

Nasir Khan vs State Of U.P. And 3 Others on 2 January, 2025

Bench: Siddharth, Subhash Chandra Sharma

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:250-DB

Court No. - 47

Case :- CRIMINAL MISC. WRIT PETITION No. - 23637 of 2024

Petitioner :- Nasir Khan

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

Counsel for Petitioner :- Saurabh Mishra

Counsel for Respondent :- G.A.

Hon'ble Siddharth,J.

Hon'ble Subhash Chandra Sharma,J.

This petition has been filed praying for directing the respondent no.2 and 3 to conclude the investigation in fair and impartial manner in Case Crime No.149 of 2024, under Sections 420, 323, 504, 506 I.P.C., Police Station Kotwali, District Rampur.

The petitioner has approached this Court with the grievance that proper investigation is not being done in the case noted above got registered by the petitioner.

The Apex Court in the case of Sakiri VasuVs. State of U.P. LAWS(SC)-2007-12-69 has held in paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27 and 30 as follows:-

"13. 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) Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C.

14. Section 156 (3) states:

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 Cr.P.C. 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 re-opening of the investigation even after the police submits the final report, vide State of Bihar vs. A.C. Saldanna AIR 1980 SC 326 (para 19).

17. In our opinion Section 156(3) Cr.P.C. 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 F.I.R. 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) Cr.P.C., 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 to its execution.

19. The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his Statutory Construction (3rd edn. page 267):-

If these details could not be inserted by implication, the drafting of legislation would be an indeterminable process and the legislative intent would likely be defeated by a most insignificant omission.

20. In ascertaining a necessary implication, the Court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.

21. An express grant of statutory powers carries with it by necessary implication the authority to use all reasonable means to make such grant effective. Thus in ITO, Cannanore vs. M.K. Mohammad Kunhi, AIR 1969 SC 430, this Court held that the income tax appellate tribunal has implied powers to grant stay, although no such power has been expressly granted to it by the Income Tax Act.

22. Similar examples where this Court has affirmed the doctrine of implied powers are Union of India vs. Paras Laminates AIR 1991 SC 696, Reserve Bank of India vs. Peerless General Finance and Investment Company Ltd AIR 1996 SC 646 (at p. 656), Chief Executive Officer & Vice Chairman Gujarat Maritime Board vs. Haji Daud Haji Harun Abu 1996 (11) SCC 23, J.K. Synthetics Ltd. vs. Collector of Central Excise, AIR 1996 SC 3527, State of Karnataka vs. Vishwabharati House Building Co-op Society 2003 (2) SCC 412 (at p. 432) etc.

23. In Savitri vs. Govind Singh Rawat AIR 1986 SC 984 this Court held that the power conferred on the Magistrate under Section 125Cr.P.C. to grant maintenance to the wife implies the power to grant interim maintenance during the pendency of the proceeding, otherwise she may starve during this period.

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 concerned police station 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 Cr.P.C. 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, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

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

30. It may be further mentioned that in view of Section 36 Cr.P.C. if a person is aggrieved that a proper investigation has not been made by the officer-in-charge of the concerned police station, such aggrieved person can approach the Superintendent of Police or other police officer superior in rank to the officer-in-charge of the police station and such superior officer can, if he so wishes, do the investigation vide CBI vs. State of Rajasthan and another 2001 (3) SCC 333 (vide para 11), R.P. Kapur vs. S.P. Singh AIR 1961 SC 1117 etc. Also, the State Government is competent to direct the Inspector General, Vigilance to take over the investigation of a cognizable offence registered at a police station vide State of Bihar vs. A.C. Saldanna (supra)."

In view of the above, no relief can be granted to the petitioner. He may avail the remedy available to him as directed by the Apex Court hereinabove.

The writ petition stands disposed of keeping in view the above direction of the Hon'ble Apex Court.

Order Date :- 2.1.2025 Ashok Gupta