
(2014) 05 RAJ CK 0250

In the Rajasthan High Court

Case No : . Habeas Corpus Petition No. 104/2014

Bhagwan Sahay Meena

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(3), 156(3), 173(8), 200

Citation : (2014) 05 RAJ CK 0250

Hon'ble Judges : V.K. Mathur, J;Raghuvendra S. Rathore, J

Bench : Division Bench

Advocate : Suresh Bundela, Advocate for the Appellant

Judgement

1. By this habeas corpus petition, the petitioner has prayed that the respondents be directed to produce the detenu and to take action against the culprits. It is revealed from the record that in respect of illegal detention of the daughter of the petitioner, namely Kumari Rekha by respondent No. 4 since 17.10.2013, the wife of the petitioner had filed a First Information Report No. 173/2013 at Police Station Mahila Thana, District Dausa. However, the grievance of the petitioner is that the police has not taken any steps thereafter.

2. On specific query having been made from the counsel for the petitioner as to what steps had been taken by the petitioner either before the higher police authorities or before the concerning Magistrate, he could not give any information in this regard. It appears that after lodging of the report on 22.10.2013, the petitioner had not taken any steps in accordance to the Code of Criminal Procedure and instead, he approached this Court on the ground that the investigation in the matter is not being proceeded with.

3. It is a settled principle of law that if after lodging of the first information report, the police does not carry out the investigation or the same is not being made expeditiously then the informant is to either approach the higher authorities of the police or the concerning Magistrate. If the informant

approaches the concerned Magistrate, then the police is to be called upon to give report in respect of the progress of the investigation. The Magistrate concerned is also empowered u/s 156(3) Cr. P.C. to ensure proper and prompt investigation and if need arises, he is to supervise and monitor the same by calling progress report, from time to time. This view has been enunciated by the Hon"ble Supreme Court in the case of Sakiri Vasu Vs. State of U.P. and Others, . The relevant paras are 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 u/s 154 CrPC, then he can approach the Superintendent of Police u/s 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 u/s 156(3) CrPC before the learned Magistrate concerned. If such an application u/s 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.

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr. P.C. 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 u/s 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 and Another Vs. J.A.C. Saldanha and Others, .

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 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 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 (though 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. before the Magistrate or by filing a criminal complaint u/s 200 Cr. P.C. and not by filing a writ petition or a petition u/s 482 Cr. P.C.

4. In view of the aforesaid facts of the case and the principles of law laid down by the Hon'ble Supreme Court in the case of Sakiri Vasu (supra), we dispose of this habeas corpus petition with the following directions:

(i) that the petitioner shall approach the Magistrate concerned by way of an application with request for calling of the report from the police station in respect of progress made in the investigation.

(ii) that the Magistrate concerned shall call a periodical report from the police station so as to supervise and monitor the investigation till the conclusion of the same is filed by the police before him.

(iii) in the event of recovery of the missing girl, the petitioner shall be at liberty to move an application u/s 97/98 Cr. P.C. for restoring her custody to him, as being her natural guardian.