

21.09.2022

**FMA 865 of 2022
With
CAN 1 of 2022**

**Nairit Retailer Pvt. Ltd. & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Sourojit Dasgupta
Ms. Kumkum Mukherjee
... ... for the appellants
Mr. Amitesh Banerjee, Sr. Adv.
Mr. Suddhadev Adak
... ... for the State
Mr. R. Bhattacharyya
Mr. Saptarshi Banerjee
... ... for the respondent nos.6 to 8

By this intra-court appeal, writ petitioners have challenged the order of the learned Single Judge dated 7th April, 2022 whereby WPA 2126 of 2022 has been disposed of by observing that an effective alternative remedy is available under Section 156(3) of the Cr.P.C. and/or Section 482 thereof.

The record reflects that the appellants had approached the Writ Court by filing the writ petition with the plea that they had extended certain financial assistance to the private respondents and the necessary documents were executed and post dated cheques were also handed over to them but the private respondents had failed to repay the amount. It is further alleged that the private respondents always had the intention of cheating the appellants. The appellants had lodged a complaint with the respondent no.3 i.e., Commissioner of Police, Lalbazar. Since the appellants were aggrieved with the inaction on the part of the police, therefore they had

filed the WPA 14278 of 2021 which was disposed of by order dated 7th October, 2021 with a direction to the authorities to complete the investigation within a schedule time. The appellants were informed by e-mail dated 29th September, 2021 that no cognizable offence was found by the police authorities. The appellants had approached the Writ Court again by filing present writ petition with the plea that the police authorities had failed, neglected and refused to complete the investigation and they had not taken appropriate steps in connection with the complaint lodged by the appellants. Hence, a prayer was made in the writ petition to take effective steps to investigate into the offences committed by the private respondents and take immediate steps to arrest the private respondents after completing and/or during the investigation process.

Learned Single Judge has taken note of the availability of alternative remedy under the Cr.P.C.

Submission of learned counsel for the appellants is that the concerned authority has not disclosed the reason in the e-mail dated 29th September, 2021 for not finding the cognizable offence as required and in this regard he has placed reliance upon the judgment of the Supreme Court in the matter of Lalita Kumari versus Government of U.P. and others.

Learned counsel for the State has supported the order of the learned Single Judge by submitting that

alternative efficacious remedy is available under the Cr.P.C.

Learned counsel for the private respondents has also submitted that there is no plea in the writ petition for supplying the reason in support of the e-mail dated 29th September, 2021 and no such relief has been claimed and the e-mail dated 29th September, 2021 has not been challenged in the writ petition.

We have heard the learned counsel for the parties. A perusal of the petition clearly reveals that the appellants were dissatisfied with the investigation, therefore, prayer was made in the petition to issue a direction to the police authorities to take effective steps to investigate the offence.

The Hon'ble Supreme Court in the matter of Sakiri Vasu Vs. State of Uttar Pradesh and others, reported in (2008) 2 SCC 409 has settled that if a party is aggrieved with the manner of investigation, then the proper remedy available is to approach the competent Magistrate under Section 156(3) of the Cr.P.C. In the above Judgement Hon'ble Supreme Court in this regard has observed as follows:-

“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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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.

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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.

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24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) CrPC to order registration of a criminal offence and/or to direct the officer

in charge of the police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) CrPC, we are of the opinion that they are implied in the above provision.

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 CrPC. 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, first under Section 154(3) and Section 36 CrPC before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned 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) CrPC or other police officer referred to in Section 36 CrPC. 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) CrPC instead of rushing to the High Court by way of a writ petition or

a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?”

Hence, we are of the opinion that learned Single Judge has not committed any error in taking the view that an effective alternative remedy under Section 156(3) of the Cr.P.C. is available and in that view of the matter has not committed any error in refusing to exercise the jurisdiction under Article 226 of the Constitution.

So far as the issue raised by the learned counsel for the appellants that no reasons have been supplied in the e-mail dated 29th September, 2021, learned counsel for the State has fairly submitted that if the appellants make an application in this regard their prayer will be duly considered by the concerned authority.

Hence, in the above circumstances of the case, we do not find any reason to interfere in the order of the learned Single Judge.

The appeal is accordingly dismissed.

Connected application is also dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)