

(2015) 07 AHC CK 0012

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 10792 of 2015

Rina Kumari

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(3), 156(3), 161, 164
Penal Code, 1860 (IPC) — Section 376, 452, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2015) 3 ACR 3420 : (2015) 5 ALJ 291 : (2015) 90 ALLCC 583

Hon'ble Judges : Sudhir Agarwal, J; Shashi Kant, J

Bench : Division Bench

Advocate : Rohit Pandey, for the Appellant

Final Decision : Disposed off

Judgement

Sudhir Agarwal, J.—This writ petition under Article 226 of the Constitution of India has been filed by Smt. Rina Kumari seeking a mandamus commanding respondent No. 2, i.e., Superintendent of Police, Rampur to transfer investigation of Case Crime No. 278-C/2014, under Sections 452, 376, 506 I.P.C. and 3(1) XII SC/ST Act, Police Station Milak, District Rampur from the present Investigating Officer, Dr. Tej Veer Singh, Circle Officer, Milak, Rampur to any other officer and to direct a fair investigation.

2. The facts, in brief, are that the petitioner fell victim to criminal act of respondent No. 5, Bal Kishan son of Sohan Lal, who forcibly entered the house of petitioner on 06.05.2014 at about 6.00 pm, and, committed rape at knife point. When she raised alarm, respondent No. 5 ran away, assaulting petitioner. She went to police station but no report was registered, whereupon she had no option but to move application under Section 156(3) Cr.P.C. before the concerned Magistrate. Ultimately, under his order, the report was lodged on 10.06.2014 at 13.00 hours against respondent No. 5.

3. Petitioner's statement under Section 161 Cr.P.C. was recorded by Investigating Officer only on 07.08.2014 in which she confirmed the offence of rape committed by respondent No. 5 and fortified the information given in first information report. Her statement under Section 164 Cr.P.C. was recorded before Magistrate on 12.09.2014 where also she confirmed her allegations levelled against respondent No. 5. Despite that the Investigating Officer, on the basis of some affidavits of some persons, submitted a final report No. 17 of 2015 on 15.10.2014.

4. The petitioner filed protest petition after receiving notice on 23.02.2015. The Judicial Magistrate/Additional Civil Judge (Junior Division), Court No. 1, Rampur heard the matter and making strictures against Investigating Officer, rejected final report. He directed for further investigation in the matter vide order dated 07.04.2015. Since thereafter, the Investigating Officer has not done anything in the matter, being in collusion with respondent No. 5 and, therefore, petitioner apprehend that present Investigating Officer is biased. He is not doing fair and partial inquiry therefore, it should be transferred to some other officer with a further direction to complete it expeditiously.

5. While entertaining above writ petition on 04.05.2015, this Court required the Investigating Officer to appear alongwith case diary to show progress and the kind of investigation he has done in the matter.

6. On 18.05.2015 Dr. Tej Veer Singh, Circle Officer, appeared before this Court. He filed an affidavit, sworn on the same date i.e. 18.05.2015 in which he stated that though the victim, i.e., petitioner and her sister-in-law (Nand), Mamta, both supported first information report, but some independent persons, namely, Brij Lal, Jageer Singh and Mukhtiyar Singh and five others stated that they have not heard any hue and cry and no such incident had taken place. There was a dispute with respect to land over which the alleged "Gher" was constructed. The accused respondent No. 5 is the real brother of father-in-law of petitioner and was implicated in a false case. The Investigating Officer in para 20, 21 and 22 of his affidavit specifically said as under:

"20. That after doing investigation without being biased in a very fair manner the deponent was of the view that no such incident had taken place rather younger brother of Bal Kishan who is father in law of the informant has launched false prosecution to grab the property of his own brother.

21. That the accused Bal Kishan is 50 years old and has good reputation in the village and none of the independent witnesses have supported the version of the first information report.

22. That the deponent while concluding the investigation gave his specific opinion that from the investigation as done by him in the period of 04 months he could not find any reliable evidence against accused, Bal Kishan and the story as developed by the informant in the first information report is nothing but all tissue of lies and launched only with intention to harass and blackmail the accused for

grabbing his property. The deponent after doing unbiased investigation prepared final report on 15.10.2014 while exonerating the accused, Bal Kishan."

7. He also made adverse comments over the order passed by Judicial Magistrate on 07.04.2015 declining to accept final report. In para 27 of the affidavit, the Investigating Officer said:

"27. That at this stage it will be not out of place to mention here that the order dated 07.04.2015 the Magistrate does not seem to have perused the case diary properly and has wrongly written that the statement under Section 164 Cr.P.C. was not copied in the case diary, although it is very well present in the Parcha No. 6 dated 12.09.2014."

8. He further said that on 17.04.2015 he himself has requested the Superintendent of Police, Rampur to assign further investigating to some other officer.

9. This Court enquired from Dr. Tej Veer Singh, Investigating Officer, as to why report was not lodged by police when the victim, i.e., petitioner went to lodge her report on the date of incident, particularly when matter relates to a serious offence under Section 376 IPC considering directions given by this Court in Roop Ram Vs. State of U.P. 2009 (5) ADJ 707 and Apex Court in Lalita Kumari Vs. Govt. of U.P. and Others, (2013) 12 AD 209 : AIR 2014 SC 187 : (2014) CriLJ 470 : (2013) 6 CTC 353 : (2014) 1 JCC 1 : (2013) 14 JT 399 : (2013) 4 RCR(Criminal) 979 : (2013) 13 SCALE 559 : (2014) 2 SCC 1 : (2014) 1 SCJ 68 , but he could give no reply.

10. We also inquired from him, when the victim herself had supported her case in repeated statements given, either under Section 161 Cr.P.C. or 164 Cr.P.C., how he could say that there was no evidence whatsoever and only on the basis of some strangers statements, who had not seen any such incident for the reason that statement of persons who are not witnesses of any incident cannot prove that no such incident took place, particularly when there were two persons, namely, the victim as well as her sister-in-law who fortified first information report in their statements, but here also he could give no reply whatsoever.

11. We also could not understand as to why no attempt was made to have medical examination of victim on the date of incident when she had gone to police station to lodge first information report and what medical examination would reveal after several months of incident. The suggestion of Investigating Officer that victim was not cooperating, does not appear to be correct for the reason that in her statement given before Investigating Officer as well as in the Court under Section 164 Cr.P.C., she has reiterated the same facts as mentioned in report and there is no variation whatsoever. Even before this Court she has maintained her version.

12. Moreover, photocopy of case diary contains 10 parchas dated 10.06.2014, 11.06.2014, 13.06.2014, 04.08.2014, 07.08.2014, 12.09.2014, 23.09.2014,

12.10.2014, 14.10.2014 and 15.10.2014.

13. Parcha No. 7 dated 23.09.2014 shows that Investigating Officer received by post eight affidavits of Mukhtiyar Singh son of Sri Fauji Singh; Indrapal son of Sri Khem Karan; Brijlal son of Sri Mast Ram; Zorawar son of Sri Indraman; Tota Ram son of Sri Umrao; Jageer Singh son of Sri Nihal Singh; Ram Das son of Sri Sukhan; and, Bandu Ram son of Sri Munna Lal, which were almost in similar language and noted down in the said parcha. He also received a copy of sale deed, also noted down in the said parcha. The deponents of affidavits said to appear before Investigating Officer on 14.10.2014. Sri Mukhtiyar Singh, Indrapal, Brijlal, Zorawar, Tota Ram, Jageer Singh, Ram Das and Bandu Ram verified the facts stated in their affidavits, earlier sent by post.

14. The entire report, nowhere shows any attempt on the part of Investigating Officer to find out, who arranged those affidavits to be sent by post and what was the occasion therefor. When he recorded statement of accused after receiving said affidavits and having the statements of deponents of affidavits, who verified the same, what sanctity can be attributed to a statement in negative when affirmance was already there.

15. Since the matter is pending for further investigation, we are refraining ourselves from making such observations which may influence investigation and prejudice either of the parties but cannot desist from observing that Investigating Officer, Dr. Tejveer Singh has shown a complete negligence in an inquiry where serious allegation of offence of rape is involved. He has failed to show prudent and scientific investigation in the matter.

16. From very beginning he appears to have a particular mind set that accused, being elder brother of father-in-law of the victim, may not have committed such an offence; and there appears to be a property dispute. The Investigating Officer has proceeded as if he was deciding a civil dispute. He has completely ignored straight and relevant evidence available to him.

17. We reiterate our prima facie observations that the conduct of Investigating Officer, in the case in hand, is clearly partisan and inclined to protect the accused. The complainant-victim has been dealt with in a most illegal and discarded manner. This is from the very beginning, when she visited police station for lodging report but denied by police, compelling her to approach Magistrate under Section 156(3) Cr.P.C. and it is his order under which the report was lodged after more than a month of the date of incident.

18. In a case where heinous crime of rape is involved, an immediate and earliest investigation can provide crucial and relevant evidence which may wither away with passage of time. Unfortunately police herein has shown a conduct which has helped accused. This conduct apparently defy the directions of this Court as well as Apex Court whereunder they were under obligation to register a report and proceed for investigation without any further delay.

19. The second attempt is made by police by submitting final report in the matter which was rejected by Judicial Magistrate concerned, making aspersions against Investigating Officer. We are surprised to see that Investigating Officer has the audacity of condemning order of Judicial Magistrate, in his affidavit filed before this Court, contending that Judicial Magistrate has omitted to consider some vital aspects while rejecting final report. This conduct of Investigating Officer is self speaking and manifests his commitment to help the accused by going to any extent.

20. We are also surprised to see the way in which police officers are making investigation in matters involving heinous crime. We find virtually a complete apathy on their part. If something has/could happen on its own, one may thank to his luck but police would not be able to turn anything of its own efforts. It is like a woodcraft structure. Conduct of Investigating Officer prima facie shows his biased attitude towards accused.

21. This situation we find almost in every third case, coming before this Court. Probably it is this laxity on the part of police which is causing increase of crime rate, extremely, in State of U.P. Virtually every person in this State is afraid that anything may happen at any time anywhere. There is lack of confidence in law enforcing machinery. The law and order situation is very vulnerable.

22. Learned Additional Advocate General, present in the Court, at one point of time finds himself optionless but to concede about deteriorating condition of law and order in the State of U.P. and also failure on the part of Police, not only in prevention of crime but also detection/investigation and prosecution. It reminds us a situation where a legal luminary in Apex Court (Hon"ble V.R. Krishna Iyer, J.) had to observe, "Who can police the Police".

23. Police Force is meant for protection of people. Its sole aim and purpose is to maintain law and order by preventing crime. If committed, to investigate out and book the guilty person, and get punished in accordance with law. There is no other agency in the State except "Police" who has this statutory as well as constitutional obligation for protection of people.

24. Unfortunately, it is still living in colonial State of affairs when Police used to be deployed against public to crush their genuine demands. Police, at that time, reflected glorified image of ruling Colonial State. It treated inhabitants of country as slaves and that is why always tried, not to allow them to raise their voice, against ruling Empire. More than half a century back, India attained its independence. Still nothing has noticeably improved. Though we are now governed by Constitution, given by the people of India to itself so as to function, ""for the people", ""by the people", ""of the people" but Police has not mend its ways.

25. Today people are frightened more with Police than criminals. There is virtually a lack of confidence with this Uniformed Force. Judicial cognizance can be taken of several heinous crimes, committed almost daily, many a times with

the nexus of Politicians/Criminals/Police personnel making common and innocent people, target. Criminality on the part of Police is highly dangerous, being a double edged weapon. When they commit crime, they are themselves being investigating agency, naively cover up the matter. The Courts of law, ultimately and ordinarily, fail to punish guilty for want of proper evidence for which the agency is responsible.

26. In criminal prosecution, eyes and ear of courts of law, basically, is the Prosecuting Agency. When agency itself is indulged in a cover up mission, it is almost impossible to bring guilty person to book and punish. Police officials have become so daredevil that they do not hesitate in committing day light, daring offences, and thereby to stick to it, may be for the reason that they are well equipped with the system of covering it up. The situation is really alarming and needs immediate remedial measures. The public dissatisfaction and distress cannot wait indefinitely if it is not attended now. It may be too late in the day. It may burst in a people's revolution, we are witnessing in some other parts of the world.

27. In Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others, AIR 1991 SC 2176 : (1991) CriLJ 3086 : (1991) 3 Crimes 232 : (1991) 3 JT 617 : (1991) 2 SCALE 501 : (1991) 4 SCC 431 : (1991) 4 SCC 406 : (1991) 3 SCR 936 where brutal behaviour of police in arrest and assault of a Chief Judicial Magistrate of Nadiad was considered in contempt petition as well as writ petitions entertained directly, the Court observed:

"Aberrations of police officers and police excesses in dealing with the law and order situation have been the subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it."

28. Hon"ble Krishna Ayer, J in Prem Shankar Shukla Vs. Delhi Administration, AIR 1980 SC 1535 : (1980) CriLJ 930 : (1980) 3 SCC 526 : (1980) SCC(Cri) 815 : (1980) 3 SCR 855 observed:

"If today freedom of the forlorn person falls to the police somewhere, tomorrow the freedom of many may fall elsewhere with none to whimper unless the court process invigilates in time and polices the police before it is too late."

29. In a concurring judgment in Dhananjay Sharma Vs. State of Haryana and Others, AIR 1995 SC 1795 : (1995) 4 JT 483 : (1995) 3 SCALE 138 : (1994) 2 SCALE 745 : (1995) 3 SCC 757 : (1995) 3 SCR 964 Hon"ble Faizan Uddin, J in para 58 observed:

"58. It is in common knowledge that in recent times our administrative system is passing through a most practical phase, particularly, the policing system which is not as effective as it ought to be and unless some practical correctional steps and measures are taken without further delay, the danger looms large when the whole orderly society may be in jeopardy. It would, indeed, be a sad day if the general public starts entertaining an impression that the police force does not

exist for the protection of society's benefits but it operates mainly for its own benefit and once such an impression comes to prevail, it would lead to disastrous consequences."

(emphasis added)

30. The Court took judicial notice in para 57 of the judgment that every morning, one opens newspapers and goes through its various columns, feels very much anguished and depressed, reading reports of custodial rapes, deaths, kidnapping, abduction, fake police encounters and all sorts of other offences and lawlessness by police personnel, of which countless glaring and concrete examples are not lacking.

31. In *Daroga Singh and Others Vs. B.K. Pandey*, (2004) CriLJ 2084 : (2004) 1 JT 608 : (2004) 4 SCALE 554 : (2004) 5 SCC 26 : (2004) 1 SCR 113 Supp the Court remarked object with which the Police Force was created and said that police is the executive force of State to which is entrusted the duty of maintaining law and order and of enforcing regulations for prevention and detection of crime. It is considered by society as an organised force of civil officers under the command of State, engaged in the preservation of law and order in society and maintaining peace by enforcement of laws and prevention and detection of crime. One, who is entrusted with the task of maintaining discipline in society, must, first itself be disciplined. Police is an agency to which social control belongs. Therefore the Police has to come up to the expectations of society. Then the Court reminded itself, policing role, the country witnessed during British Raj, and, in para 44, said:

"44. We have not been able to forget the policing role of the police of British Raj wherein an attitude of hostility between the police and the policed under the colonial rule was understandable. It is unfortunate that in one of the largest constitutional democracies of the world the police has not been able to change its that trait of hostility."

32. We have no manner of doubt that Police Force constitutes real backbone of State's power to maintain law and order. But it would be possible only when agency works with real devotion and honesty to its constitutional and legal obligation, instead of satisfying its petty material demands. Come what may, still Police is Police. It can make wonders and miracles. No one has the capacity or courage to Police the Police. Harden criminals can be shown wholly innocent and innocent, honest and simple ones may be depicted a hardcore criminal. Irrespective of nature of crime committed and brought to its notice, still may not feel any anxiety to bring culprits to Courts with effective prosecution so as to ensure appropriate punishment to them. It may manage to set the State in a way that criminals may ensure their freedom by threatening victims etc. and making witnesses to loose their life and heart for supporting prosecution. The public at large has no control over it. State has to take care of this situation.

33. The real problem lies with officials responsible for investigation. It appears

that they lack basic knowledge and technique. Everything proceeds in a casual fashion. Time and again, Courts have shown their disappointment with the ways, Police has worked out a case but it has made no impact upon Police Force. Unfortunately, observations and expectations of Courts have gone in vain. The Police Force have not mend its ways. Most of the matters do not come to the Court. When somebody dares to take up a matter to Court, only then the extent to which Police act ruthlessly and arbitrarily, is experienced by Courts also. The situation is really very grim and disappointing. It is high time when State should look into large spectrum of reforms to correct Police and policing in State, else things may render uncontrollable.

34. We find no hesitation and constrain to observe that the way in which police has proceeded in this matter, less say is better. Virtually there is no effective investigation whatsoever, till date. If this is the situation in a case where a girl has been subjected to a heinous crime of rape, what one can expect in other matters. It is now high time where the State Government and officials holding high position in Department of Home and other relevant ones, should wake up from slumber and take remedial corrective measures to make Police Force more effective, active and people oriented.

35. Besides above, there is another serious aspect on which the Police has shown virtually a contemptuous attitude to the Court.

36. This Court seriously deprecated general practice followed by police officials in denying to register first information reports, despite information given regarding occurrence of a cognizable offence. This was noticed in *Roop Ram Vs. State of U.P.* (supra) and in paras 26, 27, 28, 29 and 30 of the judgment, Court said:

"26. However, this matter does not end here. It is true that for an orderly society, the importance of an effective and efficient police force dedicated to the public service is of utmost importance and is the necessity of the time. It is a matter of common knowledge that the people run from pillar to post after occurrence of a serious crime for mere registration of the report but the concerned police authorities failed to realize trauma and harassment of such people and simply ignore the observance of their statutory duty despite of the same being declared mandatory and is the law of the land settled by the Apex Court. Crime detection and adjudication are two separate though inseparable wings of justice delivery system. The former is the basic obligation of the police and latter is in the hands of judiciary. Though the Code provides for an alternative remedy of approaching the Superintendent of Police and thereafter to the Magistrate concerned under Section 156(3) but such remedy instead of providing any solace and relief to the harried lot, on the contrary is adding to their sufferance due to persistent lacklustre attitude of police compelling a common man to run from one authority to another for a simple cause of registration of an information constituting commission of a cognizable offence, so that the police may make investigation according to the procedure prescribed in the Code.

27. The subordinate courts are already heavily burdened with the huge number of such cases where the people having approached the police authorities in vain, then had approached the Magistrate concerned under Section 156(3). Even this Court is now being burdened for the only reason that the information has not been registered by the police under Section 154. What normally ought to have been an exception has turned out to be a routine exercise. A very large number of applications are being filed under Section 156(3) of the Code before the Magistrates concerned and consequential proceedings are coming frequently to this Court also. Huge time is consumed only in such matters though it could have been utilized for other matters of substance and that too only for the reason that the police has shown blatant slackness in observance of its statutory obligations. It appears that the police is conveniently omitting to remind itself that its fundamental and basic duty is to prevent occurrence of any crime and if it has already occurred, to investigate and detect the crime so as to bring the accused to justice. The first step in this regard is as soon as the information of a cognizable offence is received, it must register the same and thereafter to proceed to investigate the matter in accordance with law.

28. This Court also take judicial notice of the fact that the tendency developed with the police authorities in refusing to register F.I.R. is not for any valid reason, as said above, but perhaps for administrative reasons namely to show to the higher authorities improvement of law and order in the area within their jurisdiction on the ground that number of F.I.R. registration has got down drastically comparing to the corresponding past or in respect to the period when some other police officers were posted thereat. It appears that the State Government and the higher authorities of the police department, while assessing the performance of a police Officer-in-charge of a police station, take into consideration whether F.I.R.'s have reduced comparing to the predecessor in office as a major factor to judge the position of law and order. The basic data taken into account by the State Government or the higher authorities of the police department is the number of F.I.R. of cognizable offence registered in the concerned police station. Probably this has led the tendency in the concerned police authorities to refuse recording of F.I.R. and thereby creating artificially good record showing reduction in crime rate due to lesser recording of F.I.R. It totally ignores the fact that due to non-registration of F.I.R. in a large number of cases, pertaining to cognizable offence, the people are compelled to approach the Magistrate by filing applications under Section 156(3) of the Code. This demonstrates that the declaration of law by the Apex Court as well as this Court that police is under a statutory obligation to register F.I.R. has gone down on blind eyes with the police authorities as well as the Government. The situation has not shown any improvement in the method of functioning of the police authorities in such matters despite of repeated observations by the Court.

29. The Court cannot overlook the fact that criminal justice system in the State is already over burdened. A large number of vacancies of judicial officers in subordinate courts are lying for one or the other reason. Mere inaction on the

part of police authorities in observance of their statutory duty and/or faulty system of investigation is adding further to the already over burdened justice system. This has gone to an extent that the people who are arrested in the early younger age are still awaiting for their trial etc., though have attained advanced old age. In many of the matters, large number of accused have died but the Court proceedings could not have been completed and even not commenced in some of the cases. In many others the trial etc., suffers due to death of material witnesses due to prolonged time taken in the Courts. At this stage, it would be prudent to notice some of the observations/directions of the Apex Court in *Lalita Kumari v. Government of Uttar Pradesh* and Ors. Paras 4 and 5 the Apex Court held:

4. It is a matter of experience of one of us (B.N. Agrawal, J.), while acting as Judge of the Patna High Court, Chief Justice of the Orissa High Court and Judge of this Court that inspite of law laid down by this Court, the police authorities concerned do not register F.I. Rs. unless some direction is given by the Chief Judicial Magistrate or the High Court or this Court. Further, experience shows that even after orders are passed by the Courts concerned for registration of the case, the police does not take the necessary steps and when matters are brought to the notice of the inspecting Judges of the High Court during the course of inspection of the Courts and Superintendents of Police are taken to task, then only F.I. Rs. are registered. In a large number of cases investigations do not commence even after registration of F.I. Rs. and in a case like the present one, steps are not taken for recovery of the kidnapped person or apprehending the accused person with reasonable dispatch. At times it has been found that when harsh orders are passed by the members of the judiciary in a State, the police becomes hostile to them, for instance, in Bihar when a bail petition filed by a police personnel, who was the accused was rejected by a member of the Bihar Superior Judicial Service, he was assaulted in the court room for which contempt proceeding was initiated by the Patna High Court and the erring police officials were convicted and sentenced to suffer imprisonment.

5. On the other hand, there are innumerable cases that where the complainant is a practical person, F.I. Rs. are registered immediately, copies thereof are made over to the complainant on the same day, investigation proceeds with supersonic jet speed, immediate steps are taken for apprehending the accused and recovery of the kidnapped persons and the properties which were the subject-matter of theft or dacoity. In the case before us allegations have been made that the Station House Officer of the police station concerned is pressurizing the complainant to withdraw the complaint, which, if true, is a very disturbing state of affairs. We do not know, there may be innumerable such instances.

30. It is high time now that this Court must endeavour to find out some ways to make the police authority adhere to their statutory duties. The time perhaps has ripened when this Court in exercise of its inherent power must look into this disease in a more serious manner and find out ways by issuing appropriate

directions to the concerned authorities, which may result in compelling the police authorities either to observe their statutory duties faithfully or to face consequences."

37. Having said so this Court issued certain directions in para 32, which read as under:

"(i) When a Police Officer-in-charge of the police station or any other Police Officer, acting under the direction of the Officer-in-charge of police station refuses to register an information disclosing a cognizable offence, the informant may either approach the Superintendent of Police under Section 154(3) or the Magistrate concerned under Section 156(3) of the Code;

(ii) If the informant approaches the Superintendent of Police, who finds that the refusal of registration of F.I.R. by the Police Officer-in-charge of the police station was unjust or for reasons other than valid, and where he directs for investigation, he shall initiate disciplinary proceedings against the Officer-in-charge of the police station for such non-observance of statutory obligation treating the same to be a serious misconduct justifying a major penalty and complete the proceedings within three months from the date he passes an order for investigation into the matter;

(iii) Where, the informant approaches the Magistrate concerned under Section 156(3) of the Code and the Magistrate ultimately finds that information discloses a cognizable offence and direct the police to proceed for investigation, he shall cause a copy of the order sent to Superintendent of Police/Senior Superintendent of Police (hereinafter referred to as the S.P./S.S.P.) of the concerned district and such S.P./S.S.P. shall cause a disciplinary inquiry into the matter to find out the person guilty of such dereliction of duty, i.e., failure to discharge statutory obligation, i.e., registration of an information disclosing cognizable offence treating the said failure as a serious misconduct justifying major penalty and shall complete the disciplinary proceedings within three months from the date of receipt of the copy of the order from the concerned Magistrate. After completing the disciplinary proceedings, the S.P./S.S.P. concerned shall inform about the action taken against the concerned police Officer-in-charge of the police station to the Magistrate concerned within 15 days from the date of action taken by him but not later than four months from the date of receipt of the copy of the order from the Magistrate concerned;

(iv) The Magistrate concerned shall review the cases in which the copy of the orders passed under Section 156(3) of the Code has been sent to concerned S.P./S.S.P. quarterly and when it is found that the concerned S.P./S.S.P. has also failed to comply with the above directions of this Court, he shall sent a copy of his order alongwith the information about non-compliance of this Court's order/direction by the concerned S.P./S.S.P. to the Director General of Police, U.P., Lucknow and the Principal Secretary (Home), U.P., Lucknow who shall look into the matter and take appropriate action as directed above against the police

Officer-in-charge of the police station concerned as well as the S.P./S.S.P. concerned for his inaction also into the matter within three months and communicate about the action within next one month to the Magistrate concerned. The Principal Secretary (Home), U.P., Lucknow and the Director General of Police, U.P., Lucknow shall also submit a report regarding number of the cases informed by the concerned Magistrate in a calendar year and also the action taken by them as directed above by the end of February of every year to the Registrar General of this Court; and (v) Besides above, non-compliance of the above directions of this Court shall also be treated to be a deliberate defiance by the concerned authorities above mentioned constituting contempt of this Court and may be taken up before the Court concerned having jurisdiction in the matter, whenever it is brought to the notice of this Court."

38. The matter pending before Apex Court in Lalita Kumari Vs. Government of U.P. (supra) came to be disposed of finally vide judgment dated 12.11.2013. In para 111 of the judgment the Court said:

"111. In view of the aforesaid discussion, we hold:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

39. The Apex Court also thus held that whenever information of a cognizable offence is given to a police officer registration of report is mandatory. Despite aforesaid authorities, in the present case, concerned police officials initially declined to register First Information Report of a cognizable offence under Section 376 I.P.C. which compelled the informant to approach Magistrate concerned under Section 156(3) Cr.P.C. and when Magistrate passed order, only then report was registered.

40. Despite repeated query, the officials of respondent-State, present in the Court, could not tell any reason as to why report was not registered by police when informant conveyed information regarding occurrence of a cognizable offence. This conduct of police officials of concerned police station is not only illegal but shows a blatant flagrant disobedience and non-compliance of directions of this Court as well as Apex Court, in the aforesaid decisions. To utter dismay of this Court, even superior field officers as well as departmental officers starting from Circle Officer upto Principal Secretary, Home, have not evolved any mechanism to ensure that Court's directions are not disobeyed by subordinate police officials and if there is such violation, appropriate action is taken by competent superior officers.

41. It appears that entire police department virtually has no respect to the orders of Courts and feel happy to function by way of total inaction, apathy to grievances of public at large and to the issues of law and order, heinous crime etc. This situation also demands immediate corrective as well as punitive measures, else the things may go beyond control.

42. We direct Chief Secretary, U.P. Government; Principal Secretary (Home), U.P. Government; and, Secretary (Appointment), U.P. Government to immediately

look into the matter, take appropriate steps and finalize scheme(s) so as to make U.P. Police Force, a real law and order enforcing machinery which should appear to be working and bring confidence of people, back. It should also reflect upon the steps taken by aforesaid officials in respect of matters of non-registration of reports by police officials whenever information of occurrence of a cognizable offence is conveyed. The steps taken shall also show, how aforesaid officials have ensured compliance of directions given by this Court as well as Apex Court in *Roop Ram Vs. State of U.P.* (supra) and *Lalita Kumari Vs. Government of U.P.* (supra). In case of lapses on the part of concerned police officials, how steps would be taken to punish the guilty officials should also be a part of the scheme. They shall also submit a progress report, on expiry of six months from the date of delivery of this judgment, showing steps taken by them in this regard and the consequences thereof. They shall make inquiry and inform the Court about the officers who have disobeyed Court's order regarding registration of first information report so that separate proceeding of contempt may be drawn against them.

43. In the present case since conduct of Investigating Officer is suspicious and lacks independence and fairness, we direct the State Government to transfer inquiry to C.B.C.I.D., who shall proceed with investigation and complete the same within a period of three months.

44. We dispose of the writ petition in the manner as aforesaid and with the direction as given hereinabove.

45. A copy of this order shall forthwith be furnished to Chief Secretary, U.P. Government; Principal Secretary (Home), U.P. Government; and, Secretary (Appointment), U.P. Government, for communication and compliance.