

IN THE HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION NO. 38397, 44752, 47845, 47952 and 47958 of 2018;
and 485, 545, 955, 1094, 1174, 1332, 1334, 1373, 1378, 1527, 1535,
1570, 1647, 1723, 1802, 1817, 1844, 1874, 1911, 1924, 2003, 2013,
2021, 2037, 2086, 2162, 2184, 2185, 2398, 2460, 2583, 2605, 2614,
2720, 2830, 3081, 3053, 3136, 3128 and 3201 of 2019

WP 38397 of 2018

Between:

Govind Raju Sami Managing Partner of M/s Bollywood
Chillyes R/o temporary at H no 4-7-1102/A Esamia Bazar
Hyderabad and permanent address Goeth Str 129, 634, 77
Manital Bischofsheim Germany

Petitioner

And

The State of Telangana
Rep by its Secretary Home Department
Secretariat Hyderabad and others

Respondents

JUDGMENT PRONOUNCED ON : 8.3.2019

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : YES
Be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : YES
To Law Reporters/Journals :
3. Whether Their Ladyship/Lordship wish to : NO
See fair Copy of the Judgment ? :

* THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

+ W.P. Nos.38397, 44752, 47845, 47952 and 47958 of 2018; and 485, 545, 955, 1094, 1174, 1332, 1334, 1373, 1378, 1527, 1535, 1570, 1647, 1723, 1802, 1817, 1844, 1874, 1911, 1924, 2003, 2013, 2021, 2037, 2086, 2162, 2184, 2185, 2398, 2460, 2583, 2605, 2614, 2720, 2830, 3081, 3053, 3136, 3128 and 3201 of 2019

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Vs.

\$ The State of Telangana
Rep by its Secretary Home Department
Secretariat Hyderabad and others

... Respondents

!Counsel for the petitioner : Sri Govind Raju Sami

Counsel for the Respondents: Government Pleader for Home

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> Head Note:

? Cases referred:

2014 (2) SCC 1
(2010) 3 SCC 571
(2008) 2 SCC 409
(2016) 6 SCC 277
2018 SCC Online Ker 1785
2005 (3) ALD 233 (LB)
2014 1 SCC 603
Civil Appeal Nos. 304-305 of 1997 dt 24.1.1997
(2014) 2 SCC 532
(2001) 3 SCC 333
(2007) 6 SCC 171
(2010) 4 SCC 513
(2014) 14 SCC 22
2018 SCC Online Bom 6793
2018 SCC Online MP 631
2016(3) ALT 797
2016(2) ALD (CrI.) 974
(2015) 6 SCC 439
Appeal (Civil) No. 1038 of 2001 dated 12.10.2001

HONOURABLE SRI JUSTICE P. NAVEEN RAO

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WP 38397 of 2018

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And

The State of Telangana
Rep by its Secretary Home Department
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Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos. 38397, 44752, 47845, 47952 and 47958 of 2018; and 485, 545, 955, 1094, 1174, 1332, 1334, 1373, 1378, 1527, 1535, 1570, 1647, 1723, 1802, 1817, 1844, 1874, 1911, 1924, 2003, 2013, 2021, 2037, 2086, 2162, 2184, 2185, 2398, 2460, 2583, 2605, 2614, 2720, 2830, 3081, 3053, 3136, 3128 and 3201 of 2019.

COMMON ORDER:

In these writ petitions grievance of petitioners is against Police not registering crime in spite of mandate of the statute and the law declared by Supreme Court and also tardy progress in investigation into the crime, in arresting the accused and in filing charge sheet. Petitioners directly invoked the jurisdiction of this Court under Article 226 of the Constitution of India without availing statutorily engrafted redressal mechanism on the aspect of not registering crime even though what is alleged is a cognizable offence and/or not investigating into crime already registered.

2. The Writ Petitions can be divided into two categories:

1) In first category of cases grievance of petitioners is against not registering crime on a complaint made by the petitioners though crime alleged is cognizable. They are: WP Nos. 38397, 44752, and 47958 of 2018; WP Nos. 485, 545, 955, 1094, 1334, 1527, 1535, 1570, 1802, 1844, 1911, 2013, 2037, 2086, 2162, 2184, 2185, 2398, 2460, 2583, 2605, 2614, 2720, 2830, 3053, 3128, 3201 and 3081 of 2019.

2) In second category of cases petitioners allege delay in investigation, arrest of accused, and filing of charge-sheet as the case may be. They are : W.P.Nos. 47845 and 47952 of 2018; 1174, 1332,

1373, 1378, 1647, 1723, 1817, 1874, 1924, 2003, 2021 and 3136 of 2019.

3. As these issues are more frequently agitated in the writ petitions, I have heard learned counsel extensively. Learned counsel representing respective petitioners made elaborate submissions spread over various days. Learned Government Pleader for Home also made elaborate submissions.

4. It was the contention of learned counsel Sri A.Raja Sekher, as held by the Supreme Court in **Lalita Kumari Vs. Govt Of UP¹**, once cognizable offence is made out in the complaint filed by the complainant, it is mandatory for the Police to register the crime and investigate. Right to life is sacrosanct. If this right is affected in any manner and crime is committed by a person, it is the sacred duty of police to register the crime and investigate. On their failure in performing statutory duties, to enforce his right, the complainant is entitled to invoke jurisdiction of this Court under Article 226 of the Constitution of India and the party need not be compelled to avail alternative remedy. In support of his contention, he placed reliance on the decision of Supreme Court in **State of West Bengal others v. Committee for Protection of Democratic Rights, West Bengal and others²**.

5. Learned counsel Sri Madan Mohan Rao contended that in view of law laid down by the Supreme Court in **Lalita Kumari**, it is mandatory to register a crime when cognizable offence is reported and investigate the crime with promptitude. Any delay in investigation would inure to the benefit of accused and would violate the right of victim to get justice against heinous crime. Thus, whenever there is delay, an aggrieved

¹ 2014 (2) SCC 1

² (2010) 3 SCC 571

person can invoke the jurisdiction of this Court to bring to the notice of this Court grave illegality committed by statutory authority and to seek mandamus to such authority to act as per law. He would further submit that until a final report is filed aggrieved person has no remedy under the Code of Criminal Procedure and, therefore, the only remedy available is under Article 226 of the Constitution of India.

6. Learned counsel Sri Chakravarthi would submit that as fundamental rights of the petitioners are affected, the writ petition is maintainable.

7. Learned counsel Sri Venu Madhav would submit that merely because alternative remedy under the statute is not availed is not a bar to institute the writ petition more so, when police failed to act as per law.

8. Learned counsel appearing for petitioners in unison would submit that if police refuse to register a crime when cognizable offence is reported and failed to investigate the crime, it affects their right to get justice from victim and same being inalienable, writ petitions are maintainable. It is contended that people from lower strata of the society cannot have access to Station House Officers and such people cannot afford to go to Police Stations every day. Further, the remedy under Section 190 of Cr.P.c., cannot be said as effective/efficacious. By the time said remedy is availed, vital piece of evidence may be lost causing irreparable set back to fair investigation. Again poor people cannot have easy access to remedy under Section 190 of Cr.P.C. By referring to conclusions recorded in **Lalita Kumari**, it is contended that Supreme Court ordered penal action on investigating officers for the lapses in performing statutory duties. Large number of decisions are cited at the bar.

9. *Per contra*, learned Government Pleader would submit that as held by the Supreme Court in **Sakiri Vasu v State of Uttar Pradesh and Others**³, if a person is aggrieved by not registering the crime or delay in conducting investigation, he has to avail appropriate remedy provided by the Code of Criminal Procedure and writ Court should not entertain the writ petitions without availing the said remedy. He would submit that same principle is reiterated by the Supreme Court in **Sudhir Bhaskar Rao Tambe v. Hemant Yashwant Dhagge and others**⁴. He further submitted that as held by the Division Bench of Kerala High Court in **Fr.Sabastian Vadakkumpadan Vs Shine Varghase**⁵, in **Lalita Kumari**, the issue of exhausting alternative remedy was not considered and submitted that petitioners have to avail alternative remedies and, therefore, writ petitions are not maintainable.

10. I have carefully considered respective submissions and the precedent decisions cited at the bar.

11. Issue for consideration is whether Writ Petitions alleging that police are not registering crime even though cognizable offence is made out in the complainant and/or not investigating into crime are maintainable or litigants be relegated to avail statutorily engrafted remedies ?

12. In **Lalita Kumari** Constitution Bench of the Hon'ble Supreme Court considered scope of various provisions of Code of Criminal Procedure and reviewed precedent decisions. Supreme Court held, once information given to the police discloses commission of cognizable

³ (2008) 2 SCC 409

⁴ (2016) 6 SCC 277

⁵ 2018 SCC Online Ker 1785

offence, they must register the crime. However, Supreme Court also carved out exception to this mandate in certain matters.

13. Operative directions of Supreme Court read as under:

“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.”

14. Thus, it is beyond cavil that Police are required to register FIR if what is complained of is a cognizable offence and as a necessary corollary Police should take up investigation without any delay and file the final report.

15. Taking clue from the statement of law enunciated in **Lalita Kumari**, there is flood of litigation directly filing writ petitions against non registration of crime and delay in investigation of crime. Petitioners contend that as Supreme Court held that it is mandatory to register crime if what is complained is cognizable offence and to investigate without delay, the Writ Petitions alleging non-compliance of said mandate are maintainable. With respect, **Lalita Kumari** never intended that an aggrieved person should side step statutory scheme of redressal against inaction by police in registering a crime or in investigating into crime already registered and directly take recourse to extra-ordinary remedy under Article 226 of the Constitution of India.

16. Chapter-XII of Criminal Procedure Code deals with information to Police and their power to investigate. This chapter vests wide amplitude of powers on police to investigate into a crime. Information received on committing of cognizable offence is the starting point to set in motion criminal law.

17. Relevant provisions of Cr.P.C., are Sections 36, 154, 156, 190 and 200.

18. As per Section 154(1) Cr.P.C., whenever a complaint is made of committing a cognizable offence, the concerned Police has to register the crime and investigate. If police refuse to register crime, under Section 154(3) of Cr.P.C., aggrieved person can send the information about cognizable offence to the Superintendent of Police/Commissioner of Police as the case may be. In turn, the Superintendent of Police, if he finds that complaint discloses cognizable offence, must investigate the case himself or direct one of his subordinate officers to do it. Section 36 vests same powers on superior police officer as vested in an officer incharge of police station. Thus, any superior officer can also be appraised of committing of crime and/or on conducting investigation into a crime already registered.

19. Further, Under Section 156 (3) of Cr.P.C., a Magistrate can order investigation of cognizable offence and can also monitor the investigation. Aggrieved person also has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Under Section 190 of Cr.P.C., a Magistrate can take cognizance of any offence, upon receiving a complaint of facts which constitute offence; upon a police report and upon information received from any person and upon his knowledge that an offence is committed. Thus, if a person is aggrieved by inaction of police in acting on his information, either refusing to register or refusing to investigate/slow in investigation, he can avail the remedy under Section 200 of Cr.P.C..

20. It is thus clear that enough safe guards are provided under Code of Criminal Procedure to an aggrieved person against non-registration of

crime, delay in investigation and filing final report. Ample powers are vested in the Magistrate in the matter of directing investigation into a crime if police do not discharge their statutory duties properly.

21. Government notified A.P. Police Manual. The manual prescribes elaborate procedure on various aspects of functioning of police personnel. Volume II of the manual has 19 chapters. Chapter 21 deals with First Information Report. It provides detailed guidelines on how to register crime reported in the police station; Chapter 22 deals with General Instructions to Investigating Officers, it deals with arrest, custody, bail and remand; Chapter 27 deals with Case Diary and Chapter 28 deals with Completion of Investigation and Final Disposal. Thus, in the Police Manual, enough guidelines are prescribed for the police personnel to properly discharge their duties and responsibilities in registering crime, investigation, filing of charge sheet and the process of conducting of trial. If the police personnel do not comply with the statutory mandate and the guidelines prescribed in the manual, it is always open to the aggrieved person to bring to the notice of the superior authorities or to work out the legal remedies.

22. The writ remedy is extra-ordinary remedy and equitable remedy. Further, the writ Court need not entertain a writ petition merely because a case is made out of alleged inaction or negligent in acting on an issue by an authority vested with power, in these cases to register crime/to complete investigation into crime, if statutorily engrafted remedy is available to seek redress on such grievance. Even if, a case is made out on alleged illegal action by statutory authority, which require redressal, ordinarily writ Court does not entertain the writ petition if the aggrieved person has not availed other remedies, more so, such remedies are incorporated in a statute. However, in a given case, Court may relax the

requirement of availing alternative remedy and entertain the writ petition. The maintainability of writ petition when an effective alternative remedy is available is considered in plethora of precedent decisions. Few are noted hereunder:

23.1. In **Bhimidipati Annapoorna Bhavani v. Land Acquisition Officer, Yeluru Reservoir Project, Peddapuram, East Godavari District, A.P., and others**⁶, on review of precedent decisions on scope of Article 226, larger Bench of this Court held that though there are no fetters in entertaining a writ petition under Article 226 of the Constitution of India, whenever a person complains of violation of his fundamental right or statutory right, one of the self imposed restraint is when there is statutorily engrafted adequate and efficacious alternative remedy available to such person to redress his grievance the court do not entertain the writ petition but relegate the party to avail such remedy before invoking extra-ordinary jurisdiction of this Court.

23.2. In **Commissioner of Income Tax and others v. Chhabil Dass Agarwal**⁷, Supreme Court held as under:

“15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal case* [AIR 1964 SC 1419] , *Titaghur Paper Mills case* [*Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that ***the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of***

⁶ 2005 (3) ALD 233 (LB)

⁷ 2014 1 SCC 603

has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (emphasis supplied)

24. Having regard to submissions made by learned counsel Sri Rajashekar, it is pertinent to note the observations of Supreme Court in **State of West Bengal Vs Committee for Protection of Democratic Rights** - paragraph-70. It reads:

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise.”

25. Even prior to **Lalita Kumari**, in several decision Supreme Court emphasized the need to register crime whenever cognizable offence is reported and complete investigation expeditiously. In a given case, writ Court can issue continuous mandamus to require performance of its duty by CBI [**Union of India Vs Sushil Kumar Modi**⁸]; in rare and compelling circumstances, the Superior Courts may invoke powers under Articles 32 and 226 of the Constitution to give such directions as required and monitor an investigation to ensure that the investigating agency conducts the investigation in a free, fair and time bound manner without any external interference. [**Manohar Lal Sharma Vs Principal Secretary and others**⁹ , **CBI Vs. State of Rajasthan**¹⁰]. When the police transgress its statutory power of investigation, the High Court under Section 482 Code of Criminal Procedure and Articles 226/227 of the Constitution and Supreme Court in an appropriate case can interdict the investigation to prevent abuse of the process of the Court or otherwise to secure ends of justice [**T.T.Authority Vs State of Kerala** { (2001) 6 SCC 181 }].

⁸ Civil Appeal Nos. 304-305 of 1997 dt 24.1.1997

⁹ (2014) 2 SCC 532

¹⁰ (2001) 3 SCC 333

26. Those being general principles on wide amplitude of power of judicial review, Supreme Court also cautioned to exercise restraint in resorting to such power and to be used sparingly. Specifically, on the scope of writ remedy, when Police refused to register a crime reported by a person which is cognizable or when Police are slow in investigating into the crime registered, in the following decisions, Supreme Court reiterated that the aggrieved party should be relegated to avail remedies engrafted in the Code of Criminal Procedure.

27.1. In **Aleque Padamsee and others v Union of India and others**¹¹, Supreme Court reviewed the precedent decisions on the issue. Supreme Court held:

“6. “4. When the information is laid with the police but no action in that behalf is taken, the complainant [can under Section 190 read with Section 200 of the Code lay] the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into the offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and [could] issue process to the accused.”

These aspects have been highlighted by this Court in *All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India* [(1996) 11 SCC 582 : 1997 SCC (Cri) 303] , SCC p. 583, para 4. **It was specifically observed that a writ petition in such cases is not to be entertained.** The above position was again highlighted in *Gangadhar Janardan Mhatre v. State of Maharashtra* [(2004) 7 SCC 768 : 2005 SCC (Cri) 404] , *Minu Kumari v. State of Bihar* [(2006) 4 SCC 359 : (2006) 2 SCC (Cri) 310] and *Hari Singh v. State of U.P.* [(2006) 5 SCC 733 : (2006) 3 SCC (Cri) 63]

7. Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score.

¹¹ (2007) 6 SCC 171

The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if the police does not do it. As was held in *All India Institute of Medical Sciences case* [(1996) 11 SCC 582 : 1997 SCC (Cri) 303] and reiterated in *Gangadhar case* [(2004) 7 SCC 768 : 2005 SCC (Cri) 404] the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in *All India Institute of Medical Sciences case* [(1996) 11 SCC 582 : 1997 SCC (Cri) 303] , *Gangadhar case* [(2004) 7 SCC 768 : 2005 SCC (Cri) 404] , *Hari Singh case* [(2006) 5 SCC 733 : (2006) 3 SCC (Cri) 63] , *Minu Kumari case* [(2006) 4 SCC 359 : (2006) 2 SCC (Cri) 310] and *Ramesh Kumari case* [(2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678 : AIR 2006 SC 1322] , we find that the view expressed in *Ramesh Kumari case* [(2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678 : AIR 2006 SC 1322] related to the action required to be taken by the police when any cognizable offence is brought to its notice. In *Ramesh Kumari case* [(2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678 : AIR 2006 SC 1322] the basic issue did not relate to the methodology to be adopted which was expressly dealt with in *All India Institute of Medical Sciences case* [(1996) 11 SCC 582 : 1997 SCC (Cri) 303] , *Gangadhar case* [(2004) 7 SCC 768 : 2005 SCC (Cri) 404] , *Minu Kumari case* [(2006) 4 SCC 359 : (2006) 2 SCC (Cri) 310] and *Hari Singh case* [(2006) 5 SCC 733 : (2006) 3 SCC (Cri) 63] . The view expressed in *Ramesh Kumari case* [(2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678 : AIR 2006 SC 1322] was reiterated in *Lallan Chaudhary v. State of Bihar* [(2006) 12 SCC 229 : (2007) 1 SCC (Cri) 684 : AIR 2006 SC 3376] . The course available, when the police does not carry out the statutory requirements under Section 154 was directly in issue in *All India Institute of Medical Sciences case* [(1996) 11 SCC 582 : 1997 SCC (Cri) 303] , *Gangadhar case* [(2004) 7 SCC 768 : 2005 SCC (Cri) 404] , *Hari Singh case* [(2006) 5 SCC 733 : (2006) 3 SCC (Cri) 63] and *Minu Kumari case* [(2006) 4 SCC 359 : (2006) 2 SCC (Cri) 310]. ***The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to their notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Section 190 read with Section 200 of the Code.*** It appears that in the present case initially the case was tagged by order dated 24-2-2003 with WP (C) No. 530 of 2002 and WP (C) No. 221 of 2002. Subsequently, these writ petitions were delinked from the aforesaid writ petitions.

8. The writ petitions are finally disposed of with the following directions:

(1) If any person is aggrieved by the inaction of the police officials in registering the FIR, the modalities contained in Section 190 read with Section 200 of the Code are to be adopted and observed.

(2) It is open to any person aggrieved by the inaction of the police officials to adopt the remedy in terms of the aforesaid provisions.

(3) So far as non-grant of sanction aspect is concerned, it is for the Government concerned to deal with the prayer. The Government concerned would do well to deal with the matter within three months from the date of receipt of this order.

(4) We make it clear that we have not expressed any opinion on the merits of the case.” (emphasis supplied)

27.2. In **Sakiri Vasu**, Supreme Court held:

“24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) CrPC to order registration of a criminal offence and/or to direct the officer in charge of the police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) CrPC, we are of the opinion that they are implied in the above provision.

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 CrPC. 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, first under Section 154(3) and Section 36 CrPC before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned 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) CrPC or other police officer referred to in Section 36 CrPC. 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) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

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 CrPC 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) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.”
(emphasis supplied)

27.3. In **Kunga Nima Lepcha and others Vs State of Sikkim and others**¹², Supreme Court delineated the scope of interference in matters concerning investigation by writ Court when statutory remedies are available. Supreme Court held:

“13. However, the remedies evolved by way of writ jurisdiction are of an extraordinary nature. They cannot be granted as a matter of due course to provide redressal in situations where statutory remedies are available. It is quite evident that the onus is on the petitioners to demonstrate a specific violation of any of the fundamental rights in order to seek relief under writ jurisdiction.

16. While it is true that in the past, the Supreme Court of India as well as the various High Courts have indeed granted remedies relating to investigations in criminal cases, we must make a careful note of the petitioners' prayer in the present case. In the past, writ jurisdiction has been used to monitor the progress of ongoing investigations or to transfer ongoing investigations from one investigating agency to another. Such directions have been given when a specific violation of fundamental rights is shown, which could be the consequence of apathy or partiality on the part of investigating agencies among other reasons. In some cases, judicial intervention by way of writ jurisdiction is warranted on account of obstructions to the investigation process such as material threats to witnesses, the destruction of evidence or undue pressure from powerful interests. In all of these circumstances, the writ court can only play a corrective role to ensure that the integrity of the investigation is not compromised. However, it is not viable for a writ court to order the initiation of an investigation. That function clearly lies in the domain of the executive and it is up to the investigating agencies themselves to decide whether the material produced before them provides a sufficient basis to launch an investigation.

¹² (2010) 4 SCC 513

17. It must also be borne in mind that there are provisions in the Code of Criminal Procedure which empower the courts of first instance to exercise a certain degree of control over ongoing investigations. The scope for intervention by the trial court is hence controlled by statutory provisions and it is not advisable for the writ courts to interfere with criminal investigations in the absence of specific standards for the same.”
(emphasis supplied)

27.4. In **Sunil Gangadhar Karve v. State of Maharashtra and others**¹³, Supreme Court observed:

“4. We have noted this submission of Mr Rohatgi. There are, however, two difficulties in his way. Firstly, that if the police offers decline to look into the complaint, the ordinary procedure under the Criminal Procedure Code is available to the complainant as held by a Bench of three Judges of this Court in *Aleque Padamsee v. Union of India* [(2007)6 SCC 171]. Besides, apart from the rights of the complainant, the rights of the accused also have to be safeguarded, and the accused has a right of appeal against any such determination if the complainant chooses to approach the Magistrate concerned. The right of appeal has been held to be a very important right of the accused by this Court in *A.R.Antulay v. R.S. Nayak* [(1988) 2 SCC 602].”

(emphasis supplied)

27.5. In **Sudhir Bhaskar Rao Tambe** following the decision in **Sakiri Vasu**, Supreme Court held:

“2. This Court has held in *Sakiri Vasu v. State of U.P.* [*Sakiri Vasu v. State of U.P.*, (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440 : AIR 2008 SC 907] , that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in *Sakiri Vasu case* [*Sakiri Vasu v. State of U.P.*, (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440 : AIR 2008 SC 907] because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

¹³ (2014) 14 SCC 22

3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.”

28. Consistently several High Courts have held that on the allegation of not registering crime and delay in completing the investigation, aggrieved person cannot directly invoke writ jurisdiction and has to avail other remedies. Few of the decisions are noted hereunder.

28.1. In **Fr. Sebastian Vedakkumpedan**, one of the issues considered by the Division Bench of Kerala High Court was can a complaint do away with statutory remedies and take straight recourse to judicial review alleging that Police refused to register a crime. Decision of Supreme Court in **Lalita Kumari** was pressed into service to support institution of writ petition. Division Bench held:

“86. Authoritative as *Lalita Kumari* is, it has not disturbed the proposition of law that this Court while exercising its jurisdiction under Article 226 does ensure that the suitor has no other efficacious, alternative remedy. So the precedential value of *Aleque Padamsee*, *All India Institute of Medical Sciences*, *Gangadhar*, *Sudhir Bhaskarrao Tambe*, *Sakiri Vasu*, *Kunga Nima Lepcha*, just to list out a few, remains undisturbed and undiminished.”

28.2. In **Raju Bhagwat Zankar v. The State of Maharashtra & Others**¹⁴, the petitioner complained to the Bombay High Court on a petition filed under Article 226 of the Constitution of India that crime under Prevention of Corruption Act, 1988 is not registered. The Division Bench relegated the petitioner to remedy under Section 156 (3) of Code of Criminal Procedure.

¹⁴ 2018 SCC Online Bom 6793

28.3. In **Sajjansingh Bhilware v. Public Health and Engineering Department & Others**¹⁵, , following the decision of Supreme Court in **Sudhir Bhaskar Rao**, the Madhya Pradesh High Court dismissed the writ petition leaving petitioner to avail the remedies under Code of Criminal Procedure.

29. In **Jallepalli Rama Koteswar Rao V. State of Andhra Pradesh rep.by its Prl.Secretary, Home Department, Hyderabad and others**¹⁶, **WP No.14256 of 2016**, and **Nalabothu Punnaiah v. State of Andhra Pradesh and others**¹⁷, cited at the bar, this Court reiterated the directions issued in **Lalita Kumari**. However, in none of the above decisions the issue of maintainability of writ petition when alternative remedy is available was considered.

30. In cases falling under Category-2, petitioners urge that soon after crime was registered, accused ought to have been arrested. They further urge that investigation ought to have been completed and charge-sheet ought to have been filed immediately and in a time bound manner.

31. In **Lalita Kumari**, Supreme Court held that on mere registration of a crime, arrest of accused is not imminent. Supreme Court held that in a given case, complaint can be closed before or after investigation.

“107. While registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. In fact, registration of FIR and arrest of an accused person are two entirely different concepts under the law, and there are several safeguards available against arrest. Moreover, it is also pertinent to mention that an accused person also has a right to apply for “anticipatory bail” under the provisions of Section 438 of the Code if the conditions mentioned therein are satisfied. Thus, in appropriate cases, he can avoid the arrest under that provision by obtaining an order from the court.

¹⁵ 20118 SCC Online MP 631

¹⁶ 2016(3) ALT 797

¹⁷ 2016(2) ALD (CrI.) 974

.....

111. Besides, the Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The section itself states that a police officer can start investigation when he has “*reason to suspect the commission of an offence*”. Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. **Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.**

.....

115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, **there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time.** One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.”

(emphasis supplied)

32. In **Ramdev Food Products (P) Ltd Vs State of Gujarat**¹⁸ relying on **Lalita Kumari**, Supreme Court held :

“19. Thus, this Court has laid down that while prompt registration of FIR is mandatory, checks and balances on power of police are equally important. **Power of arrest or of investigation is not mechanical. It requires application of mind in the manner provided. Existence of power and its exercise are different. Delicate balance had to be maintained between the interest of society and liberty of an individual.** Commercial offences have been put in the category of cases where FIR may not be warranted without enquiry.”

(emphasis supplied)

33. On the scope of Section 36 and Section 156 (3) of Code of Criminal Procedure and power of Magistrate to issue directions, in **CBI Vs. State of Rajasthan** (cited supra), Supreme Court observed:

“11. This means any other police officer, who is superior in rank to an officer in charge of a police station, can exercise the same powers of the officer in charge of a police station and when he so exercises the power he would do it in his capacity as officer in

¹⁸ (2015) 6 SCC 439

charge of the police station. But when a Magistrate orders investigation under Section 156(3), he can only direct an officer in charge of a police station to conduct such investigation and not a superior police officer, though such officer can exercise such powers by virtue of Section 36 of the Code. Nonetheless, when such an order is passed, any police officer superior in rank of such officer, can as well exercise the power to conduct an investigation, and all such investigations would then be deemed to be the investigation conducted by the officer in charge of a police station. Section 36 of the Code is not meant to substitute the magisterial power envisaged in Section 156(3) of the Code, though it could supplement the powers of an officer in charge of a police station. It is permissible for any superior officer of police to take over the investigation from such officer in charge of the police station either suo motu or on the direction of the superior officer or even that of the Government.”

34. Having regard to law propounded by Supreme Court, it is no more open for any one to contend that unless a report is filed aggrieved person is without remedy. It is also no more open to contend that once crime is registered accused must be arrested and charge sheet/ final report must be filed as a matter of course. Further, delay in completing the investigation can be for various reasons. Police may be waiting for forensic report/Medical report/the accused is absconding/having regard to complex nature of crime reported more time is consumed to collect required data/information to assess the nature of crime, number of documents and/or witnesses are more. While determining delay, it is necessary to consider each case on its facts having regard to attending circumstances including nature of offence, number of accused and witnesses etc [**Mahender Lal Das Vs State of Bihar**¹⁹]. The jurisdictional Magistrate shall have all material facts in issue at his command to assess the issue and shall be competent to go into all aspects when matters are brought before him and to take appropriate decision. It is also within the competence of superior officers to assess the conduct of Station House Officer and to take remedial action whenever there is deliberate and unexplained delay in investigation and filing of final report.

¹⁹ Appeal (Civil) No. 1038 of 2001 dated 12.10.2001

35. Heavy reliance is placed on **State of West Bengal others v. Committee for Protection of Democratic Rights, West Bengal and others** (cited supra) to contend that right of victim flows from Article 21 of the Constitution of India and whenever Fundamental Rights are violated aggrieved person can invoke the jurisdiction of this Court and writ petition cannot be dismissed on the ground of availability of alternative remedy.

36. The grievance ventilated before Calcutta High Court in a writ petition filed under Article 226 of the Constitution of India was that grave crime resulting in death of 11 persons was committed and whereabouts of several persons was not known and though crime was registered there was no progress in the investigation and that Police were under influence of ruling party and therefore sought for transfer of case to CBI. High Court ordered for handing over the investigation to CBI. On appeal, having regard to great public importance matter was placed before Constitution Bench to decide the power of High Court under Article 226 of the Constitution of India and power of Supreme Court under Article 32 of the Constitution of India to transfer a case to CBI without the consent of the State. It was contended that such transfer in effect affected the constitutional scheme of distribution of legislative powers between Union and State. On elaborate consideration of provisions of the Constitution and the precedents, Constitution Bench recorded its conclusions in paragraph-68.

37. In paragraph-69, Supreme Court held entrustment of case to CBI without consent of the State does not impinge upon the federal structure. It further observed that being the protectors of civil liberties of the citizens, the Supreme Court and the High Courts have not only the power and jurisdiction, but also an obligation to protect the

Fundamental Rights guaranteed in Part-III in general and under Article 21 of the Constitution in particular, zealously and vigilantly. There can be no two opinions on the above proposition. In exercise of power of judicial review, High Court has to ensure right to life and personal liberty of a person is not impinged upon without following due process of law. However, Hon'ble Supreme Court was not dealing with issue of not registering a crime and delay in investigating into crime.

38. In matters of this nature, there are two competing rights, on the one side right of complainant that perpetrator of crime be punished and justice be rendered to him and on the other side the right of the accused for fair investigation before he is implicated and fair trial before he is convicted. He also has inviolable right to life and liberty. Code of Criminal Procedure incorporates enough safeguards to victims and accused. It lays down detailed procedure in conducting investigation, filing of final report, taking of cognizance, conducting of trial. It provides enough safeguards against illegal action of police. It is a self contained code and comprehensive on all aspects of criminal law. A complainant has statutorily engrafted remedies to ensure that his complaint is taken to its logical end. Thus, he must first exhaust said remedies and cannot invoke extra-ordinary writ remedy as a matter of course, even when crime is not registered and there is no progress in the investigation. This is clearly discernible from precedent decisions referred to above. The directions issued by the Hon'ble Supreme Court in **Lalita Kumari** are binding on police officers. If an individual has grievance against Police Officers on the issue of non-registration of crime and slow/tardy progress in investigation he can as well bring forth the directions of the Hon'ble Supreme Court and compel them to discharge their statutory duties

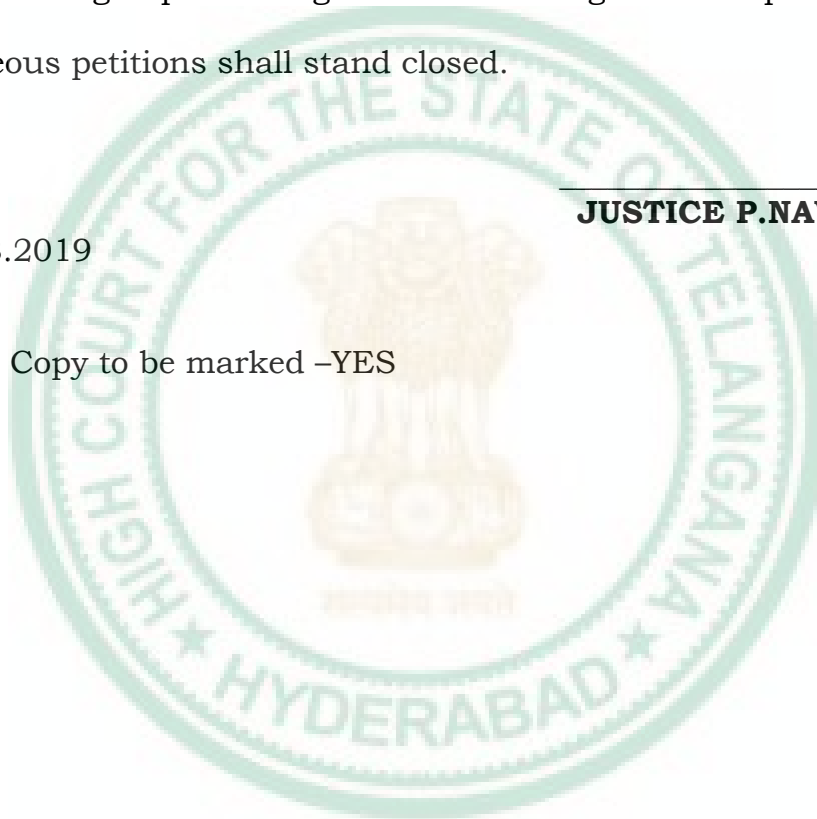
effectively while availing remedies provided in Code of Criminal Procedure.

39. Guided by the precedent decisions noted above, I am of the considered opinion that these Writ Petitions are not maintainable and they are accordingly dismissed. It is made clear that there is no opinion expressed on the content of complaints made and on delay in investigation. Petitioners are at liberty to avail statutory remedies ventilating their grievances against non-registration of crime and/or delay in taking up investigation and filing final report. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 8.03.2019
tvk/kkm

Note : L R Copy to be marked -YES



HONOURABLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION Nos. 38397, 44752, 47845, 47952 and 47958 of 2018; and 485, 545, 955, 1094, 1174, 1332, 1334, 1373, 1378, 1527, 1535, 1570, 1647, 1723, 1802, 1817, 1844, 1874, 1911, 1924, 2003, 2013, 2021, 2037, 2086, 2162, 2184, 2185, 2398, 2460, 2583, 2605, 2614, 2720, 2830, 3081, 3053, 3136, 3128 and 3201 of 2019.

Date : 8.3.2019