

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

ON THE 10th OF AUGUST, 2022

WRIT PETITION No. 2483 of 2022

Between:-

SMT. SUNAINA W/O VIVEK GUGARI, AGED ABOUT 30 YEARS, OCCUPATION: HOUSE WIFE JANPAD PANCHAYAT PARIHAR JAORA DISTRICT RATLAM MP (MADHYA PRADESH)

.....PETITIONER

(SHRI VISHAL SHRIVASTAVA - ADVOCATE FOR THE PETITIONER)

AND

- 1. THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. DISTRICT COLLECTOR THE STATE OF MADHYA PRADESH RATLAM (MADHYA PRADESH)**
- 3. POLICE ADHIKSHAK THE STATE OF MADHYA PRADESH RATLAM (MADHYA PRADESH)**
- 4. VIVEK KUMAR S/O DINESH GUGARI, AGED ABOUT 37 YEARS, MAIN ROAD KHELAR TEHSIL JHANSI THANA BABINA (UTTAR PRADESH)**
- 5. DINESH GUGARI S/O RATAN LAL GUGARI, AGED ABOUT 65 YEARS, MAIN ROAD KHELAR TEHSIL JHANSI THANA BABINA (UTTAR PRADESH)**
- 6. ASHA DEVI W/O DINESH GUGARI, AGED ABOUT 62 YEARS, MAIN ROAD KHELAR TEHSIL JHANSI THANA BABINA (UTTAR PRADESH)**
- 7. SURYA S/O DINESH GUGARI, AGED ABOUT 30 YEARS, MAIN**

ROAD KHELAR TEHSIL JHANSI THANA BABINA (UTTAR PRADESH)

**.....RESPONDENTS
(PROXY COUNSEL MS. SOUMYA MARU, P.L. FOR STATE)**

This petition coming on for order this day, the court passed the following:

ORDER

The present petition, under Article 226 of the Constitution of India has been preferred by the petitioner seeking the following reliefs:-

“(7.1) यह कि, रेस्पोंडेन्ट क्रमांक 1 लगायत 3 को यह निर्देशित किया जावे कि रेस्पोंडेन्ट क्रमांक 4 लगायत 8 के विरुद्ध कार्यवाही कर उनके विरुद्ध तत्काल एफ. आइ. आर. दर्ज करें”

2. Learned counsel for the petitioner submits that the petitioner is aggrieved by inaction of the respondents/Police Authority in not registering the FIR against respondents No.4 to 7. Directions may be issued to the respondents No.2 and 3 to register the FIR as prayed.

3. *Per contra* learned Government Advocate for the respondents/State contends that the relief prayed in this petition cannot be granted to the petitioner in view of the fact that petitioner is having an alternative efficacious remedy of filing complaint before the Magistrate under section 156(3) of the Cr.P.C. He further submits that it is well settled that disputed questions of fact cannot be looked into by this Court in Article 226 of the Constitution of India. As such, the present petition is liable to dismissed at the threshold.

4. Heard the learned counsel for the parties.

5. In the case of Sakiri Vasu vs State Of U.P. And Others ((2008)2 SCC 409) has 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 registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. 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) Cr.P.C. 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.

13. The same view was taken by this Court in *Dilawar Singh vs. State of Delhi JT 2007 (10) SC 585 (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) Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C.

14. Section 156 (3) states:

“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 Cr.P.C. 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 re-opening of the investigation even after the

police submits the final report, vide *State of Bihar vs. A.C. Saldanna AIR 1980 SC 326 (para 19).*]

17. In our opinion Section 156(3) Cr.P.C. 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 F.I.R. 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) Cr.P.C., 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.

24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.

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 concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. 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. (Emphasis supplied)

6. Recently the Apex Court in the case of M.Subramaniam Vs. S. Janaki (Cr.A. No.102 of 2011) decided on 20/3/2020, has held as under:-

6. The said ratio has been followed in *Sudhir Bhaskarrao Tambe v. Hent Dhage mant Yashwaand Others* ((2016)6 SCC 277), 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 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 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 uninfluenced by any observation in the impugned order of the High Court.” (Emphasis supplied)

7. In congruence with the aforesaid well settled position, a Division Bench of this Court has taken a similar view in the case of **Shweta Bhadoriya Vs. State of M.P. & others (2017 (1) MPLJ (Cri) 338)**.

8. In view of the legal conspectus on the point in issue, as cited above, since the petitioner has rushed to this Court without availing the alternative efficacious remedy as envisaged under the Cr.P.C., this writ petition cannot be entertained and is, accordingly, **dismissed**.

9. However, if the petitioner approaches the Magistrate concerned under the provisions of the Code of Criminal Procedure, the Magistrate concerned shall proceed in accordance with law including the precedents enumerated hereinabove.

(S.A. DHARMADHIKARI)

JUDGE

SS/-