Court No. - 2 **A.F.R.**

Case :- MISC. BENCH No. - 24492 of 2020

Petitioner :- Waseem Haider
Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. & Others
Counsel for Petitioner :- Mohd. Muballi Gussalam
Counsel for Respondent :- G.A.

Hon'ble Ramesh Sinha,J.
Hon'ble Chandra Dhari Singh,J.

(Per: Chandra Dhari Singh, J.)

1. This writ petition has been filed by the petitioner Waseem Haider seeking mandamus commanding the respondents no. 2 & 3 to make direction to respondent no.4 for registration of the First Information Report on the application of the petitioner.

2. Learned counsel for the petitioner has submitted that original owner of land Khasra Nos. 1120Ka, 1097, 2067, 1120Ka, 1121, 1122Ka, 1138, 2151Gha, 2245Ga and 1120 situated at Village Katui Paragana and Tehsil Akbarpur, District Ambedkar Nagar, Old District Faizabad was Shri Ambad Mehndi, who executed Theekanama in favour of his chief executive Quari Sayed Akhtar Husain alongwith some conditions. It is submitted that he did not transfer his title, and only the right to use the aforesaid land was given. It is also submitted that the aforesaid gata numbers are new gata numbers and in the deed of Theekanama, old numbers have been mentioned.

3. Learned counsel has submitted that Late Syed Ahmad Mehdi was Tallukdar of Peerpur Estate and after his death his only daughter Smt. Huma Husain inherited the said property by way of succession. The petitioner is attorney holder of Smt. Huma Husain and managing the affairs of Smt. Huma Husain.

4. It is submitted that when the petitioner came to know about the forged and fraudulent sale deed which was executed by Shri Jagdish Mishra in favour of several persons through six sale deeds on 29.01.2020,

the petitioner moved application for registration of First Information Report to opposite party no.4 on 27.06.2020, but opposite party no.4 did not register the said F.I.R.

5. He has submitted that the petitioner approached opposite party no.3 i.e. Superintendent of Police, Ambedkar Nagar and submitted application through registered post dated 10.07.2020 for registration of F.I.R., but nothing has been done by the said authority.

6. Learned counsel has further submitted that when the report of the petitioner was not lodged by opposite party no.4 and no direction was given by opposite party no.3 to opposite party no.4 then the petitioner approached opposite party no.2 i.e. Director General of Police, U.P., Lucknow and moved an application through E-mail on 04.12.2020, but again nothing was done by the police authorities.

7. Learned counsel for the petitioner has relied upon the judgment of Hon'ble the Apex Court in the case of ***Lalita Kumari vs. Government of U.P. and others; (2014) 2 SCC 1*** and submitted 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 Code.

8. Learned AGA has opposed the prayer as made in the present writ petition and raised a preliminary objection regarding maintainability of the writ petition and states that if the petitioner is aggrieved by the fact that his first information report is not being registered, he has an alternative remedy to approach the Magistrate concerned under section 156(3) Cr.P.C. Learned AGA has also vehemently submitted that proposed accused has not been made a party, which is necessary for proper adjudication of this case. Therefore, the writ petition may be dismissed merely on this ground itself.

9. Heard Mohd. Muballi Gussalam, learned counsel for the petitioner, Sri J. S. Tomar, learned A.G.A. for the State and perused the record.

10. The core issue raised herein is whether a writ of mandamus can be issued under Article 226 of the Constitution of India directing the police to register an offence under Section 154(1) Cr.P.C. in a petition raising grievance that despite informing the police about the commission of cognizable offence, no FIR is lodged.

11. In some cases the writ Court has directed the police authorities to perform their statutory duty under Section 154 Cr.P.C by following the law laid down by the Apex Court in the Constitution Bench decision of Lalita Kumari (supra). The State has taken serious objection and submitted that the Writ Court should have declined issuance of writ of mandamus for the reason of availability of statutory remedy under Section 154(3), 156(3), 190 and 200 Cr.P.C..

12. The core issue mentioned above in fact involves a number of principal and peripheral issues, which are as under :-

Principal Issues :-

(i) Whether in the face of remedies under Sections 154(3), 156(3), 190 & 200 Cr.P.C., writ of mandamus can be issued to police authorities to perform their statutory duty under Sections 154(1) Cr.P.C. in a petition complaining non-registration of FIR despite furnishing first information of commission of cognizable offence?

(ii) Whether the Constitution Bench decision of the Apex Court in Lalita Kumari (supra) is an answer to the above said principal issue No.1?

Peripheral Issues :-

(i) Can relief of writ of mandamus be denied to the informant merely on the ground that the informant is not an aggrieved person or victim and whether such person becomes functus officio after informing the police of commission of cognizable offence?

(ii) Whether the proposed accused is required to be heard before writ of mandamus can be issued in a petition complaining failure of police

authorities to register offence despite being informed of commission of cognizable offence?

13. Before embarking upon the process of adjudication it would be appropriate to reproduce the relevant statutory provisions which have bearing on the issued involved herein. Section 154, Section 156, Section 190 and Section 200 of the Cr.P.C. are reproduced in seriatim for convenience and ready reference :-

> *"**Section 154. Information in cognizable cases.** - (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.*
>
> *(2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.*
>
> *(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.*
>
> ***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.*
>
> ***Section 190. Cognizance of offences by Magistrates. -** (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-Section (2), may take cognizance of any offence-*

(a) upon receiving a complaint of facts which constitute such offence

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under Sub-Section (1) of such offences as are within his competence to inquire into or try.

Section. 200. Examination of complainant. - *A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:*

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or- purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

14. Writ of Mandamus is one of the prerogative writs issued by the superior Courts (High Court or Supreme Court), which is in shape of command to the State, its instrumentality or its functionaries to compel them to perform their constitutional/statutory/public duty. To clarify, the extract of decision of Apex Court explaining the discretionary limitations adopted by the Writ Court while issuing writ of mandamus are as follows:-

(i) ***Thansingh Nathmal Vs. Superintendent of Taxes, AIR 1964 SC 1419 :-***

"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a

> *petition for a writ under Art. 226, where the petitioner has an alternative remedy which, without being unduly onerous, provides an equally efficacious remedy."*

15. 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.

16. 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."*

17. The power to issue writ of mandamus has its own well defined self imposed limitations, one of which is availability of alternative efficacious remedy on the basis of which the Writ Court can deny issuance of the said writ.

18. This Court deems it appropriate to answer principal issue No.2 first. The principal issue No.2 is as follows :-

> *(ii) Whether the Constitution Bench decision of the Apex Court in the case of Lalita Kumari (supra) is an answer to the above said principal issue No.1 ?*

19. The decision of Lalita Kumari (supra) of the Apex Court arose out of a petition under Article 32 of the Constitution of India seeking issuance of writ of habeas corpus or directions of like nature against the respondents therein for the protection of minor daughter who was kidnapped. As per paragraphs 1 & 6 of the said judgment, the Apex Court framed the question raised and decided therein which are reproduced below :-

> *"Para 1. The important issue which arises for consideration in the referred matter is whether "a police officer is bound to register the first information report (FIR) upon receiving any information relating to commission of cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 (in short' the Code') or the police officer has the power to conduct 'preliminary inquiry' in order to test the veracity of such information before registering the same"?*
>
> *Para 6. Therefore, the only question before this Constitution Bench relates to the interpretation of Section 154 of the Code and incidentally to consider Sections 156 and 157 also".*

20. Perusal of the judgment of Lalita Kumari (supra) and the final directions passed in paragraphs 120.1 to 120.8 clearly reveal the laying down of ratio that the police has no option but to register the offence in shape of FIR under Section 154 Cr.P.C. on receipt of first information regarding commission of cognizable offence without verifying the veracity of the first information.

21. Though the Apex Court while formulating the question in paragraph 6 (supra) made reference to Sections 156 & 157 but the entire judgment of Lalita Kumari and final directions issued therein centre around the statutory obligation of the police to register the offence under Section 154 Cr.P.C, with only passing reference of Section 156 & 157 without laying down any law as regards these provisions (Section 156 and 157 Cr.P.C.).

22. Therefore, it can safely be concluded that the Apex Court while interpreting the statutory provision under Section 154 Cr.P.C said nothing further as regards remedy available to the informant whose information of commission of cognizable offence does not invoke any response from

the police. Thus, the judgment of Lalita Kumari does not lay down any law in respect of remedies available to the informant under Cr.P.C. to be invoked in case of failure on the part of the police to perform its statutory duty under Section 154(1)/154(3) Cr.P.C. as a *sine qua non* for seeking writ of mandamus.

23. Consequently, the case of Lalita Kumari of the Apex Court does not answer the principal issue No.1 framed by this Court.

24. Now this Court takes up the principal issue No.1.

25. The self imposed restriction of availability of statutory remedy while considering issuance of writ of mandamus is universally applied with few exceptions as enumerated above.

26. 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.

27. 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.

28. 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.

29. 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.

30. The above said discussion makes it clear that there are four different remedies available under Cr.P.C for the informant/victim to initiate prosecution in respect of the cognizable/non-cognizable offence which is alleged in the first information furnished which fails to invoke response from the police. More so, these statutory remedies cannot be branded as non-efficacious or onerous. Accordingly, informant whose first information does not lead to registration of offence under Section 154 Cr.P.C is not remedy-less and therefore, the constraints exercised by the writ Court while issuing writ of mandamus come into play. These constraints as enumerated above are self imposed and lie within the domain of discretion rather than rule but none the less are invariably applied by superior courts while exercising writ jurisdiction. To elaborate, if it is demonstrated that impugned action or inaction is vitiated by violation of principles of natural justice, or being bereft of jurisdiction or violates any statutory provision or causes breach of fundamental rights, then non-availing of alternative remedy cannot restrain the informant or victim to successfully invoke the writ jurisdiction of the superior Court.

31. In the case of ***Abhinandan Jha v. Dinesh Mishra - (1967) 3 SCR 668,*** the Supreme Court took great pains in demarking the powers of the police and the judiciary. They explained the duties of the police, in the

matter of investigation of offences, as well as their powers. It is necessary to refer to the provisions contained in Chapter XIV of the Code, Sections beginning from Section 154, and ending with Section 176. Section 154 deals with information relating to the commission of a cognizable offence, and the procedure to be adopted in respect of the same. In each of these sections, there is no role of Judiciary. The sections provide guidelines to the police on how to proceed with the Investigation but there is always a discretion to the police officer to conduct a preliminary inquiry in case a complaint does not clearly disclose a Cognizable offence or has doubts over the veracity of the complaint. The relevant extract (Para - 7) is as follows:-

> *"7. In order, properly, to appreciate the duties of the police, in the matter of investigation of offences, as well as their powers, it is necessary to refer to the provisions contained in Chapter XIV of the Code. That chapter deals with "Information to the Police and their Powers to investigate"; and it contains the group of sections beginning from Section 154, and ending with Section 176. Section 154 deals with information relating to the commission of a cognizable offence, and the procedure to be adopted in respect of the same. Section 155, similarly, deals with information in respect of non-cognizable offences. Sub-section (2), of this section, prohibits a police officer from investigating a non-cognizable case, without the order of a Magistrate. Section 156 authorises a police officer, in-charge of a police station, to investigate any cognizable case, without the order of a Magistrate. Therefore, it will be seen that large powers are conferred on the police, in the matter of investigation into a cognizable offence. Sub-section (3), of Section 156, provides for any Magistrate, empowered under Section 190, to order an investigation. In cases where a cognizable offence is suspected to have been committed, the officer in-charge of a police station, after sending a report to the Magistrate, is entitled, under Section 157, to investigate the facts and circumstances of the case and also to take steps for the discovery and arrest of the offender. Clause (b), of the proviso to Section 157(1), gives a discretion to the police officer not to investigate the case, if it appears to him that there is no sufficient ground for entering on an investigation. Section 158 deals with the procedure to be adopted in the matter of a report to be sent, under Section 157. Section 159 gives power to a Magistrate, on receiving a report under Section 157, either to direct an investigation or, himself or through another Magistrate subordinate to him, to hold a preliminary enquiry into the matter, or otherwise dispose of the case, in accordance with the Code. Sections 160 to 163 deal with the power of the police to require attendance of witnesses, examine witnesses and record statements. Sections 165 and 166 deal with the power of police officers, in the matter of conducting searches, during an investigation, in*

the circumstances, mentioned therein. Section 167 provides for the procedure to be adopted by the police, when investigation cannot be completed in 24 hours. Section 168 provides for a report being sent to the officer in charge of a police station, about the result of an investigation, when such investigation has been made by a subordinate police officer, under Chapter XIV. Section 169 authorises a police officer to release a person from custody, on his executing a bond, to appear, if and when so required, before a Magistrate, in cases when, on investigation under Chapter XIV, it appears to the officer in-charge of the police station, or to the police officer making the investigation, that there is no sufficient evidence or reasonable ground of suspicion, to justify the forwarding of the accused to a Magistrate. Section 170 empowers the officer, in charge of a police station, after investigation under Chapter XIV, and if it appears to him that there is sufficient evidence, to forward the accused, under custody, to a competent Magistrate or to take security from the accused for his appearance before the Magistrate, in cases where the offence is bailable. Section 172 makes it obligatory on the police officer making an investigation, to maintain a diary recording the various particulars therein and in the manner indicated in that section. Section 173 provides for an investigation, under Chapter XIV, to be completed, without unnecessary delay and also makes it obligatory, on the officer in charge of the police station, to send a report to the Magistrate concerned, in the manner provided for therein, containing the necessary particulars."

32. In the case of ***H.N. Rishbud and Inder Singh v. State of Delhi - 1955 (1) SCR 1150,*** the Hon'ble Supreme Court held that the Judiciary should not interfere with the police in matters such as Investigation especially of cognizable offence which is the statutory right of the police. The court observed that the police needs no authorisation of the judiciary. The court opined that the functions of the police and judiciary are complimentary and not overlapping keeping in mind individual liberty and law and order situation in the Country. The judiciary role comes into play when a charge is established and not before that. The relevant extracts (Paras - 5 & 8) are as followes:-

***"5.** To determine the first question it is necessary to consider carefully both the language and scope of the section and the policy underlying it. As has been pointed out by Lord Campbell in Liverpool Borough Bank v. Turner [(1861) 30 LJ Ch 379] , "there is no universal rule to aid in determining whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the Court to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed". (See Craies on Statute Law, p. 242, Fifth Edn.) The Code of Criminal Procedure provides not merely for judicial enquiry into or trial*

of alleged offences but also for prior investigation thereof. Section 5 of the Code shows that all offences "shall be investigated, inquired into, tried and otherwise dealt with in accordance with the Code" (except in so far as any special enactment may provide otherwise). For the purposes of investigation offences are divided into two categories "cognizable" and "non-cognizable". When information of the commission of a cognizable offence is received or such commission is suspected, the appropriate police officer has the authority to enter on the investigation of the same (unless it appears to him that there is no sufficient ground). But where the information relates to a non-cognizable offence, he shall not investigate it without the order of a competent Magistrate. Thus it may be seen that according to the scheme of the Code, investigation is a normal preliminary to an accused being put up for trial for a cognizable offence (except when the Magistrate takes cognizance otherwise than on a police report in which case he has the power under Section 202 of the Code to order investigation if he thinks fit). Therefore, it is clear that when the Legislature made the offences in the Act cognizable, prior investigation by the appropriate police officer was contemplated as the normal preliminary to the trial in respect of such offences under the Act. In order to ascertain the scope of and the reason for requiring such investigation to be conducted by an officer of high rank (except when otherwise permitted by a Magistrate), it is useful to consider what "investigation" under the Code comprises. Investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under Section 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes "all the proceedings under the Code for the collection of evidence conducted by a police officer". For the above purposes, the investigating officer is given the power to require before himself the attendance of any person appearing to be acquainted with the circumstances of the case. He has also the authority to examine such person orally either by himself or by a duly authorised deputy. The officer examining any person in the course of investigation may reduce his statement into writing and such writing is available, in the trial that may follow, for use in the manner provided in this behalf in Section 162. Under Section 155 the officer in charge of a police station has the power of making a search in any place for the seizure of anything believed to be necessary for the purpose of the investigation. The search has to be conducted by such officer in person. A subordinate officer may be deputed by him for the purpose only for reasons to be recorded in writing if he is unable to conduct the search in person and there is no other competent officer available. The investigating officer has also the power to arrest the person or persons suspected of the commission of the offence under Section 54 of the Code. A police officer making an investigation is

enjoined to enter his proceedings in a diary from day-to-day. Where such investigation cannot be completed within the period of 24 hours and the accused is in custody he is enjoined also to send a copy of the entries in the diary to the Magistrate concerned. It is important to notice that where the investigation is conducted not by the officer in charge of the police station but by a subordinate officer (by virtue of one or other of the provisions enabling him to depute such subordinate officer for any of the steps in the investigation) such subordinate officer is to report the result of the investigation to the officer in charge of the police station. If, upon the completion of the investigation it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground, to place the accused on trial, he is to take the necessary steps therefore under Section 170 of the Code. In either case, on the completion of the investigation he has to submit a report to the Magistrate under Section 173 of the Code in the prescribed form furnishing various details. Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173. The scheme of the Code also shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for every one of these steps is that of the person in the situation of the officer in charge of the police station, it having been clearly provided in Section 168 that when a subordinate officer makes an investigation he should report the result to the officer in charge of the police station. It is also clear that the final step in the investigation, viz. the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate under Section 551.

8. *A number of decisions of the various High Courts have been cited before us bearing on the questions under consideration. We have also perused the recent unreported Full Bench judgment of the Punjab High Court [Criminal Appeals Nos. 25-D and 434 of 1953 disposed of on 3rd May, 1954] . These disclose a conflict of opinion. It is sufficient to notice one argument based on Section 156(2) of the Code on which reliance has been placed in some of these decisions in support of the view that Section*

5(4) of the Act is directory and not mandatory. Section 156 of the Criminal Procedure Code is in the following terms:

> *"156.(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 XV relating to the place of inquiry or trial.*
>
> *(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."*

The argument advanced is that Section 5(4) and proviso to Section 3 of the Act are in substance and in effect in the nature of an amendment of or proviso to Section 156(1) of the Code of Criminal Procedure. In this view, it was suggested that Section 156(2) which cures the irregularity of an investigation by a person not empowered is attracted to Section 5(4) and proviso to Section 3 of the 1947 Act and Section 5-A of the 1952 Act. With respect, the learned Judges appear to have overlooked the phrase "under this section" which is to be found in sub-section (2) of Section 156 of the Code of Criminal Procedure. What that sub-section cures is investigation by an officer not empowered under that section i.e. with reference to sub-sections (1) and (3) thereof. Sub-section (1) of Section 156 is a provision empowering an officer in charge of a police station to investigate a cognizable case without the order of a Magistrate and delimiting his power to the investigation of such cases within a certain local jurisdiction. It is the violation of this provision that is cured under sub-section (2). Obviously sub-section (2) of Section 156 cannot cure the violation of any other specific statutory provision prohibiting investigation by an officer of a lower rank than a Deputy Superintendent of Police unless specifically authorised. But apart from the implication of the language of Section 156(2), it is not permissible to read the emphatic negative language of sub-section (4) of Section 5 of the Act or of the proviso to Section 3 of the Act, as being merely in the nature of an amendment of or a proviso to sub-section (1) of Section 156 of the Code of Criminal Procedure. Some of the learned Judges of the High Courts have called in aid sub-section (2) of Section 561 of the Code of Criminal Procedure by way of analogy. It is difficult to see how this analogy helps unless the said sub-section is also to be assumed as directory and not mandatory which certainly is not obvious on the wording thereof. We are, therefore, clear in our opinion that Section 5(4) and proviso to Section 3 of the Act and the corresponding Section 5-A of Act 59 of 1952 are mandatory and not directory and that the investigation conducted in violation thereof bears the stamp of illegality.

33. In the case of ***Sevi v. State of Tamilnadu - 1981 Supp SCC 43,*** the Hon'ble Supreme Court has held that before registering an FIR under Section 154 of the Code, it is open to the police officer to hold a preliminary inquiry to ascertain whether there is a prima facie case of commission of a cognizable offence or not. The relevant extract (Para - 3) is as follows :-

> *"**3.** One of the disturbing features of the case is the strange conduct of PW 15 the Sub-Inspector of Police. According to him he was told by PW 10 on the telephone that there was some rioting at Kottaiyur and that some persons were stabbed. He made an entry in the general diary and proceeded to Kottaiyur taking with him the FIR book, the hospital memo book etc. This was indeed very extraordinary conduct on the part of the Sub-Inspector of Police. If he was not satisfied with the information given by PW 10 that any cognizable offence had been committed he was quite right in making an entry in the general diary and proceeding to the village to verify the information without registering any FIR. But, we have yet not come across any case where an officer in-charge of a police station has carried with him the FIR book. The first information report book is supposed to be at the Police Station House all the time. If the Sub-Inspector is not satisfied on the information received by him that a cognisable offence has been committed and wants to verify the information his duty is to make an entry in the general diary, proceed to the village and take a complaint at the village from someone who is in a position to give a report about the commission of a cognisable offence. Thereafter, the ordinary procedure is to send the report to the police station to be registered at the police station by the officer in-charge of the police station. But, indeed, we have never come across a case where the Station House Officer has taken the first information report book with him to the scene of occurrence. According to the suggestion of defence the original first information report which was registered was something altogether different from what has now been put forward as the first information report and that the present report is one which has been substituted in the place of another which was destroyed. To substantiate their suggestion the defence requested the Sessions Judge to direct the Sub-Inspector to produce the first information report book in the court so that the counterfoils might be examined. The Sub-Inspector was unable to produce the relevant FIR book in court notwithstanding the directions of the court. The FIR book, if produced, would have contained the necessary counterfoils corresponding to the FIR produced in court. The Sub-Inspector when questioned stated that he searched for the counterfoil book but was unable to find it, an explanation which we find impossible to accept. We cannot imagine how any FIR book can disappear from a police station. Though he claimed that relevant entries had been made in the general diary at the station the Sub-Inspector did not also produce the general diary in court. The production of the general diary would have certainly dispelled suspicion. In the circumstances we think that there is*

great force in the submission of the learned counsel for the accused that the original FIR has been suppressed and, in its place some other document has been substituted. If that is so, the entire prosecution case becomes suspect. All the eyewitnesses are partisan witnesses and notwithstanding the fact that four of them were injured we are unable to accept their evidence in the peculiar circumstances of the case. Where the entire evidence is of a partisan character impartial investigation can lend assurance to the court to enable it to accept such partisan evidence. But where the investigation itself is found to be tainted the task of the court to sift the evidence becomes very difficult indeed. Another feature of the case which makes us doubt the credibility of the witnesses is the photographic and somewhat dramatic account which they gave of the incident with minute details of the attack on each of the victims. According to the account of the witnesses it was as if each of the victims of the attack came upon the stage one after the other to be attacked by different accused in succession, each victim and his assailant being followed by the next victim and the next assailant. Surely the account of the witnesses is too dramatic and sounds obviously invented to allow each witness to give evidence of the entire attack. But the witnesses themselves admit in cross-examination that they were all attacked simultaneously. If so, it was impossible for each of them to have noticed the attack on everyone else. One other important feature of the case which remains unexplained by the prosecution witnesses is the injuries found on A-4. According to A-4 the prosecution party came to his house and attacked him and the prosecution party were injured in that incident, suggesting thereby that he acted in exercise of his right of private defence. He, however, excludes the presence of the other accused. Whether his version is true or not, the fact remains that he did sustain some injuries which have remained unexplained. Having regard to all these special features of this case we do not think that the High Court was justified in setting aside the acquittal of the appellants and convicting them. The appeals are, therefore, allowed. The appellants, if not on bail, will be released forthwith. If they are on bail their bail bonds will stand cancelled.

34. The Hon'ble Apex Court in the case of ***Sakiri Vasu v. State of U.P. & Ors. - (2008) 2 SCC 409*** has discussed the remedies, procedure available if the police authorities denies to register the FIR. The relevant extract (Para - 26) is as follows :-

26. *If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint*

under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

35. The Hon'ble Apex Court while contemplating the options available to an informant/victim when his first information falls on deaf ears in the case of ***Aleque Padamsee and Ors. v. Union of India and Ors. - (2007) 6 SCC 171*** has laid down thus :-

"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 re-iterated 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's 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."

36. The decision of Aleque padamsee (supra) has though been referred by the Constitution Bench in Lalita Kumari but has neither been distinguished nor over-ruled and therefore, the same continues to hold the field. That the view taken by the Apex Court in case of Aleque Padamsee (supra) and Sakiri Vasu (supra) has been subsequently reiterated and reaffirmed in the case of ***Sudhir Bhaskar Rao Tambe Vs. Hemant Yashwant Dhage and Ors - (2016) 6 SCC 277,*** which is as follows :-

"2. This Court has held in Sakiri Vasu Vs. State of U.P. (supra), 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 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 investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case (supra) 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."

37. In matters of this nature, there are two competing rights, on the one side right of complainant/victim that perpetrator of crime be punished

and justice be rendered to him and on the other side the right of the accused for fair investigation before he is implicated and fair trial before he is convicted. He also has inviolable right to life and liberty. 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.

38. Accordingly, the principal issue No.1 is decided by holding that writ of mandamus can be declined due to non-availing of alternative remedy when the cause shown is non-registration of offence under Section 154 Cr.P.C. despite furnishing information of commission of cognizable offence.

39. Turning to the peripheral issues and taking up the first in that category, which is as under:-

> *"Can relief of writ of mandamus be denied to the informant merely on the ground that the informant is not an aggrieved person or victim and whether such person becomes functus officio after informing the police of commission of cognizable offence?"*

40. A bare perusal of terminology employed by the legislature in Section 154 Cr.P.C discloses that even a stranger to the offence can inform the police about commission of any cognizable offence. Object behind this is that legislature did not want that any cognizable offence committed in the society should go uninvestigated and untried if found to be prima facie committed. By restricting the connotation of the expression "informant" to that of "victim" would defeat this object. Accordingly, once Section 154 enables even a stranger to the cognizable

offence to invoke statutory powers of the police of registration of offence (which is now held to be mandatory by the verdict of Apex Court in Lalita Kumari), then the act of failure of police to perform this statutory duty can certainly accrue cause of action to the stranger to seek writ of mandamus under Article 226 of the Constitution of India from the superior Court to compel the police to perform its statutory duty under Section 154 Cr.P.C.

41. Consequently even a stranger to a cognizable offence has locus standi to seek issuance of mandamus against the police to act under Section 154 Cr.P.C. provided such stranger is the first informant.

42. As regards peripheral issue No.2, it is seen that the same relates to question whether proposed accused in the first information is entitled to a hearing before the writ court in a petition seeking mandamus under Article 226 directing the police to register the FIR under Section 154 Cr.P.C.

43. Reverting to the terminology of Section 154 Cr.P.C. one finds that the statute does not contemplate any prior hearing to the proposed accused before registration of cognizable offence. Thus, the natural consequence that follows is that while issuing writ of mandmus directing the police to perform its statutory duty under Section 154 Cr.P.C the accused is not required to be heard.

44. Accordingly, peripheral issue No.2 is decided by holding that proposed accused whose name is mentioned in the FIR is not a necessary party, in a writ seeking issuance of mandamus against police authorities compelling them to perform their statutory duty under Section 154 Cr.P.C.

45. Before parting, the conclusion arrived at based on the above discussion and analysis is delineated below for ready reference and convenience :-

> (1) Writ of mandamus to compel the police to perform its statutory duty under Section 154 Cr.P.C can be denied to the

informant/victim for non-availing of alternative remedy under Sections 154(3), 156(3), 190 and 200 Cr.P.C., unless the four exceptions enumerated in decision of Apex Court in the the case of *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 1*, come to rescue of the informant / victim.

(2) The verdict of Apex Court in the case of *Lalita Kumari Vs. Government of U.P. & Ors. reported in (2014) 2 SCC 1* does not pertain to issue of entitlement to writ of mandamus for compelling the police to perform statutory duty under Section 154 Cr.P.C without availing alternative remedy under Section 154(3), 156(3), 190 and 200 Cr.P.C..

(3) The informant/victim after furnishing first information regarding cognizable offence does not become functus officio for seeking writ of mandamus for compelling the police authorities to perform their statutory duty under Section 154 Cr.P.C in case the FIR is not lodged.

(4) The proposed accused against whom the first information of commission of cognizable offence is made, is not a necessary party to be impleaded in a petition under Article 226 of the Constitution of India seeking issuance of writ of mandamus to compel the police to perform their statutory duty under Section 154 Cr.P.C.

46. From the above discussion of facts and analysis of law including the judicial verdict relied upon, we do not find any force in the argument as advanced by learned counsel for the petitioner. Consequently, the writ petition is ***dismissed.***

However, it will be open for the petitioner to avail appropriate remedy available under law before appropriate forum.

Order Date :- 14.12.2020
Nishant/-

(Chandra Dhari Singh, J.) **(Ramesh Sinha, J.)**