

(2018) 08 J&K CK 0035

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No..753 Of 2017

**Mohammad Amin Lone @APPELLANT@Hash State Of Jammu & Kashmir
And Others**

Date of Decision : 10-08-2018

Acts Referred:

Jammu and Kashmir State Ranbir Penal Code, 1989 — Section 309, 323, 341, 379, 411
Code of Criminal Procedure 1973, — Section 36, 154, 154(3), 156(1), 156(2), 156(3),
161, 162, 190, 200, 482, 561A
Arms Act, 1959 — Section 7, 25
Indian Forest Act, 1927 — Section 6

Citation : (2018) 08 J&K CK 0035

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Writ of mandamus is prayed for by petitioner in the name of Director General of Police, J&K, Srinagar (respondent no.3 here) for registration of a

case FIR and constitution of a Special Investigation Team (SIT) headed by a senior police official from a district other than District Baramulla and

investigate and file a charge sheet against accused. A direction is also sought for in the name of SIT to provide regular status reports to this Court and

Commissioner/ Secretary to Government, Home Department (respondent no.1 here) and Deputy Commissioner, Baramulla (respondent no.2 here) to

provide compensation to the family of victim for violation of fundamental rights, benefits under relevant rules and consequent costs/expenses

incurred.Â

2. The case set up by petitioner for vouchsafe of afore-stated reliefs, is that his son, namely, Javaid Ahmad Lone, aged 22, is a civilian, who was

involved in religious affairs and study. He is said to be a satisfactory student at

Government Boys High School, Dewan Bagh, Baramulla, where he studied until 13th December 2008. He discontinued his studies due to death of his mother in 2008. Petitioner maintains that he had dispute with his two other sons, namely, Aijaz Ahmad Lone and Parvaiz Ahmad Lone. According to petitioner Aijaz Ahmad Lone works as a Special Police Officer (SPO) in J&K Police Department. Parvaiz Ahmad Lone, as claimed by petitioner, is a notorious drug user and dealer. Both are alleged to be closely associated rather partners in various crimes. Petitioner maintains that given their conduct and behaviour, he threw them out of the house. However, Parvaiz Ahmad Lone and his wife, namely, Afroza, are said to have forcibly returned to the house of petitioner and continued to stay there despite protests of petitioner. Parvaiz Ahmad Lone is stated to have filed numerous complaints against him, including FIR no.74/2015 in police station Baramulla.Â

3. On 19th April 2015, an advertisement in Daily Roshni, Srinagar, Sunday Edition (Annexure P2 to writ petition) is claimed to have been got issued by petitioner qua his sonâ??s (Parvaiz Ahmad Loneâ??s) unbecoming, violent, immoral and illegal behaviour, disassociating himself from Parvaiz Ahmad Lone and disinheriting him, and informing general public in the event of any harm caused to petitioner, the cause be considered to Parvaiz Ahmad Lone.Â

4. It is asserted by petitioner that during intervening night of 29th and 30th April 2015, some police personnel came to petitionerâ??s house, accompanied by some army personnel as well. They are alleged to have come from Baramulla Police Station. Petitioner says that he is in a position to identify one of them. The persons present at home at that time were petitioner, Javaid, Parvaiz Ahmad and his wife, and petitionerâ??s daughter, Nadiya. Petitionersâ?? two sons, daughter and daughter-in-law were residing in upper floor while petitioner was below. Prior to the raid by police, petitioner states that he received an abrupt phone call from an unknown person who merely asked about presence of Parvaiz Ahmad at the residence. The raid was conducted about half an hour later and both sons of petitioner, namely Parvaiz Ahmad and Javaid, were taken away by police. Javaid along with Parvaiz Ahmad, is said to have been unlawfully detained in police station Baramulla headed by Station House Officer, Ayaz Geelani, from

the time of his being taken from his residence until 5th May 2015. No FIR was filed against Javaid and neither was he produced before any court as

required under law. Throughout his unlawful detention petitioner met with Javaid and sought his release on a daily basis. Javaid, as said in petition on

hand, was being beaten and his SPO brother, Aijaz Ahmad, was threatening him. During unlawful detention of Javaid, on 3rd May 2015, petitioner on

his regular visit to Baramulla police station, was informed by Criminal Investigation Department (CID) officials that there was a newspaper report in

the 3rd May 2015 Edition of Srinagar Times (Annexure P3 to writ petition) that the police and 46 RR personnel seized the area in Old Town

Baramulla and conducted a raid on petitioner's house and his two sons, Parvaiz Ahmad and Javaid Ahmad, were arrested along with seizures of

arms. According to petitioner, the said newspaper report is confirmation that victim was in fact arrested by police. Javaid was released by the police

station Baramulla in the evening of 5th May 2015. According to petitioner the victim was beaten a lot, including on his legs and below his feet.Â

5. Petitioner contends that on 6th May 2015, he met Director General of Police with a letter regarding mistreatment of the victim. Director General of

Police is said to have given him a letter in a closed envelop to handover it to Senior Superintendent of Police, Baramulla. Further story of petitioner is

that on 7th May 2015, he handed over the letter to an unknown person at the office of SSP Baramulla, where his son, Javaid, saw his brother, Aijaz

Ahmad, SPO, and got scared. To assuage him, petitioner claims that he took Javaid to the court, where they drafted an affidavit, alleging therein that

Aijaz Ahmad Lone and others were threatening them and bonds be taken from them. The affidavit also states that Javaid is being forcibly persuaded

to give an incriminating statement against his own father. Soon after their return to home, around 8/10 police personnel from police station Baramulla

are said to have come to their house and he was informed that he was being summoned by SHO Baramulla police station. Petitioner went in public

transport and no information was provided to him. He was allowed to keep his mobile phone. On 8th May 2015, petitioner spoke to his daughter,

Nadiya, on a few occasions and it was decided that due to continued threat of her brother, Aijaz Ahmad, SPO, who lived in their vicinity, Nadiya and

Javaid would shift to a different location. In the evening time of 8th May 2015, Nadiya and Javaid, prior to going to a separate location, are asserted to

have come to Baramulla police station to visit petitioner and give him some cigarettes. Close to police station, Nadiya asked Javaid to wait on the side

as she would enter police station, but Aijaz Ahmad, SPO, saw Nadiya and questioned her. When she mentioned that Javaid was close by, Aijaz

Ahmad returned in a vehicle with police personnel, namely, Ramiz Gujjar, picked up Javaid and took him in police station Baramulla. It is averred that

meanwhile, a person, namely, Bashir Ahmad Bhat, who works with petitioner in his wood cutting business, had also come to Baramulla police station

to see petitioner. He was brought out of the room in which he had been kept and was taken to SHO's room. As he was taken into SHO's

room he saw Bashir Ahmad Bhat, standing outside and offering petitioner cigarettes that he too had brought. Petitioner asked him to wait as he was

being taken to SHO's room. It is maintained in the petition that in SHO's room petitioner saw SHO and the then Dy. S. P., Baramulla, Feroz

Yehya, (respondent no.6 here), whom he had seen prior to the said time and recognised. Two policemen are stated to have escorted petitioner inside

the room and the door of the room, just outside of which was, Bashir Ahmad Bhat, was kept open and petitioner was asked to sit down. Within a few

minutes, respondent no.6 is said to have received a call and he responded by asking the person on the phone to bring someone inside. Petitioner then

saw his son, Javaid, being brought in by Ramiz Gujjar and Aijaz Ahmad, SPO. Respondent no.6 asked Javaid what work he had with DGP. As this

questioning was taking place, respondent no.6 is averred to have suddenly picked up some sort of a silver roller like object and starting beating Javaid

as also his head. A scuffle ensued as petitioner tried to intervene and protect Javaid but he was dragged away and put in lock up with others. After an

hour or so, SHO returned and petitioner was bundled in a car. SHO kept receiving phone calls as petitioner was taken to Baramulla hospital. There

petitioner saw an ambulance in which were his son, Javaid, his daughter Nadiya and Danish, son of Sanaullah Sheikh and Zubair Ahmad Bhat son of

Mohammad Amin Bhat, both residents of Qazi Hamam Baramulla town. Further story of petitioner in writ petition is that his daughter, Nadiya later

informed petitioner that after Javaid was picked up by Aijaz Ahmad, SPO, she returned home. Subsequently, Aijaz Ahmad, SPO, came along with

injured, Javaid, whose right side of the head was swollen. Aijaz Ahmad told Nadiya to look at what Dy. S.P. had done. Aijaz Ahmad left Javaid at

home. Nadiya then enlisted the assistance of Danish and Zubair and an auto driver, Zahoor Ahmad Gojri son of Ghulam Ahmad Gojri resident of Qazi

Hamam, Baramulla town and brought Javaid to the hospital. There a doctor first informed them that Javaid was dead but then called SHO and told

him that patient was being referred to Srinagar. Petitioner reached SMHS Hospital along with Javaid, where doctors initially stated that Javaid was

dead but then subsequently realized that he was in fact alive and he was taken to Intensive Care Unit. By 11th May 2015, condition of Javaid

improved slightly, but on 12th May 2015, his situation deteriorated rapidly. On 13th May 2015, respondent no.6 himself visited hospital, which petitioner

suspected was to monitor status of Javaid and perhaps also tried and caused some harm to Javaid. Further, police personnel tried to take medical

records of Javaid that were successfully resisted by petitioner and a doctor present. Javaid was discharged from SMHS Hospital on 6th June 2015

and was then taken to Fortis Hospital, Chandigarh, and Max Hospital Chandigarh and then he was treated in Jammu at a residence under supervision

of doctors. Finally, he was brought back to his residence in Baramulla in around March 2016 and continues to receive medication under supervision of

doctors at Baramulla District Hospital.

6. Further contention of petitioner is that situation of Javaid continues to remain extremely poor inasmuch as he is in a vegetative state and bedridden

and huge costs have already been incurred by family on his treatment. Even doctors have recommended treatment through a Baclofen pump that is

upwards of Rs.6.00 lacs, way beyond the financial means of petitioner. Rather than taking action against accused police personnel, responsible for

grievous hurt caused to victim and his present medical condition, the police is alleged to have fabricated a case vide FIR no.80/2015 filed on 8th May

2015, which mentions that Javaid attempted to commit suicide. According to petitioner, this is a completely false version of events and is an attempt to

cover up criminal role of police, particularly respondent no.6 in this case. Petitioner has reason to believe that police also bought over certain members

of medical team at SMHS to create a false medical record that alleges the victim to be a drug addict. While dealing with extremely distressing

condition of victim, petitioner has, since the time of incident, sought to find remedies to initiate criminal action against accused police personnel, but he

has not approached Baramulla police as they are accused in this case.Â

7. Reply has been filed by respondent. They insist that petitioner has mentioned distorted facts regarding grievous injury caused to son of petitioner by

respondent no.6 and subsequent inaction by respondent has been denied. It is claimed that matter of fact is that Javid Lone, son of petitioner, was

never taken into custody by respondent no.6, as such, allegations levelled against him are not established nor petitioner has ever brought alleged act of

causing injury to son of petitioner involving respondent no.6 or any other official, to the notice of superior police officer. Police station Baramulla is

said to have received information through reliable sources that petitionerâ??s son, namely, Javid Ahmad Lone, made an attempt to commit suicide on

8th May 2015, after consuming some poisonous substance with an intention to end his life and accordingly in this connection case FIR no.80/2015

under Section 309 RPC, was registered in police station Baramulla. Javaid Ahmad Lone had been taken by his legal heirs to District Hospital

Baramulla, for treatment. On receipt of said information, police rushed to District Hospital, Baramulla, and recorded some statements under Section

161 Cr.P.C. Later, on the same date after initial management at District Hospital, petitionerâ??s son was referred to SMHS Hospital, Srinagar, for

further treatment. The report obtained from Medical Officer, District Hospital, Baramulla, is also corroborative of said fact. During course of

investigation of aforesaid case, correspondence was made with Medical Officer, SMHS, Srinagar, on 27th May 2015, by Investigating Officer for

recording the statement of petitionerâ??s son as was warranted under law to bring investigation of said case to its logical conclusion, the said

communication was accordingly Â referred to concerned Registrar for the said purpose. It is reiterated by respondents that petitionerâ??s son,

namely, Javid Ahmad Lone, had consumed poisonous substance on 8th May 2015 and was declared as a case of oral poisoning by doctors, which is

evident from the medical record registered under OPD Ticket no.328651, issued by Medical Officer, District Hospital Baramulla.Â

8. It is also averred that investigation conducted in the matter reveals that petitionerâ??s son is a drug addict and on relevant point of time, he had

consumed overdose of drugs and was lying unconscious at his home. Accordingly, he was taken to District Hospital, Baramulla, by home people on

8th May 2015, where his stomach was washed by Doctors, which is evident from prescription dated 8th May 2015, issued by Government District

Hospital, Baramulla. According to respondents, petitioner is levelling unfounded allegations against respondent no.6 about causing grievous injury to

petitioner's son and he has made an attempt with some ulterior motive to cause damage to image of respondent no.6 and police force.

9. Respondents also maintain that another son of petitioner, namely, Parveez Ahmad, was arrested in case FIR no.74/2015 under Section 7/25 Arms

Act of police station Baramulla, owing to his militant background, which includes recovery of arms/ammunition from his possession. It is insisted that

on his own showing of petitioner, his sons were involved in illegal activities that were known to public and therefore family of petitioner has a criminal

history. The fact regarding Parveez Lone, Javid Lone, being involved in Arms Act and NDPS Act/Drug Abuse are of utmost importance and the

report of medical experts regarding drug overdose by Javid Lone needs to be given due credibility. Respondents also assert that petitioner has

mentioned distorted fact regarding occurrence and date of arrest of his son, namely, Parveez Ahmad. The fact, according to respondents, is that

petitioner's son was not arrested on 29th and 30th April 2015, as claimed by petitioner and in fact on 2nd May 2015 police station Baramulla

received a letter bearing no.2082/46RR/FIR dated 2nd May 2015 on behalf of commanding officer 46 RR to the effect that Parvez Ahmad Lone son

of Mohammad Amin Lone has been a LeT OGW. Based on own reliable inputs about presence of individual in his house at Qazi Hamam old town,

a search operation has been launched by joint team of 46 Rashtiya Rifles, JKP Baramulla and SOG Baramulla on 1st May 2015 at 2330 hours. The

individual was apprehended and was questioned by teams and on his disclosure, a Chinese pistol with 04 rounds, 02 commando knives and a duplicate

AK-47 has been recovered from his illegal possession. Subsequently, individual along with recoveries has been handed over to police station

Baramulla and in terms of aforesaid letter, a request has been made to lodge an FIR against the said individual and investigation into the matter be

conducted/ carried out. The said information led to registration of case FIR no.74/2015 under Section 7/25 Arms Act, in police station Baramulla and

investigation was set into motion. The formal arrest of suspect was effected in the case. During course of investigation, offence punishable under

section 7/25 Arms Act was prima facie made out against accused, Parveez Ahmad son of petitioner, who was, accordingly, admitted to bail by the

court of law and was released. The challan of said case stands produced before the court on 22nd December 2016 for judicial determination.

Petitioner's son namely, Parveez Ahmad Lone, has got affiliated with LeT outfit after coming into contact with some foreign mercenaries of LeT

outfit, who had successfully motivated him to join LeT outfit. The contention of petitioner that his another son, namely, Javid Ahmad, was also taken

away by police along with accused Parveez Ahmad is unfounded.Â

10. Respondents state that the contention of petitioner that he has handed over a letter to some unknown person at the office of respondent no.4 is

denied because petitioner was supposed to hand over said letter, if any, to some other senior officer, if respondent no.4 was not present in his office at

the relevant point of time and would have obtained acknowledgement of said letter from concerned quarters inasmuch as records were checked in the

office of respondent no.4, which also corroborated the fact that no such letter has been received in the said office.Â

11. Respondents claim that petitioner is involved in various criminal cases of police station Baramulla viz. FIR no.110/2007 under Section 379, RPC &

6 Forest Act; FIR no.83/2009 under Section 147, 148, 149, 336, 332, 341, 323 RPC; FIR no.30/2015 under Section 379/2015 under Section 379/411

RPC; and FIR no.171/2015 under Section 341, 323 RPC.Â Respondents also contend that the allegations about alleged act of beating, involving

respondent no.6 or other officials of police station Baramulla, have never been brought by petitioner to the notice of any superior officer. Respondents

have reason to believe that petitioner has taken false averments to malign image of police force.

12. I have heard learned counsel for parties and considered the matter.

13. Learned counsel for petitioner to reinforce the case set up by petitioners, states that the courts particularly High Courts and Supreme Court are

sentinels of justice and have been vested with extraordinary powers of judicial review and supervision to ensure rights of citizens are duly protected.

The courts have to maintain constant vigil against inaction of authorities in discharging their duties and obligations in the interests of citizens, for whom

they exist. His further submission is that duty of the State, especially the police,

is to investigate cognizable offences. While there is no time limit prescribed for investigation of serious offences, the Supreme Court has in numerous judgements emphasised need for speedy investigations. Failure to carry out fair investigations directly impacts on question of justice because delay can lead to loss of crucial evidence, whether oral evidence or otherwise. Petitioner's fundamental rights to equality under Article 14 of the Constitution, are stated to have been violated by noninvestigation of grievous hurt caused to victim. Learned counsel for petitioner while inviting attention of this Court to judgement rendered by the Supreme Court in *Lalita Kumari v. Government of U.P. and others* (2014) 2 SCC 1, to contend that registration of FIR is mandatory under Section 154 of Code, if information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. Even in cases where such preliminary enquiry is carried out, the Supreme Court has said that this enquiry should not exceed seven days. He has also referred to the Supreme Court (five Judges) judgement delivered in *State of West Bengal and others v. Committee for Protection of Democratic Rights and others* (2010) 3 SCC 571, to contend that Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said Article in its broad application not only takes within its fold enforcement of rights of an accused but also rights of victim. The State has a duty to enforce human rights of a citizen, providing for fair and impartial investigation against any person accused of commission of cognisable offence, which may include its own officers. According to learned counsel, the case in hand is effectively an open and shut case due to evidence of eyewitnesses of unlawful detention of victim by police and subsequent beating of victim on the head by respondent no.6. In support of his submissions learned counsel for also placed reliance on *Arumugam Servai v. State of Tamil Nadu* (2011) 6 SCC 405; *DK Basu v. State of West Bengal* AIR 1997 SC 610; *Nilabati Behera v. State of Orissa and others* AIR 1993 SC 1960; *Rudul Shah v. State of Bihar and another* AIR 1983 SC 1086; *The Chairman, Railway Board and others v. Mrs Chandrima Das and others* (2000) 2 SCC 465.

14. In the present case, petitioner's contention is that his son, namely, Javaid Ahmad Lone, has been beaten to a pulp by respondent no.6. If

respondent no.5 or for that matter any other police authority had declined registration of FIR vis-à-vis allegations made by petitioner in writ petition on hand, he could have fall back upon provisions of Section 156 (3) of the Code of Criminal Procedure. Subsection (1) of Section 156, Cr.P.C. envisages and envisions that any office-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 local limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial. Subsection (2) of Section 156, Cr.P.C. provides that no proceeding of 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. Subsection (3) of Section 156 Cr. P.C., pertinent here, stipulates that any Magistrate, empowered under Section 190, may order such an investigation as abovementioned.Â

15. In cases where a prior complaint is already registered, a counter complaint is permissible, even in cases where a first complaint is registered and investigation initiated, it is possible to file a further complaint by the same complainant based on material gathered during the course of investigation. If in regard to a crime committed by real accused, he takes the first opportunity to lodge a false complaint and the same is registered by jurisdictional police, then aggrieved victim of such crime will be precluded from lodging a complaint giving his version of incident in question, consequently he will be deprived of his legitimated right to bring real accused to book. The Supreme Court in the case of Upkar Singh v. Ved Prakash and others (2004) 13 SCC 292, relied upon by learned counsel for petitioner, has held that learned Magistrate was justified in directing police concerned to register a case and investigate the same and report back. The Supreme Court also opined that both learned Additional Sessions Judge and the High Court erred in coming to conclusion that the same is hit by Section 161 or 162 of the Code, which has absolutely no bearing on question involved. Section 161 or 162 does not refer to registration of a case, it only speaks of a statement to be recorded by police in the course of investigation and its evidentiary value. As held by the Supreme Court in Criminal Appeal no.408 of 2018 (arising out of SLP no. (Crl.) No.7970 of 2014) titled P. Sreekumar v. State of

Kerala & ors reported in (2018) 4 SCC 579, even if second FIR being in the nature of a counter-complaint qua same incident, for which the first FIR was already filed, is legally maintainable and could be entertained for being tried on its merits. There is no prohibition in law to file second FIR and once it is filed, such FIR is capable of being taken note of and tried on merits in accordance with law.Â

16. Without delving into the merits or demerits of the allegations and counter-allegations made by parties in the present case, this Court is of the view that in case of denial by police to register an FIR on his complaint, proper alternative remedy for petitioner for redressal of his grievances, was to first approach the Superintendent of Police under Section 154 (3) of Cr.P.C.Â and in case it was ineffective, he had the right to file an appropriate application before the Magistrate under Section 156 (3) of Cr.P.C. Admittedly, that has not been done. In the case of Gangadhar Janardan Mhatre vs.

State of Maharashtra & Ors., 2004 (7) SCC 768, the Supreme Court held that â?? at this stage it needs to be clarified that the obligation to register a case is not to be confused with the remedy. The remedy availability to the aggrieved person in case of refusal to register FIR to have recourse to lay complaint before the Magistrate under Section 190 read with Section 200 Cr.P.C.â??

17. In Sakiri Vasu v. State of U.P. and others, 2008 (2) SCC 409, the Supreme Court observed as follows:

â??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 under Section 154

Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. 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 under Section 156(3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section

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. â?|..

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 FIR 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. â?|â?|

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 police station concerned 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 had 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 under Section 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, first under Section 154 (3) and Section 36 Cr.P.C. before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned under Section 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 under Section 154 (3) CrPC 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 under Section 156 (3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover, he has a further remedy of filing a criminal complaint under Section 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 under Section 482CrPC 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 police officers concerned, and if that is of no avail, under Section 156 (3) Cr.P.C. before the Magistrate or by

filing a criminal complaint under Section 482 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. 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.â??

18. From the above it emerges that if a person has a grievance that police is not registering his FIR under Section 154 Cr. P.C., then he can approach

Superintendent of Police under Section 154(3) Cr. P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that

either FIR is still not registered or that even after registering it no proper investigation is held, it is open to aggrieved person to file an application under

Section 156(3) Cr. P.C. before learned Magistrate concerned. If such an application under Section 156 (3) is filed before the Magistrate, the

Magistrate can direct registration of FIR and also can direct a proper investigation to be made in a case where, according to aggrieved person, no

proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.Â

19. 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 power to order registration of an FIR 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 police. Section 156 (3) Cr.P.C., though briefly worded, is very wide and it will include all such incidental powers as

are necessary for ensuring a proper investigation.

20. In view of the abovementioned legal position, 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 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 had not been expressly mentioned in Section 156 (3) Cr.P.C., but such powers are implied in the above provision.

21. It also emerges from above discussion that when someone has a grievance that his FIR has not been registered at police station and/or a proper

investigation is not being done by police, he rushes to the High Court to file a writ petition or a petition under Section 561-A Cr. P.C., which is pari

materia to Section 482 Cr. P.C., the Supreme Court categorically says that the High Court should be loath in encouraging such practice and should

generally refuse to interfere in such matters and relegate petitioner to his alternative remedy, first remedy is to approach Superintendent of Police

under Section 154 (3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If, despite approaching Superintendent of Police or the officer

referred to in Section 36, his grievance still persists, then he can approach a Magistrate under Section 156 (3) Cr. P.C. instead of rushing to the High

Court by way of a writ petition or a petition under Section 561-A Cr.P.C. Moreover, he has a further remedy of filing a criminal complaint under

Section 200 Cr. P.C. The Supreme Court, while cautioning regarding practice of entertaining writ petitions and petitions under Section 561-A Cr. P.C.

again says that why then should writ petitions or Section 482 of the Central Cr.P.C. (Section 561-A of the State Cr. P.C.) petitions be entertained

when there are so many alternative remedies

22. The Supreme Court has also observed that 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. While observing so, the Supreme

Court in clear cut terms held that if there is an alternative remedy available, the High Court should not ordinarily interfere.

Same is true qua present case.

23. In *Aleque Padamsee v. Union of India*, 2007 (6) SCC 171, the Supreme Court

held:Â

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.

24. Additional reliefs claimed by petitioner in writ petition are primarily off-shoot of main relief i.e. direction to register FIR. Moreover, for seeking

other reliefs, petitioner has other alternative remedies available that he can make use of.

25. In view of forgoing discussion and discourse, present writ petition is devoid of any merit and is, accordingly, dismissed. Pending application(s) also

stand(s) dismissed. Interim direction, if any, shall stand vacated.

26. Liberty is, however, given to the petitioner to avail appropriate remedy as available under the Code of Criminal Procedure.Â

27. Observations made herein above would have no impact on the merits of the case.