20 .12.2016

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This order shall govern the disposal of **WA . 247/2016, WA. 341/2016, WA. 358/2016. No. 379/2016. WA No. 394/2016**.

1. All the aforesaid writ appeals involve common questions of law and therefore have been heard analogously and are decided by this common order.

2. The core issue raised herein is whether a writ of mandamus can be issued under Article 226 of the Constitution of India directing the police to register an offence under Section 154(1) Cr.P.C. in a petition raising grievance that despite informing the police about the commission of cognizable offence, no FIR is lodged.

2.1 In some of these cases the writ Court has directed the police authorities to perform their statutory duty under Section 154 Cr.P.C by following the law laid down by the Apex Court in the Constitution Bench decision of **Lalita Kumari Vs.**

Government of U.P. & Ors. reported in **(2014) 2 SCC 1** whereas in other cases the Writ Court has declined issuance of writ of mandamus for the reason of availability of statutory remedy under Section 154(3), 156(3), 190 and 200 Cr.P.C.

2.2 The core issue mentioned above in fact involves a number of principal and peripheral issues as under :-

Principal Issues :-

(i) Whether in the face of remedies u/s 154(3), 156(3), 190 & 200 Cr.P.C. writ of mandamus can be issued to police authorities to perform their statutory duty u/s 154(1) Cr.P.C. in a petition complaining non-registration of FIR despite furnishing first information of commission of cognizable offence?

(ii) Whether the Constitution Bench decision of the Apex Court in Lalita Kumari (supra) is an answer to the above said principal issue No.1 ?

Peripheral Issues :-

(i) Can relief of writ of mandamus be denied to the informant merely on the ground that the informant is not an aggrieved person or victim and whether such person becomes functus officio after informing the police of commission of cognizable offence?

(ii) Whether the proposed accused is required to be heard before writ of mandamus can be issued in a petition complaining failure of police authorities to register offence despite being informed of commission of cognizable offence ?

2.3 Before embarking upon the process of adjudication it would be appropriate to reproduce the relevant statutory

provisions which have bearing on the issued involved herein. Section 154, Section 156, Section 190 and Section 200 of the Cr.P.C. are reproduced in seriatim for convenience and ready reference :-

"S. 154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

S.156. Police officer' s power to investigate cognizable case.

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the

ground that the case was one which such officer was not empowered under this section to investigate.
(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

S.190. Cognizance of offences by Magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-Section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under Sub-Section (1) of such offences as are within his competence to inquire into or try.

S. 200. Examination of complainant.

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:
Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-
(a) if a public servant acting or- purporting to act in the discharge of his official duties or a Court has made the complaint; or
(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:
Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the

witnesses, the latter Magistrate need not re-examine them.

2.4 Mandamus is one of the prerogative writs issued by the superior Courts (High Court or Supreme Court), which is in shape of command to the State, its instrumentality or its functionaries to compel them to perform their constitutional / statutory / public duty. To clarify the extracts of decisions of Apex Court explaining the discretionary limitations adopted by the Writ Court while issuing writ of mandamus are as follows :-

(i) **Thansingh Nathmal Vs. Supdt. of Taxes, AIR 1964 SC 1419** :-

"The jurisdiction of the High Court under Art. 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Art. 226, where the petitioner has an alternative remedy which, without being unduly onerous, provides an equally efficacious remedy."

(ii) **Nivedita Sharma Vs. Cellular Operators Association of India and Ors. (2011) 14 SCC 337**:-

"Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

2.5 The power to issue writ of mandamus has its own well defined self imposed limitations, one of which is availability of

alternative efficacious remedy on the basis of which the Writ Court can deny issuance of the said writ unless the following exceptions are found to exist. These exceptions are as follows :-

(a) Violation of principles of natural justice.
(b) the impugned action being bereft of authority of law.
(c) when the vires of any provision is challenged.
(d) Issue of enforcement / breach of fundamental rights is involved. [vide **(1998) 8 SCC 1, Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors.,)**

2.6 This Court deems it appropriate to answer principal issue No.2 first.

The principal issue No.2 is as follows :-

(ii) Whether the Constitution Bench decision of the Apex Court in the case of Lalita Kumari (supra) is an answer to the above said principal issue No.1 ?

2.7 The decision of Lalita Kumari (supra) of the Apex Court arose out of a petition under Article 32 of the Constitution of India seeking issuance of writ of habeas corpus or directions of like nature against the respondents therein for the protection of minor daughter who was kidnapped. As per paragraphs 1 & 6 of the said judgment the Apex Court framed the question raised and decided therein which are reproduced below :-

*" **Para 1**. The important issue which arises for consideration in the referred matter is whether " a police officer is bound to register the first information report (FIR) upon receiving any information relating to commission of cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 (in short' the Code') or the police officer has the power to conduct 'preliminary inquiry' in order to test the veracity of such information before registering the same"?*

***Para 6**. Therefore, the only question before this Constitution Bench relates to the interpretation of Section 154 of the Code and incidentally to consider Sections 156 and 157 also".*

2.8 Perusal of the judgment of Lalita Kumari and the final directions passed in paragraphs 120.1 to 120.8 clearly reveal the laying down of ratio that the police has no option but to register the offence in shape of FIR under Section 154 Cr.P.C. on receipt of first information regarding commission of cognizable offence without verifying the veracity of the first information.

2.9 Though the Apex Court while formulating the question in paragraph 6 (supra) made reference to Sections 156 & 157 but the entire judgment of Lalita Kumari and final directions issued therein centre around the statutory obligation of the police to register the offence under Section 154 Cr.P.C, with only passing reference of Section 156 & 157 without laying down any law as regards these provisions (Section 156 and 157 Cr.P.C.) .

2.10. Therefore it can safely be concluded that the Apex Court while interpreting the statutory provision u/s 154 Cr.P.C said nothing further as regards remedy available to the informant whose information of commission of cognizable offence does not invoke any response from the police. Thus, the judgment of Lalita Kumari does not lay down any law in respect of remedies available to the informant under Cr.P.C. to be invoked in case of failure on the part of the police to perform its statutory duty under Section 154(1) / 154(3) Cr.P.C. as a *sine qua non* for seeking writ of mandamus.

2.11 Consequently, the case of Lalita Kumari of the Apex Court does not answer the principal issue No.1 framed by this Court.

3. Now this Court takes up the principal issue No.1.

3.1 The self imposed restriction of availability of statutory remedy, adopted by a writ Court while considering issuance of writ of mandamus is universally applied with few exceptions as enumerated above.

3.2. The Code of Criminal Procedure provides various avenues before the informant / victim to initiate criminal prosecution. The first avenue is of lodging of FIR under Section 154(1) / 154(3) which can be availed by the victim and as well as a stranger to the offence, provided the first information discloses commission of cognizable offence. The lodging of FIR under Section 154 Cr.P.C. sets the investigative machinery into motion without prior permission of the Magistrate as is otherwise required for non-cognizable offences.

3.3 The second avenue available to the victim and as well as a stranger to the cognizable offence, is u/s 156(3) by approaching the concerned Magistrate by informing commission of cognizable offence. The Magistrate can then conduct an enquiry himself or direct the concerned police station to register the offence alleged, thereby triggering the investigation.

3.4 The third avenue available is under Section 190 Cr.P.C empowering the competent Magistrate to take cognizance of any offence upon receipt of complaint of facts containing allegation constituting the offence, or upon a police report of such facts or upon information received from any person other than a police officer, or upon his own knowledge of commission of cognizable and as well as non-cognizable offence, except offences punishable under Chapter XX of IPC, for which procedure prescribed u/s 198 Cr.P.C. is to be adhered to.

3.5 The fourth avenue is under Section 200 Cr.P.C where a complaint, oral or in writing if made before the competent Magistrate leads to hearing by the Magistrate on the question of taking cognizance of offence or not and if it is found that complaint discloses commission of any offence punishable in law then the Magistrate issues summons to the proposed

accused on appearance of whom statements of rival parties are recorded and the Magistrate decides on the question of framing of charge or discharging the accused. If charges are framed then trial proceeds.

3.6 The above said discussion makes it clear that there are four different remedies available under Cr.P.C for the informant / victim to initiate prosecution in respect of the cognizable / non-cognizable offence which is alleged in the first information furnished which fails to invoke response from the police. More so, these statutory remedies cannot be branded as non-efficacious or onerous. Accordingly, informant whose first information does not lead to registration of offence under Section 154 Cr.P.C is not remedy-less and therefore the constraints exercised by the writ Court while issuing writ of mandamus come into play. These constraints as enumerated above are self imposed and lie within the domain of discretion rather than rule but none the less are invariably applied by superior courts while exercising writ jurisdiction. To elaborate, if it is demonstrated that impugned action or inaction is vitiated by violation of principles of natural justice, or being bereft of jurisdiction or violates any statutory provision or causes breach of fundamental rights, then non-availing of alternative remedy cannot restrain the informant or victim to successfully invoke the writ jurisdiction of the superior Court.

3.7 In the cases at hand none of these four exceptions are either alleged or made out.

3.8. Pertinently the Apex Court while contemplating the options available to an informant / victim when his first information falls on deaf ears in the case of ***Aleque padamsee and others*** **V.** ***Union of India and others*** **[(2007) 6 SCC 171]** has laid down

thus :-

> *"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 Employees' Union (Regd.) Vs. Union of India, (1996) 11 SCC 582 and re-iterated in Gangadhar's case (supra) 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's case (supra), Gangadhar Janardan Mhatre Vs. State of Maharashtra, (2004) 7 SCC 768, Hari Singh Vs. State of U.P. (2006) 5 SCC 733, Minu Kumari Vs. State of Bihar, (2006) 5 SCC 733, and Ramesh Kumar Vs. (NCT of Delhi) (2006) 2 SCC 677, we find that the view expressed in Ramesh Kumari's case (supra) related to the action required to be taken by the police when any cognizable offence is brought to its notice. In Ramesh Kumari's case (supra) the basic issue did not relate to the methodology to be adopted which was expressly dealt with in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Minu Kumari's case (supra) and Hari Singh's case (supra). The view expressed in Ramesh Kumari's case (supra) was re- iterated in Lallan Chaudhary and Ors. V. State of Bihar (AIR 2006 SC 3376). 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's case (supra), Gangadhar's case (supra), Hari Singh's case (supra) and Minu Kumari's case (supra). The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to its 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 Sections 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) 530/2002 and WP(C) 221/2002. Subsequently, these writ petitions were de-linked from the aforesaid writ petitions.*

8. The writ petitions are finally disposed of with the following directions:

(1) 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 Code are to be adopted and observed.

(2) It is open to any person aggrieved by the inaction of the police officials to adopt the remedy in terms of the aforesaid provisions.

(3) So far as non-grant of sanction aspect is concerned, it is for the concerned government to deal with the prayer. The concerned government would do well to deal with the matter within three months from the date of receipt of this order.

(4) We make it clear that we have not expressed any opinion on the merits of the case."

3.9 Similar view was reiterated by the Apex Court in its subsequent verdict in **Sakiri Vasu Vs. State of U.P., (2008) 2 SCC 409.** The relevant paras are reproduced below :-

"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?"*

3.10. The decision of Aleque padamsee (supra) has though been referred by the Constitution Bench in Lalita Kumari but has neither been distinguished nor over-ruled and therefore, the same continues to hold the field. That the view taken by the Apex Court in case of Aleque padamsee and Sakiri Vasu (supra) has been subsequently reiterated and reaffirmed in the case of **Sudhir Bhaskar Rao Tambe Vs. Hemant Yashwant Dhage and Ors, [(2016) 6 SCC 277]** as follows **:-**

> *"2. This Court has held in Sakiri Vasu Vs. State of U.P. (supra), 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 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 investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case (supra) 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."*

3.11 Accordingly, the principal issue No.1 is decided by holding that writ of mandamus can be declined due to non-availing of alternative remedy when the cause shown is non-registration of offence u/s 154 Cr.P.C despite furnishing information of commission of cognizable offence.

4. Turning to the peripheral issues and taking up the first in that category, it is seen that the same relates to WA. No. 341/2016 filed to assail the order dated 3.10.2016 in WP No. 6986/ 2016 where the writ Court found the informant to be functus officio and thus held that petitioner therein has no *locus standi* for seeking a writ of mandamus.

4.1 A bare perusal of terminology employed by the legislature in Section 154 Cr.P.C discloses that even a stranger to the offence can inform the police about commission of any coginzable offence. Object behind this is that legislature did not want that any coginzable offence committed in the society should go uninvestigated and untried if found to be prima facie committed. By restricting the connotation of the expression "informant" to that of "victim" would defeat this object. Accordingly, once Section 154 enables even a stranger to the cognizable offence to invoke statutory powers of the police of registration of offence (which is now held to be mandatory by the verdict of Apex Court in Lalita Kumari), then the act of failure of police to perform this statutory duty can certainly accrue cause of action to the stranger to seek writ of mandamus under Article 226 of the Constitution of India from the superior Court to

compel the police to perform its statutory duty under Section 154 Cr.P.C.

4.2 Consequently even a stranger to a cognizable offence has *locus standi* to seek issuance of mandamus against the police to act u/s 154 Cr.P.C provided such stranger is the first informant.

5. As regards peripheral issue No.2, it is seen that the same relates to question whether proposed accused in the first information is entitled to a hearing before the writ court in a petition seeking mandamus under Article 226 directing the police to register the FIR under Section 154 Cr.P.C.

5.1 Reverting to the terminology of Section 154 Cr.P.C. one finds that the statute does not contemplate any prior hearing to the proposed accused before registration of cognizable offence. Thus the natural consequence that follows is that while issuing writ of mandmus directing the police to perform its statutory duty under Section 154 Cr.P.C the accused is not required to be heard.

5.2 More so, impleadment of a party (respondent) in a writ petition is based on the principle of natural justice (*audi alterem partem*). No judicial order ought to be passed without hearing the person against whom the same is made. More so the impleadment of a respondent further becomes necessary when any particular respondent against whom though no relief is sought but such respondent is required to be heard by the writ court for proper and effective adjudication of the cause. In this background if the peripheral issue No.2 is seen then it is evident that the writ of mandamus sought under Article 226 is based on the cause of failure of police to perform its statutory duty despite receipt of first information of commission of cognizable offence. The direction sought in such a writ petition is against the police

authorities and not against the proposed accused and therefore the proposed accused is neither required to be heard nor to be impleaded as party.

5.3. Accordingly, peripheral issue No.2 is decided by holding that proposed accused whose name is mentioned in the FIR is not a necessary party, in a writ seeking issuance of mandamus against police authorities compelling them to perform their statutory duty under Section 154 Cr.P.C.

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 the case of **Whirlpool Corporation Vs. 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 Vs. 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 Section 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.

7. From the above discussion of facts and analysis of law including the judicial verdict relied upon this court deems it appropriate to dispose of all the writ appeals as follows :-

7.1 **(i) WA.394/2016 (Mirza Javed Baig and Ors. Vs. State of M.P. & Ors.) and WA No. 379/2016 (Bare Lal and Anr. Vs. Deepa and Ors.)** are allowed and the impugned orders dated 18.10.2016 passed in WP No. 2539/ 2016 and order dated 12.08.2016 passed in WP No. 5603/ 2016 are set aside, leaving the petitioners free to avail the statutory remedies under Sections 154(3), 156(3), 190 and 200 Cr.P.C.

7.2 (ii) **WA. 341/2016 (Mukesh Dangi Vs. The State of M.P. & Ors.)** is partly allowed to the following extent :-

(a) the impugned order of the writ court dated 03.10.2016 passed in WP No.6986/2016 is set aside to the extent it declares the petitioner / appellant to be functus officio and having no locus to file the writ.

(b) The petitioner / appellant is free to avail remedy available to him u/s 154(3), 156(3), 190 or 200 Cr.P.C.

7.3 (iii) **WA No. 247/2016 (Shweta Bhadoria Vs. State of M.P. & Ors.) and WA No. 358 / 2016 (Naveen Bajaj Vs. State of M.P. & Ors.)** are dismissed and impugned orders dated 2058/2016 passed in WP No. 2058/2016 and order dated

13.07.2017 passed in WP No. 1076/2016 are affirmed, leaving it open for the petitioners to avail the remedy under Section 154(3), 156(3), 190 and 200 Cr.P.C.

No cost.

(Sheel Nagu)
Judge

(S.A. Dharmadhikari)
Judge

sarathe/-