
(2008) 05 AHC CK 0014
In the Allahabad High Court
Case No : Criminal M.W.P. No. 7256 of 2008

Ram Sagar Patel	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 21-05-2008

Acts Referred:

Arms Act, 1959 — Section 25, 3
Constitution of India, 1950 — Article 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(3), 156(3), 169, 190
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 8
Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 — Rule 14

Citation : (2008) 3 ACR 2554

Hon'ble Judges : Vinod Prasad, J; Surendra Singh, J

Bench : Division Bench

Advocate : Raj Kumar, for the Appellant; A.G.A., for the Respondent

Judgement

Surendra Singh, J.—The Petitioner, aggrieved by the inaction on the part of the Respondents, to the present writ petition has invoked our extraordinary jurisdiction under Article 226 of the Constitution of India praying for a writ of a mandamus commanding the Respondent No. 2 to follow the paragraph No. 486(I) and (III) of the U.P. Police Regulation and register the F.I.R. and investigate the offences against the Respondent Nos. 4 to 7.

2. We have heard learned Counsel for the Petitioner at a great length and learned A.G.A., and perused the record of the writ petition.

3. Encapsulated facts are that the Petitioner is the owner of landed property near Varanasi Development Authority. Rakesh Naik, a local M.L.A. and a Land Mafia, in collusion with one Abdul Kalam got executed a forged Will dated 1.6.2002 in favour of one Ram Surat Patel. On coming to know about the Will, Petitioner in 2002 filed a suit for cancellation of the Will deed before Civil Judge (S.D.) and obtained an injunction to maintain status quo. It is further alleged that by way of counter blast to exert pressure in civil suit, Rakesh Naik lodged an F.I.R. against

the Petitioner on 24.2.2004 as Crime No. 463 of 2004 u/s 8/21 of N.D.P.S. Act and also u/s 3/25 of Arms Act at Police Station Cantt, district Varanasi.

4. The Petitioner was arrested in the aforesaid crime. His brother however, moved an application before the Respondent No. 2 for initiating an enquiry which was conducted by Santosh Kumar (C.O.) district Varanasi. The Enquiry Officer (C.O.) submitted his report on 10.11.2004 to Respondent No. 2 in favour of the Petitioner. In the enquiry report C.O. held that the Petitioner has been falsely implicated in a fake recovery of 400 gms. of heroine, vide aforesaid crime number and thus he found the implication of the Petitioner to be false u/s 8/21 of N.D.P.S. Act and also u/s 3/25 of Arms Act.

5. In pursuance of enquiry report the Investigating Officer (Dy. S.P.) submitted a final report u/s 169, Cr.P.C. in favour of the Petitioner in the Court of Special Judge, N.D.P.S. Act, district Varanasi. The Petitioner was released on bail by the Special Judge, N.D.P.S. Act on 8.12.2004. However, the crime was taken up for further investigation which culminated in submission of charge-sheet against the Petitioner.

6. The Petitioner thereafter preferred a Criminal Misc. Application No. 9155 of 2006 and Criminal Misc. Application No. 9183 of 2006 before this Hon'ble Court, both u/s 482, Cr. P.C., challenging the aforesaid charge-sheet, i.e., u/s 8/21 of N.D.P.S. Act (vide Crime No. 463/04) and also u/s 3/25 of Arms Act (vide Crime No. 464/04). This Court vide its order dated 31.7.06 and 1.8.06 stayed the proceedings of lower court in the aforesaid criminal misc. applications which stay order is still in vogue. Respondent No. 2, however, initiated a departmental proceedings against the Respondent Nos. 4 to 7 under Rule 14 Sub-clause (i) of the U.P. Police Officers of the Subordinate Rank (Punishment and Appeal) Rules, 1991, in which the objection of the Petitioner was invited.

7. The Petitioner desires and now he has prayed that the proceedings against the Respondent Nos. 4 to 7 be initiated under the provisions of paragraph No. 486 (I) and (III) of the U.P. Police Regulation as it was imperative on the part of the police authorities to lodge a F.I.R. against them for the offence under I.P.C. and get the matter investigated. According to the Petitioner, his effort is to get the F.I.R. registered against the Respondent Nos. 4 to 7, yielded no result, although it should have been registered as envisaged under paragraph No. 486 (I) and (III) of the Police Regulations.

8. After hearing the Petitioner's counsel in support of this petition and the learned A.G.A., we are of the considered opinion that prayer made in this writ petition is wholly misconceived and the Petitioner has alternative statutory remedies available to him. Firstly, he should have filed an application u/s 156(3), Cr.P.C., secondly, he should have lodged complaint against malefactors u/s 190(1) (a) of the Code. The tendency of the litigants to approach High Court or Supreme Court under Articles 226 or 32 of the Constitution to get their F.I.R. registered have been depreciated by the Apex Court. This not only throng dockets of the

higher courts but also erodes the tendency of the litigants to by pass statutory remedies. This practice, in our view, should not be encouraged. The writ power under Article 226 of the Constitution of India is an extraordinary constitutional power which should be entertained only when other statutory remedies have been exhausted. We do not mean that the alternative remedy is a bar in exercise of writ power but what we mean to say is that it should be exercised only when it is most desired in rarest of rare cases to preserve the Fundamental Rights of the citizens. Our thrust is not so much on possession of power but is on its exercise. The matter is no longer *res integra*. The Apex Court has held in following decisions that for registration of a F.I.R. victim or aggrieved person has got alternative remedies. It has been held in case of *Sakiri Vasu v. State of U.P. and Ors.*, (LX) 2008 ACC 689: 2008 (1) ACR 4, as follows :

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his F.I.R. u/s 154, Cr.P.C., then he can approach the Superintendent of Police u/s 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 F.I.R. 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), Cr.P.C. before the learned Magistrate concerned. If such an application u/s 156(3) is filed before the Magistrate, the Magistrate can direct the F.I.R. 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.

Further, in the same decision Supreme Court held as follows :

13. ...We would further clarify that even if an F.I.R. has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate u/s 156(3), Cr.P.C. and if the Magistrate is satisfied, he can order a proper investigation and take other suitable steps and pass such other orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys u/s 156(3), Cr.P.C.

....

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.

....

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 worked, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

Further it has been held by the Apex Court in the case of Gangadhar Janardan Mhatre v. State of Maharashtra AIR 2004 SC 4753: 2004 (3) ACR 2758 ,

13. When the information is laid with the Police, but no action in that behalf is taken, the complainant is given power u/s 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 u/s 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 Employees' Union (Reg.) through its President v. Union of India and Ors. (1997) SCC 303. It was specifically observed that a writ petition in such cases is not to be entertained.

It has further been held in the case of Hari Singh Vs. The State of U.P., as follows :

4. When the information is laid with the police, but no action in that behalf is taken, the complainant can u/s 190 read with Section 200 of the Code 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 u/s 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 Employees' Union (Reg.) through its All India Institute of Medical Sciences Employees' Union (Regd.) through its President Vs. Union of India (UOI) and Others, It was specifically observed that a writ petition in such cases is not to be entertained.

Yet in another decision Minu Kumari and Another Vs. The State of Bihar and

Others, it has been laid down by the Apex Court as follows :

15. When the information is laid with the Police, but no action in that behalf is taken, the complainant is given power u/s 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 u/s 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 Employees' Union (Reg.) through its All India Institute of Medical Sciences Employees' Union (Regd.) through its President Vs. Union of India (UOI) and Others, It was specifically observed that a writ petition in such cases is not to be entertained.

In view of the above discussions, this petition is devoid of merits and hence it is dismissed.