

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Criminal) No. 155 of 2017

- Abhishek Jain S/o. Late Jagdish Jain, Aged About 38 Years R/o. Arihant Nivas, Favvara Chowk, Sattibazar, Raipur Chhattisgarh

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Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Home/ Police, Secretariat, Mahanadi Bhawan, New Raipur, P. S. And Post Rakhi District Raipur Chhattisgarh
2. Collector, Raipur, District Raipur, Chhattisgarh
3. Superintendent Of Police (S P), Office Of Superintendent Of Police (S P), Dhamtari, District Dhamtari Chhattisgarh
4. Station House Officer, Police Station Mujgahan, Raipur Chhattisgarh
5. M/s. Sanjay Bajpai Builders Pvt. Ltd. A Private Company Registered Under The Provisions Of The Indian Companies Act, 1956, Having Its Registered Office At Krishna Complex, Second Floor, Kachahri Chowk, Raipur Chhattisgarh Through Its Director, Smt. Sarita Bajpai, Wd/o. Late S. N. Bajpai, Aged About 45 Years, R/o. Exotica, Shankar Nagar, Post And Police Station Shankar Nagar, Raipur, District Raipur, Chhattisgarh
6. Smt. Sarita Bajpai, Wd/o. Late S. N. Bajpai, Aged About 45 Years R/o. Exotica, Shankar Nagar, Post And Police Station Shankar Nagar, Raipur, District Raipur Chhattisgarh M/s. Sanjay Bajpai Builders Pvt. Ltd. A Private Company Registered Under The Provisions Of The Indian Companies Act, 1956, Having Its Registered Office At Krishna Complex, Second Floor, Kachahri Chowk, Raipur Chhattisgarh
7. Yogeshwar Shukla, S/o Late Mahaveen Shukla, Aged About 47 Years R/o. C-1, Maharaja Apartment, Shankar Nagar, Raipur Chhattisgarh, Additional Director, M/s. Sanjay Bajpai Builders Pvt. Ltd. Registered Office At Krishna Complex, Second Floor, Kachahri Chowk, Raipur Chhattisgarh
8. Deewan Housing Finance Corporation Limited D. H. F. L National Office H D I L Tower, 6 Floor, Anant Kanekar Marg, Station Road, Bandra East, Mumbai 400051 Maharashtra And Branch Office 4/91 Dr. Naidu Complex, 2nd Floor, Jail Road, Raipur Chhattisgarh
9. Smt. Kedia Bai W/o. Late Shri Bhuko Ram Mahobia, R/o. Nav Bharat Chowk, Kankali Para, Raipur Chhattisgarh
10. Smt. Dulari Bai Pansari, W/o Late Shri Bhikam Lal Pansari, Lily Chowk, Near Baraee Mandir, Raipur Chhattisgarh
11. Cheta Das Tarwadi, S/o. Late Shri Tirodimal Tarwadi, Lek

Nagar, Raipur Chhattisgarh

12. Shri Ambika Prasad Dubey, S/o. Late Shri Ganga Vishnu Dube, Vinoba Nagar Bilaspur Chhattisgarh

---Respondents

For Petitioner : Shri YC Sharma, Advocate
For Respondents 1 to 4/ State : Shri Ravi Bhagat, Dy. Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

02.12.2020.

1. By way of this petition, the petitioner seek direction to the respondents 1 to 4 to register FIR against respondents 5 to 12 and investigate the matter against them through Special Investigation team.

2. Learned counsel for the petitioner submits that respondents 5 to 12 have committed cognizable offence and FIR has not been registered against them by the Police, therefore, appropriate direction may be passed for registration of FIR against them.

3. I have heard learned counsel for the petitioner, considered his submissions made hereinabove and also went through the records with utmost circumspection.

4. The question for consideration would be, whether a writ of mandamus should be issued under Article 226 of the Constitution of India directing the jurisdictional police to register an offence under Section 154(1) of the CrPC in a petition filed stating that despite informing the police about the commission of offence, FIR is not being registered against the concerned persons?

5. At this stage, it is appropriate to notice the judgment of the Supreme Court in the matter of **Lalita Kumari v. Government of**

U.P.¹ in which the Supreme Court has held that registration of FIR is

the mandatory duty of the police and held as under:-

“120. In view of the aforesaid discussion, we hold:
120.1 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.”

6. However, in the matter of Aleque Padamsee and others v. Union of India and others², the question was, whether it is within the powers of the Court to issue a writ directing the police to register an FIR? In that case, Their Lordships of the Supreme Court have held that in case the police fails to register an FIR, the modalities set out under Section 190 read with Section 200 of the CrPC are to be adopted and observed.

7. Likewise, in the matter of Sakiri Vasu v. State of U.P.³, the Supreme Court has categorically held that if a person is aggrieved that his FIR has not been registered by the police or having been registered, proper investigation is not done, the remedy available to the aggrieved person lies to approach the Judicial Magistrate under Section 156(3) of the CrPC, and observed 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, Criminal Procedure Code. 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](#), Criminal Procedure Code 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

2(2007) 6 SCC 171

3(2008) 2 SCC 409

section 154(3), Criminal Procedure Code or other police officer referred to in section 36, Criminal Procedure Code. 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), Criminal Procedure Code instead of rushing to the High Court by way of a writ petition or a petition under section 482, Criminal Procedure Code. Moreover he has a further remedy of filing a criminal complaint under section 200, Criminal Procedure Code. Why then should writ petitions or section 482 petitions be entertained when there are so many alternative remedies?”

8. The principle of law laid down in Sakiri Vasu (supra) was followed with approval by Their Lordships of the Supreme Court in the matter of Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and others⁴ in which it was held as under: -

“2. This Court has held in *Sakiri Vasu v. State of U.P.*, 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 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.

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. ”

9. This Court considering the decisions rendered in Sakiri Vasu (supra) and Aleque Padamsee (supra), in W.P.(Cr.)No.136/2017 (R.K. Pandey v. State of Chhattisgarh and others), decided on 19-4-2017, held as under: -

“(8) Thus, the petitioner has the efficacious statutory alternative remedy of approaching first before the Superintendent of Police under Section 154(3) of the CrPC or other officer mentioned in Section 36 of the CrPC. Despite approaching the Superintendent of Police or other officer as mentioned in Section 36 of the CrPC, the petitioner is entitled to make an application to the Magistrate under Section 156(3) of the CrPC and also has a further remedy of filing complaint under Section 200 of the CrPC. The Supreme Court in like situation has deprecated the practice of directly entertaining writ petition or petition under Section 482 of the CrPC by this Court and emphasized that the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation in *Sakiri Vasu* (supra), and followed by this Court also in above-stated case.

(9) In view of the above, the petitioner has not properly approached the above stated forums as rendered in *Sakiri Vasu* (supra). I do not find any case of issuance of a writ to the police authorities to register FIR on the report made by the petitioner and the writ petition is liable to be dismissed and it is accordingly dismissed in *limine* but without imposition of cost(s). However, the petitioner shall be at liberty to avail other appropriate remedies, in accordance with law for registration of FIR is concerned as indicated by the Supreme Court in *Sakiri Vasu* (supra) and also at liberty to bring to the notice of said authorities the decision rendered by the Supreme Court in *Lalita Kumari* (supra).”

10. The order of this Court in R.K. Pandey (supra) was assailed before this Court in W.A.No.231/2017 (R.K. Pandey v. State of Chhattisgarh and others) in which the Division Bench of this Court considered the matter and dismissed the appeal by observing as under:

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“5. While **Lalita Kumari v. Government of Uttar Pradesh & Others, (2014) 2 SCC 1** is authority for the position that the police officers have statutory duty to act upon the complaint in the manner delineated therein, the fact of the matter remains that the learned Single Judge, has through the impugned order, only refused to entertain the writ petition noticing that the Petitioner has adequate efficacious alternative statutory remedy in view of Sections 156(3) and 200 of the CrPC, for which, the proposition that there can be no dispute for the precedents in *Sakiri Basu (supra)* and *Aleque Padamsee (supra)*. Hence, we do not find our way to hold that the exercise of discretionary jurisdiction by the learned Single Judge can be faulted to any ground to place this intra-Court appeal to the Division Bench in proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006. Hence, this appeal fails.”

11. Apart from this, a Division Bench of the M.P. High Court in the matter of **Shweta Bhadoria v. State of M.P. and others**⁵ 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 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 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. ”

12. 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 others⁶ 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).”

13. Very recently, the Supreme Court (three Judges Bench) in the

62018(1) M.P.L.J. 716

matter of M. Subramaniam and Ors. v. S. Janaki and Ors.⁷, decided on 20.3.2020 (MANU/SC/0348/2020) relying upon its earlier judgment in the matters of Sakiri Vasu (supra), Sudhir Bhaskarrao Tambe (supra) and Mohd. Yousuf v. Afaq Jahan⁸ set aside the direction of the High Court issued for registration of the FIR and investigation into the matter by the police. It was held as under:-

“8. In these circumstances, we would allow the present appeal and set aside the direction of the High Court for registration of the FIR and investigation into the matter by the police. At the same time, our order would not be an impediment in the way of the first Respondent filing documents and papers with the police pursuant to the complaint dated 18.09.2008 and the police on being satisfied that a criminal offence is made out would have liberty to register an FIR. It is also open to the first Respondent to approach the court of the metropolitan magistrate if deemed appropriate and necessary. Equally, it will be open to the Appellants and others to take steps to protect their interest.”

14. Considering the nature of dispute between the parties and nature of allegation, it would not be expedient to direct respondents No.1 to 4 to register FIR against respondents 5 to 12. Accordingly, the writ petition is dismissed. However, the petitioner is at liberty to file complaint under Section 156(3) or complaint under Section 200 of the CrPC. No cost(s).

Sd/-

(Sanjay K. Agrawal)

JUDGE

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