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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMP No.744 of 2025

Dwaru Patra

....

Petitioner

Mr. P. K. Mishra, Advocate

-versus-

State of Odisha and Others

....

Opp. Parties

Mr. R. B. Dash, Addl. P. P.

CORAM:

THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Judgment: 13.08.2025

1. Heard learned counsel for the Parties.
2. By means of this application, the Petitioner seeks the intervention of this Court for a direction to the Opposite Party Nos.2 & 3 to register the FIR against the erring Police officials involved in the incident dated 16.10.2024 and proceed with the investigation thereupon.
3. Vide order dated 07.07.2025, this Court directed the learned counsel for the State to obtain instructions in this matter. Pursuant to the said direction, the IIC, Binika P.S. submitted the written instructions, narrating the details that the Petitioner has been implicated in connection with the Binika P.S. Case No.357 of 2024. It is alleged that the Petitioner led a mob, the one that went violent and obstructed



the Police from discharging their official duty in dispersing the mob who were bent upon to take the law into their hand and attempted to go for mob lynching of three persons allegedly, to have attempted to commit robbery. The Petitioner was alleged to have instigated the public against the Police, thereby a mob getting involved in the incident of attempt to lynch three minor boys who were kept captive by the Petitioner and others. On the attempt being made by the Police to rescue the minor boys, the Petitioner, and the public at the instigation of the Petitioner became more violent and furious and attacked the three boys by entering into a club-room where they have been confined overnight.

4. Be that as it may, to give a counter blast to the aforesaid action taken by the Police, the Petitioner lodged a complaint falsely alleging against the Police personnel to get the complaint registered as FIR. As the said complaint was not registered as FIR, the Petitioner moved this Court herein.

5. In course of hearing in this application, Mr. Mishra, learned counsel for the Petitioner, *inter alia*, submitted that the inaction of the Police, by not registering the FIR is in contravention of the direction issued by the Hon'ble Supreme Court in ***Lalita Kumari Vs. Govt. of U.P. and Others***, reported in **MANU/SC/1166/2013**, and has categorically submitted that such action of the Police is required to be



interfered with by this Court by way of a direction. He also referred to the decision in the matter of *Pradeep Nirankarnath Sharma Vs. State of Gujarat and Others*, reported in **2023 LiveLaw (Guj) 177**, wherein the Hon'ble Supreme Court has reiterated with regard to the circumstances in which the FIR is to be registered by the Police, mandatorily. However, the learned counsel Mr. Mishra, did not submit anything with regard to the maintainability of the application.

6. The moot question for consideration in the present writ application is with regard to a direction to the Police to register the FIR. The Hon'ble Supreme Court in the case of *Aleque Padamsee and Others*, reported in **(2007) 6 SCC 171**, has held that 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 Vs. Union of India (UoI) And Ors.*, reported in **1996 (11) SCC 582**, and re-iterated in *Gangadhar Janardan Mhatre Vs. State of Maharashtra and Ors.*, reported in **(2004) 7 SCC 768**, the remedy



available is as set out above by filing a complaint before the Magistrate.

7. The Hon'ble High Court of Madhya Pradesh, in the case of ***Dr. Anjana Singh Vs. The State of Madhya Pradesh and Ors.***, with neutral citation: **2024:MPHC-JBP:51172**, has observed as under: -

“7. The Supreme Court in the case of **Divine Retreat Centre Vs. State of Kerala and Others** reported in **(2008) 3 SCC 542** has held as under:-

41. It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an investigating officer mala fide. That power is to be exercised in the rarest of the rare case where a clear case of abuse of power and non-compliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code.

42. Even in cases where no action is taken by the police on the information given to them, the informant's remedy lies under Sections 190, 200 CrPC, but a writ petition in such a case is not to be entertained. This Court in *Gangadhar Janardan Mhatre v. State of Maharashtra* [(2004) 7 SCC 768] held: (SCC pp. 774-75, 774 para 13)

“13. When the information is laid with the police, but no action in that behalf is taken, the



complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter investigate XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India [(1996) 11 SCC 582: 1997 SCC (Cri) 303]. It was specifically observed that a writ petition in such cases is not to be entertained.”

8. The Supreme Court in the case of **Sakiri Vasu Vs. State of Uttar Pradesh and Others** reported in (2008) 2 SCC 409 has 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 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under



Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.”

9. The Supreme Court in the case of **Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and Others** reported in (2016) 6 SCC 277 has held as under:-

“2. This Court has held in *Sakiri Vasu v. State of U.P.* [*Sakiri Vasu v. State of U.P.* (2008) 2 SCC 409: (2008) 1 SCC (Cri) 440: AIR 2008 SC 907], that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, *prima facie*, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in *Sakiri Vasu* case [*Sakiri Vasu v. State of U.P.* (2008) 2 SCC 409: (2008) 1 SCC (Cri) 440: AIR 2008 SC 907] 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 too do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.

4. In view of the settled position in Sakiri Vasu case [Sakiri Vasu v. State of U.P. (2008) 2 SCC 409: (2008) 1 SCC (Cri) 440: AIR 2008 SC 907], the impugned judgment [Hemant [Hemant Yashwant Dhage v. S.T. Mohite, 2009 SCC OnLine Bom 2251] of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper roper investigation into the alleged offence under Section 156(3) CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned a change of the investigating officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police). Parties may produce any material they wish before the Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.”

8. To re-iterate, the Hon’ble Supreme Court in the case of *Sakari Vasu Vs. State of Uttar Pradesh and Others*, reported in (2008) 2 SCC 409, has 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 v. Afaq Jahan* this Court observed: (SCC p. 631, para 11)

“11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code



that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.”

13. The same view was taken by this Court in *Dilawar Singh v. State of Delhi* (JT vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) CrPC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) CrPC.

14. Section 156(3) states:

“156. (3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.”

The words “as abovementioned” obviously refer to Section 156(1), which contemplates investigation by the officer in charge of the police station.

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

16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power and does not affect the power of the investigating officer to further investigate the case



even after submission of his report vide Section 173(8). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide *State of Bihar v. J.A.C. Saldanha* (SCC : AIR para 19).

17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

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

9. As far as the verdict of the Hon’ble Apex Court in the case of *Lalita Kumari Vs. Govt. of U.P.& Ors* (*Supra*) as referred to by the learned counsel herein, does not pertain to the issue of entitlement to writ of mandamus for compelling the Police to perform statutory duty under Section 154 Cr.P.C. (S.173 BNSS) without availing remedy under Sections 156(3) Cr.P.C.



(S.175(3)BNSS), 190 Cr.P.C. (S.190 BNSS), and 200 Cr.P.C. (S.223 BNSS).

10. In view of the above discussion and having regard to the fact emerged in the present case, this Court is not inclined to pass any direction to the Police concerned for registration of FIR. The Petitioner may have the liberty to approach the jurisdictional magistrate by way of a complaint for redressal of his grievance, if any. Accordingly, the CRLMP stands disposed of.

(Chittaranjan Dash)
Judge