
(2020) 02 MP CK 0126

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 8382 Of 2010

Maloji Rao Narsingh Rao Shitole Litigation, Conduct, Cost And
Benefit Trust

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 20-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 154(3), 156(3), 173, 190, 200,
203, 482
Constitution Of India, 1950 — Article 226

Citation : (2020) 02 MP CK 0126

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : R.K.Upadhyay

Final Decision : Dismissed

Judgement

This application under Section 482 of Cr.P.C. has been filed seeking following relief :-

It is therefore humbly prayed that this Hon'ble High Court may be pleased to direct the petitioner to register the F.I.R., investigate into the offence and submit report under Section 173 Criminal Procedure Code in the competent court. The Non-applicant may kindly be also directed to check the nuisance being committed and protect the trust property.

(2) It is submitted by the counsel for the State that in the light of the judgments passed by the Supreme Court in the case of Sakiri Vasu vs. State of

U.P., reported in (2008) 2 SCC 409, Aleque Padamsee and others Vs. Union of India & Ors., reported in (2007) 6 SCC 17, 1 Divine Retreat Centre

Vs. State of Kerala and others reported in (2008) 3 SCC 542 and Division Bench of this Court in Smt. Reeta Bais vs. State of M.P. & Ors. Writ

Appeal No.247/2016 (Shweta Bhadauria Vs. State of M.P. & Ors.), this application is not maintainable.

(3) The moot question for consideration is that :-

“Whether a petition under Section 482 of Cr.P.C. for registration of the FIR is tenable or not?”

(4) The Supreme Court in the case of Divine Retreat Centre (supra) has held as under:-

“41. It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue

appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an

investigating officer mala fide. That power is to be exercised in the rarest of the rare case where a clear case of abuse of power and noncompliance

with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the

High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for

in the Code.

42. Even in cases where no action is taken by the police on the information given to them, the informant’s remedy lies under Sections 190, 200

CrPC, but a writ petition in such a case is not to be entertained. This Court in Gangadhar Janardan Mhatre v. State of Maharashtra held:(SCC pp.

774-75, para 13)

“13. When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with

Section 200 of the Code to 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 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 under

Section 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 would issue process to the accused. These aspects have been highlighted by this Court in All India Institute of Medical Sciences

Employeesâ?? Union (Regd.) v. Union of India. It was specifically observed that a writ petition in such cases is not to be entertained.â??

The Division Bench of this Court in the case of Shweta Bhadauria (supra) has held as under:-

â??(1) Writ of mandamus to compel the police to perform its statutory duty u/s 154 Cr.P.C can be denied to the informant /victim for non-availing of

alternative remedy u/Ss. 154(3), 156(3), 190 and 200 Cr.P.C., unless the four exceptions enumerated in decision of Apex Court in the the case of

Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 1, come to rescue of the informant / victim.

(2) The verdict of Apex Court in the case of Lalita Kumari Vs. Government of U.P. & Ors. reported in (2014) 2 SCC 1 does not pertain to issue of

entitlement to writ of mandamus for compelling the police to perform statutory duty under Section 154 Cr.P.C without availing alternative remedy

under Section 154(3), 156(3), 190 and 200 Cr.P.C..â??

(5) As the petitioner has an efficacious and alternative remedy of filing a criminal complaint before the Court of competent jurisdiction, therefore, this

application is dismissed with liberty to file a criminal complaint before the Court of competent jurisdiction.

(6) With aforesaid liberty, the present application is dismissed.