

(2009) 08 JH CK 0094
In the Jharkhand High Court

Ram Subhag Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 200, 36, 482
Penal Code, 1860 (IPC) — Section 153, 154, 190, 200, 203

Citation : (2009) 08 JH CK 0094

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—Extraordinary jurisdiction of this Court has been invoked on behalf of the petitioner for directing the respondent No. 4 Officer In-charge, Doranda Police Station, Kanchi to institute a case under Sections 295A/290/153 of Indian Penal Code upon a written complaint, submitted by the petitioner on 21.9.2007. putting allegation against respondent No. 5-the Chief Minister of Tamil Nadu, of maliciously outraging the religious feeling of the petitioner and also of the other people having faith in Hindu religion by uttering derogatory remarks against the Lord Rama.

Learned Counsel appearing for the petitioner submits that the respondent No. 5-the Chief Minister of Tamil Nadu deliberately and maliciously uttered derogatory remarks against the Lord Rama outraging the religious feeling of the Hindus which was published in the daily newspaper "Hindustan" Ranchi Edition on 21.9.2007. The petitioner having read it lodged a written complaint before Doranda Police Station on 21.9.2007 with a view to set the law in motion but the respondent No. 4-Officer In-charge, Doranda Police Station, in spite of receiving the said complaint, disclosing cognizable offence, did not institute the case though he was statutorily bound to register the case. When the petitioner did find that the case has not been lodged, a written intimation was given to the Superintendent of Police, Ranchi through FAX but still no action was taken and,

therefore, this application was filed for directing the respondent No. 4-Officer In-charge, Doranda Police Station to lodge the case. Learned Counsel in support of his submission, that the police, on receiving complaint, disclosing a cognizable offence, is duty bound to register the case, referred to a case of Ramesh Kumari Vs. State (N.C.T. of Delhi) and Others, and also a case of Parkash Singh Badal and Another Vs. State of Punjab and Others, .

The stand of the State, as disclosed in the counter affidavit, is that on receiving the" complaint, the respondent No. 4-Officer In-charge, Doranda Police Station sent it to the Superintendent of Police, Ranchi so that the matter be referred to the Central Government, as the place of occurrence was outside of the jurisdiction of Doranda Police Station.

Having heard learned Counsel appearing for the parties, it appears that when a news item was published in the daily newspaper including "Hindustan" in its issue on 21.9.2007 about the alleged derogatory remarks made by respondent No. 5-the Chief Minister of Tamil Nadu against the Lord Rama, a complaint was filed by the petitioner on the same day before the respondent No. 4-Officer In-charge, Doranda Police Station alleging therein that respondent No. 5 by uttering certain remarks against Lord Rama deliberately and maliciously outraged the religious feeling of the petitioner and also of the other people having faith in. Hindu religion and thereby committed cognizable offence u/s 295A of Indian Penal Code, but the respondent No. 4-Officer In-charge, Doranda Police Station never instituted FIR on the aforesaid complaint and, therefore, this writ application was filed for directing the respondent No. 4-Officer In-charge, Doranda Police Station to institute an FIR, as he, according to the petitioner, was duty bound to register the case on the complaint, as the same discloses commission of a cognizable offence. The said proposition, as advanced on behalf of t. e petitioner, has been laid down in a case of R.S. Raghunath Vs. State of Karnataka and another, , wherein it was categorically held in Paragraph-33:

It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a Police Station satisfying the requirement of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

The aforesaid view was subsequently followed in a case of Ramesh Kumari Vs. State (N.C.T. of Delhi) and Others, and also in a case of Parkash Singh Badal and Another Vs. State of Punjab and Others, , but at the same time, their Lordships in a case of Parkash Singh Badal (supra) have observed in Paragraph-73 which reads as under:

At this stage it needs to be clarified that the obligation to register a case is not to be confused with the remedy if same is not registered. Issue of the remedy has been decided by this Court in several cases (See Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others, .

In the case of Gangadhar Janardan Mhatre, their Lordships dealt with the matter relating to the remedy available to aggrieved person when the police refuses to institute FIR on a complaint disclosing cognizable offence and held as under:

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 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 (Regd.) through its President Vs. Union of India (UOI) and Others, .

It was specifically observed that a writ application in such cases is not to be entertained.

Again Hon'ble Supreme Court in a case of Sakiri Vasu Vs. State of U.P. and Others, has expressed the same view in Paragraphs-25, 26 and 27 which read as under:

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 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, first u/s 154(3) and Section 86 Cr.P.C. before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned 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 86 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 petition; 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 u/s 36 and 154(3) before the police officers concerned, 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.

In view of the principles laid down by the Hon"ble Supreme Court, the petitioner is not entitled to get relief, as claimed, rather he does have other remedy which has been indicated in the aforesaid decisions.

Accordingly, I do not find any merit in this writ application and hence, this application is dismissed.