

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (Cr.) No. 12 of 2023**

Pooja Giri

... **Petitioner**

-Versus-

1. The State of Jharkhand through Chief Secretary, Government of Jharkhand, Ranchi
2. Principal Secretary, Home Department, Government of Jharkhand, Ranchi
3. Director General of Police, Government of Jharkhand, Ranchi
4. Superintendent of Police, West Singhbhum, Chaibasa, District- West Singhbhum
5. Officer Incharge, Sadar Police Station, Chaibasa, District- West Singhbhum

... **Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	: Mr. Suraj Singh, Advocate Mr. Parambir Singh Bajaj, Advocate Mr. Vikas Kumar, Advocate
For the State	: Mr. P.C. Sinha, A.C. to G.A.-III

07/15.09.2023 Heard Mr. Suraj Singh, learned counsel for the petitioner and Mr. P.C. Sinha, learned counsel for the respondent-State.

2. This petition has been filed for direction upon the respondents to register FIR on the complaint made by the petitioner.
3. Mr. Suraj Singh, learned counsel for the petitioner submits that the elder brother of the petitioner, namely, Uma Shankar Giri had lodged Chakradharpur P.S. Case No.131 of 2022 under Sections 302 and 34 of the Indian Penal Code, Section 27 of the Arms Act and Sections 3, 4 and 5 of the Explosive Substance Act regarding murder of one of the brother of the petitioner, namely, Kamal Dev Giri, on 14.11.2022 against unknown accused persons. He further submits that the petitioner and her family members along with residents of Chakradharpur prayed to the Investigating Authority for Narco Analysis Test of arrested accused persons and for that a representation was given to the Superintendent of Police, West Singhbhum

at Chaibasa on 13.12.2022, which was duly received by Chakradharpur Police Station, contained in Annexure-1 of the petition. He submits that on 26.12.2022, a fresh representation was filed by the petitioner before the Deputy Commissioner, West Singhbhum at Chaibasa, which was also duly received by his office, contained in Annexure-2 of the petition. He further submits that the information regarding peaceful demonstration was given to the Deputy Commissioner, West Singhbhum at Chaibasa, Superintendent of Police, West Singhbhum at Chaibasa and Deputy Superintendent of Police, West Singhbhum at Chaibasa on 29.12.2022, which was duly received by their offices. On 29.12.2022, detailed information was given to the Deputy Commissioner, West Singhbhum at Chaibasa, which was duly received by his office. On 29.12.2022, the petitioner and her family members were sitting outside the office of the Deputy Commissioner, West Singhbhum at Chaibasa for peaceful demonstration. He submits that suddenly In-charge of Sadar Police Station, namely, Niranjan Tiwari came to the petitioner and her family members and started abusing them and had also brutally assaulted the petitioner and her brother namely Uma Shankar Giri and in connection to that, the petitioner gave written information to the Officer In-charge, Sadar Police Station, West Singhbhum at Chaibasa on 29.12.2022 at 07:45 p.m. regarding illegal act of the In-charge, Sadar Police Station, however, no FIR was registered by the said police station against the erring police official, contained in Annexure-5 of the petition. He also submits that on the given date, the petitioner was brutally assaulted by the In-charge, Sadar Police Station, West Singhbhum at Chaibasa and she was referred to the Sadar Hospital, Chaibasa, contained in Annexure-6 of the petition. The Chief Medical Officer, Sadar Hospital, Chaibasa, after examining the petitioner, has

prepared a medical report dated 29.12.2022 and he has found eight different injuries on the body of the petitioner, contained in Annexure-7 of the petition. He submits that the petitioner has duly represented again to the Superintendent of Police, West Singhbhum at Chaibasa regarding abuse and assault being made by the said Niranjana Tiwari, In-charge, Sadar Police Station, Chaibasa, contained in Annexure-8 of the petition. He submits that in spite of the above facts where the allegations are there of brutal assault upon the petitioner and others and medical report contained in Annexure-7 of the Government medical officer is also there and the petitioner was examined pursuant to the reference made by the police itself, however, no FIR has been registered. He submits that this all has happened overlooking the judgment passed by the Hon'ble Supreme Court in ***Lalita Kumari v. Government of Uttar Pradesh and others***, reported in **(2014) 2 SCC 1**.

4. On the other hand, Mr. P.C. Sinha, learned counsel for the respondent-State submits that the FIR with regard to murder of the petitioner's brother has already been registered, which is being investigated and in view of that, the entire act will come in the investigation of that case. He further submits that the petitioner and others were protesting and they have sustained injuries in course of such protest and that is why, the FIR has not been registered. He also submits that the petitioner is having alternative remedy.

5. In view of the above facts and looking into the documents brought on record, it is crystal clear that the petitioner has received eight different injuries on her body. The allegations of brutal assault are made against none other than the police official of the said district. Further, the said

medical report was also there pursuant to the reference made by the police for examination of the petitioner. The question remains when such injuries are there, whether the action of the police and district administration can be justified by way of not registering the FIR against the named person or not, the answer is already there in view of the judgment passed by the Hon'ble Supreme Court in *Lalita Kumari (supra)*. In the said judgment, following directions have been issued by the Hon'ble Supreme Court at paragraph 120 of the said judgment:

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

120.1. *The 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.*

120.2. *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.*

120.3. *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.*

120.4. *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.*

120.5. *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.*

120.6. *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.

120.7. *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.*

120.8. *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."*

6. In view of the above directions, once the offence of cognizable nature is there, the police officer is bound to register an FIR when complaint discloses cognizable offence.

7. The complaint of an offence was filed on 29.12.2022, contained in Annexure-5 of the petition and if the FIR is not registered till date, it is impermissible and it would also amount to dereliction of duty, upon the police officer who has not complied the direction of the Hon'ble Supreme Court.

8. This is not a single case. There are many cases of such nature, which have been examined by this Court in several writ petitions and appropriate directions have also been issued. This is unfortunate that a citizen has been compelled to move before this Court under Article 226 of the Constitution of India for registration of the FIR and such a direction is already there in view of the judgment passed in *Lalita Kumari (supra)*.

9. There is no doubt that the petitioner is having alternative remedy, but looking to the facts and circumstances of the present case as disclosed in the petition, the Court finds that already much time has lapsed and to further delay the matter, unnecessarily the evidence may be further diluted. Prima facie, cognizable offence is there and in view of the judgment passed

by the Hon'ble Supreme Court in *Lalita Kumari (supra)*, the FIR has not been registered by the police. It is further well settled that in exceptional circumstances when alternative remedy is there, the writ jurisdiction power can be exercised by the High Court and exceptional case has been made out in the present case and that is why, the argument of Mr. P.C. Sinha, learned counsel for the State with regard to availability of alternative remedy to the petitioner, is not being accepted by this Court.

10. In view of the above, the Director General of Police, State of Jharkhand, Ranchi and the Superintendent of Police, West Singhbhum at Chaibasa are directed to register an FIR forthwith.

11. The Director General of Police, State of Jharkhand, Ranchi is further directed to issue necessary Circular/SOP to all Station House Officers in respect of the directions issued in *Lalita Kumari's* case at paragraph 120 of the judgment, which has already been produced hereinabove, with instructions to follow them scrupulously and if necessary, the Director General of Police, Jharkhand, Ranchi may forward the said Circular/SOP in translated copy of the said judgment in Hindi and other languages so that the police officers are able to understand the judgment. The Director General of Police, Jharkhand, Ranchi may also indicate that disciplinary proceedings will be initiated against the police officers, who will not follow the Circular/SOP in light of the judgment passed by the Hon'ble Supreme Court in *Lalita Kumari (supra)*.

12. So far as registration of the FIR is concerned, that will be considered as per the direction issued hereinabove. Further, the direction shall be complied by the Director General of Police, Jharkhand, Ranchi within a period of two weeks.

13. Accordingly, this petition is disposed of.
14. Pending I.A., if any, is also disposed of.
15. It is made clear that this Court has not expressed any opinion on the complaint filed by the petitioner and investigation shall be conducted independently, in accordance with law.
16. Let a copy of this order be communicated to the Director General of Police, Jharkhand, Ranchi, Deputy Commissioner, West Singhbhum at Chaibasa and Superintendent of Police, West Singhbhum at Chaibasa.

(Sanjay Kumar Dwivedi, J.)

Ajay/ A.F.R.