

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 1114 of 2022

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RANJITPRASAD CHANDRADEVVRAM RAJVANSHI PROPERITOR OF SHREE
LOGISTICS
Versus
STATE OF GUJARAT

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Appearance:

MR DIPAK H SINDHI (5710) for the Applicant(s) No. 1
for the Respondent(s) No. 2,3,4
MR RONAK RAVAL, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

Date : 02/02/2022

ORAL ORDER

1. This petition is filed under Article 226 of the Constitution of India in which the petitioner has prayed that the respondent police authority be directed to register the FIR on the basis of the written complaint dated 10.01.2022 submitted by the petitioner.

2. Heard learned advocate Mr. Dipak Sindhi for the petitioner and learned APP Mr. Ronak Raval for the respondents.

3. Learned advocate for the petitioner submitted that petitioner has given written complaint dated 10.01.2022 to the respondent police authority against the concerned persons. However, till today, the said written complaint has not been registered as FIR. It

is also pointed out that statement of the petitioner is recorded on 13.01.2022.

4. Learned advocate for the petitioner further submitted that when the cognizable offence is committed by the concerned persons, it is the duty of the respondent police authority to register the FIR. However, till today, no action is taken. Therefore, appropriate direction be issued to the respondent police authority.

5. On the other hand, learned APP Mr. Ronak Raval has opposed this petition and submitted that from the averments made in the written complaint given by the petitioner, it appears that petitioner is trying to take the defence in the proceedings, which may be filed by the concerned persons under the provisions of the Negotiable Instruments Act against the present petitioner. Learned APP has referred the said averments made in the written complaint. It is specifically stated that 9 blank cheques were obtained by the concerned persons from the petitioner. Thus, learned APP submitted that when the petitioner is trying to take the defence by giving such type of complaint, this Court may not entertain the present petition. It is further submitted that even otherwise the petitioner is having remedy of filing private complaint before the concerned Magistrate Court. Learned APP has placed reliance upon the order dated 17.12.2020 passed by the Coordinate Bench of this Court in Special Criminal

Application No.6760 of 2020. Learned APP, after referring to the relevant paragraphs of the said order, submitted that after relying upon the decision rendered by the Hon'ble Supreme Court, the Coordinate Bench has specifically observed that, "It is noticed by this Court that various applications seeking registration of FIR are being filed before this Court directly without approaching the concerned Magistrate under Section 156(3) of the Code. Such applications which are directly filed are in direct conflict with the observations of the Apex Court. The Apex Court has expressed its concern with regard to filing of such applications/petitions directly before the High Court since filing of such petitions/applications are an unnecessary burden." Learned APP, therefore, urged that in spite of the aforesaid observations made by this Court, number of such petitions are filed before this Court directly. Learned APP, therefore, urged that this petition be dismissed.

6. I have considered the submissions canvassed by learned advocates appearing for the parties. I have also perused the material placed on record. The only grievance raised by the petitioner in the petition is that though the written complaint given by the petitioner on 10.01.2022, the respondent police authority has not registered the FIR. However, it is pertinent to note at this stage that as per the case of the petitioner, petitioner was called on 13.01.2022 i.e. within a period of three days from the date of giving a written complaint to the

concerned police authority, in spite of that, immediately the present petition has been filed directly before this Court. The Coordinate Bench of this Court, in the order dated 17.12.2020 passed in Special Criminal Application No.6760 of 2020, has observed in para 3 to 7 as under:

"3. At this stage, it would be apposite to incorporate the observations made by the Apex Court in the case of M. Subramaniam v. S. Janki dated 20.03.2020 passed in Criminal Appeal No.102 of 2011. The Apex Court has observed thus;-

"5.While it is not possible to accept the contention of the appellants on the question of locus standi, we are inclined to accept the contention that the High Court could not have directed the registration of an FIR with a direction to the police to investigate and file the final report in view of the judgment of this Court in Sakiri Vasu v. State Of Uttar Pradesh And Others in which it has been inter alia held as under:

"11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 of CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application (2008) 2 SCC 409 under Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed

before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

12. Thus in Mohd. Yousuf v. Afaq Jahan this Court observed: (SCC p. 631, para 11) "11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

13. The same view was taken by this Court in Dilawar Singh v. State of Delhi (JT vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person

feels is not proper, such a person can approach the Magistrate under Section 156(3) CrPC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) CrPC

14. Section 156(3) states: "156. (3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned." The words "as abovementioned" obviously refer to Section 156(1), which contemplates investigation by the officer in charge of the police station.

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide State of Bihar v. J.A.C. Saldanha (SCC : AIR para 19).

17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has

not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution."

6. The said ratio has been followed in *Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and Others*², in which it is observed.

"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 (2016) 6 SCC 277 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.

8. In these circumstances, we would allow the present appeal and set aside the direction of the High Court for

registration of the FIR and investigation into the matter by the police. At the same time, our order would not be an impediment in the way of the first respondent filing documents and papers with the police pursuant to the complaint dated 18.09.2008 and the police on being satisfied that a criminal offence is made out would have liberty to register an FIR. It is also open to the first respondent to approach the court of the metropolitan magistrate if deemed appropriate and necessary. Equally, it will be open to the appellants and others to take steps to protect their interest."

4. While referring to the judgment of Sudhir Bhaskarrao Tambe (supra), it is observed that if the High Courts entertain such writ petitions seeking registration of FIR, then they will be flooded with such writ petitions and will not be able to do any other work, except dealing with them. It is specifically held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under section 156(3) of Cr.P.C and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the FIR and also ensure a proper investigation in the matter. While approving the aforementioned view, the Supreme Court has set aside the direction of the High Court for registration of the FIR and has directed the respondent thereto to approach the court of Magistrate if deem appropriate and necessary. Thus, the law on the registration of FIR is well settled and has been reiterated in the recent judgment of the Supreme Court as noted herein above.

5. In the present case, the petitioner has not approached the concerned Magistrate and has directly approached this Court for the aforesaid prayer.

6. Under the circumstances and in light of the observations made by the Apex Court, the

writ petition is rejected since the petitioner has the remedy to approach the approach the concerned Magistrate under section 156(3) of the Cr.PC.

7. It is noticed by this Court that various applications seeking registration of FIR are being filed before this Court directly without approaching the concerned Magistrate under Section 156(3) of the Code. Such applications which are directly filed are in direct conflict with the observations of the Apex Court. The Apex Court has expressed its concern with regard to filing of such applications/petitions directly before the High Court since filing of such petitions/applications are an unnecessary burden."

7. At this stage, it is pertinent to note that the Coordinate Bench of this Court has specifically observed in para 7 of the aforesaid order that it has come to the notice of the Court that various applications seeking registration of FIR are being filed before this Court directly without approaching the concerned Magistrate under Section 156(3) of the Code, which is in direct conflict with the observations of the Apex Court. Thus, in the facts and circumstances of the present case, this petition is dismissed.

(VIPUL M. PANCHOLI, J)

LAVKUMAR J JANI