

(2020) 10 GUJ CK 0011
In the Gujarat High Court

Case No : R/Special Criminal Application No. 5023 Of 2020

Roshan Dharmendrakumar Joshi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-10-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 36, 154, 156(3), 190, 200, 203

Citation : (2020) 10 GUJ CK 0011

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : Kartikkumar G Barot, Rajendra P Thakur, Pranav Trivedi

Final Decision : Disposed Of

Judgement

Gita Gopi, J

1. By way of this petition preferred under Article 226 of the Constitution of India, the petitioner has prayed to direct the respondents to register the complaint given by the petitioner as a first information report and to take further action in accordance with law.

2. It is the case of the petitioner that his marriage with Hetalben took place on 03.04.2008 and out of the said wedlock, two children were also born. However, the petitioner felt that his wife-Hetal was into an extra-marital affair with one of his friends, named Sarfarazhusen, on account of which matrimonial disputes used to take place between them. Ultimately, the petitioner and his wife got divorced on 29.04.2019. It is the further case of the petitioner that said Sarfarazhusen had threatened the petitioner that his ex-wife Hetal is residing with him as his wife and two children and that he would get all three of them to follow Islam. Being aggrieved by the same, the petitioner filed application in the form of complaint before the respondents seeking registration of a first information report. However, no steps were taken by the respondents on such

application. Hence, this petition.

3. Heard learned advocates on both the sides and perused the documents on record. In the case of Divine Retreat Centre v/s. State of Kerala and Ors., (2008) 3 SCC 542, the Apex Court has in paras-41 and 42 held thus;

"41. It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an Investigating Officer mala fide. That power is to be exercised in rarest of the rare cases where a clear case of abuse of power and noncompliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code.

42. Even in cases where no action is taken by the police on the information given to them, the informant's remedy lies under Sections 190, 200 Cr. P.C., but a Writ Petition in such a case is not to be entertained. This Court in Gangadhar Janardan Mhatre Vs. State of Maharashtra & ors. held:

"13. When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 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 under Section 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.) V. Union of India. It was specifically observed that a writ petition in such cases is not to be entertained."

4. Similarly, in the case of Sudhir Bhaskarrao Tambe v/s. Hemant Yashwant Dhage and Ors., (2016) 6 SCC 277, the Hon'ble Apex Court has held in para 2 as under :-

"2. This Court has held in Sakiri Vasu v. State of U.P., that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC. If such an application under Section 156(3) CrPC is made and the

Magistrate is, *prima facie*, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation."

5. In view of the principle rendered in the cases of Divine Retreat Centre (*supra*) and Sudhir Tambe (*supra*), the petitioner has the alternate remedy to approach the concerned authority and/or the learned Magistrate under Sections 36, 154, 156(3) and 200 or any other provisions of the Code of Criminal Procedure, 1973 for the relief sought for in the present petition.

6. In view of the same, the present petition is not entertained; however, the petitioner is at liberty to approach the competent authority/Court for redressal of his grievance, if the petitioner so desires. The petition stands disposed of accordingly. It is clarified that this Court has not examined the merits of the case.