



CRM-M-23098-2024 (O&M)

-1-

**(116) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-23098-2024 (O&M)
Date of decision : 09.05.2024**

ANGREJ SINGH**... Petitioner****Versus****STATE OF PUNJAB & OTHERS****...Respondents****CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Dr. Rau P.S. Girwar, Advocate with
Ms. Archana Arora, Advocate
for the petitioner.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for registration of an FIR based on the complaints of the petitioner (Annexures P-1 to P-5) and to conduct a fair investigation in accordance with law.

2. The learned counsel for the petitioner contends that on 11.07.2022 an occurrence took place wherein the accused persons had attacked the house of the petitioner and had threatened to kill him. Various complaints were submitted by the petitioner on 12.07.2022, 31.08.2022, 06.02.2023, 27.03.2023 and 03.04.2023 seeking the registration of an FIR. However, despite a cognizable offence having been made out, no FIR has been registered till date. He, therefore, contends that appropriate directions be issued for registration of the FIR and a fair investigation be conducted in accordance with law. Reliance is



placed on the judgment of the Hon'ble Supreme Court in the case of **Lalita Kumari Versus Govt. of UP & others, 2013(4) R.C.R. (Criminal) 979.**

3. I have heard the learned 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

XXXX XXXX XXXX

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.

XXXX

XXXXX

XXXX

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.

XXXX

XXXX

XXXX

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 ***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 Others](#), 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.”

(emphasis supplied)

5. A perusal of the aforementioned judgments would show that while it was open in an appropriate cases to give directions for the registration of an FIR, ordinarily, it was the job of the Illaqa Magistrate on an application being moved under Section 156(3) Cr.P.C. to order the registration of an FIR.

6. Coming back to the facts of the instant case, firstly, the various complaints made are cryptic to say the least. Be that as it may, the judgment of the Hon'ble Supreme Court in the case of **Lalita Kumari** (supra) does not hold that in case an FIR is not registered the only remedy available is of filing of a petition under Section 482 Cr.P.C. Therefore, it is well within the rights of the petitioner to move an appropriate application under Section 156(3) Cr.P.C. seeking the relief sought here by relying on the judgment in **Lalita Kumari** (supra).

7. Therefore, I deem it appropriate to dispose of the present petition with the liberty to the petitioner to avail his alternative remedies



CRM-M-23098-2024 (O&M)

-14-

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

09.05.2024
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No