

**HIGH COURT OF MADHYA PRADESH**

**BENCH AT GWALIOR**

**SINGLE BENCH**

**PRESENT:**

**HON'BLE MR. JUSTICE G.S. AHLUWALIA**

**Misc. Criminal Case No.3701 of 2016**

**Narottam Pathak & Ano.**

**-Vs-**

**State of M.P. & Ors.**

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Shri Sankalp Sharma, counsel for the applicants.

Shri Girdhari Singh Chauhan, Public Prosecutor for the respondent No.1 & 2/State.

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**O R D E R**  
**(08/12/2016)**

This petition under Section 482 of CrPC has been filed seeking a direction to the respondents to register the FIR on the basis of his complaint dated 20.10.2015 made to Station House Officer, Police Station City Kotwali, Morena and complaint dated 05.03.2016 made to Superintendent of Police, Morena.

**2.** The counsel for the applicants relied upon a common order dated 27.09.2016 passed by High Court of Madras in the case of **Sugesan Transport Pvt. Ltd vs The Inspector Of Police (Crl.O.P. No.19197/2016)** and submitted that although the High Court has held that in case of non-registration of FIR, the aggrieved person must avail alternative remedy of filing application under Section 156 (3) of CrPC but prayed for other similar directions.

**3.** Without entering into the merits of the case, in the light of the judgments passed by the Supreme Court in the cases of **Aleque Padamsee & Ors. Vs. Union of India & Ors.,**

reported in **(2007) 6 SCC 171, Sakiri Vasu Vs. State of U.P.**, reported in **(2008) 2 SCC 409** and **Divine Retreat Centre Vs. State of Kerala & Ors.** reported in **(2008) 3 SCC 542**, order dated 24.10.2016 passed by a Coordinate Bench of this Court in the case of **Soniya vs. State of M.P. & Ors. (W.P.No.8906/2016)** and order dated 30.09.2016 passed by Division Bench of Allahabad High Court in the case of **Smt. Sudami Devi Vs. State of U.P. & Ors., (Writ - C No. 47416/2016)**, it is held that the complainant has an efficacious and alternative remedy of filing a criminal complaint before the court of competent jurisdiction.

**4.** When an application under Section 156 (3) of CrPC is filed and if the order is passed on the said application directing the police to submit its report then whether the Magistrate has directed or not, it is obligatory on the part of the police to register the FIR before initiating investigation.

**5.** Section 156 (3) of CrPC reads as under:-

“(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.”

**6.** As it is evident from Section 156 of CrPC that Chapter 12 of the Code of Criminal Procedure deals with the various steps which are required to be taken by the investigating officer. The investigation starts with the registration of FIR and ends only with the filing of the report by the police as required under Section 173 of CrPC. Thus, when an order under Section 156 (3) of CrPC is passed by the Magistrate then the police must register the FIR irrespective of the fact that whether such an order has been given by the Magistrate or not. Where a Magistrate does not think it proper to pass an order under Section 156 (3) of CrPC, then he can take cognizance of the offence and can follow the procedure as provided in Chapter 15 of the Code of Criminal Procedure. After recording the statements of the complainant witnesses, if the Magistrate

proposes to seek help from the police, then he can direct for any inquiry under Section 202 (1) of CrPC.

**7.** The Supreme Court in the case of **Mohd. Yousuf v. Smt. Afaq Jahan & Anr.** reported in **AIR 2006 SC 705** has held as under:-

“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 complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.”

**8.** Thus, it is clear that the Code of Criminal Procedure provides for a complete and efficacious remedy to the complainant. Thus, under the facts and circumstances of the case, no further direction is required to be given.

**9.** Accordingly, the petition is dismissed as the petitioner has an efficacious and alternative remedy of filing an application/complaint under Section 156 (3), 200 of CrPC.

**10.** The petition is accordingly dismissed.

**(G.S. AHLUWALIA)**  
**Judge**  
**(08.12.2016)**

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