
(2007) 12 J&K CK 0001
In the Jammu And Kashmir High Court

Abdul Khaliq Guroo

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 27-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)

Citation : (2008) 2 JKJ 296

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Judgement

M. Yaqoob Mir, J.—Heard appearing counsel for the petitioner.

2. Considered the submissions. In the instant writ petition it is projected that the investigation of the case under FIR No. 149/07 registered with

Police Station, Awantipora, may be undertaken by some senior police officer under the supervision of DIG of the Police or the investigation of the

case may be entrusted to CBI. The question which arise for consideration is as to whether the instant writ petition can be entertained or not;

answer is in negative.

3. It shall be quite apposite to precisely notice the back ground of the matter. Petitioner herein is grand father of the deceased five year old boy

who allegedly was beaten by the accused, consequent to which case has been registered under FIR No. 149/2007 for commission of offence

under. Section 147 and 323 RPC. Date of occurrence is 12.09.2007. Later on the deceased died in SKIMS on 14.10.2007. Offence punishable

u/s 302 R.P.C was added and the accused family comprising of six persons were arrested. Bail petition on their behalf was also rejected by Chief

Judicial Magistrate, Shopian, as at that time post mortem report was not

produced. Subsequently, composite petition in terms of Section 435 Cr .P.C and 498 Cr.P.C was preferred before this Court. Same stands disposed of vide order dated 12.12.2007. Accused were admitted to bail in view of the postmortem report which is reproduced below:

Opinion as to cause of death

The deceased under autopsy had enlarged liver pleural effusion and ascetics and open disease (non-Hodgkin 's Lymphoma Cancer) leading to Cardio-respiratory arrest and death. Viscera was sent to Department of Pathology with report No. S-4370/07 dated 28.11.2007 confirming tumor of Liver.

4. Petitioner (complainant) feels that the post mortem report is concocted and investigation of the case has not been conducted properly. Hence, the instant writ petition.

5. Effective remedy is available to the complainant i.e complainant should have agitated the matter before the Magistrate concerned who is competent enough to pass the orders while having recourse to Section 156 (3) of the Cr.P.C. Entrusting of investigation to CBI is not warranted unless exceptional circumstances are made out. On the strength of contents of the petition, no such exceptional situation has been projected.

Recently, Apex Court while delivering judgment in CIMA No. 1685/07 titled Sakiri v. State of U.P. and Ors. has ruled:

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 u/s 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.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the Police Station and/or a proper investigation is not being done by the Police he rushes to High Court to file a writ petition or a petition u/s 482

Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse, to interfere in such matters, and

relegate the petitioner to his alternating remedy, firstly u/s 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no

avail, by approaching the concerned Magistrate u/s 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of

Police u/s 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the

officer referred to in Section 36 his grievance still persist, then he can approach a Magistrate u/s 156(3) Cr.P.C. instead of rushing to the High

Court by way of a writ petition or a petition u/s 482 Cr.P.C.-Moreover he has a further remedy of filing a criminal complaint u/s 200 Cr.P.C. Why

then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?.

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 u/s 36 and 154(3) before the concerned police officers, and if that is of no avail, u/s 156(3) Cr.P.C. before the

Magistrate or by filing a criminal complaint u/s 200 Cr.P.C. and ' filing a writ petition or a petition u/s 482

It is true that alternative remedy is not an absolute bar to the Section, but it is equally well settled that if there is an remedy the High Court should

not ordinarily.

6. What emerges from judgment (supra) is that practice of filing writ petition or petition u/s 482 Cr.P.C has to be discouraged. For redressal of

grievance, proper remedy is available u/s 156 (3) Cr.P.C which the petitioner must avail. Scope of Section 156 (3) has been elaborated as

indicated hereinabove. Therefore, before the concerned Magistrate, petitioner

shall agitate the matter and in case the Court of Magistrate is moved

by proper motion, necessary orders/direction as warranted in the facts and circumstances of the case, shall be issued by the concerned Magistrate.

7. Applying the ratio of judgment (supra) of Apex Court, this writ petition is required to be disposed of being not fit to be entertained.

8. Disposed of alongwith connected CMP.