

(2022) 12 MP CK 0089
In the Madhya Pradesh High Court
Case No : Writ Petition No. 28708 Of 2022

Skandh Dubey

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 13-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

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

Citation : (2022) 12 MP CK 0089

Hon'ble Judges : Gurpal Singh Ahluwalia, J

Bench : Single Bench

Advocate : H.K. Shukla, A.K. Nirankari

Final Decision : Dismissed

Judgement

Gurpal Singh Ahluwalia, J

This petition under Article 226 of the Constitution of India has been filed seeking following reliefs :-

"1. That, in the light of the above mentioned peculiar facts and circumstances the respondent be directed to decide the petitioner complaint Annexure P/1, P/2, P/3 without any delay.

2. That, the respondent further be directed to take affective punitive penal action against the constable Avinash Patsariya, Akhilesh Gurjar and Ramvaran Lodhi who has forcefully entered in the premises along with the Lomas Dubey and Gaurav Jain and has forcefully taken away the bundle of wire fencing and other items and Gaurav Jain has also made a fire through his country made pistol suitable criminal action may also be directed against the said persons.

3. That, the cost of litigation may also be awarded.

4. Any other relief which this Hon'ble Court deem fit in the facts and circumstances of the case may kindly be granted to the petitioner."

It is submitted by the counsel for the State that in the light of the judgments passed by the Supreme Court in the case of 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 Writ Appeal No.247/2016 (Shweta Bhadauria Vs. State of M.P. & Ors.), this petition is not maintainable.

Heard the counsel for the parties.

The moot question for consideration is that :-

"Whether a writ petition under Article 226 of the Constitution of India for registration of FIR is tenable or not?"

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."

As the petitioner has an efficacious and alternative remedy of filing a criminal complaint before the Court of competent jurisdiction, therefore, this petition is dismissed with liberty to file a criminal complaint before the Court of competent jurisdiction.

With aforesaid liberty, the present petition is dismissed.