

[2022 LiveLaw \(Del\) 212](#)

IN THE HIGH COURT OF DELHI AT NEW DELHI
CORAM: HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

W.P.(CRL) 580/2022; 16th March 2022

LALIT RAJ versus UNION OF INDIA MINISTRY OF HOME AFFAIRS & ORS. & ORS.

Code of Criminal Procedure, 1973 - A writ to compel police to conduct an investigation can be denied for not exhausting the alternative and efficacious remedy available under the provisions of the Code. [Para 15]

Petitioner Through: Mr. Shakti Narayan, Advocate Respondents Through: Ms. Monika Arora, Advocate for UOI Mr. Rajesh Mahajan, ASC for State with Mr. Jyoti Babbar, Advocate with ACP Vijay Singh, P. S. Dwarka North

ORDER

CHANDRA DHARI SINGH, J.

1. The instant writ petition under Article 226 & 227 of the Constitution of India has been filed on behalf of the petitioner inter alia seeking issuance of writ of certiorari for immediate arrest of accused persons and taking appropriate action against the investigation officer for delay in lodging FIR and helping accused persons.

2. Mr. Shakti Narayan learned counsel appearing on behalf of the petitioner submitted that Rs. 32,00,000 (Rupees Thirty-Two Lakhs Only) has been deposited in the account of petitioner/accused as donation. It is further submitted that the Police have caused a substantial delay of sixteen days in lodging the FIR. They lodged the FIR on 8th December 2021 after the order of the Hon'ble High Court of Delhi in W.P.(CRL) 2433/2021 dated 7th December 2021.

3. Learned counsel further submitted that the police is not investigating the matter as per the mandate of the judgments of the Hon'ble Supreme Court and this High Court. Even after lodging the FIR, the accused have not yet been arrested by the police. It is therefore prayed that an order be passed directing the police to arrest the accused immediately and to initiate the proceedings against the SHO, Dwarka North and ACP, Dwarka Sector 23 as they have not discharged their duty properly.

4. Per contra, Mr. Rajesh Mahajan, learned ASC appearing for State and police officials vehemently opposed the instant writ petition and submitted that the instant petition is nothing but a gross misuse of process. The police has already lodged the FIR and the investigating the matter in accordance with the Code of Criminal Procedure as well as the judgments of the Hon'ble Supreme Court and this High Court.

5. It is submitted that after perusing the writ petition, it is evident that there is no ground available for invoking the extraordinary powers of this Hon'ble Court under Article 226 of the Constitution. Learned ASC further informed this Court that despite several requests, the petitioner has joined the investigation only once i.e. on 22nd February, 2022. On 9th March, 2022, a notice has been issued to the petitioner but he has not joined the investigation.

6. Furthermore, it is submitted that investigation is going to be completed in near future, and the chargesheet will be filed as soon as the investigation is completed. Thus, this is a premature stage to file a writ petition praying for interference in the investigation. Learned ASC further submitted that this petition being a gross misuse of process of law, is devoid of merit and hence, is liable to be dismissed with costs.

7. Heard learned counsels for parties and perused the record.

8. In order to appreciate the case at hand, it is pertinent to refer to the position of law laid down as to the exercise of the writ jurisdiction by the High Court.

9. In the case of **Whirlpool Corporation. v. Registrar of Trade Marks (1998) 8 SCC 1**, the Apex Court had held as follows:-

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

10. The Hon'ble Supreme Court in the case of **Sudhir Bhaskar Rao Tambe v. Hemant Yashwant Dhage (2016) 6 SCC 277** has considered the law laid down by the Hon'ble Supreme Court in the case of **Sakri Vasu v. State of UP (2008) 2 SCC 409** and has held 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.

3. We are of the opinion that if the High Courts entertain such writ petitions then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.

4. In view of the settled position in Sakiri Vasu case, the impugned judgment of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under Section 156(3) CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned a change of the investigating officer so that a proper

investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police). Parties may produce any material they wish before the Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.”

11. Recently, in ***Radha Krishan Industries v. State of Himachal Pradesh 2021 SCC OnLine SC 334***, the Hon’ble Supreme Court has reiterated and summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. The Hon’ble Supreme Court has observed:

“28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and (vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

12. The principle that emerges from the aforementioned judgments is that the extraordinary writ jurisdiction is to be exercised only in rare cases or certain contingencies in the interest of justice, including the exceptional cases delineated above.

13. A Division Bench of the Allahabad High Court while deciding the case of ***Waseem Haider v. State of U. P. Through Principal Secretary Home, Lucknow and Ors.*** Misc. Bench No. 24492 of 2020, decided on 14th December 2020, was of the opinion that the power to issue a writ of mandamus has its own well defined self-imposed limitations, one of which is the availability of alternative efficacious remedy. In the aforesaid judgment, the Division Bench has exhaustively dealt with the alternative remedies available to a person aggrieved by non-registration of FIR by the police. The Bench inter alia held that:

“The writ remedy is extra-ordinary remedy and equitable remedy. Further, the writ Court need not entertain a writ petition merely because a case is made out of alleged inaction or negligent in acting on an issue by an authority vested with power, in these cases to register crime/to complete investigation into crime, if statutorily engrafted remedy is available to seek redress on such

grievance. Even if, a case is made out on alleged illegal action by statutory authority, which require redressal, ordinarily writ Court does not entertain the writ petition if the aggrieved person has not availed other remedies, more so, such remedies are incorporated in a statute."

14. While explaining the remedies available under Cr.P.C. the Court also observed:

"Code of Criminal Procedure incorporates enough safeguards to victims and accused. It lays down detailed procedure in conducting investigation, filing of final report, taking of cognizance, conducting of trial. It provides enough safeguards against illegal action of police. It is a self contained code and comprehensive on all aspects of criminal law. A complainant has statutorily engrafted remedies to ensure that his complaint is taken to its logical end. Thus, he must first exhaust said remedies and cannot invoke extra-ordinary writ remedy as a matter of course, even when crime is not registered and there is no progress in the investigation."

15. Thus, a writ to compel the police to conduct an investigation can be denied for not exhausting the alternative and efficacious remedy available under the provisions of the Code, unless the exceptions enumerated in the decision of Apex Court in the aforementioned judgment are satisfied. In the instant case, the petitioner is yet to exercise and exhaust his alternative remedies available under the provisions of the Code including approaching the Magistrate by taking recourse to Section 156(3) of the Code.

16. Further in the instant case, it is an admitted fact that the FIR has already been lodged by the police against the accused. As per the statement of the learned APP, the investigation agency is investigating the matter in accordance with law, and the investigation is about to be completed in near future and the chargesheet will be filed soon after. It has been prayed by the petitioner that the accused be arrested by the police. It is the prerogative of the police/investigation agency to determine whether custodial interrogation is required. Further, the present stage is pre-mature for the writ petition to be entertained since the investigating agency is already investigating in accordance with law. Therefore, there is no need to interfere with the investigation at this stage.

17. In light of the aforesaid, it is settled law that the power to issue writ has its own well-defined limitations imposed by the High Courts, one of which is the availability of alternative efficacious remedy. This Court is also of the opinion that the High Court should not ordinarily, as a matter of routine, exercise its extraordinary writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available. Considering the law laid down by the judicial precedents, the procedure laid down by the Code of Criminal Procedure and as well as the fact that alternate and efficacious remedy is available to the petitioner. Therefore, this Court does not find any merit in the instant petition and hence, is not inclined to entertain the petition for exercising its extraordinary writ jurisdiction.

18. Accordingly, the instant petition stands dismissed.

19. Pending applications, if any, also stand disposed of.