
(2019) 10 CHH CK 0056

Chhattisgarh High Court

Case No: Writ Petition (Cr.) No. 1035 Of 2019

Bharat Bajaj

APPELLANT

Vs

District Magistrate And Ors

RESPONDENT

Date of Decision: Oct. 15, 2019

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 36, 154, 154(1), 154(3), 156(3), 190, 200, 202, 482
- Indian Penal Code, 1860 - Section 466, 468, 471
- High Court Of Chhattisgarh Rules, 2007 - Rule 32(2)(i)
- Constitution Of India, 1950 - Article 226

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Vipin Punjabi, Mateen Siddiqui

Judgement

Sanjay K. Agrawal, J

1. The petitioner herein seeks a direction for registration of FIR for offence punishable under Sections 466, 468 and 471 of the IPC against one Swati

Singh and other persons stating that they have committed cognizable offence as stated above and despite complaint to the respondents they are not

taking action, therefore, appropriate direction / writ in the nature of mandamus be issued directing the respondents to perform their duties under the

provisions of Section 202 of the CrPC and register FIR for the aforesaid offences against the aforesaid persons and carry-on investigation thereupon.

2. Mr. Vipin Punjabi, learned counsel for the petitioner, would submit that the complaint filed by the petitioner clearly and prima facie discloses the

commission of cognizable offence, therefore, as per the decision laid down by Their Lordships of the Supreme Court in the matter of Lalita Kumari v.

Government of U.P. (2014) 2 SCC 1, it was imperative for the respondents to register FIR, but, as they have declined, appropriate writ or direction be issued for registration of FIR.

3. Mr. Mateen Siddiqui, learned State counsel, would submit that if the petitioner is not satisfied with the action of the police authorities in not taking cognizance of the alleged offence, he has remedy to submit application under Section 156(3) of the CrPC before the Judicial Magistrate or to file complaint before the jurisdictional criminal Court under Section 200 of the CrPC, as such, the writ petition is not maintainable. He would further submit that there is a matrimonial dispute between the parties and on the basis of that, no direction can be given for registration of FIR against Swati Singh and others.

4. I have heard learned counsel for the parties, considered the rival submissions made herein-above and gone through the record with utmost circumspection.

5. The question for consideration would be, whether a writ of mandamus should be issued under Article 226 of the Constitution of India directing the jurisdictional police to register an offence under Section 154(1) of the CrPC in a petition filed stating that despite informing the police about the commission of cognizable offences, FIR is not being registered against the concerned persons?

6. At this stage, it is appropriate to notice the judgment forcefully relied upon by the learned counsel for the petitioner i.e. Lalita Kumari (supra) in which the Supreme Court has held that registration of FIR is the mandatory duty of the police and held as under: -

120. In view of the aforesaid discussion, we hold:

120.1 Registration of FIR is mandatory under section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2 If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be

conducted only to ascertain whether cognizable offence is disclosed or not.

120.3 If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4 The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5 The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6 As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

7. However, in the matter of *Aleque Padamsee and others v. Union of India and others* (2007) 6 SCC 171, the question was, whether it is within the

powers of the Court to issue a writ directing the police to register an FIR? In that case, Their Lordships of the Supreme Court have held that in

case the police fails to register an FIR, the modalities set out under Section 190 read with Section 200 of the CrPC are to be adopted and observed.

8. Likewise, in the matter of Sakiri Vasu v. State of U.P. Â (2008) 2 SCC 409, the Supreme Court has categorically held that if a person is aggrieved that his FIR has not been registered by the police or having been registered, proper investigation is not done, the remedy available to the aggrieved person lies to approach the Judicial Magistrate under Section 156(3) of the CrPC, and observed as under: -

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, Criminal Procedure Code. 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, Criminal Procedure Code 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), Criminal Procedure Code or other police officer referred to in section 36, Criminal Procedure Code. 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), Criminal Procedure Code instead of rushing to the High Court by way of a writ petition or a petition under section 482, Criminal Procedure Code.

Moreover he has a further remedy of filing a criminal complaint under section 200, Criminal Procedure Code. Why then should writ petitions or section 482 petitions be entertained when there are so many alternative remedies?

9. The principle of law laid down in Sakiri Vasu (supra) was followed Â Â with approval by Their Lordships of the Supreme Court in the matter of Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and others (2016) 6 SCC 277 in which it was held as under: -

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.

10. This Court considering the decisions rendered in *Sakiri Vasu* (supra) and *Aleque Padamsee* (supra), in W.P.(Cr.)No.136/2017 (*R.K. Pandey v.*

State of Chhattisgarh and others), decided on 19-4- 2017, held as under: -

(8) Thus, the petitioner has the efficacious statutory alternative remedy of approaching first before the Superintendent of Police under Section 154(3)

of the CrPC or other officer mentioned in Section 36 of the CrPC.

Despite approaching the Superintendent of Police or other officer as mentioned in Section 36 of the CrPC, the petitioner is entitled to make an

application to the Magistrate under Section 156(3) of the CrPC and also has a further remedy of filing complaint under Section 200 of the CrPC. The

Supreme Court in like situation has deprecated the practice of directly entertaining writ petition or petition under Section 482 of the CrPC by this Court

and emphasized that the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation in *Sakiri Vasu* (supra),

and followed by this Court also in above-stated case.

(9) In view of the above, the petitioner has not properly approached the above stated forums as rendered in Sakiri Vasu (supra). I do not find any case

of issuance of a writ to the police authorities to register FIR on the report made by the petitioner and the writ petition is liable to be dismissed and it is

accordingly dismissed in limine but without imposition of cost(s). However, the petitioner shall be at liberty to avail other appropriate remedies, in

accordance with law for registration of FIR is concerned as indicated by the Supreme Court in Sakiri Vasu (supra) and also at liberty to bring to the

notice of said authorities the decision rendered by the Supreme Court in Lalita Kumari (supra).

11. The order of this Court in R.K. Pandey (supra) was assailed before this Court in W.A.No.231/2017 (R.K. Pandey v. State of Chhattisgarh and

others) in which the Division Bench of this Court considered the matter and dismissed the appeal by observing as under: -

5. While Lalita Kumari v. Government of Uttar Pradesh & Others, (2014) 2 SCC 1 is authority for the position that the police officers have statutory

duty to act upon the complaint in the manner delineated therein, the fact of the matter remains that the learned Single Judge, has through the impugned

order, only refused to entertain the writ petition noticing that the Petitioner has adequate efficacious alternative statutory remedy in view of Sections

156(3) and 200 of the CrPC, for which, the proposition that there can be no dispute for the precedents in Sakiri Basu (supra) and Aleque Padamsee

(supra). Hence, we do not find our way to hold that the exercise of discretionary jurisdiction by the learned Single Judge can be faulted to any ground

to place this intra-Court appeal to the Division Bench in proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006.

Hence, this appeal fails.

12. Apart from this, a Division Bench of the M.P. High Court in the matter of Shweta Bhadoria v. State of M.P. and others 2017 (I) MPJR 247 has

held that if FIR is not registered on the basis of complaint which discloses a cognizable offence, remedy available to the aggrieved person is to take

recourse to the provisions under Sections 154(3), 156(3), 190 and 200 of the CrPC, and observed as under: -

6. Before parting the conclusion arrived at based on the above discussion and analysis is delineated below for ready reference and convenience :-

(1) Writ of mandamus to compel the police to perform its statutory duty u/s 154 Cr.P.C. can be denied to the informant/victim for non-availing of

alternative remedy u/Ss. 154(3), 156 (3), 190 and 200 Cr.P.C., unless the four exceptions enumerated in decision of Apex Court in the case of

Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 1, come to rescue of the informant/victim.

(2) The verdict of Apex Court in the case of Lalita Kumari v. Government of U.P. & Ors. reported in (2014) 2 SCC 1 does not pertain to issue of

entitlement to writ of mandamus for compelling the police to perform statutory duty under Section 154 Cr.P.C. without availing alternative remedy

under Sections 154(3), 156(3), 190 and 200 Cr.P.C.

(3) Subject to (1) supra the informant/victim after furnishing first information regarding cognizable offence does not become functus officio for seeking

writ of mandamus for compelling the police authorities to perform their statutory duty under Section 154 Cr.P.C. in case the FIR is not lodged.

(4) Subject to (1) supra the proposed accused against whom the first information of commission of cognizable offence is made, is not a necessary

party to be impleaded in a petition under Article 226 of the Constitution of India seeking issuance of writ of mandamus to compel the police to perform

their statutory duty under Section 154 Cr.P.C.

13. The principle of law laid down in Shweta Bhadoria (supra) was subsequently followed by another Division Bench of that Court in the matter of

Dharmendra Sonkar v. State of M.P. and others 2018(1) M.P.L.J. 716 and in that case, the Division Bench speaking through Hemant Gupta, CJ, (as

then His Lordship was) clearly held that in Lalita Kumari (supra), there is no mandate that writ Court under Article 226 of the Constitution of India,

should issue a direction for registration of FIR and observed as under: -

Â ""7. The Constitution Bench in Lalita Kumari (supra) was considering the question as to whether registration of an FIR is mandatory, in case it

discloses a cognizable offence. If the information does not disclose a cognizable offence, it mandates to conduct a preliminary enquiry. But, there is no

mandate in the aforesaid judgment that this Court under Article 226 of the Constitution of India should issue a direction for registration of an FIR.

Such a question has been specifically answered in Aleque Padamsee and others (supra), Sakiri Vasu (supra) and Sudhir Bhaskar Rao Tambe (supra).

14. In my considered opinion, the course open to the petitioner, if any, is to avail the remedy available to him under Sections 154(3), 156(3), 190 and

200 of the CrPC and writ of mandamus can be denied to the petitioner for non-availing the above-stated statutory alternative remedy as held by Their

Lordships of the Supreme Court in Sakiri Vasu (supra), Aleque Padamsee (supra) and Sudhir Bhaskarrao Tambe (supra). However, in order to have

an authoritative pronouncement of this Court and looking to the fact that it involves a substantial question of law, the matter is referred to the Hon'ble

Chief Justice for constituting a Larger Bench under Rule 32(2)(i) of the High Court of Chhattisgarh Rules, 2007 on the following stated question: -

Whether in view of remedies available to the writ petitioner under Sections 154(3), 156(3), 190 and 200 of the CrPC, writ of mandamus / appropriate

direction can be issued to the police authorities to perform statutory duty under Section 154(1) of the CrPC in this petition stating that despite giving

information of the commission of cognizable offences, first information report is not being registered?

15. Let the matter be placed before the Hon'ble Chief Justice for consideration and constituting a larger Bench.