



2024:DHC:10013



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****RESERVED ON – 26.11.2024**

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PRONOUNCED ON – 23.12.2024

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W.P.(CRL) 703/2022

WASIM KHAN

.....Petitioner

Through: Mr. Abhimanyu Bhandari, Senior
Advocate with Ms. Nattasha Garg,
Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Anurag Ahluwalia, CGSC for
UOI
Mr. Sanjeev Bhandari, ASC for the
State with Ms. Charu Sharma, Adv.
Insp. Aditya Malik, SI Sachin
Panwar, PS Fatehpur Beri
Mr. Amit Chadha, Adv. for R-4 to 6**CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA,J :**

1. The present petition has been filed under Article 226 read with Article 21 of the Constitution of India read with section 97 of Cr.P.C. by the petitioner for issuance of directions to the Commissioner of Police, New Delhi to investigate the Complaint filed by the petitioner and register an FIR against SI Satender Guliya, HC Jitender and CT Praveen under relevant sections for illegally detaining and attacking the



petitioner by taking him into illegal custody on the night of 17.05.2021 at Fatehpur Beri Police Station and to inform the petitioner about the action taken against the alleged police personnel on the findings of Vigilance Enquiry Report No. 70/P.SEC/DCP/VIG.

2. Briefly stating facts of the case are that on 17.05.2021 at about 10:00 PM, a PCR Call was received at PS Fatehpur Beri regarding firing and talwarbazi at Village Chandola Holla, which was entrusted to SI Nitin for further necessary action. SI Nitin, SI Satyender Gulia and HC Jitender along with other Police officials rushed to Chandan Holla Village and during enquiry, no such incident of firing or talwarbaazi was found at the spot. During further course of the enquiry, it was revealed that persons namely Ajbuldin S/o Hakim Ali, and Saif Khan S/o Hakim Ali were arguing and abusing each other in an intoxicated state. Apart from that, they were also arguing and abusing other people present at the spot, who were identified as (1) Ahmad Ali S/o Suleman Khan, (2) Kashim Khan S/o Ashe Ahmed and (3) Razia W/o Kashim Khan. Hence, legal action U/s 107/151 Cr.P.C. was taken against Ajbuldin and Saif Khan and they were arrested as per procedure.
3. During the enquiry, it was revealed that the said false PCR call was made by the petitioner herein. Hence, he was contacted and brought to the Police station for further queries regarding the said PCR call, where the petitioner was asked about the reason for making the false PCR Call of firing and Talwarbaazi, but he did not have any plausible answer for the same. After enquiry, SI Lala Ram freed petitioner and handed him over to his maternal uncle, Akbar Ali, in absolutely fit condition. After that, Wasim Khan was roaming in the PS Premises



freely for quite long without any difficulty and then he went out from the PS premises at around 02:22 AM on 18.05.2021 in fit condition. A case vide FIR No. 250/2021, dated 18.05.2021 was registered U/s 160 IPC at PS Fatehpur Beri against (1) Ajbuldin S/o Hakim Ali, (2) Saif Khan S/o Hakim Ali, (3) Nasima W/o Saif Khan, (4) Ahmad Ali S/o Suleman Khan, (5) Kashim Khan S/o Ashe Ahmed & (6) Razia W/o Kashim Khan.

4. Sh. Abhimanyu Bhandari, learned senior counsel for the petitioner submitted that after recording the statement of the petitioner regarding the incident, the Petitioner was not allowed to go home but was instead taken into illegal custody by Respondent No.4. It was further submitted that Respondent No.4 to 6 started mercilessly beating the Petitioner with at his, and also hurled fist bowls and kicks on him and further the Petitioner was also subject to verbal abuse.
5. Learned senior counsel further submitted that after mercilessly beating the Petitioner for a few hours, the police released the Petitioner from their illegal custody at about 2:30 AM on 18.05.2021. It was submitted that on reaching home, the Petitioner felt immense pain and faced great difficulty in moving his body. Petitioner visited a doctor on 20.05.2021, where he was informed that he had a fracture in the lower back. On the advice of the doctor on duty, the Petitioner got an MLC bearing MLC No. 11576/21 dated 20.05.2021 from the Indian Spinal Injury Hospital, Vasant Kunj, New Delhi. Learned senior counsel also submitted that the Petitioner also got his X-ray done from Mahajan Imaging, Hauz Khas Enclave, New Delhi, further confirming the fracture in the Petitioner's spine.



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6. Learned senior counsel submitted that the Petitioner, on 20.05.2021, filed a complaint against the Respondent Nos. 4 to 6 for the custodial torture inflicted on him before the Police Station Vasant Kunj, South bearing Complaint No. 0081710632100793 and also gave a written complaint to the Police Station Fatehpur Beri, but the officers refused to take the Complaint and told him to file Complaint through the online CCTNS Portal. Thereafter, Petitioner registered his Complaint bearing No.8167012072100018 on the CCTNS Portal.
7. Being aggrieved by the entire incident, the Petitioner also filed a complaint dated 24.05.2021 before the Commissioner of Police, Delhi Police Headquarters ("Respondent No.2") and a Complaint before the Special Commissioner of Police (Vigilance), Delhi Police, dated 24.05.2021 with a request to take immediate and appropriate actions against the Respondent Nos. 4 to 6 for confining the Petitioner in illegal detention and inflicting custodial torture while in illegal detention.
8. Learned senior counsel submitted that the Petitioner also wrote an SMS to Respondent No.2 on 04.06.2021 at 08:33 pm requesting him to preserve the footage of CCTV installed at the police station for the period of 17.05.2021 to 18.05.2021 pending investigation in said matter, to ascertain the facts and veracity of the case. However, there has been no response or action taken on the said request to date.
9. It was further submitted that the Vigilance Team vide Letter dated 10.06.2021 at 12pm without any prior notice informed the Petitioner that he was required to be present before a Forensic Expert at AIIMS at 2 pm for examination of his injury on the same day, i.e. 10.06.2021.



10. Learned senior counsel also submitted that pursuant to the Petitioner's complaint to the Vigilance Department dated 24.05.2021, an enquiry was conducted by the ACP-Vigilance resulting in Report No. 70/P.SEC/DCP/VJG dated 02.08.2022. Despite the said report conclusively proving the allegations against Respondent Nos. 4 to 6 as detailed in the complaint made to the Special Commissioner of Police (Vigilance), Delhi Police, no action appears to have been initiated against the said Respondents, nor have any effective steps been taken till date.
11. It was further submitted that the Petitioner filed RTI applications - first vide Registration No. DEOPL/R/E/21/04496 seeking the status of the complaint dated 20.05.2021, and subsequently another application bearing ID-132/221671 dated 03.02.2022 with PIO-Vigilance regarding the complaint dated 24.05.2022. In response, vide reply dated 28.02.2022, the PIO-Vigilance provided the Vigilance Enquiry Report No. 70/P.SEC/DCP/VJG dated 02.08.2021 wherein the ACP-Vigilance had concluded that allegations against Respondent Nos. 4-6 stood "clearly proved" specifically noting their pleas could not be entertained in light of the medical board's expert opinion and witness statements. Despite these findings and numerous representations, no action has been taken against the culprits who violated the Petitioner's fundamental rights and caused grievous injuries.
12. Sh. Sanjeev Bhandari, learned ASC submitted that in the present case, the alleged offence, whether it was committed in the police station or not, is not clear, which is fortified by seeing the CCTV footage that the petitioner was walking normally while leaving the police station. It is



further submitted that as per medical jurisprudence, a person with a lower back/pelvic injury/spinal fracture, especially a severe one as alleged by the petitioner, cannot walk normally as the pelvis is most crucial for supporting body weight/movement, and any type of damage would largely restrict walking moment, but, from the CCTV coverage, he walked normally while going out from police station.

13. Learned ASC submitted that the CCTV shows the petitioner in good health while leaving the station, contradicting his claims of being beaten and this evidence was not considered in the preliminary enquiry.
14. Learned ASC submitted that vide Enquiry No. 70/P.SEC/DCPNIG, a vigilance enquiry was ordered by DCP/Vigilance on Petitioner's complaint and thereafter the enquiry was entrusted to ACP Rajesh Bamania and based on the findings of the Vigilance Enquiry, a regular joint departmental enquiry was initiated against the police personnel (SI Satender Guliya, HC Jitender, and CT Praveen).
15. Learned ASC submitted that thereafter an exhaustive departmental enquiry was conducted under the supervision of the ACP, Defence Colony. This enquiry included detailed examination and cross-examination of witnesses, as well as evaluation of electronic and medical evidence. Based on this detailed inquiry, the ACP concluded that the evidence does not support the claims of the petitioner, and only then the police personnel were exonerated.
16. Lastly, the learned ASC submitted that all contentions raised by the petitioner have already been thoroughly examined through a detailed inquiry. Therefore, no further directions are warranted in this matter. In the event the petitioner remains dissatisfied with the outcome, he is at



liberty to seek appropriate legal recourse by filing a complaint before the learned Magistrate.

17. Sh. Amit Chadha, learned counsel for respondent no 4 to 6 submitted that the Vigilance Branch/PHQ conducted a fact-finding Preliminary Enquiry which was conducted by ACP/ Vigilance Shri Rajesh Bamanian. The then ACP concluded the Enquiry stating that the allegations made in the complaint against all the alleged police officials are proved were entirely and solely based on the alleged Medical history stated in the MLC made by the Indian Spinal Injury Center, expert opinion by medical board and statement of complainant/victim but no such direction for any legal action was directed to be passed by the then concerned ACP.
18. It was further submitted that the then ACP while conducting the Preliminary Enquiry did not appreciate and consider the fact that the complainant got conducted his medical examination after 65 hours i.e., on 20/05/2021, while the alleged act was of 18.05.2021. It is also submitted that the CCTV footage which is/was a crucial piece of evidence and establishes the falsity of the petitioner, as he is seen walking out of the Police station in an absolute fit, healthy and sound condition. This fact has not been dealt in and considered by the then ACP. It is also submitted that consequent to the outcome of the Preliminary Enquiry by Vigilance/PHO, a regular joint Departmental Enquiry was directed to be initiated against all the alleged police officials vide order no. 2003/HAP/SD, dated- 25/02/2022.
19. Learned counsel further submitted that the joint Departmental Enquiry was held under the aegis of the Worthy ACP, Defence Colony, which



was much more exhaustive and a detailed enquiry, as compared to the Preliminary Vigilance Enquiry, as detailed examination and cross-examination of the witnesses were conducted, Independent witnesses were examined, electronic evidence & medical evidences brought on record were also evaluated and considered during the enquiry by the then Enquiry officer. It was submitted that the detailed Departmental Enquiry exonerated Respondent Nos. 4 to 6.

20. Additionally, it was also submitted that immediately following the alleged incident, the DCP had shared a video on his official Twitter Handle stating: “Allegations of the beating of a complainant in P.S Fatehpur Beri by police personnel is being enquired into by vigilance branch of South District. Preliminary Enquiry has disclosed that the complainant left the Police Station in a normal and apparently healthy condition.”
21. After careful consideration of the rival submissions and examination of the material on record, this Court finds that two separate inquiries have been conducted in this matter - first, a Preliminary Enquiry by the Vigilance Branch, and subsequently, a detailed Departmental Enquiry under the aegis of ACP, Defence Colony. While the Preliminary Enquiry found the allegations proved based primarily on medical evidence and victim statements, the subsequent Departmental Enquiry, which was more comprehensive in nature involving detailed examination of witnesses and evaluation of all evidence including CCTV footage, has exonerated the respondent officials.
22. The scope of jurisdiction of the High Court under Article 226 is well settled. Article 226 of the Constitution of India grants High Courts the



power to issue writs, orders, or directions for the enforcement of fundamental rights and for any other purpose. However, this jurisdiction is discretionary and extraordinary, intended to address violations of rights or substantial legal errors where no adequate alternate remedy is available. The Constitutional Courts have consistently held that the powers under Article 226 are not meant to bypass statutory remedies provided under other laws. Further, if a statutory remedy exists, courts generally refrain from exercising jurisdiction under Article 226 unless there are exceptional circumstances, such as a breach of fundamental rights, lack of jurisdiction by the statutory authority, or cases involving manifest injustice. The High Court does not engage in fact-finding or substitute its view for the statutory mechanism prescribed under law.

23. Furthermore, the writ jurisdiction under Article 226 of the Constitution cannot be exercised to conduct a roving inquiry into disputed questions of fact, i.e., particularly when detailed departmental proceedings have already been conducted. The exercise of writ jurisdiction in such a scenario is restricted as the allegations made by the petitioner, while serious, do not show a situation where the petitioner is left without any remedy under the law. Adequate mechanisms exist under the Cr.P.C. for investigation and redressal.
24. In **M. Subramaniam and Another v. S. Janaki and Another**, (2020) 16 SCC 728, the apex court inter-alia held as under:

“ 6. 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 U.P. [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440] 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.

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13. The same view was taken by this Court in Dilawar Singh v. State (NCT of Delhi) (2007) 12 SCC 641. 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 [State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554].

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.”

The apex court in the above case inter-alia has categorically held that



statutory remedies under the Cr.P.C., such as filing a private complaint under Section 200 Cr.P.C. or seeking directions for investigation under Section 156(3) Cr.P.C., must be exhausted before invoking the extraordinary writ jurisdiction under Article 226 of the Constitution. This principle is squarely applicable to the present case. The inquiries conducted so far, including the preliminary vigilance inquiry and the departmental inquiry, have sufficiently addressed the facts of the case. Additionally, the petitioner has an alternate remedy under Section 200 Cr.P.C., which provides an effective legal mechanism to file a private complaint before the magistrate.

25. In **Aleque Padamseev. Union of India** (2007) 6 SCC 171, the apex court inter-alia held as under:

“7. Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if the police does not do it. As was held in All India Institute of Medical Sciences case [(1996) 11 SCC 582] and reiterated in Gangadhar case [2005 SCC (Cri) 404] the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in All India Institute of Medical Sciences case [(1996) 11 SCC 582] , Gangadhar case [(2004) 7 SCC 768] , Hari Singh case [(2006) 5 SCC 733] , Minu Kumari case [(2006) 4 SCC 359] and Ramesh Kumari case [(2006) 2 SCC 677] , we find that the view expressed in Ramesh Kumari case [(2006) 2 SCC 677] related to the action required to be taken by the police when any cognizable offence is brought to its notice. In Ramesh Kumari case [(2006) 2 SCC 677] the basic issue did not relate to the methodology to be adopted which was expressly dealt with in All India Institute of Medical Sciences case [(1996) 11 SCC 582], Gangadhar



case [(2004) 7 SCC 768], Minu Kumari case [(2006) 4 SCC 359] and Hari Singh case [(2006) 5 SCC 733]. The view expressed in Ramesh Kumari case [(2006) 2 SCC 677] was reiterated in Lallan Chaudhary v. State of Bihar [(2006) 12 SCC 229]. The course available, when the police does not carry out the statutory requirements under Section 154 was directly in issue in All India Institute of Medical Sciences case [(1996) 11 SCC 582], Gangadhar case [(2004) 7 SCC 768], Hari Singh case [(2006) 5 SCC 733] and Minu Kumari case [(2006) 4 SCC 359]. The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to their notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Section 190 read with Section 200 of the Code. It appears that in the present case initially the case was tagged by order dated 24-2-2003 with WP (C) No. 530 of 2002 and WP (C) No. 221 of 2002. Subsequently, these writ petitions were delinked from the aforesaid writ petitions.”

In the above case, the apex Court *inter-alia* held that factual disputes involving inquiries and investigations are better resolved through statutory mechanisms rather than writ petitions. If any person is aggrieved by the inaction of the police officials in registering the FIR, the modalities contained in section 190 read with section 200 of the Cr.P.C. are to be adopted first.

26. In **Sakiri Vasu v. State of Uttar Pradesh**, (2008) 2 SCC 409, the Apex Court *inter-alia* held that if an aggrieved person has a grievance about non-registration of an FIR or improper investigation, they should ordinarily avail of the alternate remedies available under the Cr.P.C., such as filing a private complaint under Section 200 before a Magistrate. The Court emphasized that the High Court’s writ jurisdiction under Article 226 should not be invoked as a substitute for these remedies unless there are exceptional circumstances.



27. In the present case, the petitioner has an alternate remedy under Section 200 of the Code of Criminal Procedure, which empowers a Magistrate to take cognizance of an offence based on a private complaint. The petitioner alleges custodial torture and illegal detention by police officials. Under Section 200 Cr.P.C., the petitioner can file a private complaint before the Magistrate, who has the authority to take cognizance of the offence and record the petitioner's statement and that of witnesses, if necessary and further order an inquiry under Section 202 Cr.P.C. or direct the police to investigate under Section 156(3) Cr.P.C.. This process provides the petitioner with an effective legal remedy to ensure a fair and independent inquiry into the allegations while addressing any grievances about police inaction.
28. Given that a comprehensive departmental inquiry has already been conducted, and considering the availability of an alternate remedy, this Court is not inclined to exercise its extraordinary jurisdiction under Article 226 in the present matter. The writ petition is accordingly dismissed, with liberty to the petitioner to adopt remedy under the modalities contained in section 190 read with section 200 of the Cr.P.C. and approach the concerned Magistrate. However, this Court has not delved deep into the merits of the case and all the contentions of the petitioner have been left open to be agitated before the competent Court of jurisdiction. No order as to costs.

DINESH KUMAR SHARMA, J

DECEMBER 23, 2024

Pallavi/HT