
(2021) 07 GAU CK 0140
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 493 Of 2020

Anil Baruah And Anr.

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 29-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 36, 107, 145, 146, 154, 154(3), 156(3), 173(8), 200, 482

Citation : (2021) 07 GAU CK 0140

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : P J Saikia

Judgement

1. The Court proceedings have been conducted through online court proceeding services.

2. Heard Mr. P.J. Saikia, learned counsel for the petitioner; Mr. B. Deuri, learned Junior Government Advocate, Assam for respondent nos. 1 & 4;

and Mr. P.K. Barman, learned counsel for respondent no. 5.

3. The petitioners have projected that the petitioner no. 1 purchased a plot of land measuring 4 Bighas, covered by Dag No. 489 & K.P. Patta No. 98,

situated at Village " North Dimoria, Sonapur Revenue Circle, Mouza " Dimoria, District - Kamrup (M), Guwahati (hereinafter referred to as

the subject-plot, for easy reference) from one Daya Ram Deuri, the father of the respondent no. 5 vide a Sale Deed dated 10.12.1992. The

possession of the said subject-plot was delivered to the petitioners. It is the further case of the petitioners that they are enjoying peaceful possession of

the subject-plot by paying land revenues regularly. It has been projected that in

the year 2014, the respondent no. 5 tried to prevent the petitioners from cultivating in the subject-plot. It is alleged that on 27.11.2019, the respondent no. 5 started to cut the ripe and ready to harvest paddy cultivated by the petitioners in the subject-plot forcibly. The petitioner no. 1 had lodged one First Information Report (FIR) in respect of the said incident on 27.11.2019 before the Officer In-Charge, Khetri Police Station against the respondent no. 5. On receipt of the said FIR, a case being Khetri Police Station Non-FIR Case no. 12/2019 under Sections 145/146/107, Code of Criminal Procedure, 1973 (CrPC) had been registered. After investigation, the police submitted a report before the Additional District Magistrate, Kamrup (M), Guwahati on 07.12.2019. By the report, it was informed that the paddy, cut by the respondent no. 5 and his men, were seized and after seizure, the same were kept stored in the field of Dimoria High School. But the paddy were stolen from the police custody again on 15.12.2019. Suspecting that the respondent no. 5 was behind such theft, the petitioners filed another FIR before the Officer In-Charge, Khetri Police Station on 16.12.2019. Alleging that despite filing of the FIR dated 16.12.2019 wherein the petitioner no. 1 had specifically alleged about the involvement of the respondent no. 5 behind the alleged theft of paddy, the Officer In-Charge, Khetri Police Station had not even registered a case on the basis of the said FIR, not to speak of making an effort to recover the stolen paddy.

4. The present writ petition has been filed by the petitioners seeking, inter-alia, directions to the respondent authorities, more particularly, the respondent no. 4 i.e. the Officer In-Charge, Khetri Police Station to act on the FIR dated 16.12.2019 and to recover the paddy stolen from the police custody and thereafter, to give zimma of the paddy to the petitioners.

5. From the afore-stated projections in the writ petition, it is evident that after lodging FIR before the Officer In-charge, Khetri Police Station the petitioners have straight away approached this Court by way of this writ petition under article 226 of the Constitution of India seeking the above directions. It is found that the Officer In-charge, Khetri Police Station has not acted on the FIR lodged by them on 16.12.2019, the petitioners did not approach the concerned higher authorities under either Section 36, CrPC or under Section 154(3), CrPC by any application in writing. The petitioners have not also approached the jurisdictional Magistrate by filing any application

under Section 156(3), CrPC by highlighting his grievances in respect of non-registration of the FIR by the Officer In-Charge of the Police Station and inaction on the part of the police authorities in respect of recovering the stolen paddy.

6. In this connection, it would be apposite to refer to the following observations made by the Honâ??ble Supreme Court of India in Sakiri Vasu vs.

State of Uttar Pradesh and others, reported in (2008) 2 SCC 409 :

â??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 (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 suitable steps and pass such order order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys

under Section 156(3) CrPC.

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 re-opening of the investigation even after the police submits the final report, vide State of Bihar vs. J.A.C. Saldanha (SSC 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.

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) CrPC 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) CrPC, 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 the High Court to file a writ petition or a petition under Section 482 CrPC. 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 under Section 154(3) and Section 36 CrPC before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 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 under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC.

If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover he has a further remedy of filing a criminal complaint under Section 200 CrPC. 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 CrPC 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) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.â??

7. The observations made by the Honâ??ble Supreme Court of India in Sakiri Vasu (Supra) have again been reiterated in the subsequent decision in

Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and others, reported in (2016) 6 SCC 277 in the following manner :

2. This Court has held in Sakiri Vasu Vs. 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 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.â??

8. In view of the fact situation obtaining in the case, as have been projected briefly above, and in the light of the observations of the Honâ??ble

Supreme Court of India in Sakiri Vasu (Supra), and Sudhir Baskarrao Tambe (Supra), this writ petition seeking the above directions is not entertained,

reserving the liberty, however, to the petitioners to avail the alternative remedies, firstly, under Section 36, CrPC and Section 154 (3), CrPC before the

police officers concerned and if that is of not to their satisfaction, secondly, by approaching the jurisdictional Magistrate under Section 156(3), CrPC, if

they wish to do so. While not entertaining the writ petition, this Court would like to clarify that this Court has not expressed any opinion on merits and

whether any criminal offence is made out or not.