

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 8TH DAY OF JUNE 2021 / 18TH JYAISHTA, 1943

WP(C) NO. 1788 OF 2021

PETITIONER/S:

JUDE JOSEPH
AGED 55 YEARS
S/O BENEDICT.P.PEREIA, MINI BHAVAN, TC, 9/1797,
PATTANIKUNNU LANE, SASTHAMANGALAM,
THIRUVANANTHAPURAM-695 010.
BY ADV M.R.SARIN

RESPONDENT/S:

- 1 DIRECTOR GENERAL OF POLICE
POLICE HEADQUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM-695 010.
- 2 STATION HOUSE OFFICER,
FORT POLICE STATION, ATTAKULANGARA,
TRIVANDRUM-695 023.

BY ADV SRI.SUMAN CHAKRAVARTHY, SENIOR GOVT.PLEADER THIS WRIT
PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23.02.2021,

THE COURT ON 08.06.2021 THE SAME DAY DELIVERED THE

FOLLOWING:

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JUDGMENT

Dated this the 8th day of June, 2021

The writ petition is filed, aggrieved by the failure to register FIR and conduct investigation into the allegations raised in Exts.P1 and P2 complaints. The petitioner is working as Vehicle Supervisor at the Vizhinjam Depot of the KSRTC. The incumbent Managing Director of the KSRTC unearthed a scam involving a highly placed official of the Corporation. It was reported that in the internal audit of the Corporations' accounts for the period 2012-2015, grave financial irregularities and misappropriation by the then Accounts Manager, K.M.Sreekumar had been unearthed. Taking cue from that revelation, the petitioner, who claims to have been agitating the

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issue of corruption on his own, lodged Exts.P1 and P2 complaints alleging that, along with

Sri.K.M.Sreekumar, the then Executive Director (Vigilance) Sri. Sharad Mohammed and certain other officials were also involved in the misappropriation of public money. The Police having refused to register crime based on the complaints, the petitioner prays for a direction to the respondents to consider and dispose of Exts.P1 and P2 by conducting proper investigation.

2. Heard Sri.M.R.Sarin Panicker, learned Counsel for the petitioner and Sri.Suman Chakravarthy, learned Senior Public Prosecutor.

3. Learned Counsel for the petitioner drew attention to the mandatory terms in which Section 154 of Cr.P.C is phrased and placed strong reliance on the Constitution Bench decision of the Apex Court in Lalita Kumari v State of U.P [(2014)

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2 SCC 11], to contend that the Police is bound to

register FIR, when commission of cognisable offence/s is brought to its notice.

4. Per contra, the learned Public Prosecutor, relying on the decisions of the Apex Court in Aleque Padamsee v. Union of India, [(2007) 6 SCC 171], Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 and Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage, (2016) 6 SCC 277, contended that the obligation of the police to register FIR cannot be enforced by straightaway rushing to the High Court and seeking the issuance of a writ of mandamus. It was submitted that the Managing Director of the corporation having raised the allegation of misappropriation, the matter will definitely be investigated and that interlopers like the petitioner should not be permitted to meddle with the investigation. It was contended that in Lalita

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Kumari (supra), the question whether a writ of

mandamus could be issued to register an FIR, dehors the alternative remedies under Sections 36, 156(3) and 200 of Cr.P.C, had not arisen for consideration. To buttress this argument, reliance is placed on the Division Bench decision in Fr. Sebastian Vadakkumpadan V Shine Varghese and others (2018 (3) KHC 590).

5. In reply, learned Counsel for the petitioner submitted that the decisions cited by the Public Prosecutor does not hold good in the light of the authoritative pronouncement in Lalita Kumari and that the distinction drawn by the Division Bench in Fr. Sebastian Vadakkumpadan is legally unsustainable. It is submitted that pending the writ petition, the petitioner had been issued with a notice under Section 160 Cr.PC, pursuant to which he appeared before the second

respondent and gave Ext.P4 statement. According to the learned Counsel, having recorded the petitioner's statement, the second respondent is bound to register FIR and commence investigation.

6. Learned Public Prosecutor countered this argument and submitted by pointing out that, as per the instructions received, the statement given by the petitioner is vague and is based on surmises and newspaper reports alone.

7. The legal obligation cast on the Police to register FIR on receipt of information regarding commission of cognisable offence/s is no longer *res integra* in the light of the declaration of law in Lalita Kumari. Therein, after threadbare scrutiny of the relevant provisions and careful consideration of precedents, the Apex Court concluded as under;

“120. In view of the aforesaid discussion,

we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of

the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."

8. On the question of invocation of writ jurisdiction for directing the police to register FIR, the Honourable Supreme Court has repeatedly

held that the aggrieved complainant should resort to the remedies provided under the Code and cannot, straight away, invoke the writ jurisdiction. In Aleque Padamsee (supra), after due deliberation of this issue, the following directions were issued;

“(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 Government concerned to deal with the prayer. The Government concerned would do well to deal with the matter within three months from the date of receipt of this order.”

The legal position was reiterated in Sakiri Vasu

(supra) in the following words;

“24. In view of the abovementioned legal position, we are of the view that although

Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and/or to direct the officer in charge of the police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C, we are of the opinion that they are implied in the above provision.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 CrPC. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, first under Section 154(3) and Section 36 Cr.P.C before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned under Section 156(3)."

9. Later, in Sudhir Bhaskarrao Tambe (supra), the Apex Court considered the consequence of

entertaining writ petitions seeking registration

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of FIR and expressed the following opinion;

“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.”

10. The contention of the learned Counsel for the petitioner is that the aforementioned decisions are no longer good law in view of the exposition in Lalita Kumari. As a matter of fact, in Fr. Sebastian Vadakkumpadan, the Division Bench has dealt with the very same contention by formulating the following question;

“Does the Supreme Court in Lalita Kumari’s case

do away with the statutory remedies and instead, take a straight recourse to judicial review?"

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After indepth analysis of the judgment, the Division Bench came to the conclusion that Lalita Kumari does not obliterate the alternative statutory remedies available to the aggrieved complainant. I am in respectful agreement with the above finding. In fact, the following observation at paragraph 6 of Lalitha Kumari itself clarifies the position;

"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."

11. It is pertinent to note that, going by the finding at paragraph 120.6 of Lalita Kumari, the FIR in corruption cases need be registered only after conducting preliminary enquiry. The specific case of the petitioner being that the persons

named in his complaint are guilty of the offences under Sections 13(1) (c) & (d) of the Prevention of

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Corruption Act, 1988, Lalita Kumari is of no help to him. The petitioner's failure to implead the persons against whom grave allegations are raised, is yet another factor which deters me from entertaining the writ petition.

The writ petition is dismissed for the aforementioned reasons.

Sd/-

V.G.ARUN
JUDGE

Scl/

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APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 THE TRUE COPY OF COMPLAINT FILED BEFORE THE
1ST RESPONDENT ON 18.1.2021
- EXHIBIT P2 THE TRUE COPY OF THE COMPLAINT FILED BEFORE
THE 2ND RESPONDENT ON 18.1.2021
- EXHIBIT P3 THE TRUE COPY OF THE LEGAL NOTICE SENT BY THE
PETITIONER HEREIN TO K.M
SREEKUMAR KSRTC OFFICE DATED 27.12.2019
- EXHIBIT P4 THE TRUE COPY OF THE STATEMENT OF THE
PETITIONER RECORDED BY SUB INSPECTOR
OF
POLICE FORT POLICE STATION DATED
1/2/2021