

HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR

| | |
|---------------------------------------|---|
| Writ Petition No. | 18878/2020 |
| Parties Name: | Rajendra Singh Pawar and others Vs. State of M.P. and others |
| Bench Constituted | Single Bench |
| Judgment delivered By | HON'BLE SHRI JUSTICE VISHAL DHAGAT |
| Whether approved for reporting | YES |
| Name of counsel for parties | For petitioners: Shri Munish Saini, Advocate For Respondents/State: Shri Aman Pandey, Panel Lawyer |
| Law laid down | Police Officer shall enter complaint in General Diary as per M. P. Police Regulation 634. Give number of entry to complainant. If cognizable offence is disclosed First Information Report shall be registered. If preliminary inquiry is required then same shall be completed within 15 days. In cases of delay after giving reasons preliminary inquiry shall be completed within 42 days and result shall be communicated to complainant. In case of failure to complete preliminary inquiry in 42 days and communicate result to complainant, Superintendent of Police shall take departmental action against concerned Police Officers. |
| Significant paragraph number | Para-11 |

Hearing Through Video Conferencing**ORDER****24.12.2020**

Petitioners have filed this present writ petition making following prayers:-

7.1 To call for entire record from the office of respondent nos. 2 and 3 relating to steps taken and investigation conducted in relation to the

written complaint submitted by the petitioners (Annexure P/6)

7.2. To direct respondent nos. 2 and 3 to take appropriate action on the written complaint submitted by the petitioners (Annexure P/6) and register F.I.R. against accused Shridhar Ingle S/o Shri D. S. Ingle R/o C-26, New Jail Road, Indore Bypass, Bhopal (M.P.) while keeping in view his previous conduct as was appreciated by this Hon'ble Court in M.Cr.C.No. 11099/2016 (Annexure P/15).

2. Counsel for the petitioners submitted that no action has been taken by respondent no.3 on his complaint/information given regarding commission of offence by one Shridhar Ingle. It is submitted by counsel for the petitioners that Shridhar Ingle is a habitual offender and he is doing forgery and cheating and, therefore, offences ought to have been registered by respondent no.3 against him.

3. Number of petitions are filed before High Court as Police does not take any decision on a complaint made by a party regarding economic offences. In all such petitions, prayer is made for lodging of First Information Report against the accused persons or prayer is made to decide the complaint/representation preferred by the petitioners before concerned police station or by Superintendent of Police. This Court in matter of ***Dharmendra Sonkar Vs. State of M.P. and others reported in 2018(1) MPLJ 716, Shweta Bhadauria Vs. State of M.P. and others-2017 (1) MPJR 247, Sudhir***

Bhaskar Rao Tambe Vs. Hemant Yashwant Dnage and others-(2016) 6 SCC 277, has held that in cases, where First Information Report is not registered at Police Station, then complainant has an alternate remedy under Sections 154 (3), 156 (3) of the Code of Criminal Procedure or to avail alternative remedy under Sections 190 and 200 of the Code of Criminal Procedure or in exceptions enumerated in case of ***Whirphool Corporation Vs. Registrar of Trade Marks, Mumbai and others***-reported in ***(1998) 8 SCC 1*** can file a writ petition before High Court.

4. In view of the aforesaid law, this Court does not deem fit to exercise jurisdiction to give direction to Police Authorities to register First Information Report as petitioners have not demonstrated that their case falls in exception laid down in case of ***Whirphool Corporation*** (supra).

5. Chapter XII-Section 154 of the Code of Criminal Procedure fixes duty on concerned police officer to examine the complaint and form opinion whether cognizable offence is made out or not. If cognizable offence is made out then he is duty bound to register First Information Report. Otherwise, he can close the complaint if no offence is made out or enter the information as non cognizable offence under Section 155 of the Code of Criminal Procedure.

6. Hon'ble Supreme Court in the matter of ***Lalita Kumari Vs. Govt. of U.P. and others*** reported in ***(2014) 2 SCC 1*** has

specifically laid down following directions for action to be taken on receipt of complaint:-

Conclusion/Directions:

111.

"i) Registration of FIR is mandatory under [Section 154](#) of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a

preliminary inquiry must also be reflected, as mentioned above.”

7. Section 154 of the Code of Criminal Procedure reads

as under:-

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:

[Provided that if the information is given by the woman against whom an offence under Section 326-A, Section 326-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, [Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB], Section 376-E or Section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that-

(a) in the event that the person against whom an offence under Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, [Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB], Section 376-E or Section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be video graphed ;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5-A) of Section 164 as soon as possible.]

(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."

8. Section 156 of the Code of Criminal Procedure reads

as under:-

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.

9. Section 200 of the Code of Criminal Procedure reads

as under:-

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.

10. Section 634 of the M.P. Police Regulations Act reads as under:-

"634. The General Diary:- This is the diary prescribed by Section 44 of the Police Act, 1861, and is the book referred to in Sections 154 and 155 of the Criminal Procedure Code. It is brief record of the proceedings of the police and the occurrences which are reported to them, or of which they obtain information from day to day, and it is therefore, of the utmost importance that it should be written up accurately and punctually. Any official who enters, or causes to be entered, in it a report which he knows to be false renders himself liable to dismissal from the service."

11. In instant case aforesaid directions and law are not followed by Station House Officer/Investigating Officer after receiving complaint. Complainant is not informed about result of preliminary inquiry/scrutiny done by the Investigating Officer. If such result is informed to the complainant, then he can resort to remedy available to him under the law, but the complaint filed by a person remains unattended. To weed out the problem which is being faced by complainant/informant in respect of economic offences at the police station following directions are reiterated:-

(i) Whenever a complaint is filed at police station, concerned Police Officer shall examine the complaint and if required preliminary inquiry be done to ascertain whether information reveals any cognizable offence.

(ii) Investigating Officer shall either register First Information Report if complaint/information discloses cognizable offence or proceed under Section 155 of the Code of Criminal Procedure, if no cognizable offence is disclosed or if no offence is made out then complainant shall be informed that his complaint has been filed. Police Officer shall process all complaints received within a period of 15 days. If due to some reasons, it is not possible for concerned Police Officer to process the complaint and take action on it within said time, he shall take aforesaid action within maximum period of 42 days after receiving of complaint.

(iii) Every complaint which is received by Investigating Officer shall be entered into General Diary, as per M.P. Police Regulation 634 maintained at the Police Station and a number on which said complaint is entered in General Diary shall be given to the complainant. Superintendent of Police shall keep a check that such complaints are decided within the stipulated time mentioned above as per the directions of Apex Court. If complaints remain pending for more than 42 days then Superintendent of Police shall initiate Departmental Enquiry against delinquent Police Officer.

(iv) It is observed that in offences of cheating and fraud, Investigating Officer/Station House Officer is taking a long time to register an offence under Indian Penal Code or to dispose off complaint in accordance with law. Principal Secretary, Home/Director General of Police shall issue directions to Superintendent of Police to sensitize all Police Officers on filed when offence of cheating is made out and when only a civil wrong is made out so that concerned Police Officer can process the complaints/applications made in case of economic offence of cheating and fraud expeditiously.

12. This writ petition filed by the petitioners is **disposed off** with direction to Station House Officer, Lordganj to consider the complaint filed by the petitioners and take appropriate action as mentioned above within a period of 15 days from the date of receipt of certified copy of the order passed today. Result of scrutiny of complaint and action shall be conveyed to petitioners.

13. Let a copy of this order be forwarded to Secretary, Department of Home Affairs, Vallabh Bhawan, Bhopal, Principal Secretary, Law, Director General of Police, Inspector General and Advocate General so that necessary action shall be taken for compliance of directions issued.

Certified copy as per rules.

(VISHAL DHAGAT)
JUDGE

DUBEY/-