bench in Lalita Kumari (supra) was considering the question as to whether registration of an FIR is mandatory, in case it discloses a cognizable offence. If the information does not disclose a cognizable offence, it mandates

to conduct a preliminary enquiry. But, there is no mandate in the aforesaid judgment that this Court under Article 226 of the Constitution of India should issue a direction for registration of an FIR. Such a question has been specifically answered in Aleque Padamsee and others (supra), Sakiri Vasu (supra) and Sudhir Bhaskar Rao Tambe (supra)."

12. After overall consideration, on the facts and circumstances and law applicable and the principles laid down, it is found that this petitioner has instead of seeking the remedy that is available to him under the statute has directly approached this Court by filing this petition under Article 226 of Constitution of India. On the basis of the distinction drawn as mentioned hereinabove, I am of this view that this petition does not deserve to be entertained. Hence, it is dismissed at motion stage.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika