

(2012) 12 GUJ CK 0037

In the Gujarat High Court

Case No : Special Criminal Application No. 945 of 2012

Ayub Shabbir Malek

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 07-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(3), 156(3), 190, 200

Citation : (2012) 12 GUJ CK 0037

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Harshad K. Patel, No. 1, for the Appellant; Raval, APP for the Respondent No. 1, for the Respondent

Judgement

Honourable Mr. Justice K.M. Thaker

1. In present petition the petitioner has prayed, inter alia, that:-

8 (A) YOUR LORDSHIPS be pleased to issue appropriate writ, order of direction, directing the respondent no. 2 to forthwith register the FIR as per the version of the petitioner and as per written representation made to respondent no. 3 and thereafter, to transfer the investigation of the FIR to any higher authority or independent agency with a view to confirm fair and impartial investigation into the matter, in the interest of justice;

(B) YOUR LORDSHIPS be pleased to call upon the respondent nos. 2 to submit his explanation for not registering the FIR against the accused till date despite written representation given by petitioner and also call upon the respondent no. 3 to submit action taken report in pursuance to the representation made by petitioner, pending the admission, hearing and final disposal of this petition;

(C) YOUR LORDSHIPS be pleased to direct respondent no. 3 and 4 to look into the grievances of the petitioner and if it is found that the respondent No. 2 has deliberately or intentionally not registered FIR of the petitioner as per his version, appropriate steps may be taken against the respondent no. 2 for his acts

and omissions in discharging his duty, in the interest of justice;

(D).....

Thus, the petitioner in effect prays that appropriate direction may be issued to register FIR and initiate and complete investigation.

2. Mr. Patel, learned advocate has appeared for the petitioner and submitted that though Janva Jog Entry has been received and registered by respondent No. 2, the FIR has not been registered and any investigation is yet not commenced. He submitted that since the FIR has not been registered despite request by the petitioner, the petitioner is compelled to take out present petition.

3. In this regard the petitioner should make his grievance and request before the Court of concerned learned Magistrate and for the said purpose/request this Court is not inclined to entertain present petition.

4. In this context reference deserves to be made to the observations made by the Hon''ble Apex Court in the case between Aleque Padamsee and Others Vs. Union of India (UOI) and Others, and in case between Sakiri Vasu Vs. State of U.P. and Others, .

4.1 In case of Aleque Padamsee vs. Union of India (supra) in paragraph Nos. 6, 7 and 8, the Hon''ble Apex Court has observed that:

6. "4. When the information is laid with the police but no action in that behalf is taken, the complainant [can u/s 190 read with Section 200 of the Code 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 the 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 u/s 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 [could] 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, SCC p. 583, para 4. It was specifically observed that a writ petition in such cases is not to be entertained. The above position was again highlighted in Gangadhar Janardan Mhatre v. State of Maharashtra, Minu Kumari v. State of Bihar and Hari Singh v. State of U.P.

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 and reiterated in Gangadhar case 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, Gangadhar case, Hari Singh case, Minu Kumari case and Ramesh Kumari case, we find that the view expressed in Ramesh Kumari case related to the action required to be taken by the police when any cognizable offence is brought to its notice. In Ramesh Kumari case 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, Gangadhar case, Minu Kumari case and Hari Singh case. The view expressed in Ramesh Kumari case was reiterated in Lallan Chaudhary v. State of Bihar. The course available, when the police does not carry out the statutory requirements u/s 154 was directly in issue in All India Institute of Medical Sciences case, Gangadhar case, Hari Singh case and Minu Kumari case. 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.

4.2 In case of Sakiri Vasu vs. State of U.P. (supra) in paragraph Nos. 24 to 27 the Hon"ble Apex Court has observed that:

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 the 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 alternative 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 persists, 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 (through he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition u/s 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, u/s 156(3) Cr.P.C. and not by filing a writ petition or a petition u/s 482 Cr.P.C.

5. In view of the aforesaid decisions by the Hon''ble Apex Court the petition is not entertained and the petitioner may approach the Court of concerned learned Magistrate and submit appropriate application/complaint whereupon the learned Magistrate would issue appropriate direction as may be necessary, in accordance with the provisions of the Code and in light of the aforesaid decisions by the Hon''ble Apex Court. With the aforesaid clarification and in light of the aforesaid decisions by the Hon''ble Apex Court, the petition is disposed of accordingly.