

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPCR No. 202 of 2020**

Balraj Mahish S/o Lt. Shri Chotelal Mahish, Caste Satnami, Aged about 25 years, Caste Gond, R/o Telikot, Police Station Kharsiya, Distt. Raigarh, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh through Superintendent of Police, Raigarh, Distt. Raigarh, Chhattisgarh.
- 2.Station House Officer, Police Station Kharsiya, Distt. Raigarh, Chhattisgarh.

--- Respondents

For Petitioner :- Mr. Soumitra Kesharwani, Advocate
For State :- Mr. Mateen Siddiqui, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

19/05/2020

- 1.Petitioner herein seeks for direction to the respondent/State authorities for registration of FIR against the accused namely Umadevi Sahu stating inter alia that she has committed cognizable offence punishable under Section 420 of Indian Penal Code, 1860 and Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and despite the said

offences being reported by the petitioner, the police authorities are not registering FIR against the accused Umadevi Sahu.

2. Mr. Soumitra Kesharwani, learned counsel for the petitioner, would submit that the complaint filed by the petitioner clearly and prima facie discloses the commission of cognizable offence, therefore, as per the decision laid down by Their Lordships of the Supreme Court in the matter of Lalita Kumari v. Government of U.P.¹, it was imperative for respondents No. 1 and 2 to register the FIR, but as they have declined, appropriate writ or direction be issued to them for registration of FIR against the petitioner.

3. Mr. Rahul Jha, learned State counsel, would submit that if the petitioner is not satisfied with the action of the police authorities in not taking cognizance of the alleged offence, he has remedy to submit an application under Section 156(3) of the Cr.P.C before the Judicial Magistrate or to file complaint before the jurisdictional criminal Court under Section 200 of the Cr.P.C., as such, the writ petition is not maintainable. Even otherwise, the complaint does

¹ (2014) 2 SCC 1

not discloses cognizable offence, as such, no direction can be given for registration of FIR against the accused Umadevi Sahu.

4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and gone through the record with utmost circumspection.

5. 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 person?

6. At this stage, it is appropriate to notice the judgment forcefully relied upon by the learned counsel for the petitioner i.e. Lalita Kumari (supra) 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."

7. 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.
8. 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

2(2007) 6 SCC 171

3(2008) 2 SCC 409

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 [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?"

9. 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. "

10. Very recently, in the matter of **M. Subramanian and Anr. v. S. Janaki and Anr.**⁵ decided on 20/03/2020, Their Lordships of the Supreme Court, in a similar situation, have held that High Court could not have directed the registration of an FIR with a direction to the police to investigate

⁵ 2020 SCC Online SC 342

and file the final report. Paragraph 5 of the report states as under :-

"5. While it is not possible to accept the contention of the appellants on the question of locus standi, we are inclined to accept the contention that the High Court could not have directed the registration of an FIR with a direction to the police to investigate and file the final report in view of the judgment of this Court in [Sakiri Vasu v. State Of Uttar Pradesh And Others](#)⁶ in which it has been inter alia held as under:

"11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the 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.

12. Thus in [Mohd. Yousuf v. Afaq Jahan](#) this Court observed: (SCC p. 631, para 11)

"11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to

examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

13. The same view was taken by this Court in [Dilawar Singh v. State of Delhi \(JT vide para 17\)](#). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) CrPC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) CrPC.

14. Section 156(3) states:

"156. (3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned."

The words "as abovementioned" obviously refer to Section 156(1), which contemplates investigation by the officer in charge of the police station.

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. 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 a direction to the police to do the investigation properly, and can monitor the same.

16. The power in 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 vide Section 173(8). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide State of Bihar v. J.A.C. Saldanha (SCC : AIR para 19).

17. In our opinion Section 156(3) CrPC 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) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in

the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution."

Paragraph 8 of the report states 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."

11. Reverting to the facts of the present case, in this case also, it is the case of the petitioner that the complaint discloses the commission of cognizable offence, whereas it is the case of the State/respondents No. 1 and 2 that complaint case does not disclose any cognizable offence, and alternate remedy available to the petitioner is to approach to the competent forum, and therefore, in this factual situation, in my considered opinion, the remedy of the petitioner,

if any, is to avail the remedy available to him under Sections 154(3), 156(3), 190 and 200 of Cr.P.C., as such, no direction can be issued to the respondents/State authorities to register FIR against Umadevi Sahu in extra-ordinary jurisdiction under Article 226/227 of the Constitution of India. However, the liberty is reserved in favour of the petitioner as stated above.

12. The writ petition deserves to be and is accordingly dismissed subject to the aforesaid liberty reserved in favour of the petitioner. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet