

# Ashwani Kumar Yadav vs State Of U.P. And 3 Others on 2 January, 2025

**Author: Vivek Kumar Birla**

**Bench: Vivek Kumar Birla**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:140-DB

Court No. - 43

Case :- CRIMINAL MISC. WRIT PETITION No. - 23697 of 2024

Petitioner :- Ashwani Kumar Yadav

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Manjesh Kumar Yadav

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Syed Qamar Hasan Rizvi,J.

1. Heard Sri Manjesh Kumar Yadav, learned counsel for the petitioner, learned AGA for the State-respondents and perused the records.

2. By means of present petition the petitioner is seeking following reliefs:

"(I) issue a writ, order of direction in the nature of mandamus directing respondents to ensure strict compliance of settled proposition of law laid down by Hon'ble Apex

Court in the case of Lalita Kumari (supra) and register first information report against respondent no.4 in appropriate sections in the light of Circular dated 06.11.2014 issued by Director General of Police Uttar Pradesh under the direction of this Hon'ble Court in Writ-C No.52588 of 2014 Smt. Razeena & Another versus State of U.P."

3. In the case of Ajay Kumar Pandey versus State of U.P. and 2 others reported in 2021 (2) ADJ 239; this Court has observed that for such relief the remedies under Section 156(3) Cr.P.C. be available. Paragraph nos.15, 16 & 17 of the aforesaid judgment are quoted as under:-

"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. Subramaniam 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 BHASKARRAO 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."

4. In a recent judgment dated 17.07.2023, passed by this Court in Criminal Misc. Writ Petition No.10929 of 2023, Pushpa Devi versus State of U.P. and 6 others; this Court has observed as under:-

"In view of the law noticed above, we dispose off this petition with liberty to the petitioner to invoke the power of the Magistrate available under the Code of Criminal Procedure in the light of the law laid down by the apex court as noticed above."

5. Accordingly, the present writ petition stands disposed of in the light of aforesaid judgments by grants liberty to the petitioner to invoke the power of the Magistrate concern under Section 175 B.N.S.S. Order Date :- 2.1.2025 Nitendra