

**AFR**(Judgment reserved on 12.01.2021)
(Judgment delivered on 27.01.2021)**Court No. - 48**

1. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 15692 of 2020

Petitioner :- Ajay Kumar Pandey
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Sachida Nand Tiwari
Counsel for Respondent :- G.A.

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2. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 15750 of 2020

Petitioner :- Shashi Gangwar
Respondent :- State Of U P And 5 Others
Counsel for Petitioner :- Varinder Singh
Counsel for Respondent :- G.A.

3. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 15760 of 2020

Petitioner :- Smt. Deepu Devi
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Ajay Kumar Kashyap
Counsel for Respondent :- G.A.

4. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 15766 of 2020

Petitioner :- Ganesh Bind And Another
Respondent :- State Of U P And 3 Others
Counsel for Petitioner :- Ulajhan Singh Bind
Counsel for Respondent :- G.A.

5. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 15778 of 2020

Petitioner :- Ram Raksha
Respondent :- State Of U P And 2 Others
Counsel for Petitioner :- Sanjay Kumar Mishra
Counsel for Respondent :- G.A.

6. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 15780 of 2020

Petitioner :- Khushnuma
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Firdos Ahmad
Counsel for Respondent :- G.A.

7. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 15781 of 2020

Petitioner :- Smt. Shilpi Mitchell Innes
Respondent :- State Of U.P. And 11 Others
Counsel for Petitioner :- Shree Prakash Giri
Counsel for Respondent :- G.A.

8. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 17059 of 2020

Petitioner :- Manju Devi
Respondent :- State Of U P And 14 Others

Counsel for Petitioner :- Diwan Saifullah Khan, Abhishek Ankur Chaurasia
Counsel for Respondent :- G.A.

9. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 16346 of 2020

Petitioner :- Mangari Devi
Respondent :- State Of U.P. And 6 Others
Counsel for Petitioner :- Ram Awtar
Counsel for Respondent :- G.A.

10. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 15693 of 2020

Petitioner :- Rama Devi
Respondent :- State Of U.P. And 6 Others
Counsel for Petitioner :- Anil Kumar Tripathi
Counsel for Respondent :- G.A.

11. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 15725 of 2020

Petitioner :- Lalit Kumar Tiwari
Respondent :- State Of U P And 2 Others
Counsel for Petitioner :- Arun Kumar Tiwari
Counsel for Respondent :- G.A.

12. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 15732 of 2020

Petitioner :- Savita Devi
Respondent :- State Of U.P. And 12 Others
Counsel for Petitioner :- Arvind Prabodh Dubey, Ashok Kumar Giri
Counsel for Respondent :- G.A.

13. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 15745 of 2020

Petitioner :- Anshu Kumar
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Anand Mohan Pandey, Om Prakash Katiyar
Counsel for Respondent :- G.A.

14. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 16342 of 2020

Petitioner :- Satyanand Singh
Respondent :- State Of U.P. And 5 Others
Counsel for Petitioner :- Mirza Ali Zulfaqar
Counsel for Respondent :- G.A.

15. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 17010 of 2020

Petitioner :- Smt. Indrawati
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Janardan Yadav
Counsel for Respondent :- G.A.

16. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 17035 of 2020

Petitioner :- Bharti
Respondent :- State Of U.P. And 5 Others
Counsel for Petitioner :- Vikash Chandra Tiwari
Counsel for Respondent :- G.A.

17. **Case :- CRIMINAL MISC. WRIT PETITION No. - 17038 of 2020**

Petitioner :- Smt. Devika Mahajan
Respondent :- State Of U.P. And 6 Others
Counsel for Petitioner :- Alok Kumar Srivastava
Counsel for Respondent :- G.A.

18. **Case :- CRIMINAL MISC. WRIT PETITION No. - 17040 of 2020**

Petitioner :- Rakesh Kumar Yadav
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Sandeep Kumar,Devendra Singh
Counsel for Respondent :- G.A.

19. **Case :- CRIMINAL MISC. WRIT PETITION No. - 17046 of 2020**

Petitioner :- Ram Dhani
Respondent :- State Of U P And 6 Others
Counsel for Petitioner :- Om Prakash Vishwakarma
Counsel for Respondent :- G.A.

20. **Case :- CRIMINAL MISC. WRIT PETITION No. - 17054 of 2020**

Petitioner :- Smt Suman Devi
Respondent :- State Of U P And 4 Others
Counsel for Petitioner :- Sadhana Singh,Archana Singh
Counsel for Respondent :- G.A.

21. **Case :- CRIMINAL MISC. WRIT PETITION No. - 17114 of 2020**

Petitioner :- Kiranpal Singh
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Jitendra Singh
Counsel for Respondent :- G.A.

22. **Case :- CRIMINAL MISC. WRIT PETITION No. - 15792 of 2020**

Petitioner :- Shamim
Respondent :- State Of U.P. And 5 Others
Counsel for Petitioner :- Harish Chandra
Counsel for Respondent :- G.A.

23. **Case :- CRIMINAL MISC. WRIT PETITION No. - 16390 of 2020**

Petitioner :- Usha Devi
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Chandra Bhan Singh Chandel
Counsel for Respondent :- G.A.

24. **Case :- CRIMINAL MISC. WRIT PETITION No. - 15801 of 2020**

Petitioner :- Sujeet Verma
Respondent :- State Of U.P. And 6 Others
Counsel for Petitioner :- Anil Kumar Mishra
Counsel for Respondent :- G.A.

25. **Case :- CRIMINAL MISC. WRIT PETITION No. - 17089 of 2020**

Petitioner :- Emon Nir
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Mary Puncha (Sheeb Jose),Mohd. Kalim
Counsel for Respondent :- G.A.

26. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 17088 of 2020**Petitioner :-** Asha Devi**Respondent :-** State Of U.P. And 7 Others**Counsel for Petitioner :-** Saurabh Kumar Tiwari,Kuldeep Kumar Gupta**Counsel for Respondent :-** G.A.27. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 17116 of 2020**Petitioner :-** Santram**Respondent :-** State Of U.P. And 7 Others**Counsel for Petitioner :-** Renu Devi Dohre**Counsel for Respondent :-** G.A.28. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 17177 of 2020**Petitioner :-** Chaturbhuj Lal Srivastava**Respondent :-** State Of U.P. And 8 Others**Counsel for Petitioner :-** Sanjay Kumar Srivastava**Counsel for Respondent :-** G.A.29. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 17100 of 2020**Petitioner :-** Rajkumar Yadav**Respondent :-** State Of U.P. And 4 Others**Counsel for Petitioner :-** Surendra Singh**Counsel for Respondent :-** G.A.30. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 16367 of 2020**Petitioner :-** Sri Krishna Verma**Respondent :-** State Of U.P. And 5 Others**Counsel for Petitioner :-** Pankaj Kumar Shukla**Counsel for Respondent :-** G.A.31. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 16366 of 2020**Petitioner :-** Sarita (Minor)**Respondent :-** State Of U.P. And 3 Others**Counsel for Petitioner :-** Anil Kumar**Counsel for Respondent :-** G.A.32. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 16421 of 2020**Petitioner :-** Rahul Gaurav**Respondent :-** State Of U.P. And 7 Others**Counsel for Petitioner :-** Rajendra Kumar Singh**Counsel for Respondent :-** G.A.33. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 16409 of 2020**Petitioner :-** Soorja Devi**Respondent :-** State Of U.P. And 10 Others**Counsel for Petitioner :-** Amar Nath Singh**Counsel for Respondent :-** G.A.34. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 554 of 2021**Petitioner :-** Ramji Dubey**Respondent :-** State Of U.P. And 8 Others**Counsel for Petitioner :-** Shashi Kumar Dwivedi,Dashrath Lal Dwivedi,Hanuman

Kinkar
Counsel for Respondent :- G.A.

35. **Case :-** CRIMINAL MISC. WRIT PETITION No. - 16430 of 2020

Petitioner :- Ashok Kumar Harizan
Respondent :- State Of U.P. And 5 Others
Counsel for Petitioner :- Prakhar Srivastava
Counsel for Respondent :- G.A.

Hon'ble Surya Prakash Kesarwani, J.
Hon'ble Shamim Ahmed, J.

(Per: Surya Prakash Kesarwani, J.)

1. Heard learned counsels for the petitioners and the learned A.G.A. for the State-respondents in this batch of writ petitions.

2. All the above noted writ petitions have been filed by the petitioners praying for a direction to the concerned police authorities for fair and proper investigation in criminal cases in which investigation is going on. Thus, following **questions of law** are involved in the present writ petition:-

(a) Whether the jurisdictional Magistrate has power to direct the police authority concerned for fair and proper investigation?

(b) Whether the petitioners are justified to file writ petitions under Article 226 of the Constitution of India without approaching the concerned Magistrate under Section 156(3) of the Code of Criminal Procedure, 1973 for fair and proper investigation?

Submissions:

3. Learned counsel for the petitioners submitted that an important facet of the rule of law is that in criminal justice system, investigation into the crime should be fair, in accordance with law and should not be tainted. Therefore, if the investigating authority is not fairly and properly investigating into crime then this court has power to issue appropriate directions under Article 226 of the Constitution of India. They further submitted that once the power is available to this court, there is no need to

invoke the powers of the concerned Magistrate under Section 156(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.').

4. Learned A.G.A. submitted that the Magistrate has the power under Section 156(3) of the Cr.P.C. to order for fair and proper investigation and, therefore, the petitioners should have approached the concerned Magistrate for redressal of their grievances.

Discussion and Findings:

5. We have carefully considered the submissions of the learned counsels for the parties.

6. Relevant provisions for the purposes of controversy involved in the present writ petitions are Sections 2(c), 2(d), 2(g), 2(h), 36 and 156, Cr.P.C., which are reproduced below:

"Section 2(c):- "cognizable offence" means an offence for which, and ***"cognizable case"*** means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

Section 2(d):- "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Section 2(g):- "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

Section 2(h):- "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

Section 36:- Powers of superior officers of police. Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

Section 156. Police officer's power to investigate cognizable case.-
(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such

station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.”

Fair Investigation - Rule of Law:

7. The criminal justice system mandates that any investigation into the crime should be fair, in accordance with law and should not be tainted. It is equally important that interested or influential persons are not able to misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders escaping punitive course of law. These are important facets of the rule of law. Breach of rule of law amounts to negation of equality under Article 14 of the Constitution of India. Article 21 of the Constitution of India makes it clear that the procedure in criminal trials must be right, just and fair and not arbitrary, fanciful or oppressive, vide **Menka Gandhi vs. Union of India**¹ (para-7) and **Vinubhai Haribhai Malviya and others vs. State of Gujrat and another**² (paras-16 and 17) and **Subramanian Swamy vs. C.B.I.**³ (para-86). Article 21 enshrines and guarantees the precious right of life and personal liberty to a person which can only be deprived on following the procedure established by law in a fair trial which assures the safety of the accused. **The assurance of a fair trial is the first imperative** of the dispensation of justice, vide **Commissioner of Police, Delhi vs. Registrar, Delhi High Court, New Delhi**⁴ (para-16). The ultimate aim of all investigation and inquiry whether by the police or by the Magistrate is to ensure that those who have actually committed a crime, are correctly booked and those who have not, are not arraigned to stand trial. This is the minimal and fundamental requirement of Article 21 of the Constitution of India. Interpretation of provisions of Cr.P.C. needs to be made so as to ensure that Article 21 is followed both in letter and in spirit. “A speedy trial” is the essence of companion in concept in “fair trial”. Both being inalienable jurisprudentially, the guarantee under Article 21 of the Constitution of India embraces both life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at

1 AIR 1978 SC 597

2 AIR 2019 SC 5233

3 (2014) 8 SCC 682

4 AIR 1997 SC 95

large and, therefore, cannot be alienated from each other. A fair trial includes fair investigation as reflected from Articles 20 and 21 of the Constitution of India. If the investigation is neither effective nor purposeful nor objective nor fair, the courts may if considered necessary, may order fair investigation, further investigation or reinvestigation as the case may be to discover the truth so as to prevent miscarriage of justice. However, no hard and fast rules as such can be prescribed by way of uniform and universal invocation and decision shall depend upon facts and circumstances of each case.

8. Fair and proper investigation is the primary duty of the investigating officer. In every civilized society, the police force is invested with powers of investigation of a crime to secure punishment for the criminal and it is in the interest of the society that the investigating agency must act honestly and fairly and not resort to fabricating false evidence or creating false clues only with a view to secure conviction because such acts shake the confidence of the common man not only in the investigating agency but in the ultimate analysis in the system of dispensation of criminal justice. Proper result must be obtained by recourse to proper means, otherwise it would be an invitation to anarchy, vide **Rampal Pithwa Rahidas vs. State of Maharashtra**⁵ (para-37). Investigation must be fair and effective and must proceed in the right direction in consonance with the ingredients of the offence and not in a haphazard manner moreso in serious case. Proper and fair investigation on the part of the investigating officer is the backbone of rule of law vide **Sasi Thomas vs. State**⁶ (para-15 and 18).

Investigation under the Cr.P.C.:-

9. No investigating agency can take unduly long time in completing investigation. There is implicit right under Article 21 for speedy trial which in turn encompasses speedy investigation, inquiry, appeal, revision and retrial. There is clear need for time line in completing investigation for having in-house oversight mechanism wherein accountability for adhering to lay down timeline, can be fixed at different levels in the hierarchy, vide **Dilawar vs. State of Haryana**⁷ (paras-4 to 8), **Menka Gandhi** (supra), **Hussainara Khatoon (I) vs. State of Bihar**⁸, **Abdul Rehman Antulay vs. R.S. Nayak**⁹ and **P. Ramchandra Rao vs. State of Karnataka**¹⁰.

5 1994 Suppl. (2) SCC 73

6 (2006) 12 SCC 421

7 (2018) 16 SCC 521

8 (1980) 1 SCC 81

9 (1992) 1 SCC 225

10 (2002) 4 SCC 578

10. For the purposes of investigation, offences are divided into two categories “cognizable” and “non-cognizable”. When information of a cognizable offence is received or such commission is suspected, the proper police officer has the authority to enter in the investigation of the same but where the information relates to a non-cognizable offence, he shall not investigate it without the order of the competent Magistrate. **Investigation includes all the proceedings under the Cr.P.C. for the collection of evidence conducted by a police officer or by any person other than a Magistrate** (who is authorised by a Magistrate in his behalf). **Investigation consists of steps, namely (i) proceeding to spot, (ii) ascertainment of the facts and circumstances of the case, (iii) discovery and arrest of the suspected offender, (iv) collection of evidence relating to the commission of the offence and (v) formation of opinion as to whether on the material collected therein to place the accused before a Magistrate for trial and if so to take necessary steps for the same by filing a chargesheet under Section 173, Cr.P.C., vide **H.N. Rishbud vs. State of Delhi**¹¹.**

Remedy for Proper Investigation:-

11. Section 156(1) confers power upon any officer in-charge of a police station to investigate any cognizable case. Section 156(3) provides for a cheque by the Magistrate on the police performing its duties under Chapter XII, Cr.P.C. In cases where the Magistrate finds that 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.

12. In **Sakiri Vasu vs. State of U.P. and others**¹² (paras-11 to 18 and 27 to 30) Hon’ble Supreme Court considered Section 156(3), Cr.P.C. and after referring to its earlier decisions in **Mohd. Yousuf vs. Smt. Afaaq Jahan**¹³ (para-11), **Dilawar Singh vs. State of Delhi**¹⁴ (para-17), **State of Bihar vs. A.C. Saldana**¹⁵ (para-19) and also referring to its judgments on the point of “doctrine of implied powers”, in **Union of India vs. Paras Laminates (P) Ltd.**¹⁶, **I.T.O. vs. Mohd. Kunhi**¹⁷, **Reserve Bank of India vs. Peerless General Finance and Investment Company Ltd**¹⁸, Chief

11 AIR 1955 SC 196

12 (2008) 2 SCC 409

13 (2006) 1 SCC 627

14 JT 2007 (10) SC 585

15 AIR 1980 SC 326

16 (1990) 4 SCC 453

17 AIR 1969 SC 430,

18 (1996) 1 SCC 642

Executive Officer & Vice Chairman Gujarat Maritime Board vs. Haji Daud Haji Harun Abu¹⁹, J.K. Synthetics Ltd. vs. Collector of Central Excise²⁰, State of Karnataka vs. Vishwabharati House Building Co-op Society²¹, 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 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. 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 under Section 156 (3) Cr.P.C. 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 vs. Smt. Afaq Jahan & Anr. 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 investigating 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 complaint 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 vs. State of Delhi (2007) 12 SCC 641 (JT vide para 17). We would further clarify that even if an FIR has been registered and even if*

19 1996 (11) SCC 23

20 (1996) 6 SCC 92

21 2003 (2) SCC 412

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) Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C.

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 Cr.P.C. 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 re-opening of the investigation even after the police submits the final report, vide State of Bihar vs. A.C. Saldanna (1980) 1 SCC 554 (SCC: para 19).*

17. ***In our opinion Section 156(3) Cr.P.C. 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 F.I.R. 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) Cr.P.C., 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 to its execution.

27. As we have already observed above, **the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.**

28. **It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.**

29. *In Union of India vs. Prakash P. Hinduja and another (2003) 6 SCC 195 (SCC vide para 13), it has been observed by this Court that a Magistrate cannot interfere with the investigation by the police. However, in our opinion, the ratio of this decision would only apply when a proper investigation is being done by the police. If the Magistrate on an application under Section 156(3) Cr.P.C. is satisfied that proper investigation has not been done, or is not being done by the officer-in-charge of the concerned police station, he can certainly direct the officer in charge of the police station to make a proper investigation and can further monitor the same (though he should not himself investigate)."*

(Emphasis supplied)

13. The principles laid down in the case of **Sakiri Vasu (supra)** has been reiterated by Hon'ble Supreme Court in **Sudhir Bhaskar Rao Tambe vs. Hemant Yaswant Dhage²²** (paras-2, 3 and 4) and **Vinay Tyagi vs. Irshad Ali²³** (paras-40 to 40.6, 43, 44, 45, 46, 47, 48). In the case of **Vinay Tyagi (supra)**, Hon'ble Supreme Court held as under:

"43. At this stage, we may also state another well-settled canon of criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct 'further investigation', 'fresh' or 'de novo' and even 'reinvestigation'. 'Fresh', 'de novo', and 'reinvestigation' are synonymous

22 (2016) 6 SCC 277

23 (2013) 5 SCC 762

expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

44. *We have deliberated at some length on the issue that the powers of the High Court under Section 482 of the Code do not control or limit, directly or impliedly, the width of the power of Magistrate under Section 228 of the Code. Wherever a charge sheet has been submitted to the Court, even this Court ordinarily would not reopen the investigation, especially by entrusting the same to a specialised agency. It can safely be stated and concluded that in an appropriate case, when the court feels that the investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialised agency. These principles have been reiterated with approval in the judgments of this Court in the case of Disha v. State of Gujarat & Ors. [(2011) 13 SCC 337]. Vineet Narain v. Union of India [(1998) 1 SCC 226], Union of India v. Sushil Kumar Modi [1996 (6) SCC 500] and Rubabbuddin Sheikh v. State of Gujarat [(2010) 2 SCC 200].*

48. *What ultimately is the aim or significance of the expression ‘fair and proper investigation’ in criminal jurisprudence? It has a twin purpose: Firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.”*

(Emphasis supplied)

14. In the case of **Vinubhai Haribhai Malviya and others vs. State of Gujrat and another²⁴ (para-23)**, Hon’ble Supreme Court held as under:

“23. It is thus clear that the Magistrate’s power under Section 156(3) of the CrPC is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a “proper investigation” takes place in the sense of a fair and just investigation by the police - which such Magistrate is to supervise - Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the

ordering of further investigation after a report is received by him under Section 173(2); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the “investigation” referred to in Section 156(1) of the CrPC would, as per the definition of “investigation” under Section 2(h), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under Section 173(8) of the CrPC.”

(Emphasis supplied)

15. In the case of **Sudhir Bhaskar Rao Tambe** (supra) (paras-2, 3 and 4), Hon’ble Supreme Court following the judgment in the case of **Sakiri Vasu** (supra) held 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), Cr.P.C. If such an application under Section 156(3) Cr.P.C. 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. Thus, the law laid down by Hon’ble Supreme Court is that after registration of the First Information Report if proper investigation is not being done by the investigating officer, then informant may approach the magistrate concerned under Section 156(3), Cr.P.C. so that proper investigation is done. A three judges bench of Hon’ble Supreme Court in the case of **M. Subramaniam and others vs. S. Janki and others** (Criminal Appeal No.102 of 2011 decided on 20.03.2020) quoted with approval the law laid down by two judges bench in the case of **Sakiri Vasu** (supra) and **Sudhir Bhaskar** (supra) and thus, it affirmed the principles laid down in those judgments that even if a first information report has already been registered, on an application under Section 156(3) Cr.P.C., the Magistrate can direct proper investigation and writ petition for this purpose should not generally be entertained by the High Court in view of the remedy available before the Magistrate under Section 156(3), Cr.P.C.

16. In a recent judgment of this court dated 08.01.2021 in Criminal Misc. Writ Petition No.16288 of 2020 (Ram Shila Gupta vs. State of U.P. and 3 others), a Division Bench of this court has held as under:

“In the case of M. Subramanian and another Vs. Janki and another (Criminal Appeal No.102 of 2011) decided on 20.03.2020, the Hon’ble Supreme Court observed that if FIR has already been registered then the Magistrate can direct proper investigation to be done which includes his discretion, if he deems it necessary, recommending change of the investigation officer, so that a proper investigation is done in the matter. The High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation and 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. Hon’ble Supreme Court further held that the complainant must avail of his alternative remedy to approach the Magistrate concerned under Section 156(3) Cr.P.C 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 recommend to the Senior Superintendent of Police/ Superintendent of Police 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. The observations made by the Hon’ble Supreme Court are also in reiteration of the principle laid down by the Hon’ble Supreme Court in the case of SUDHIR BHASKARAO TAMBE VS. HEMANT YASHWANT DHAGE AND OTHERS; 2016(6) SCC 277 and in the case of SAKIRI VASU VS. STATE OF UTTAR PRADESH AND OTHERS, 2008(2) SCC 409.

In view of the aforesaid, we do not find any good reason to entertain the writ petition.

Consequently, considering the submissions of the learned counsel for the parties, this writ petition is dismissed leaving it open to the petitioner to avail such remedy as may be available to him under law.”

17. In view of the discussions made above, we hold that if an informant/ petitioner is aggrieved that proper/ fair investigation is not being done by the investigating officer, then he/ she may approach the concerned Magistrate by moving an application under Section 156(3) Cr.P.C. for appropriate orders instead of invoking writ jurisdiction under Article 226 of the Constitution of India.

18. For all the reasons aforesated, all the writ petitions are dismissed leaving it open to the petitioners to approach the Magistrate concerned under Section 156(3) of Cr.P.C. for fair and proper investigation.

Order Date :- 27.01.2021
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