* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 07th December 2021**

\+ **W.P.(CRL) 2431/2021**

JYOTI RACHHOYA **..... Petitioner**

Through: Mr. Vikas Bapurao Pakhiddey, Advocate

versus

STATE & ORS **..... Respondent**

Through: Ms. Nandita Rao, ASC (CRL) with ACP Digvijay Singh and ASI Giriraj, P.S. Kamla Market

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CRL.M.A. 19589/2021

Exemption allowed subject to just exceptions.

The application stands disposed of.

W.P.(CRL) 2431/2021

1. The instant writ petition under Article 226 of the Constitution of India read with Section 482 Code of Criminal Procedure, 1973 for issuance of Writ in the nature of Mandamus directing respondent Nos. 1 and 4 to register First Information Report on the following complaints:-

a) Complaint dated 25th February 2021 addressed to Deputy Commissioner of Police, Central District, Daryaganj, New Delhi and Assistant Commissioner of Police, Kamla Market;

b) Complaint dated 15th April 2021 addressed to SHO, Kamla Market, New Delhi; and

c) Complaint dated 21st August 2021 addressed to Deputy Commissioner of Police, Central Deputy Commissioner of Police, Central District, Daryaganj, New Delhi and Assistant Commissioner of Police, Kamla Market, New Delhi.

2. Learned counsel for the petitioner submitted that in the instant case, no FIR has been registered by the police despite several complaints made to the police authorities on various dates as mentioned in the petition.

3. Learned counsel for the petitioner vehemently submitted that the incident had taken place in a public place and the said officer passed castiest remarks against the petitioner as she is a member of the Scheduled Castes. It is further submitted that the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 as a special Act has been enacted to prevent atrocities against people belonging to the SC/ST community.

4. Learned counsel has further submitted that on 21st May 2021, petitioner moved an application under Right to Information Act, 2005 for knowing the status of complaint dated 15th April 2021 addressed to the

concerned SHO. In the reply received under the RTI Act, it is stated that the detailed enquiry has been conducted on the said complaint and found that no cognizable offence is made out against the alleged accused person. Therefore, after the detailed enquiry, the complaint was closed.

5. Learned counsel for the petitioner has relied upon the judgment of the Constitution Bench of Hon'ble Supreme Court in ***Lalita Kumari vs. Govt of U.P. & Ors.*** **(2014) 2 SCC 1** wherein it was held that a police officer is bound to register a First Information Report upon receiving any information relating to commission of a cognizable offence.

6. On the issue of jurisdiction, learned counsel for the petitioner has relied upon judgments of Hon'ble Supreme Court in ***The Assistant Commissioner of State Tax & Ors. V. M/S Commercial Steel Ltd.*** **2021 SCC OnLine SC 884** and ***Maharashtra Chess Association v. Union of India*** **(2020) 13 SCC 285.** It is submitted that such incidents should be treated as rarest of rare cases and Investigating Agency should be directed to register the FIR. Further, it is submitted that not lodging the FIR by the police on the complaint made by the petitioner, who belongs to the SC Community, is a clear violation of her Fundamental Rights.

7. Heard. Issue notice. Ms. Nandita Rao, learned Additional Standing Counsel for the State accepted notice and vehemently opposed the writ petition. She submitted that on the basis of the preliminary enquiry conducted, no cognizable offence has been made out. It is also submitted that as required for constituting an offence under the provisions

of the statute, neither the incident had taken place in public place nor the complainant was present at the time of the alleged offence.

8. Learned Additional Standing Counsel also submitted that it is not a fit case wherein powers under Article 226 of the Constitution of India be invoked. It is also submitted that if the petitioner has any grievance, she has an alternative remedy and should file an application before the appropriate authority.

9. Heard learned counsel for parties and perused the averments made as well as the material on record.

10. In order to appreciate the case at hand, it is pertinent to refer to the position of law laid down in this context by various judgments.

11. 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 40**9 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."

12. The Hon'ble Supreme Court in the case of ***Aleque Padamsee and Ors. v. Union of India and Ors.* (2007) 6 SCC 171** has held that:-

"7. Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if the police does not do it. As was held in All India Institute of Medical Sciences Employees' Union (Regd.) Vs. Union of India, (1996) 11 SCC 582 and reiterated in Gangadhar's case (supra) the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in All India Institute of Medical Sciences' case (supra), Gangadhar Janardan Mhatre Vs. State of Maharashtra, (2004) 7 SCC 768, Hari Singh Vs. State of U.P. (2006) 5 SCC 733, Minu Kumari Vs. State of Bihar, (2006) 5 SCC 733, and Ramesh Kumar Vs. (NCT of Delhi) (2006) 2 SCC 677, we find that the view expressed in Ramesh Kumari's case (supra) related to the action required to be taken by the police when any cognizable offence is brought to its notice. In Ramesh Kumari's case (supra) the basic issue did not relate to the methodology to be adopted which was expressly dealt with in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Minu Kumari's case (supra) and Hari Singh's case (supra). The view expressed in Ramesh Kumari's case (supra) was reiterated in Lallan Chaudhary and Ors. V. State of Bihar (AIR 2006 SC 3376). The course available, when the police does not carry out the statutory requirements under Section 154 was directly in issue in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Hari Singh's case (supra) and Minu Kumari's case (supra). The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to its

notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Sections 190 read with Section 200 of the Code. It appears that in the present case initially the case was tagged by order dated 24.2.2003 with WP(C) 530/2002 and WP(C) 221/2002. Subsequently, these writ petitions were de-linked from the aforesaid writ petitions.

8. The writ petitions are finally disposed of with the following directions: (1) If any person is aggrieved by the inaction of the police officials in registering the FIR, the modalities contained in Section 190 read with Section 200 of the Code are to be adopted and observed (2) It is open to any person aggrieved by the inaction of the police officials to adopt the remedy in terms of the aforesaid provisions. (3) So far as non-grant of sanction aspect is concerned, it is for the concerned government to deal with the prayer. The concerned government would do well to deal with the matter within three months from the date of receipt of this order. (4) We make it clear that we have not expressed any opinion on the merits of the case."

13. The aforesaid decision was referred to by the Constitution Bench of the Hon'ble Supreme Court in ***Lalita Kumari*** (supra) but has neither been distinguished nor overruled and hence, is good law.

14. 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."*

15. Thus, a writ of mandamus to compel the police to perform its statutory duty under Section 154 Cr.P.C can be denied to the complainant for non-availing of alternative remedy under the provisions of the Code, unless the exceptions enumerated in the decision of Apex Court in the aforementioned judgment are satisfied.

16. In a matter having facts similar to the one at hand, a Division Bench of the Allahabad High Court in Misc. Bench No. 24492 of 2020, titled as ***Waseem Haider v. State of U. P. Through Principal Secretary Home, Lucknow and Ors.*** decided on 14th December 2020, faced with the question whether a writ of mandamus can be issued under Article 226 of the Constitution directing the police to register an FIR in a petition raising grievance that despite informing the police about the commission of cognizable offence, no FIR was lodged, the Bench 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.

17. 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 Court held as under:

> *"The Code of Criminal Procedure provides various avenues before the informant/victim to initiate criminal prosecution. The first avenue is of lodging of FIR under Section 154(1)/154(3) which can be availed by the victim and as well as a stranger to the offence, provided the first information discloses commission of cognizable offence. The lodging of FIR under Section 154 Cr.P.C. sets the investigative machinery into motion without prior permission of the Magistrate as is otherwise required for non-cognizable offences.*
>
> *The second avenue available to the victim and as well as a stranger to the cognizable offence, is under Section 156(3) by approaching the concerned Magistrate by informing commission of cognizable offence. The Magistrate can then conduct an enquiry himself or direct the concerned police station to register the offence alleged, thereby triggering the investigation.*
>
> *The third avenue available is under Section 190 Cr.P.C empowering the competent Magistrate to take cognizance of any offence upon receipt of complaint of facts containing allegation constituting the offence, or upon a police report of such facts or upon information received from any person other than a police officer, or upon his own knowledge of commission of cognizable and as well as non-cognizable offence, except offences punishable under Chapter XX of IPC, for which procedure prescribed under Section 198 Cr.P.C. is to be adhered to.*
>
> *The fourth avenue is under Section 200 Cr.P.C where a complaint, oral or in writing if made before the*

competent Magistrate leads to hearing by the Magistrate on the question of taking cognizance of offence or not and if it is found that complaint discloses commission of any offence punishable in law then the Magistrate issues summons to the proposed accused on appearance of whom statements of rival parties are recorded and the Magistrate decides on the question of framing of charge or discharging the accused. If charges are framed then trial proceeds."

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*."

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."

This Court is fully convinced that the aforementioned ruling of the Allahabad High Court is the one that squarely applies to the case at hand.

18. In light of the aforesaid, it is settled law that the power to issue writ of mandamus has its own well-defined limitations imposed by the High Courts, one of which is availability of alternative efficacious remedy. A complainant whose first information does not lead to registration of offence under Section 154 CrPC is not remedy-less and therefore, the constraints exercised by the writ Court while issuing writ of mandamus come into application.

19. The Petitioner in this case has *inter alia* placed reliance on the landmark ruling in ***Lalita Kumari (supra)***, wherein it was held that upon receipt of information by a police officer in-charge of a police station disclosing a cognizable offence, it is imperative for him to register a case under Section 154 of the Cr.P.C. This precedent would be of no avail in the instant case, since the same does not lay down any law in respect of remedies available to the informant under CrPC, to be invoked in case of failure on the part of the police to perform its statutory duty under Section 154(1) and 154(3) of Cr.P.C.

20. Considering the law laid down by the Hon'ble Supreme Court in the aforesaid cases as well as the fact that alternate and efficacious remedy is available to the petitioner for approaching the Magistrate under

Section 156(3) of the Code, this Court does not find merit in the instant petition and hence, is not inclined to entertain the petition.

21. Accordingly, this petition is disposed of with liberty to the petitioner to approach the concerned Court by way of filing appropriate application.

22. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

December 07, 2021
AJ