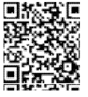



# IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

**BEFORE**

**HON'BLE SHRI JUSTICE G. S. AHLUWALIA**

**ON THE 23rd OF AUGUST, 2024**

**WRIT PETITION No. 16602 of 2023**

***AMIT KHAMPARIYA***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

***Shri Ms. Palak Jain – Advocate for the petitioner.***

***Shri Dilip Parihar – Government Advocate for the respondents/State.***

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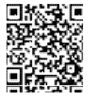
## O R D E R

This petition under Article 226 of Constitution of India has been filed seeking following relief(s):-

> "7.1 That, this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction:
>
> a) Petitioner further prays before this Hon'ble court looking to the facts and circumstances of the case, this Hon'ble court be pleased to direct to the respondents No.2 to consider the representation of petitioner along with documents submitted by the petitioner. Annex.P16.
>
> b) To direct to the respondents may be directed for proper investigation in the case of the petitioner as per law against Kailash and Gopikrishna Maheshwari.
>
> c) To direct to the respondent to produce entire record of the matter of petitioner.
>
> d) To direct to the respondents to investigate the matter in proper course and submit complete report before this Hon'ble court.





> 7.2 That, this Hon'ble Court may kindly be pleased to issues any other appropriate Writ/Order/Direction."

**2.** It is submitted by counsel for petitioner that in spite of complaint made by petitioner, Police has not taken any action.

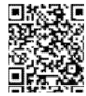
**3.** It is submitted by counsel for the State that it is well established principle of law that a Writ Petition for registration of FIR is not maintainable because petitioner has an efficacious remedy of approaching the Trial Magistrate under Section 200 of Cr.P.C. (Section 223 of Bharatiya Nagarik Suraksha Sanhita, 2023).

**4.** Considered the submissions made by counsel for the parties.

**5.** The moot question for consideration is as to whether a Writ Petition for direction to the Police to register FIR is maintainable or not?

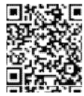
**6.** The Supreme Court in the case of **Aleque Padamsee and others vs. Union of India & Ors**, reported in **(2007) 6 SCC 171** has held as under :-

> "**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 case* [(1996) 11 SCC 582 : 1997 SCC (Cri) 303] and reiterated in *Gangadhar case* [(2004) 7 SCC 768 : 2005 SCC (Cri) 404] 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 case* [(1996) 11 SCC 582 : 1997 SCC (Cri) 303] , *Gangadhar case* [(2004) 7 SCC 768 : 2005 SCC (Cri) 404] , *Hari Singh case* [(2006) 5 SCC 733 : (2006) 3 SCC (Cri) 63] , *Minu Kumari case* [(2006) 4 SCC 359 : (2006) 2 SCC (Cri) 310] and *Ramesh Kumari case* [(2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678 : AIR 2006 SC 1322] , we find that the view expressed in *Ramesh Kumari case* [(2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678 : AIR 2006 SC 1322] related to the action required to be taken by the police when any cognizable offence is brought to its notice. In *Ramesh Kumari case* [(2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678 : AIR 2006 SC 1322] the basic issue did not relate to the methodology to be adopted which was expressly dealt with in *All India Institute of Medical Sciences case* [(1996) 11 SCC 582 : 1997 SCC (Cri) 303] , *Gangadhar case* [(2004) 7 SCC 768 : 2005 SCC (Cri) 404] , *Minu Kumari case* [(2006) 4 SCC 359 : (2006) 2 SCC (Cri) 310] and *Hari Singh case* [(2006) 5 SCC 733 : (2006) 3 SCC (Cri) 63] . The view expressed in *Ramesh Kumari case* [(2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678 : AIR 2006 SC 1322] was reiterated in *Lallan Chaudhary* v. *State of Bihar* [(2006) 12 SCC 229 : (2007) 1 SCC (Cri) 684 : 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 case* [(1996) 11 SCC 582 : 1997 SCC (Cri) 303] , *Gangadhar case* [(2004) 7 SCC 768 : 2005 SCC (Cri) 404] , *Hari Singh case* [(2006) 5





SCC 733 : (2006) 3 SCC (Cri) 63] and *Minu Kumari case* [(2006) 4 SCC 359 : (2006) 2 SCC (Cri) 310] . The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to their 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 Section 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) No. 530 of 2002 and WP (C) No. 221 of 2002. Subsequently, these writ petitions were delinked from the aforesaid writ petitions.

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

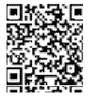
(*1*) If any person is aggrieved by the inaction of the police officials in registering the FIR, the modalities contained in Section 190 read with Section 200 of the Code are to be adopted and observed.

(*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 Government concerned to deal with the prayer. The Government concerned 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."

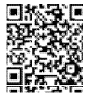
**7.** The Supreme Court in the case of **Divine Retreat Centre Vs. State of Kerala and Others** reported in **(2008) 3 SCC 542** has held as





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 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* [(2004) 7 SCC 768] 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

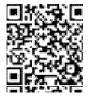




> to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence 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* [(1996) 11 SCC 582 : 1997 SCC (Cri) 303] . It was specifically observed that a writ petition in such cases is not to be entertained."

**8.** The Supreme Court in the case of **Sakiri Vasu Vs. State of Uttar Pradesh and Others** reported in **(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 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,

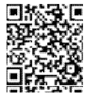




> in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation."

**9.** The Supreme Court in the case of **Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and Others** reported in **(2016) 6 SCC 277** has held as under:-

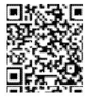
> **"2.** This Court has held in *Sakiri Vasu* v. *State of U.P.* [*Sakiri Vasu* v. *State of U.P.*, (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440 : AIR 2008 SC 907] , that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not 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* [*Sakiri Vasu* v. *State of U.P.*, (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440 : AIR 2008 SC 907] 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* [*Sakiri Vasu* v. *State of U.P.*, (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440 : AIR 2008 SC 907] , the impugned judgment [*Hemant Yashwant Dhage* v. *S.T. Mohite*, 2009 SCC OnLine Bom 2251] 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."

**10.** A Division Bench of this Court in the case of **Shweta Bhadauria Vs. State of M.P. & Ors.** decided on 20/12/2016 in **W.A. No. 247/2016 (Gwalior Bench)** has held that a Writ Petition for the purposes of directing the respondents to lodge the FIR is not maintainable and 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.”

**11.** Accordingly, this petition is **dismissed** with liberty to petitioner that if so desire, then he can approach the concerning Magistrate under Section 200 of Cr.P.C/Section 223 of Bharatiya Nagarik Suraksha Sanhita, 2023 for redressal of his grievance.

**(G.S. AHLUWALIA)**
**JUDGE**

TG/-