

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION No. 149 OF 2019

Felix Inacio Fernandes,

.... Petitioner.

Versus

The Superintendent of Police,
Margao And Ors.,

... Respondents.

**Coram : M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Date : 17th September, 2019.

Oral Order: (Per M. S. Sonak, J.)

Heard Mr. Ravi Gawas, learned Counsel for the Petitioner, Mr. S. R. Rivankar, learned Public Prosecutor for Respondents no. 1 and 2 and Mr. Ryan Menezes, learned Counsel for Respondents no. 3 to 7.

2. In this Petition, the Petitioner complains of defective investigations and further seeks appropriate writ to direct the Respondent no. 1 and 2 to add Section 307 of the IPC to the other Sections set out in Crime No. 41 of 2019 registered before the Respondent no. 2, in respect of alleged offences committed by Respondent no. 3 to 7.

3. Mr. Rivankar and Mr. Menezes refer to the decision of the Hon'ble Supreme Court in the case of **Sakiri Vasu v/s. State of Uttar Pradesh and others**¹ to submit that the grievance of the Petitioner can as well be raised by the Petitioner before the Judicial Magistrate and there is no good reason to entertain the present Petition under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure. In particular, they submit that the Magistrate, in such matters, has wide powers including powers to examine whether the ingredients of offence under Section 307 of the IPC are made out and, if so, to direct the addition of this provision as well to Crime No. 41 of 2019.

4. Mr. Rivankar, learned Public Prosecutor in fact points out that even after a chargesheet is filed if the concerned Magistrate is satisfied that ingredients of offence are made out, he will always have powers to direct inclusion of Section 307 of the IPC in the case. For all these reasons, the learned Counsel submits that the present Petition may not be entertained as the Petitioner has alternative remedy of resorting to provisions of Section 156(3) of Cr.P.C.

¹ 2008 2 SCC 409

5. In **Sakiri Vasu** (supra), the Hon'ble Apex Court has already held that if a person has grievance that police station is not registering his FIR under Section 154 Cr.P.C., then he can approach Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either FIR is still not registered, or that even after registering if no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) Cr.P.C. before the Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

6. The Hon'ble Supreme Court has further observed that Section 156(3) of the Cr.P.C. provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr.P.C. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue direction to the police to do the investigation properly and can monitor the same. The power of the Magistrate to order "further investigation" under Section 156(3) is an independent power and

does not affect the power of the investigating officer to further investigate the case even after submission of his report under Section 173(8). Hence, the Magistrate can order re-opening of the investigation even after the police submits the final report. In support of this proposition, the Hon'ble Apex court has referred to its earlier decision on the **State of Bihar And Anr v/s. J.A.C. Saldanha And Ors²**.

7. The Hon'ble Supreme Court has further held that Section 156(3) is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, is very wide and will include such incidental powers as are necessary for ensuring a proper investigation. In support of this proposition, the Hon'ble Apex Court has applied doctrine of implied powers.

8. Finally, the Hon'ble Apex Court observed that 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) or other police officer referred to in Section 36

² 1980(1)SCC 554.

Cr.P.C. If despite approaching the Superintendent of Police or other officer referred to in Section 36 his grievance still persists, then he can approach the Magistrate under Section 156(3) of 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. He has further remedy of filing a criminal complaint under Section 200 Cr.P.C. In such circumstances, the Hon'ble apex Court has itself raised a question as to why then should writ petitions or Section 482 petitions be entertained when there so many alternative remedies are available to a party placed in such circumstances. The Hon'ble Apex Court has noted that though alternative remedy is not an absolute bar to a writ petition, it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.

9. In the present case, we are satisfied that the Petitioner has several alternative remedies available and therefore there is really no case made out to entertain the present Petition. The apprehension that the Respondent no. 1 and 2 may, in the meanwhile, file a chargesheet is really misplaced. In any case, as pointed out by Mr. Rivankar, that even if the chargesheet is filed, that does not prevent the Magistrate from directing further investigations and from even directing the inclusion of Section 307 of the IPC if an appropriate case is made out for this purpose.

10. Therefore, without going into the merits, we decline to entertain this Petition solely on the ground that the Petitioner has alternative and efficacious remedies available to him in this matter.

11. Accordingly, all contentions of the Petitioner are kept expressly open. In case, the Petitioner invokes any of the alternate remedies available to him, the concerned Magistrate or the concerned authority to dispose the matter on its own merits and being uninfluenced by the fact that this Petition was not entertained by this Court.

12. The Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

13. All concerned to act on the basis of authenticated copy of this Order.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.