

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 549 OF 2020

Sachin S/o Daulatrao Salve,
Age; 41 years, Occ; Painting work,
R/o; Sanjaynagar, Mukundwadi,
Aurangabad,
Tq. and District Aurangabad.

..PETITIONER.

V E R S U S

- 1) The State of Maharashtra,
- 2) The Superintendent of Police
Aurangabad (Rural),
Office of Superintendent of Police,
Aurangabad (Rural).
- 3) The Police Inspector,
Chikalthana Police Station,
Aurangabad,
Taluka & District Aurangabad.

..RESPONDENTS.

.....
Mr. R.M. Deshmukh, learned Advocate for the Petitioner
Mr. R.D. Sanap, learned APP for the Respondents.
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**CORAM : RAVINDRA V. GHUGE &
M.G. SEWLIKAR, JJ.**

Date of Reserving of Judgment : 21/07/2020

Date of Pronouncement of Judgment : 27/08/2020

JUDGMENT : (Per M.G. Sewlikar, J.)

1. Rule. Rule made returnable forthwith. With the consent of the parties, taken up for final hearing.

2. This petition is filed for direction to register F.I.R. alleging that the deceased Rushikesh Sachin Salve was the son of the petitioner. On 29.2.2020 for celebrating the birthday of Sujeet Bodkhe, the deceased Rushikesh along with his other friends by the names of Rohit Bhole, Ramesh Salve, Rahul Kharat and Sumit Jadhav, all residents of Sanjaynagar, Aurangabad, had gone to Varud Kazi (Kacchi Ghati) on two separate motorcycles. All of them consumed liquor and assaulted Rushikesh, as a result of which, the ribs of the deceased Rushikesh were broken and his kidney was damaged. The deceased Rushikesh had sustained multiple injuries. The deceased was brought to the Sahyadri Hospital, Aurangabad in injured condition by his friends and thereafter all of them ran away. One Umesh Dane gave information of the incident on phone to the petitioner. It is further alleged that the petitioner and his family members had been to the Sahyadri Hospital and on inquiry with Sumit Jadhav and Rahul Kharat, they learnt that because of losing balance of the motorcycle in Kacchi Ghati, the motorcycle had skidded and they fell into valley along with motorcycle. They also learnt that three persons were riding the motorcycle. On the advise of doctors in Sahyardi Hospital, the deceased Rushikesh was shifted

to Mahatma Gandhi Mission Hospital, Aurangabad on 2.3.2020. The Medical Officer of M.G.M. hospital reported the incident to CIDCO Police Station being Medico Legal Case, on the basis of which, N.C. was registered and it was referred to Khultabad Police Station for investigation. Thereafter, the spot of the incident was changed. Actual spot of the incident is Varud Kazi (Kacchi Ghati). Thereafter, the investigation of the alleged incident was transferred to Chikalthana Police Station on 9.3.2020. This aroused the suspicion of the petitioner and he lodged complaint alleging that the deceased Rushikesh was murdered by his friends. Accordingly, on 11.3.2020, the complaint was filed in the Police Station. However, police did not take any cognizance of it. Therefore, the petitioner has filed this petition. Rushikesh died on 11.3.2020 in M.G.M. hospital during treatment.

3. Heard Shri R.M. Deshmukh, the learned counsel for the petitioner and Shri R.D. Sanap, the learned A.P.P. for the respondents/State.

4. Shri Deshmukh, learned counsel for the petitioner contended that the deceased Rushikesh was assaulted by his friends and they gave it the colour of an accident. He submitted that initially it was projected by the friends of deceased that the accident had taken place within the jurisdiction of Khultabad Police Station. Therefore, N.C. was sent to Khultabad Police Station for

investigation. Thereafter, the friends of the deceased changed the spot of incident and stated that accident took place at Kacchi Ghati, owing to which investigation was transferred to Chikalthana Police Station. This clearly shows that friends of the deceased changed the spot of incident, which gave rise to suspicion that the deceased was murdered by the petitioner and they falsely projected it to be the case of an accident. He submitted that unless the investigation is carried out, the truth will not come out and therefore, First Information Report ought to have been registered by the Chikalthana Police Station. On the basis of complaint lodged by the petitioner, a cognizable offence is made out and the concerned police station was duty bound to register the F.I.R., but the concerned police station abdicated its responsibility and refused to register the offence. He, therefore, submitted that the concerned police station be directed to register the F.I.R.

5. Shri Sanap, learned A.P.P. for Respondents/State submitted that it was the case of an accident. The deceased alongwith his above referred friends had gone for celebrating the birthday of their friend Sujeet Bodkhe. He submitted that the motorcycle was driven by Sumit Bhaskar Jadhav. The deceased and one more person were riding the motorcycle. Thus, three persons i.e. Sumit Jadhav, Rahul Kharat and the deceased Rushikesh were riding the motorcycle triple seat. Sumit Jadhav lost balance, because of which the motorcycle skidded and fell into the valley of

Kacchi Ghati. He submitted that in the investigation of this incident, it was revealed that it was an accident and not murder, as alleged by the petitioner. He submitted that there is no substance in the complaint lodged by the petitioner. Therefore, the concerned police station has rightly refused to registered the F.I.R. He therefore, prayed for dismissal of the petition.

6. Chapter XII of the Code of Criminal Procedure, 1973 deals with the information to the police and their powers to investigate. Section 154 of the Criminal Procedure Code casts a duty on the Officer-in-Charge of the Police Station to register the offence if information given orally to an Officer-in-Charge of the Police Station discloses commission of a cognizable offence. Section 154 (3) of the Criminal Procedure Code enables the complainant to send the substance of information in writing by post, to the Superintendent of Police if the Officer-in-Charge of the Police Station refuses to record the information referred to in Sub-Section 1 of Section 154 of the Criminal Procedure Code.

7. Thus, this shows that it is the duty of the Officer-in-Charge of the Police Station to register the offence, if the information received by him orally or in writing discloses the commission of a cognizable offence. Thus, when the information received by the Officer-in-Charge of the Police Station discloses the commission of a cognizable offence, the Officer-in-Charge cannot

refuse to register the F.I.R. It is not open for him to say that he will hold preliminary inquiry and then register the offence if the information received by him discloses the commission of a cognizable offence. In the case of **Lalita Kumari v. Govt. of U.P. and Ors** “**AIR 2014 SC 187**”. The Hon’ble Supreme Court has held as under :-

“39. Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer-in-charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the concerned officer is duty bound to register the case on the basis of information disclosing a cognizable offence”.

8. The Officer-in-Charge of the Police Station can hold preliminary inquiry before registering the F.I.R., if the information received by him does not disclose the commission of a cognizable offence. However, if during the inquiry, it is revealed that a cognizable offence has been committed, it is obligatory on the part of the Officer-in-Charge of the Police Station to register an F.I.R. The Hon’ble Supreme Court in the case of **Lalita Kumari** (cited supra) has held as under :-

“111. In view of the aforesaid discussion, we hold :-

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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.

(viii) 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."

9. The next question is the forum to which the informant should approach, if the Officer-in-Charge of the Police Station refuses to register the F.I.R. In other words, whether remedy lies under Article 226 and 227 of the Constitution of India or under Section 156 (3) of the Criminal Procedure Code.

10. **Section 156 of the Code of Criminal Procedure, 1973** deals with Police Officer's power to investigate cognizable offence which reads as under :

"156. Police Officer's power to investigate

cognizable case. – (1) Any Officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

Provided that, no Magistrate shall order an investigation under this section against a person who is or was a public servant as defined under any other law for the time being in force, in respect of the act done by such public servant while acting or purporting to act in the discharge of his official duties, except with the previous sanction under section 197 of the Code of Criminal Procedure, 1973 or under any law for the time being in force :

Provided further that, the sanctioning authority shall take a decision within a period of ninety days from the date of the receipt of the proposal for sanction and in case the sanctioning authority fails to take the decision within the said stipulated period of ninety days, the sanction shall be deemed to have been accorded by the sanctioning authority."

11. The words "as above mentioned", in Section 156 (3) Cr.P.C. obviously refer to Section 156 (1), which contemplates investigation by the Officer-in-charge of the Police Station .

12. Section 156 (3) provides for a check by the Magistrate on the police performing its duties under Chapter XII of the Criminal

Procedure Code. In cases, where the Magistrate finds that the police has not done its duty in investigating the case at all, or has not done it satisfactorily, he can issue direction to police to do the investigation properly and can monitor the same. In the case of **Sakiri Vasu Vs. State of U.P. and Ors. AIR 2008 SC 907**, the Hon'ble Supreme Court has held that the power under Articles 226 and 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure should not ordinarily be exercised by the High Court if there is alternate remedy under Section 156 (3) of the Criminal Procedure Code available. It has been held in para 27 & 28 of the said case as under :-

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."

The Hon'ble Supreme Court reiterated the same principle in the case of **M. Subramaniam and Ors. Vs. S. Janki and Ors. (MANU/SC/0348/2020)**.

13. Thus, in our considered opinion, if the Officer-in-Charge of the concerned police station refuses to register an F.I.R. and the Superintendent of Police also fails to give direction to the concerned police station to register an F.I.R., the remedy lies under Section 156 (3) of the Criminal Procedure Code.

14. It is true that even if statutory remedy is there, Court can issue directions under Article 226 and 227 of the Constitution of India. However, having regard to the peculiar facts of the case, we refrain from making any observation on merits of the matter.

15. The writ petition is, therefore, disposed of.

16. Rule is discharged.

(M.G. SEWLIKAR)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE