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THE HIGH COURT OF MADHYA PRADESH
Writ Petition No.18595/2019
Mamta Prajapati Vs. State of M.P. and others

Gwalior, Dated :06/09/2019

None for petitioner.

Shri R.K. Soni, Government Advocate for respondents no.1 and 2/State.

This petition under Article 226 of the Constitution of India has been filed by the petitioner seeking a direction to the respondents no.1 and 2 to register an FIR against the respondent no.3 on the basis of the complaint made by her. The petitioner has annexed an application dated 30/7/2019 purportedly submitted by her before the Collector, District Gwalior in Jan Sunwai as Annexure P/1.

2. Considered the facts and grounds mentioned in the petition.

3. The moot question for consideration is that :-

“Whether a writ petition under Article 226
of the Constitution of India for registration of the
FIR is tenable or not?”

4. The Supreme Court in the case of **Divine Retreat Centre Vs. State of Kerala and others** reported in **(2008) 3 SCC 542** has held as under:-

“41. It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an investigating

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officer mala fide. That power is to be exercised in the rarest of the rare case where a clear case of abuse of power and non-compliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code.

42. Even in cases where no action is taken by the police on the information given to them, the informant's remedy lies under Sections 190, 200 CrPC, but a writ petition in such a case is not to be entertained. This Court in *Gangadhar Janardan Mhatre v. State of Maharashtra* held: (SCC pp. 774-75, para 13)

“13. When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in *All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India*. It was specifically observed that a writ petition in such cases is not to be entertained.”

The Division Bench of this Court by order dated 20/12/2016

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passed in **Writ Appeal No.247/2016 (Shweta Bhadauria Vs. State of M.P. & Ors.)** has held as under:-

“(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..”

5. Without entering into the merits of the case, in the light of the judgments passed by the Supreme Court in the cases of **Sakiri Vasu vs. State of U.P., reported in (2008) 2 SCC 409** and **Aleque Padamsee and others Vs. Union of India & Ors., reported in (2007) 6 SCC 171** and order dated 30/9/2016 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)**, the complainant has an efficacious and alternative remedy of filing a criminal complaint before the Court of competent jurisdiction. Hence, this petition is dismissed with liberty to file a criminal complaint before the Court of

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competent jurisdiction.

6. With aforesaid liberty, the present petition is **dismissed**.

Arun*

(G.S. Ahluwalia)
Judge