
Md. Shamim Vs State of Jharkhand And Ors

Writ Petition (Cr.) No. 312 Of 2020

Court: Jharkhand High Court

Date of Decision: April 8, 2021

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 36, 107, 154(3), 156(3), 200, 482#Constitution of India, 1950 " Article 226

Hon'ble Judges: Sanjay Kumar Dwivedi, J

Bench: Single Bench

Advocate: Afaque Rashidi, Aditya Raman

Final Decision: Dismissed

Judgement

1. Heard, Mr. Afaque Rashidi, learned counsel for the petitioner and Mr. Aditya Raman, learned counsel for the respondent-State.

2. This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to

COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been

heard.

3. Petitioner has filed this instant writ petition under Article 226 of the Constitution of India for direction upon the respondents to lodge F.I.R. on the

basis of written complaint made by the petitioner.

4. Grievance of the petitioner is that inspite of written submission of the petitioner, F.I.R. has not been lodged.

5. Learned counsel for the petitioner submits that it is right of the petitioner to lodge F.I.R. and the respondents are liable to lodge F.I.R, which has not

been done in the hand in hand.

6. Mr. Aditya Raman, learned counsel for the respondent-State submits that approaching the Hon'ble High Court by filing application under Article

226 of the Constitution is not an appropriate remedy. He submits that a proceeding under section 107 Cr.P.C. has already been initiated. He submits

that in this type of cases there is remedy under Code of Criminal Procedure. He submits that if an FIR has not been registered, proposed informant

should approach before the Magistrate in terms of Code of Criminal Procedure. In support of his contention learned counsel for the respondent-State

relied upon judgement in the case of ""Sakiri Vasu Vrs. State of Uttar Pradesh and Ors."" reported in (2008) 2 SCC 409. The Hon'ble Surpeme Court

has considered this aspect of the matter in the case of ""Sakiri Vasu"" (supra) in paragraph 27 and 28 which reads as under:-

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 police officers concerned, and if that is of no avail, under Section 156(3) CrPC 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.

7. The Hon'ble Supreme Court has further considered this aspect of the matter in the case of ""Sudhir Bhaskarrao Tambe Vrs. Hemant Yaswant

Dhage & Others"" reported in (2016) 6 SCC 277 wherein judgment passed in ""Sakri Vasu"" (supra) was followed. In paragraph 2 of the aforesaid

judgment the Hon'ble Apex Court has held as under:-

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) Cr.P.C. If such an application under Section 156(3) Cr.PC is made and the Magistrate is, prima face, 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 is

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.

A caution has been put at Paragraph No.3 which reads as under:-

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.

8. This judgment has also been relied upon by the Hon'ble Supreme Court of India in the case of ""M. Subramaniam & Anr Vrs. S. Janaki & Anr.

reported in (2020) SCC Online SC 341.

9. In view of the judgment passed by the Hon'ble Supreme Court, the issue is now well settled. If police is not registering the FIR, the remedy lies with

the complainant to approach the Magistrate in terms of Code of Criminal Procedure. This alternative remedy is available to the complainant. In view

of the aforesaid judgments since an alternative remedy is available to the petitioner, the Court is not inclined to exercise its power under Article 226 of

the Constitution of India.

10. Accordingly, the instant criminal writ petition stands dismissed with a liberty to the petitioner to approach before the Magistrate concerned by

invoking the statutory remedy available in the Cr.P.C.

11. It is made clear that the Court is not entering into the merit of the allegations and it should be considered by the Magistrate concerned as to

whether it warrants an order under Section 156(3) Cr.P.C or not.