

(2008) 02 KL CK 0017

In the High Court Of Kerala

Case No : Criminal O.P. No's. 28785 to 28787 of 2004 and etc. etc.

G. Arokiya Marie

APPELLANT

Vs

Superintendent of Police and Others

RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(3), 156(3), 190, 200
Penal Code, 1860 (IPC) — Section 154(3), 156(3), 190, 200, 36

Citation : (2008) CriLJ 4257

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : E. Vijay Anand, R.C. Paul Kanagaraj, A. Kalaiselvan and A. Swaminathan and Ors, for the Appellant; A. Saravanan, Government Advocate, Thangavel, Public Prosecutor for Pondicherry and N. Chandrasekaran, Spl. Public Prosecutor, for the Respondent

Judgement

M. Jeyapaul, J.—All these petitions are filed seeking a direction to the Station House Officer concerned to register the case as the allegation made in the respective complaint reflects commission of cognizable offences.

2. Learned Government Advocate (Criminal Side) Mr. A. Saravanan, referring to the authority pronounced by the Honourable Supreme Court in Sakiri Vasu Vs. State of U.P. and Others, and also the authority in Aleque Padamsee and Others Vs. Union of India (UOI) and Others, , would contend that the alternative remedy available under Sections 154(3), 190 and 200 read with Section 156(3) of the Code of Criminal Procedure will have to be resorted to by the aggrieved party on refusal to register the complaint by the Station House Officer. It is his further submission that when there is effective remedy available under the statute, the Court cannot invoke the inherent jurisdiction conferred u/s 482 of the Code of Criminal Procedure and grant the relief sought for.

3. Learned Counsel for the petitioners in various petitions would contend that Section 482 of the Code of Criminal Procedure has been incorporated only to do

complete justice. The judgments of the Honourable Supreme Court referred to by the learned Government Advocate (Criminal Side) do not totally bar the aggrieved litigants to approach the High Court invoking the provision u/s 482 of the Code of Criminal Procedure. Referring deeply into those two verdicts pronounced by the Honourable Supreme Court, the learned Counsel appearing for the petitioners would contend that the Honourable Supreme Court has just referred to the methodology to be adopted in case the Station House Officer refuses to register the complaint in spite of the fact that the complaint reflects commission of cognizable offence. It may be a case where the aggrieved party may not have the right to invoke Article 226 or Article 32 of the Constitution of India, but, they have got a right to invoke the inherent jurisdiction to secure the ends of complete justice. In one of those two judgments, the Honourable Supreme Court has observed that ordinarily the aggrieved party shall not invoke the inherent jurisdiction of the High Court u/s 482 of the Code of Criminal Procedure. They would further contend that the alternative methodology found under Sections 154(3), 190 and 200 read with 156(3) does not pave way for quick remedy. Further, the time consuming process adumbrated therein will wipe out the valuable evidence and thereby cause injustice to the aggrieved party. Therefore, the inherent jurisdiction will have to be invoked by the High Court whenever a party knocks at the doors of the High Court seeking justice.

4. The Court has to answer as to whether the aggrieved parties, on the refusal of the Station House Officer to register the complaint which reflects commission of cognizable offence, can straightway invoke the inherent jurisdiction of the High Court u/s 482 of the Code of Criminal Procedure.

5. Section 482 reads as follows:

Saving of inherent powers of High Court- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

The High Court has inherent power under the aforesaid provision of law to do real and substantial justice to the aggrieved party. If there is a specific provision in the Code for the redressal of any grievance of the aggrieved party, the normal rule is that the party aggrieved shall invoke the relevant provision to redress his grievance. But, such a provision or the methodology found in the Code of Criminal Procedure does not limit the inherent powers of the High Court u/s 482 of the Code of Criminal Procedure. Of course, the Court that exercises inherent jurisdiction shall exercise such a power very sparingly to do complete justice. The High Court also does not have arbitrary jurisdiction in the guise of inherent powers to perform its functions according to its whims and fancies.

6. Section 154 of the Code of Criminal Procedure mandates the Station House Officer to register a complaint if it reflects commission of cognizable offence. But, the person aggrieved by a refusal of the Officer in charge of a Police Station may

send the complaint in writing to the Superintendent of Police concerned who is mandated to either investigate the case or direct an investigation by a subordinate police officer if he is satisfied that the complaint discloses commission of cognizable offences.

7. Therefore, u/s 154 of the Code of Criminal Procedure, a remedy has been provided for the aggrieved person to approach the Superintendent of Police of the District if the Station House Officer concerned refuses to register the complaint reflecting commission of cognizable offence.

8. Section 190 of the Code of Criminal Procedure empowers the learned Judicial Magistrate to take cognizance of any offence upon receiving a complaint of facts which constitutes some offence. While taking cognizance of an offence on a complaint, the learned Judicial Magistrate, u/s 200 of the Code of Criminal Procedure, is called upon to examine upon oath the complainant and the witnesses present before the Court. The Magistrate empowered u/s 190 of the Code of Criminal Procedure to take cognizance of an offence may order an investigation of the complaint by a police officer as per Section 156(3) of the Code of Criminal Procedure.

9. Therefore, it is crystal clear that an alternative methodology to redress the grievance of an aggrieved person on refusal to register the complaint by the Station House Officer has been provided under the scheme of the Code of Criminal Procedure.

10. The Honourable Supreme Court, in *Aleque Padamsee and Others Vs. Union of India (UOI) and Others*, has held as follows:

The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to its 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 Sections 190 read with Section 200 of the Code.

That was a case where a direction was sought by an aggrieved party to register a case on being aggrieved by the refusal to register a case by the Station House Officer invoking Article 32 of the Constitution of India. The Honourable Supreme Court, in the aforesaid case, has observed that the modality adumbrated u/s 190 read with 200 of the Code of Criminal Procedure will have to be adhered to and observed if a person is aggrieved by any inaction on the part of the police official in registering the First Information Report. It is to be noted here that the inherent jurisdiction conferred on the High Court u/s 482 of the Code of Criminal Procedure to pass orders to do complete justice was not the subject matter in issue in the aforesaid judgment. Therefore, the said authority cannot be cited to buttress the contention that the High Court has no power to invoke Section 482 of the Code of Criminal Procedure when alternative modality is found under various provisions of the Code of Criminal Procedure referred to above.

11. The Honourable Supreme Court in *Sakiri Vasu Vs. State of U.P. and Others*,

referred to above has held as follows:

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 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 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.

12. The entire text of the aforesaid judgment would make it clear that when alternative modality has been contemplated under Sections 154(3), 190 read with 156(3) and Section 200 of the Code of Criminal Procedure, the High Court should ordinarily refuse to invoke the inherent jurisdiction as provided u/s 482 of the Code of Criminal Procedure. The term "ordinarily" and the phrases "should not encourage" and "should discourage" have been employed by the Honourable Supreme Court in its wisdom to mean that Section 482 of the Code of Criminal Procedure shall not be a thoroughfare but an emergency exit for the aggrieved litigants. In my considered opinion, the aforesaid decision of the Honourable Supreme Court does not take away the entire inherent jurisdiction conferred on the High Court u/s 482 of the Code of Criminal Procedure. Therefore, ordinarily, the aggrieved party shall not approach the Court invoking the inherent jurisdiction and the Court also shall not casually direct the investigating officer to

register the cases of all varieties.

13. There are cases where immediate inspection of the scene of crime, recovery of material objects and collection of other potential evidence in heinous crimes may be highly warranted. If the Station House Officer exhibits supine indifference and carelessness in registering such cases which warrant immediate attention of the Station House Officer for the purpose of saving the very case from collapse, then in spite of the alternative remedy available under the scheme of the Code of Criminal Procedure, the aggrieved party can very well invoke Section 482 of the Code of Criminal Procedure to secure the ends of justice. In such grave nature of cases, it would be unjust to direct the aggrieved party to prefer a complaint to the Superintendent of Police and thereafter if he refuses to investigate the case, approach the learned Judicial Magistrate with a complaint to take cognizance of the matter. The aggrieved parties, who allege commission of offences which do not warrant immediate investigation to save the case from collapse, cannot be permitted to resort to the inherent jurisdiction of the Court which can be used only sparingly when alternative remedies are available.

14. Take for example a case of murder or a case of gang rape or a case of robbery. In the considered opinion of this Court, it will be a travesty of justice if such aggrieved parties are directed to adopt the alternative mode to redress their grievance. Even a few hours delay in the investigation of such heinous crimes would deal a death knell to the case of the prosecution. Therefore, while discouraging the invocation of the inherent jurisdiction by the persons who allege commission of offences of lesser gravity which may not require immediate investigation, the Court shall entertain a petition u/s 482 invoked by the victims of heinous crimes who cry for registration of a case and investigation forthwith in order to do complete justice. The Society at large will lose faith in the system if the High Court does not go to the rescue of such victims in the face of the lackadaisical attitude of the Station House Officer. It will cost the criminal justice system dearly if the inherent jurisdiction is not invoked in cases where the Court finds that justice will be in peril in case suitable direction is not flowed from Section 482 of the Code of Criminal Procedure.

15. In view of the above, it is held that if the complaint reflects commission of murder, dowry death, attempt to murder where the victim sustained grievous injury, robbery, dacoity, rape and attempt to rape and the Station House Officer refuses to register the complaint of such allegation, then the court will have to necessarily give a direction to the Station House Officer to register the case invoking the jurisdiction u/s 482 of the Code of Criminal Procedure.

16. The aggrieved persons, who complain of the commission of other offences under the Indian Penal Code and the offences under the other Acts, shall resort to Sections 154(3), 190 read with 156(3) and 200 of the Indian Penal Code as the case may be. The inherent jurisdiction shall not be invoked in those cases to redress their grievance, for alternative remedy as detailed above is very much available.

17. The following Criminal Original Petitions reflect commission of robbery, attempt to rape, murder and attempt to commit murder where the victim sustained grievous injuries:

Crl.O.P. Nos. 28785 of 2004, 36013, 36163, 36640, 37210 of 2007 and 146 of 2008.

Therefore, the respondent police concerned are directed to register those cases forthwith, investigate the matter and file final report as expeditiously as possible. The said Criminal Original Petitions are ordered accordingly.

18. The following Criminal Original Petitions do not fall under the category of heinous crimes of murder, attempt to murder where the victim sustained grievous injuries, dowry death, rape and attempt to rape:

Crl.O.P. Nos. 28786, 28787 of 2004, 17452, 24235, 26540, 28027, 29792, 29807, 30473, 30875, 31098, 31099, 31887, 32364, 34205, 34315, 34550, 34657, 34706, 34781, 34995, 35151, 34998, 35003, 35062, 35063, 35065, 35066, 35069, 35071, 35147, 35148, 35196, 35222, 35224, 35225, 35267, 35448 to 35450, 35606, 35619, 35795, 35858, 35868, 35870, 35913, 35918, 35920 to 35924, 35946, 35949, 36012, 36022, 36026, 36029, 36030, 36036, 36059, 36083, 36084, 36144, 36160, 36162, 36168, 36170, 36247, 36294 to 36296, 36300, 36301, 36303, 36304, 36322, 36351 to 36353, 36414, 36417, 36418, 36421 to 36425, 36427, 36449, 36462, 36465, 36470, 36472, 36501, 36503, 36505, 36529 to 36534, 36636, 36637, 36641, 36643, 36644, 36812, 36813, 36816, 36822, 36866, 36934, 36935, 36937 to 36940, 36942 to 36944, 36946, 36948 to 36950, 36958, 36960, 36961, 36966, 36967, 36973 to 36975, 37013, 37018, 37084 to 37086, 37089, 37090, 37093, 37103, 37108, 37109, 37118, 37119, 37136, 37145, 37148, 37150, 37162, 37164, 37168, 37173, 37180, 37183, 37184, 37193, 37194, 37201 to 37203, 37207, 37218, 37226, 37484, 37485, 37524 of 2007, 15, 33, 40, 42, 70, 71, 93, 131, 134, 138, 144, 169, 171, 202, 206, 232 to 234, 236, 252, 290, 293, 353, 354 to 358, 360, 361, 382, 401, 402, 470, 510, 512, 594, 598, 631, 639, 688 to 692, 695, 705, 720 to 722, 731, 732, 784, 821, 881, 883, 884, 930, 941, 949, 1015, 1035, 1053, 1054, 1075, 1077, 1097, 1100, 1101, 1164, 1327, 968 and 1287 of 2008.

19. Therefore, the aforesaid Criminal Original Petitions stand dismissed granting liberty to the petitioners to invoke the alternative remedy available under Sections 154(3), 190 read with 156(3) and 200 of the Indian Penal Code as the case may be. The connected pending Miscellaneous Petitions stand dismissed.