
(2020) 07 RAJ CK 0003

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 1511, 2206, 2423 Of 2020

Meera Devi

APPELLANT

Vs

State Of Rajasthan and Ors

RESPONDENT

Date of Decision : 10-07-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 36, 154, 154(3), 156(1), 156(3), 190, 482

Citation : (2020) 07 RAJ CK 0003

Hon'ble Judges : Manoj Kumar Vyas, J

Bench : Single Bench

Advocate : Devanshu Sharma, Ripu Daman Singh, Pooran Singh Meena, Riyasat Ali

Final Decision : Dismissed

Judgement

Manoj Kumar Vyas, J

1. All These criminal misc. petitions filed under Section 482 of Cr.P.C. involve similar factual matrix and relief clause.

2. Broadly these petitions under Section 482 of Cr.P.C. have been filed on facts that petitioners lodged FIRs regarding certain offences in respective

police stations but these FIRs were either belatedly registered and it has also been alleged that after registration of FIRs the investigation in these

cases is not being conducted in fair and impartial manner. Either investigation is improper or not being conducted in appropriate manner and the

accused persons are not being dealt with in accordance with law. Hence, it has been prayed that these petitions may be allowed and respondents may

be directed to conduct fair and impartial investigation in the respective FIRs.

3. Thus, broadly the allegations and relief prayers are common invoking powers

of this court under Section 482 of Cr.P.C. to direct fair and impartial investigation in registered FIRs on the allegation that police is in collusion with accused persons and investigation is being compromised.

4. The question before this court is whether there are sufficient grounds for petitioners to invoke powers of this court under Section 482 of Cr.P.C. for the purpose of issuing direction of proper and fair investigation and whether petitioners do not have any other alternative and efficacious remedy available to them so as to require indulgence of this court through petitions under Section 482 of Cr.P.C.

5. The scheme of Code of Criminal Procedure 1973 is comprehensive and it deals with all the important aspects of criminal procedure. Chapter XII of the Code deals with information to the police and their powers to investigate. Section 154(3) of the Code reads thus:-

Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

Section 156 of the Code provides that:-

Police officer's power to investigate cognizable case.-(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

Equally important is Section 36 of the Code which provides as follows:-

Powers of superior officers of police. - Police officers superior in rank to an officer in charge of a police station may exercise the same powers,

throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

6. A bare reading of the above provisions show that detailed and elaborate provisions have been made in the Code for securing investigation regarding cognizable offences. The Code also visualises situation where police officers can refuse to register an FIR and even after registration of FIR, proper and fair investigation is not made in relation to offences regarding which FIR was registered.

7. Section 154 of Cr.P.C. provides a remedy in cases where officer in charge of a police station refuses to register an FIR in any cognizable offence.

Any person aggrieved by refusal on the part of an officer in charge of a police station to register an FIR, may send the substance of such information

in writing and by post to the Superintendent of Police concerned, and if the information discloses the commission of cognizable offence, the

Superintendent of Police is required to either investigate the case himself or direct investigation to be made by any police officer subordinate to him, in

the prescribed procedure.

8. Section 156(3) gives power to any Magistrate empowered under Section 190 to pass an order directing such an investigation as mentioned in

Section 156(1).

9. Therefore, even if Section 154(3) is of no avail then the aggrieved person can approach the concerned Magistrate and the jurisdictional Magistrate

can direct the FIR to be registered and investigation to be made into the alleged offences.

10. In *Sakiri Vasu v. State of U.P. & Others* (2008) 2 SCC 409, Hon'ble Apex Court has observed as under:-

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. xxxx xxxx xxxx xxxx xxxx

17. In our opinion Section 156(3) Cr.P.C. 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 F.I.R. 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) Cr.P.C., 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.

18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

Hon'ble Supreme Court further observed as under:-

19. The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his 'Statutory Construction' (3rd edn. Page 267):

If these details could not be inserted by implication, the drafting of legislation would be an indeterminable process and the legislative intent would likely be defeated by a most insignificant omission.

20. In ascertaining a necessary implication, the Court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.

21. xxxx xxxx xxxx xxxx xxxx

22. xxxx xxxx xxxx xxxx xxxx

23. xxxx xxxx xxxx xxxx xxxx

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) 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.

11. Similar view has been expressed by Hon'ble Supreme Court in *The Income Tax Officer, Cannanore v. M.K. Mohammed Kunhi* AIR 1969 SC

430, and it was observed that an express grant of statutory power carries with it, by necessary implication the authority to use all reasonable means to

make such grant effective. It has further been observed in para 7 of the judgment, as under:-

7. Maxwell on Interpretation of Statutes, Eleventh Edition contains a statement at p. 350 that ""where an Act confers a jurisdiction, it impliedly also

grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. Cui jurisdiction data est, ea quoque

concessa esse venduntur, sine quibus jurisdictio explicari non potuit."" An instance is given based on *Ex. Parle Martin* (1879) 4 Q.B.D. 212, 491 that

where an inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the

enactment, for the power would be useless if it could not be enforced.

12. Thus, it becomes absolutely clear that a Magistrate can, under Section 156(3) of the Code direct an FIR to be registered regarding a cognizable

offence and direct investigation. Further he is empowered under Section 156(3) to order proper investigation, if he is satisfied that a proper

investigation has not been done or is not being done by the police. Section 156(3) by necessary implication gives power to the Magistrate to issue

directions to the police to do the investigation properly and can monitor the same. Thus, power to monitor investigation flows by necessary implication

under Section 156(3) of Cr.P.C..

13. In *Union of India v. Prakash P. Hinduja & Others* (2003) 6 SCC 195, Hon'ble Supreme Court observed as follows:-

13. The provisions referred to above occurring in Chapter XII of the Code show that detail and elaborate provisions have been made for securing that

an investigation takes place regarding an offence of which information has been given and the same is done in accordance with the provisions of the

Code. The manner and the method of conducting the investigation are left entirely to the officer in charge of the police station or a subordinate officer

deputed by him. A Magistrate has no power to interfere with the same...

This judgment of Hon'ble Apex Court lays down the principle that the Magistrate cannot interfere in the investigation of a case and held that the

manner and method of conducting the investigation are left entirely to the officer in charge of the police station or a subordinate officer deputed by

him, but in the case of Sakiri Vasu (supra), Hon'ble Supreme Court has made a clear distinction between interference in an investigation and

monitoring of any investigation. It has been observed as below:-

29. In Union of India v. Prakash P. Hinduja and Anr. 2003 CriLJ 3117, it has been observed by this Court that a Magistrate cannot interfere with the

investigation by the police. However, in our opinion, the ratio of this decision would only apply when a proper investigation is being done by the police.

If the Magistrate on an application under Section 156(3) Cr.P.C. is satisfied that proper investigation has not been done, or is not being done by the

officer-in-charge of the concerned police station, he can certainly direct the officer in charge of the police station to make a proper investigation and

can further monitor the same (though he should not himself investigate).

14. Hon'ble Supreme Court in Sakiri Vasu's case (supra) has also observed that ""The High Court should discourage the practice of filing a writ petition

or petition under Section 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, under Section 156(3) before the Magistrate. It is true that alternative remedy is not an absolute bar to a writ

petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.

15. Thus, following principles emerge from the discussion:-

(i) The Code of Criminal Procedure makes a comprehensive scheme regarding investigation of the offences in Chapter XII of the Code. If a person

has a grievance that the police station is not registering his FIR under Section 154 of Cr.P.C., then he can approach the Superintendent of Police

under Section 154(3) of Cr.P.C. by an application in writing. Even if this does not help the aggrieved person and either FIR is not registered or after

registering of an FIR no proper investigation is held, then it remains open to the

aggrieved person to resort to the help of Section 156(3) of Cr.P.C. He has the option of filing an application before the jurisdictional Magistrate and if an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered.

(ii) The Magistrate has power under Section 156(3) for ensuring a proper investigation and it includes the power to order registration of an FIR and

direct the concerned SHO to conduct proper investigation if he is satisfied that proper investigation is not being done by the police or has not been

done, and for this purpose the Magistrate has power to monitor the investigation, though he cannot himself investigate the case.

(iii) The power of a Magistrate to monitor the investigation flows by necessary implication under Section 156(3) of Cr.P.C. and can be exercised in

proper cases, if the circumstances and facts of the case so warrant and he is satisfied that fair and impartial investigation is not being conducted in the

matter.

16. Thus in view of above, it becomes amply clear that petitioners in these cases have alternative and equally efficacious remedy available to them.

They can approach the concerned Magistrate for seeking direction of fair and proper investigation. If they have any grievance that after registration

of their FIR, concerned investigating officer is not conducting proper and fair investigation. The concerned Magistrate has ample powers to issue

directions for proper and fair investigation to the concerned SHO to the extent that he can even monitor the investigation if circumstances and facts of

the case so warrant.

17. In light of the above discussion and settled legal position, the petitioners in these cases have not made out a case for exercise of extraordinary

power of this court under Section 482 of CrPC when there is alternative efficacious remedy available to them, as indicated above. Accordingly, the

petitions are dismissed.

18. A copy of this order be placed in the files of CRLMP-2206/2020 and CRLMP-2443/2020.