IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 5701 of 2020.

Date of decision: 14.12.2020.

Pawan Kumar .....Petitioner.

Versus

State of Himachal Pradesh and others
.....Respondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.
The Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?[1] No

For the Petitioner : **Mr. P. M. Negi, Advocate.**

For the Respondents: **Mr. Ashok Sharma, Advocate General with Mr. Vinod Thakur, Additional Advocate General, Ms. Seema Sharma, Mr. Bhupinder Thakur and Mr. Yudhbir Singh Thakur, Deputy Advocate Generals.**

(Through Video Conferencing)

Tarlok Singh Chauhan, Judge (Oral)

The instant petition has been filed by the petitioner for the grant of following reliefs:

> *(a) That the writ of mandamus may kindly be issued against the respondent to immediately hand over the investigation of the case to the CIA or CBI.*

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

(b) That the direction may kindly be issued to the Police of Hamirpur, not to further investigate the matter by the IO's and to submit the challan before the Panchayat on the offences as incorporated in the FIR by the PS of Hamirpur just to favour the accused, who is their Police staff.

(c) That the direction may kindly be issued to get the case investigated by the above agencies not below the rank of SP or the Gazetted Officer."

2. It is by now well settled that if a person has grievance that FIR has not been registered by the police or having been registered, proper investigation has not been done, then the remedy of the aggrieved person is not to come to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) Cr.P.C.

3. This was so held by the Hon'ble Supreme Court in ***Sakiri Vasu*** *vs.* ***State of Uttar Pradesh and others (2008) 2 SCC 409*** which judgment was followed by two Hon'ble Judges Bench of the Hon'ble Supreme Court in ***Sudhir Bhaskarrao Tambe*** *vs.* ***Hemant Yashwant Dhage and others (2016) 6 SCC 277*** and both these judgments in turn have now been followed by three Hon'ble Judges Bench in ***M.Subramaniam and another***

vs. ***S.Janaki and another (2020) 2 RCR (Criminal) 788***

wherein it has been observed 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 (2008) 2 SCC 409 in which it has been inter alia held as under:*
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> > *"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.*
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> > *12. Thus in Mohd. Yousuf v. Afaq Jahan (2006) 1 SCC 627 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 (2007) 12 SCC 641: JT (2007) 10 SC 585 (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."*
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> *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 (1980) 1 SCC 554 (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."*

6. The said ratio has been followed in Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and Others (2016) 6 SCC 277 in which it is observed.

> *"2. This Court has held in Sakiri Vasu v. State of U.P. (2008) 2 SCC 409 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.*
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> *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.*
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> *4. In view of the settled position in Sakiri Vasu case, the impugned judgment of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under Section 156(3) CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned a change of the investigating officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police). Parties may produce any material they wish before the Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court."*

4. The law on the subject was also recognized by the two Hon'ble Judges Bench of the Hon'ble Supreme Court in ***T.C. Thangaraj*** *vs.* ***V.Engammal and others (2011) 12 SCC 328*** wherein after taking into consideration the

judgment in ***Sakiri Vasu's case*** *(*supra), it was held as under:

> *"12. It should also be noted that Section 156(3) of the Code of Criminal Procedure provides for a check by the Magistrate on the police performing their duties and where the Magistrate finds that the police have not done their duty or not investigated satisfactorily, he can direct the Police to carry out the investigation properly, and can monitor the same. (see Sakiri Vasu v. State of U.P. (2008) 2 SCC 409).*

5. In view of the aforesaid discussion and reasons stated above, we decline to interfere and dispose of the writ petition accordingly, reserving liberty to the petitioner to invoke the powers of the Magistrate, as available to him, under the Code of Criminal Procedure. The parties are left to bear their own costs. Pending application, if any, also stands disposed of.

(Tarlok Singh Chauhan)
Judge

(Sandeep Sharma)
Judge

14th December, 2020.
(GR)