

CRM-M-53407-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-53407-2023

Date of decision :19.10.2023

SANJAY GAMBIR

... petitioner(s)

Versus

STATE OF PUNJAB & OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Anter Singh Brar, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for the issuance of necessary directions to the official respondents to take legal action on applications dated 04.09.2023 (Annexure P-4), 06.09.2023 (Annexure P-5) and 21.09.2023 (Annexures P-6 & P-7) which had been moved against the private respondents seeking registration of an FIR and for grant of protection.

2. The learned counsel for the petitioner states that all the private respondents had committed a fraud upon the petitioner. The petitioner had raised construction for the respondents but the respondents had not paid a sum of Rs.1.4 crores to him and had forcibly retained his entire machinery and shuttering articles which were required to be recovered and his payment of Rs.1.4 crores was also to be recovered. Therefore, the offence was made out for which an FIR ought to have been registered on the basis of the representations moved by the

petitioner. Reliance is placed on the judgment in the case of **Lalita Kumari Vs. State of UP and others, (SC) 2014(1) SCC (CrL) 524.**

3. I have heard the counsel for the petitioner.

4. The Hon'ble Supreme Court has dealt with the issues of the power to order the registration of an FIR, transfer investigations, to supervise the same and other allied issues in a number of judgments. Some of them are enumerated hereinbelow:-

In **"Sakiri Vasu versus State of U.P. and others, 2008 (1) RCR (Criminal) 392"**, the Hon'ble Supreme Court has held as under:-

"10. It has been held by this Court in CBI & another vs. Rajesh Gandhi and another 1997 Cr.L.J 63 (vide para 8) that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

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 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. 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) Cr.P.C. 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 vs. Smt. Afaq Jahan & Anr. JT 2006(1) SC 10*, this Court observed:

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 investigating 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 complaint 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 vs. State of Delhi 2007(4) RCR (Criminal) 115* (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)

Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C.

14. Section 156 (3) states:

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 Cr.P.C. 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 re-opening of the investigation even after the police submits the final report, vide State of Bihar vs. A.C. Saldanna AIR 1980 SC 326 (para 19).

17. In our opinion Section 156(3) Cr.P.C. 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 F.I.R. 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) Cr.P.C.,

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 to its execution.

19. The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his Statutory Construction (3rd edn. Page 267):-

If these details could not be inserted by implication, the drafting of legislation would be an indeterminable process and the legislative intent would likely be defeated by a most insignificant omission.

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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) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station 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) Cr.P.C., 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 Cr.P.C. 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 Cr.P.C. 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) 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.

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31. No doubt the Magistrate cannot order investigation by the CBI vide CBI vs. State of Rajasthan and another (Supra), but this Court or the High Court has power under Article 136 or Article 226 to order investigation by the CBI. That, however should be done only in some rare and exceptional case, otherwise, the CBI would be flooded with a large number of cases and would find it impossible to properly investigate all of them.

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33. In Secretary, Minor Irrigation & Rural Engineering Services U.P. and others vs. Sahngoo Ram Arya and another 2002 (5) SCC 521 (vide para 6) , this Court observed that although the High Court has power to order a CBI inquiry, that power should only be exercised if the High Court after considering the material on record comes to a conclusion that such material discloses prima facie a case calling for investigation by the CBI or by any other similar agency. A CBI inquiry cannot be ordered as a matter of routine or merely because the party makes some allegation”.

In the judgment of **“D. Venkatasubramaniam and others versus M.K. Mohan Krishnamachari and another 2009(4) RCR (Criminal) 318**, the Hon’ble Supreme Court held as under:-

“1. A short question that arises for our consideration in these appeals is whether it is open to the High Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure to interfere with the statutory power of investigation by police into a cognizable offence? If such a power is available with the Court, what are the parameters for its interference?

2. It is well settled and this Court time and again, reiterated that the police authorities have the statutory right and duty to investigate into a cognizable offence under the scheme of Code of Criminal Procedure (for short ‘the Code’). This Court, on more than one occasion, decried uncalled for interference by the Courts into domain of investigation of crimes by police in discharge of their statutory functions. The principle has been succinctly stated way back in Emperor V. Khwaja Nazir Ahmad, Air 1945 Privy Council 18, and the same has been repeatedly quoted with respect and approval. The Privy Council observed that "just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly, acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the AIR 1945 PC 18 judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry"

3. The Privy Council further observed:

"In India as has been shown there is a statutory right on the part of the police to investigate the

circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491, Criminal P.C. to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then. It has sometimes been thought that Section 561A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code, and that no inherent power had survived the passing of that Act."

(emphasis supplied)

4. In State of West Bengal V. S. N. Basak, (1963) 2 SCR 52, a Division Bench of three Judges of this Court, while referring to the observations of the Privy Council referred to hereinabove, observed:

"With this interpretation, which has been put on the statutory duties and powers of the police and of the powers of the Court, we are in accord."

and it was further held:

"The powers of investigation into cognizable offences are contained in Chapter XIV of the Code. Section 154 which is in that Chapter deals with information in cognizable offences and Section 156 with investigation into such offences and under these sections the police has the statutory right to investigate into the circumstances of any alleged cognizable offence ...and this statutory power of the police to investigate cannot be interfered with by the exercise of power under Section 439 or under the inherent power of the court under Section 561A of Criminal Procedure Code"

This Court, having found that the High Court had exceeded its jurisdiction in interfering with the investigation, interfered with the orders of the High Court by allowing the appeal preferred by the State.

5. In State of Bihar & Anr. V. J.A.C. Saldanha & Ors., (1980) 2 SCR 16, a three Judge Bench, speaking through Desai, J., after referring the precedents including Khwaza Nazir Ahmad, held:

"There is a clear cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department, the superintendence over which vests in the State Government. The executive, which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is

its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This has been recognised way back in King Emperor v. Khwaja Nazir Ahmad [1944] L.R. 71 IA 203.

... ..

This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary."

6. *M.C. Mehta (Taj Corridor Scam) v. Union of India & Ors., 2007(1) RCR (Criminal) 266 : 2007(1) RAJ*

99 : (2007)1 SCC 110 was a public interest litigation in which this Court, after noticing the precedents, held that when a cognizable offence is reported to the police, they may after investigation take action under Section 169 or Section 170 of the Code. If the officer-in-charge of the police station forms an opinion that there is no sufficient evidence against the accused, the officer-in-charge may, under Section 169 of the Code, release the accused from custody or, if the officer forms an opinion that there is sufficient evidence, he may, under Section 170 of the Code, forward the accused to a competent Magistrate. After analyzing the earlier judgments, this Court observed :

...that there is a clear-cut and well-demarcated sphere of activities in the field of crime detection and crime punishment. Investigation of an offence is the field reserved for the executive through the police department, the superintendence over which vests in the State Government. The executive is charged with a duty to keep vigilance over law and order situation. It is obliged to prevent crime. If an offence is committed allegedly, it is the State's duty to investigate into the offence and bring the offender to book. Once it investigates through the police department and finds an offence having been committed, it is its duty to collect evidence for the purposes of proving the offence. Once that is completed, the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 Criminal Procedure Code and his duty comes to an end."

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11. Be it noted, that there is no allegation of dereliction of any duty on the part of the investigating agency.

There is also no allegation of any collusion and deliberate delay on the part of the investigating agency in the matter of investigation into the case that has been promptly registered on the information lodged by the respondent. The petition almost reads like a civil suit for recovery of the money. As noted hereinabove, the petition has been filed within one week of registration of the crime by which time the police had already started serious investigation as is evident from the material available on record. It is also required to notice that none of the appellants have been impleaded as party respondents to the petition filed under section 482 of the Code. The State represented by its Sub Inspector of Police, Central Crime Branch, Egmore, Chennai alone was impleaded as the respondent. The investigating agency in its counter filed in the High Court stated that after obtaining necessary legal opinion, a case was registered and 'commenced the investigation'. It is also stated in categorical terms that the police had "inquired all the connected witnesses, recorded their statements and also collected the material documents and confirmed commission of cognizable offences by all the accused". The High Court, within a period of one month from the date of filing of the petition, finally disposed of the same observing that "it is obligatory on the part of the respondent police to conduct investigation in accordance with law, including recording of statements from witnesses, arrest, seizure of property, perusal of various documents, filing of charge sheet. It is also needless to state that if any account is available with the accused persons, or any amount is in their possession and any account is maintained in Natinoalised Bank, it is obligatory on the part of the

respondent police to take all necessary steps to safeguard the interest of the aggrieved persons in this case." The Court accordingly directed the police to expedite and complete the investigation within six months from the date of receipt of a copy of the order. The said order of the High Court is impugned in these appeals.

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14. The question that arises for our consideration is whether the contents of the petition submitted by the respondent reveal any cause for issuing directions guiding the Investigating Officer in the matter of exercise of statutory power and duty to investigate into crime that had already been registered and investigation was actually in progress? Whether such a direction could have been issued by the High Court in exercise of its jurisdiction under section 482 of the Code ?

15. It is too fairly well settled and needs no restatement at our hands that the saving of the High Court's inherent power is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. It is unfortunate that it is the exercise of the inherent power by the High Court in this case that had ultimately resulted in harassment of the appellants as is evident from the subsequent events. Pursuant to the impugned order, the investigating authorities have approached the appellant No. 1 (in S.L.P (Crl) No. 3269 of 2007), took him into custody and exhibited him on television channel. The police have demanded to pay an amount of Rs. 2,28,00,000/- and threatened that he would be arrested if he fails to comply with their demand. Accordingly, the appellants

have paid Rs. 10 lakhs in cash in the police station itself and issued a cheque for an amount of Rs. 2.18 cores drawn on Tamil Nadu Mercantile Bank. However, the cheque was not encashed on account of the instructions to the bank to stop the payment in view of the interim order dated 4th May, 2007 of this Court. The police offered explanation stating that the matter was settled voluntarily between the parties and therefore, the accused were not arrested and remanded to custody. It is difficult to buy this idea that there was a settlement between the parties in the police station. It is not difficult to discern as to how and under what circumstances the appellants may have agreed to pay the amounts and also issued a cheque. It is not known as to how and under what authority the police could intervene and settle any disputes between the parties. It is needless to observe that the police have no such authority or duty of settling disputes.

16. It is the statutory obligation and duty of the police to investigate into the crime and the Courts normally ought not to interfere and guide the investigating agency as to in what manner the investigation has to proceed. In M.C. Abraham & Anr. V. State of Maharashtra & Ors. 2003(1) Rcr (Criminal) 452 : (2003) 2 SCC 649, this Court observed:

"Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable

offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the court has no role to play. Since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. Obviously, the power has to be exercised with caution and circumspection."

17. It is further observed:

"The principle, therefore, is well settled that it is for the investigating agency to submit a report to the Magistrate after full and complete investigation. The investigating agency may submit a report finding the allegations substantiated. It is also open to the investigating agency to submit a report finding no material to support the allegations made in the first information report. It is open to the Magistrate concerned to accept the report or to order further enquiry. But what is clear is that the Magistrate cannot direct the investigating agency to submit a

report that is in accord with his views. Even in a case where a report is submitted by the investigating agency finding that no case is made out for prosecution, it is open to the Magistrate to disagree with the report and to take cognizance, but what he cannot do is to direct the investigating agency to submit a report to the effect that the allegations have been supported by the material collected during the course of investigation."

18. This Court while observing that it was not appropriate for the High Court to issue a direction that the case should not only be investigated but a charge sheet must be submitted, held:

"In our view the High Court exceeded its jurisdiction in making this direction which deserves to be set aside. While it is open to the High Court, in appropriate cases, to give directions for prompt investigation etc. the High Court cannot direct the investigating agency to submit a report that is in accord with its views as that would amount to unwarranted interference with the investigation of the case by inhibiting the exercise of statutory power by the investigating agency."

(emphasis is of ours)

19. It is worthwhile to notice that the directions in the said case were issued by the High Court of Bombay in writ petition filed in public interest in which a grievance has been made that though the Provident Fund Commissioner has lodged a complaint against several Directors, the investigation has made no progress on account of the fact that the Directors were Government servants and enjoying considerable influence. The High Court issued series of directions which were

challenged in this Court contending that the High Court was in error in exercising jurisdiction under Article 226 of the Constitution resulting in unjustified interference of the investigation of the case. It is, therefore, clear that if the High Court, in exercise of its power under Article 226 of the Constitution of India, cannot direct the investigating agency to investigate the case in accord with its views as that would amount to unwarranted interference, equally no such directions could be issued in exercise of inherent jurisdiction under Section 482 of the Code.

20. Tested in the light of the principles aforesaid, the impugned order, in our considered opinion, must be held to be an order passed overstepping the limits of judicial interference. It was observed by this Court on more than one occasion, that even in Public Interest Litigation proceedings, appropriate directions may be issued and the purpose in issuing such directions is essentially to ensure performance of statutory duty by the investigating agency. The duty of the Court in such proceedings is to ensure that the agencies do their duties in compliance with law. The inherent power of the High Court is saved to interfere with the proceedings pending before a Criminal Court if such interference is required to secure the ends of justice or where the continuance of the proceedings before a Court amounts to abuse of the process of Court. Such a power under Section 482 of the Code is always available to the High Court in relation to a matter pending before a criminal Court.

21. The High Court, in the instant case, did not even advert to the relevant facts. As stated in the order itself, it was more guided by the arguments made across the Bar that the police has not taken any steps to arrest the persons and seize the amounts involved in this case from the appellants though there is no such factual foundation as such laid in the petition. It has altogether ignored the counter filed by

the police that the police had already examined ten witnesses within a short span of time after the registration of crime and recorded their statements. The High Court, without recording any reason whatsoever, directed the police that it is obligatory on their part to record statements from witnesses, arrest, seizure of property and filing of charge sheet. It is difficult to discern as to how such directions resulting in far reaching consequences could have been issued by the High Court in exercise of its jurisdiction under Section 482 of the Code. The High Court interfered with the investigation of crime which is within the exclusive domain of the police by virtually directing the police to investigate the case from a particular angle and take certain steps which the police depending upon the evidence collected and host of other circumstances may or may not have attempted to take any such steps in its discretion. It is not necessary that every investigation should result in arrest, seizure of the property and ultimately in filing of the charge sheet. The police, in exercise of its statutory power coupled with duty, upon investigation of a case, may find that a case is made out requiring it to file charge sheet or may find that no case as such is made out. It needs no reiteration that the jurisdiction under Section 482 of the Code conferred on the High Court has to be exercised sparingly, carefully and with caution only where such exercise is justified by the test laid down in the provision itself.”

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23. The High Court in the present case, without realising the consequences, issued directions in a casual and mechanical manner without hearing the appellants. The impugned order is a nullity and liable to be set aside only on that score.

24. We are not impressed by the submission made by the learned counsel for the respondent that the High Court did not issue any directions but merely disposed of the petition with the observations

reminding the police of its duty. The question that arises for consideration is whether there was any occasion or necessity to make those "observations" even if they are to be considered to be observations and not any directions. It is not even remotely suggested that there was any deliberate inaction or failure in the matter of discharge of duties by the police. There was no allegation of any subversion of processes of law facilitating the accused to go scot-free nor there is any finding as such recorded by the High Court in its order. The power under Section 482 of the Code can be exercised by the High Court either suo motu or on an application (i) to secure the ends of justice; (ii) the High Court may make such orders as may be necessary to give effect to any order under the Code; (iii) to prevent abuse of the process of any Court. There is no other ground on which the High Court may exercise its inherent power. In the present case, the High Court did not record any reasons whatsoever why and for what reasons, the matter required its interference. The High Court is not expected to make any casual observations without having any regard to the possible consequences that may ensue from such observations. Observations coming from the higher Courts may have their own effect of influencing the course of events and process of law. For that reason, no uncalled for observations are to be made while disposing of the matters and that too without hearing the persons likely to be affected. The case on hand is itself a classic illustration as to how such observations could result in drastic and consequences of far reaching in nature. We wish to say no more.

In “M. Subramaniam and another versus S. Janaki and another, 2020(2) RCR (Criminal) 788”, the Hon’ble Supreme Court held 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 1 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.”

6. The said ratio has been followed in Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and Otherssm, in which it is observed.

“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.

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.”

5. A perusal of the aforementioned judgments would clearly establish that while it is open to the High Court in appropriate cases to give directions for the registration of an FIR and for prompt and proper investigation under Section 482 Cr.P.C., the Court should ordinarily not

issue directions to the investigating agency to either register an FIR or submit a final report within a particular time frame for which an appropriate application under Section 156(3) Cr.P.C. can be filed before the Magistrate. Further, the High Court cannot direct the investigating agency to submit a report that is in accordance with its view as that would amount to unwarranted interference with the investigation. The contours of the investigation can also not be delineated by a Court and no order for filing of a chargesheet or arrest of an accused can be issued. Further, issuance of directions for an investigation to be conducted by the CBI should be in rare and exceptional cases so as not to unnecessarily burden the premier investigating agency with routine matters unless there are grave allegations against senior officers of the State administration or in cases having inter-state ramifications etc., of course these situations being merely illustrative and not exhaustive.

6. So far the judgment of the Hon'ble Supreme Court in the case of *Lalita Kumari Vs. State of UP and others, (SC) 2014(1) SCC (Crl.) 524* is concerned, the said judgment does not hold that the only efficacious remedy available to the complainant in case the Investigating Agency does not register an FIR is by way of an appropriate petition under Section 482 Cr.P.C. Therefore, as has already been mentioned hereinabove, in case the petitioner is aggrieved by the non-registration of an FIR, he is at liberty to approach the Illaqa Magistrate of competent jurisdiction seeking the registration of an FIR on the basis of the allegations levelled in the applications (Annexures P-4 to P-7).

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7. Therefore, I deem it appropriate to dispose of the present petition with the liberty to the petitioner to avail his alternative remedies in accordance with law including but not limited to the moving of an application under Section 156(3) Cr.P.C. seeking registration of an FIR, if so advised.

(JASJIT SINGH BEDI)
JUDGE

19.10.2023
JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No