

**HIGH COURT OF MADHYA PRADESH
WP-5590-2021**

(INDAL SINGH Vs THE STATE OF MADHYA PRADESH AND OTHERS)

**HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR**

(Single Bench)

W.P. NO. 5590 OF 2021

INDAL SINGH PETITIONERS
Versus
STATE OF M.P. AND ORS. RESPONDENTS

CORAM

Hon. Shri Justice Vishal Mishra

Appearance

Shri H.K. Shukla, learned counsel for the petitioner.

Shri D.D. Bansal, learned Government Advocate for
respondent//State.

Whether approved for Reporting : Yes/No

**O R D E R
(10.03.2021)**

The present petition has been filed being aggrieved by the action on the part of the respondents/authorities, whereby, they are not taking any action with respect to the offence under Section 304-B, 498-A and 34 of IPC and Sec. 3/4 of Dowry Prohibition Act against the respondents No. 4 to 6 bearing Crime No.85/2021 registered at Police Station Kotwali, District Morena and have not taken any steps to

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ensure the arrest and completion of the investigation even after rejection of bail application by the Sessions Court, Morena.

2. It is submitted that threat was given by the accused persons that if compromise will not be done, then petitioner has to face dire consequences. It is argued that the petitioner's daughter Rohini @ Binu was married with respondent No.6/Deepak as per the Hindu customs on 19.05.2015 and thereafter, under the unnatural circumstances, she passed away on 13.09.2020 within a period of five years of the marriage. On the basis of which, an FIR was got registered against the respondent No.4 to 6. The application for anticipatory bail were already rejected by Sessions Court. It is argued that the police authorities are not investigating the matter and are not arresting the respondents till date as per the provisions under Section 156 and 157 of Cr.P.C. It is the duty of the Police Authorities to conclude the investigation without any delay and also not to secure the life and liberty of the witnesses from threatening. He has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Mahendra Chawla Vs. Union of India and ors.** reported in **2019 (4) SCC 615**, wherein certain directions with respect to the witnesses protection scheme 2018 has been given by the Hon'ble Supreme Court. Petitioner has also approached before the Superintendent of Police, District Morena by way of filing a detailed application, but the same

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has not been given effect to till date. In such circumstances, he has prayed for following reliefs:-

“(1) That, in the light of the above mentioned peculiar facts and circumstances of the case the police authorities be directed to ensure to arrest of the accused person and also to provide protection to the petitioner who is the witness of heinous offence u/s 304-B of IPC.

(2) That, the cost of the litigation may also be awarded.”

3. Per contra, counsel for the State has opposed the arguments made by the petitioner and has argued that the police authorities will complete the investigation and file the charge sheet at the earliest. As far as the reliefs claimed by the petitioner are concerned, the petitioner is having an alternative and efficacious remedy of approaching the concerning Magistrate, in case, he is not satisfied with the manner in which the investigation is being carried out by the police authorities, he has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Sakiri Basu Vs. State of U.P and Others reported in AIR 2008 SC 907** and in case of **Sudhir Bhaskar Rao Tambe Vs. Hemant Yashwant Dhage and Others reported in 2016 (6) SCC 277** and has argued that the remedy is provided under Section 156(3) of Cr.P.C to approach before the concerning Magistrate against the investigation carried out by the police authorities.

4. As far as harassment and protection to the petitioner is concerned it is submitted that the Witness Protection Scheme, 2018 has

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been framed by the Home Ministry. The petitioner has to apply as per the provision of Scheme, 2018 and file an application to the competent authority in a prescribed format. The matter can be taken up by the authorities for granting protection to the petitioner who happens to be witnesses of the case, therefore, no the reliefs can be extended to the petitioner at this stage in the petition. He has prayed for dismissal of the petition.

5. Heard learned counsel for the parties and perused the record.
6. From perusal of the record it is seen that with respect to the death of the daughter of the petitioner and FIR was got registered at Crime No.85/2020 for offences under Sections 304-B, 498-A and 34 of IPC and Sec. 3/4 of Dowry Prohibition Act. It is pointed out that police authorities are not completed the investigation till date despite of the fact that the complaint was got made on 30.01.2021 and despite rejection of the application of anticipatory bail by the Sessions Court, the police authorities have not concluded the investigation till date.
7. As far as the relief with respect to the conclusion of investigation is concerned the provision of Sections, 173, 156 and 157 of Cr.PC. are required to be seen.

173. Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of

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the offence on a police report, a report in the form prescribed by the State Government, stating-

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation,

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order- for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate alongwith the report-

- (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
- (b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject- matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub- section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall

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forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

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.

157. Procedure for investigation preliminary inquiry.

(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender; Provided that-

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

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8. From perusal of the aforesaid sections it is apparently clear that the police authorities on receipt of the information with respect to cognizable offence has to take up the matter and investigate the same and conclude the investigation without any delay and submit the report to the concerning Magistrate. They are duty bound to follow such procedure prescribed in the aforesaid sections without any undue delay. Therefore, in such circumstances, if the investigation is pending in the case bearing Crime No. 85/2021 registered at Police Station Aron, District Guna, the authorities are directed to conclude the same and produce the report before the concerning Magistrate at the earliest.

9. As far as the relief claimed by the petitioner with respect to the manner in which investigation is being carried out by the Police authorities, the petitioner is having remedy to approach before the concerning Magistrate under Section 156(3) of Cr.P.C. by filing an appropriate application, as has been considered and held by the Hon'ble Supreme Court in the case of **Sakiri Basu, Sudhir Bhaskar Rao Tambe and M. Subramaniam (Supra)** wherein the Hon'ble Supreme Court has held as under:-

“5. While it is not possible to accept the contention of the appellants on the question of locus standi, we are inclined to accept the contention that the High Court could not have directed the registration of an FIR with a direction to the police to investigate and file the final report in view of the judgment of this Court in **Sakiri Vasu v. State Of Uttar Pradesh And Others** in which it has been inter alia held as under:

“11. In this connection we would like to state that if a person has a grievance that the police station is not

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registering his FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

12. Thus in **Mohd. Yousuf v. Afaq Jahan** this Court observed: (SCC p. 631, para 11)

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

13. The same view was taken by this Court in **Dilawar Singh v. State of Delhi (JT vide para 17)**. We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) CrPC, and if the Magistrate is satisfied he can order a proper investigation and take other

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suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) CrPC.

14. Section 156(3) states: “156. (3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.”

The words “as abovementioned” obviously refer to Section 156(1), which contemplates investigation by the officer in charge of the police station.

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide **State of Bihar v. J.A.C. Saldanha (SCC : AIR para 19)**.

17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing Criminal Appeal No. 102 of 2011 Page 5 of 8 all such acts or employ such

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means as are essentially necessary for its execution.”

6. The said ratio has been followed in **Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and Others 2**, in which it is observed.

“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.

4. In view of the settled position in **Sakiri Vasu case**, the impugned judgment of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under Section 156(3) CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned a change of the investigating 2 (2016) 6 SCC 277 Criminal Appeal No. 102 of 2011 Page 6 of 8 officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police). Parties may produce any material they wish before the Magistrate concerned. The learned Magistrate shall be

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uninfluenced by any observation in the impugned order of the High Court.”

7. We are also surprised and concerned at the registration of the FIR in Crime No. 7 of 2010, notwithstanding, the stay order passed by this Court while issuing notice by which the operation of the impugned judgment was directed to remain stayed.

8. In these circumstances, we would allow the present appeal and set aside the direction of the High Court for registration of the FIR and investigation into the matter by the police. At the same time, our order would not be an impediment in the way of the first respondent filing documents and papers with the police pursuant to the complaint dated 18.09.2008 and the police on being satisfied that a criminal offence is made out would have liberty to register an FIR. It is also open to the first respondent to approach the court of the metropolitan magistrate if deemed appropriate and necessary. Equally, it will be open to the appellants and others to take steps to protect their interest.”

10. In view of the law laid down by Hon'ble Supreme Court the relief as claimed cannot be granted to the petitioner. Petitioner may file an application before the concerning Magistrate.

11. As far as the relief claimed by the petitioner with respect to granting protection to him as he is witness in the offence committed under Section 304-B of IPC is concerned, the Witness Protection Scheme, 2018 provides for filing of an application by the witness in the prescribed format before the competent authorities for seeking witness protection order. It can be moved by the witness or his family members or duly engaged counsel or Investigating Officer or Station House Officer or SDO(P)/Prison and SP concerned and the same shall preferably be got forwarded through the Prosecutor concerned; The Competent Authorities is defined as the Standing Committee in each

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District chaired by District and Sessions Judge with Head of the Police in the District as Member and Head of the Prosecution in the District as its Member Secretary.

12. The offences for which such the offences is formulated is provided under the definition Clause 2(i) which is read as under:

“Offence” means those offences which are punishable with death or life imprisonment or an imprisonment up to seven years and above and also offences punishable under Section 354, 354-A, 354-B, 354-C, 354-D and 509 of IPC.”

13. The **Procedure for processing the application** is also prescribed in Clause 6 which reads as under:-

“(a) As and when an application is received by the Member Secretary of the Competent Authority, in the prescribed form, it shall forthwith pass an order for calling for the Threat Analysis Report from the ACP/DSP in charge of the concerned Police Sub-Division.

(b) Depending upon the urgency in the matter owing to imminent threat, the Competent Authority can pass orders for interim protection of the witness or his family members during the pendency of the application.

(c) The Threat Analysis Report shall be prepared expeditiously while maintaining full confidentiality and it shall reach the Competent Authority within five working days of receipt of the order.

(d) The Threat Analysis Report shall categorize the threat perception and also include suggestive protection measures for providing adequate protection to the witness or his family.

(e) While processing the application for witness protection, the Competent Authority shall also interact preferably in person and if not possible through electronic means with the witness and/or his family members/employers or any other person deemed fit so as to ascertain the witness protection needs of the witness.

(f) All the hearings on Witness Protection Application shall be held in-camera by the Competent Authority while maintaining full confidentiality.

(g) An application shall be disposed of within five working days of receipt of Threat Analysis Report from the Police authorities.

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(h) The Witness Protection Order passed by the Competent Authority shall be implemented by the Witness Protection Cell of the State/UT or the Trial Court, as the case may be. Overall responsibility of implementation of all witness protection orders passed by the Competent Authority shall lie on the Head of the Police in the State/UT.

However the Witness Protection Order passed by the Competent Authority for change of identity and/or relocation shall be implemented by the Department of Home of the concerned State/UT.

(i) Upon passing of a Witness Protection Order, the witness Protection Cell shall file a monthly follow-up report before the Competent Authority.

(j) In case, the Competent Authority finds that there is a need to revise the Witness Protection Order or an application is moved in this regard, and upon completion of trial, a fresh Threat Analysis Report shall be called from the ACP/DSP in charge of the concerned Police Sub-Division.”

14. In the present case, the petitioner has not filed any application and the petitioner has sought protection alleging himself from the threatening given by the accused persons and their family members pressurizing him to compromise into the matter out of fear of dire consequences as the petitioner is one of the witnesses in the criminal case registered for offence under Sections 304-B regarding death of her daughter under the unnatural circumstances within five years of her marriage. The petitioner is required to file an application to the concerning Authorities i.e. the competent authorities as defined under Clause 2(c) of the Witness Protection Scheme, 2018. The application on the prescribed format is required to be submitted. As soon as the application will be filed, then, the same will be processed by the competent authorities. In such circumstances and looking to the Witness Protection Scheme 2018, no relief regarding protection can be

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extended to the petitioner at this stage. Petitioner is at liberty to prefer an application to the competent authority claiming protection.

15. With the aforesaid observation, the petition is **disposed off**.

(Vishal Mishra)
Judge

LJ*/-