

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMP No.1633 of 2024

(In the matter of application under Article 227 of the Constitution of India).

Swarnalata Jena

...

Petitioner

-versus-

State of Odisha and others

...

Opposite Parties

For Petitioner

**: Mr. R.D. Mohapatra,
Advocate**

For Opposite Parties

: Mr. S.K. Rout, Addl. PP

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:03.02.2025(ORAL)

G. Satapathy, J.

1. The grievance of the petitioner in this case is for a direction to OPNos.2 and 3 to register the FIR lodged under Annexure-1 series and to take necessary action.

2. Heard, learned counsel for the parties and perused the record.

3. Time and again, the Apex Court has reiterated that in case the grievance of the petitioner is

for non-registration of FIR, he has to approach the



jurisdictional Magistrate by invoking the provisions of law. Admittedly, in this case, the petitioner has not approached the Magistrate against his grievance of non-registration of FIR, but instead of, he has directly approached this Court. What should be the approach of the aggrieved person for non-registration of FIR on his complaint has been outlined in Chapter XIII of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, "BNSS") and Sec. 175(3) therein provides powers to the Magistrate to order an investigation on the application of the aggrieved persons whose complaint has been refused by the police to register it as an FIR, provided the aggrieved persons satisfies the Magistrate to direct for an investigation. For the matter relating to non-registration of FIR and how to redress such grievance, this Court considers it apt to refer to the decision of the Apex Court in ***Sakiri Vasu v. State of Uttar Pradesh and others; (2008) 2 SCC 409***, wherein at paragraph- 27, it has held as under:-

"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 CrPC 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 police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC."

4. The principle as laid down in ***Sakiri Vasu(supra)*** has been reiterated with approval in ***Sudhir Bhaskarrao Tambe vrs. Hemant Yashwant Dhage and others; (2016) 6 SCC 277***, the Apex Court at paragraphs-2 & 3 has held as under:-

"2. This Court has held in ***Sakiri Vasu (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 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** 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”.**

5. In a very recent decision in **Om Prakash Ambadkar Vrs. State of Maharashtra and others; 2025 Live Law (SC) 139**, the Apex Court has held as under:-

"The Magistrate is not expected to mechanically direct investigation by the police without first examining whether the fact and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straight away proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further in the matter, instead of passing the



buck to the police U/S. 156(3) of the CrPC. Of course, if the allegations made in the complaint require complex and complication investigation which cannot be undertaken without active assistance an expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the police authorities. The Magistrate is, therefore, not supposed to act merely as a post office and needs to adopt a judicial approach while considering an application seeking investigation by the Police."

6. In the aforesaid decision, the Apex Court has also held that unlike Sec.156(3) of the CrPC, any Magistrate, before ordering investigation U/S.175(3) of BNSS is required to:-

- (a) consider the application, supported by an affidavit, made by the complainant to the Superintendent of Police U/S. 173(4) of the BNSS;
- (b) conduct such enquiry as he thinks necessary; and
- (c) consider the submission made by the police officer.

In view of the decision in **Om Prakash Ambadkar** (supra), it is mandatory for the Magistrate to consider the submissions of the concerned Police Officer, so as to apply his mind judicially while considering both the complaint and the submission of the police officer, thereby ensuring the requirement of



passing reason orders is complied with in a more effective and comprehensive manner.

7. In view of the aforesaid facts and taking into account the law laid down by the Apex Court in the decisions referred to above and regard being had to the prayer of the petitioner, this Court is not inclined to issue any direction to OPNos.2 and 3 to register the FIR and, accordingly, the CRLMP stands dismissed.

The petitioner is, however, at liberty to approach the appropriate forum in accordance with law.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 3rd day of February, 2025/Subhasmita*

Signature Not Verified

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Signed by: SUBHASHMITA DAS
Designation: Sr. Stenographer
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Date: 06-Feb-2025 15:12:52



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