THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

S. B. : Hon'ble Shri Justice Rajendra Kumar Srivastava

M.Cr.C.No.38612/2020

Guddi Bai

Vs

The State of M.P. & others

Shri Sourabh Kumar Sharma, learned counsel for the petitioner.

Shri Manoj Kushwaha, learned P.L. for the respondents/State.

O R D E R
(17 .12.2020)

This petition under Section 482 of Cr.P.C. has been filed by the petitioner seeking direction to register the FIR.

2. Learned counsel for the petitioner submits that petitioner's husband namely Rajkumar Patel has died on 28.05.2016 due to electrocution. Thereafter, on the information of an informant-Rajendra Rajak, who is watchman of District Hospital, Sehora, police registered the said report in Crime

No.0/16 under Section 174 of Cr.P.C. and said information was also been referred to the Police Station-Dheemerkheda. Thereafter, on 04.09.2020, petitioner has also filed a complaint regarding offence is made out against the respondent under Section 304 Part-II, 120-B read with Section 34 of the IPC, but neither any action was taken nor any FIR was registered against the concerned respondent. Respondent Nos.4 and 5 have not registered the said offences the against the concerning person i.e. respondent No.6 deliberately to save him. He further submits that petitioner's husband died due to involvement of respondent No.6 and petitioner has also filed a complaint, but police has not registered the case for the aforesaid offences. Police officials are not discharing their duties in compliance of Section 154(3) of Cr.P.C. whereas the said offences are cognizable and serious in nature which is punishable, but till date no action has been taken by the respondents. In support of his contention, he relied on the order passed by Hon'ble the Apex Court in the case of ***Lalita Kumari Vs. State of U.P.*** reported in ***AIR 2014 SC 187***. With the aforesaid, he prays for allowing the same.

3. On the other hand, learned counsel for the respondents opposes the submission made by the petitioner

and submits that on the complaint filed by the petitioner, concerning official conducted on inquiry in the matter. He further argued that petitioner has alternate remedy to file complaint before Magistrate, if the police has not registered the FIR. Therefore, this petition is not maintainable and same deserves to be dismissed.

4. Heard both the parties and perused the case diary.

5. The grievance of the petitioner is that he submitted a written complaint before the concerned Police Station to register the case under Section 304 Part-II, 120-B read with Section 34 of the IPC against the concerned respondent in respect of death of her husband, but neither the police lodge the FIR and nor inquired the matter. By way of filing this present petition, petitioner is seeking direction to register the FIR against the concerned respondent.

6. The Ho'ble Apex Court in the case of **Sakiri Vasu Vs. State of UP reported in 2008 (2) SCC 409** category held that:-

> *"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?

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 Cr.P.C. 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 concerned police officers, and if that

> *is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.*
>
> *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."*

7. On careful reading of the above cited judgment, it is found that if a person is aggrieved that his/her FIR has not been registered by the police or having been registered, proper investigation has not been done, the remedy available to aggrieved person is not to go to the High Court under Section 482 of Cr.P.C. or Article 226 of the Constitution of India, but to approach the concerned Magistrate, under Section 156(3) of the Cr.P.C.

8. Counsel for the petitioner has relied on the judgment of **Lalita Kumari (Supra)** and submits that the Hon'ble Apex Court has held that the registration of an FIR is the mandatory duty of the police. In this regard in this case of ***Dharmendra Sonkar Vs. State of M.P***. passed in ***W.A No.***

594/2017 this High Court has expressed different view after considering the judgment of **Lalita Kumari (Supra)**.

9. Therefore, in view of the forgoing discussion and the law laid down by the Hon'ble Apex Court as well as this High Court and looking to the fact that the alternative remedy is available to the petitioner, I do not find any sufficient reason to exercise the power under Section 482 of Cr.P.C.

10. Accordingly, this petition is hereby **disposed off.**

(Rajendra Kumar Srivastava)
Judge

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