
(2020) 09 MP CK 0083

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 31350 Of 2020

Shriram Jatav

APPELLANT

Vs

State Of MP

RESPONDENT

Date of Decision : 08-09-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 154(3), 156(3), 190, 200, 203, 482

Citation : (2020) 09 MP CK 0083

Hon'ble Judges : G. S. Ahluwalia, J

Bench : Single Bench

Advocate : Avadhesh Parashar, Abhishek Singh Bhadoriya

Final Decision : Dismissed

Judgement

This petition under Section 482 of CrPC has been filed seeking the following reliefs:-

"(i) The respondents/ police authorities may kindly be directed to conduct prompt investigation in the matter and lodged the FIR against the accused persons (Respondents No.5 to 7).

(ii) The respondents/ police authorities may kindly be directed to make efforts to arrest them and file a charge sheet against all the accused persons."

It is submitted by the counsel for the petitioner that the son of the petitioner was found hanging and accordingly, a merg enquiry has been registered, however, the police has not registered the FIR against the private respondents.

Considered the submissions made by the counsel for the petitioner.

It is clear that the merg enquiry must be pending. The son of the petitioner was found dead on 16/06/2020. The son of the petitioner committed suicide in his house. It is the case of the petitioner that in fact, the respondents Nos.5 to 7 have committed murder of his son, therefore, the police must register the FIR against the respondents No. 5 to 7.

Heard the learned counsel for the petitioner.

Where the merg enquiry is going on, then it is for the police to proceed further after collecting the evidence. Therefore, at this stage, this Court cannot give any direction to the police to register the FIR against the respondents No.5 to 7.

Even otherwise, in the light of judgments passed by the Supreme Court in the case *Sakiri Vasu vs. State of U.P.*, reported in (2008) 2 SCC 409, *Aleque Padamsee and others Vs. Union of India & Ors.*, reported in (2007) 6 SCC 171, *Divine Retreat Centre Vs. State of Kerala and others* reported in (2008) 3 SCC 542 and Division Bench of this Court in *Smt. Reeta Bais vs. State of M.P. & Ors.* Writ Appeal No.247/2016 (*Shweta Bhadauria Vs. State of M.P. & Ors.*), the petition under Section 482 of CrPC seeking a direction for registration of FIR is not maintainable.

The Supreme Court in the case of *Divine Retreat Centre* (supra) has held as under:-

"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 the rarest of the rare case 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 CrPC, but a writ petition in such a case is not to be entertained. This Court in *Gangadhar Janardan Mhatre v. State of Maharashtra* held:(SCC pp. 774-75, para 13)

"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."

The Division Bench of this Court in the case of Shweta Bhadauria (supra) has held as under:-

"(1) Writ of mandamus to compel the police to perform its statutory duty u/s 154 Cr.P.C can be denied to the informant /victim for non-availing of alternative remedy u/Ss. 154(3), 156(3), 190 and 200 Cr.P.C., unless the four exceptions enumerated in decision of Apex Court in the the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 1, come to rescue of the informant / victim.

(2) The verdict of Apex Court in the case of Lalita Kumari Vs. Government of U.P. & Ors. reported in (2014) 2 SCC 1 does not pertain to issue of entitlement to writ of mandamus for compelling the police to perform statutory duty under Section 154 Cr.P.C without availing alternative remedy under Section 154(3), 156(3), 190 and 200 Cr.P.C.."

Thus, it is observed that in case if the petitioner is not satisfied with the merg enquiry which is being conducted by the police, then he is at liberty to file a complaint before the Court of competent jurisdiction.

With aforesaid observation, this petition is finally dismissed.