

# Aleque Padamsee And Ors vs Union Of India And Ors on 18 July, 2007

**Author: Arijit Pasayat**

**Bench: D.K. Jain, Arijit Pasayat**

CASE NO.:

Writ Petition (crl.) 11-15 of 2003

PETITIONER:

Aleque Padamsee and Ors

RESPONDENT:

Union of India and Ors

DATE OF JUDGMENT: 18/07/2007

BENCH:

Dr. ARIJIT PASAYAT P.K. BALASUBRAMANYAN & D.K. JAIN

JUDGMENT:

**J U D G M E N T** Dr. ARIJIT PASAYAT, J.

1. These petitions are filed under Article 32 of the Constitution of India, 1950 (in short the 'Constitution'). The petitioners have stated that they have approached this Court because of inaction of official respondents in not acting on the report lodged by two persons namely, Sumesh Ramji Jadhav and Suresh Murlidhar Bosle. The basic grievance is that though commission of offences punishable under the Indian Penal Code, 1860 (in short the 'IPC') was disclosed, the police officials did not register the FIR and, therefore, directions should be given to register the cases and wherever necessary accord sanction in terms of Section 196 of the Code of Criminal Procedure, 1973 (in short the 'Code'). It is stated that the speeches made by respondents 5 and 6 were likely to disturb the communal harmony in the country and the likely result of such inflammatory speeches was to create hatred in the minds of citizens against the persons belonging to minority communities. It appears that so far as respondent No.5 is concerned a complaint was lodged at the police station in the State of Maharashtra where the complainants reside. Since the police authorities in Maharashtra found that the alleged speeches were delivered outside the State of Maharashtra and inside the State of Gujarat, they took up the position that action could be taken by the authorities in Gujarat. Accordingly, the report lodged was sent to the officials in Gujarat. So far as respondent No.6 is concerned sanction in terms of Section 196 of the Code was prayed for alleging that there was complete inaction and, therefore, the writ petition has been filed. It was pointed out by learned counsel for the petitioners that since undisputedly, the commission of cognizable offence is disclosed even on a bare reading of the FIR lodged, the authorities were not justified in not registering the FIR. It is contended that the partisan approach of the authorities in the State of

Gujarat is writ large, which is evident from a bare reading of the counter affidavit filed. The role which is to be played by the investigating agency and finally the court has been assumed by the authorities who were not competent to deal with the matter. It is pointed out that in *Ramesh Kumari v. State (NCT of Delhi) and Ors.* (AIR 2006 SC 1322) this Court had said that whenever cognizable offence is disclosed the police officials are bound to register the same and in case it is not done, directions to register the same can be given.

2. Learned counsel appearing for respondent No.5 and the State of Gujarat submitted that on a bare reading of the complaint lodged it appears that no offence was made out and whenever a complaint is lodged automatically and in a routine manner FIR is not to be registered. In any event, it is submitted that petition under Article 32 of the Constitution is not a proper remedy.

3. Chapter XII of Code relates to "Information to the Police and their Powers to Investigate". Section 154 reads as follows:

Information in cognizable cases. (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence".

4. Section 156 deals with "Police officer's power to investigate cognizable cases" and the same reads as follows:

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-

mentioned.

5. When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code 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 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 the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and could issue process to the accused. These aspects have been highlighted by this Court in *All India Institute of Medical Sciences Employees' Union (Reg) through its President v. Union of India and Others* [(1996) 11 SCC 582]. It was specifically observed that a writ petition in such cases is not to be entertained.

6. The above position was again highlighted in *Gangadhar Janardan Mhatre v. State of Maharashtra* [(2004) 7 SCC 768], *Minu Kumari and Another v. State of Bihar and Others* [(2006) 4 SCC 359] and *Hari Singh v. State of U.P.* (2006 (5) SCC 733).

7. 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's case* (supra) and re-iterated in *Gangadhar's case* (supra) the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in *All India Institute of Medical Sciences's case* (supra), *Gangadhar's case* (supra), *Hari Singh's case* (supra), *Minu Kumari's case* (supra) and *Ramesh Kumari's case* (supra), we find that the view expressed in *Ramesh Kumari's case* (supra) related to the action required to be taken by the police when any cognizable offence is brought to its notice. In *Ramesh Kumari's case* (supra) the basic issue did not relate to the methodology to be adopted which was expressly dealt with in *All India Institute of Medical Sciences's case* (supra), *Gangadhar's case* (supra), *Minu Kumari's case* (supra) and *Hari Singh's case* (supra). The view expressed in *Ramesh Kumari's case* (supra) was re- iterated in *Lallan Chaudhary and Ors. V. State of Bihar* (AIR 2006 SC 3376). The course available, when the police does not carry out the statutory requirements under Section 154 was directly in issue in *All India Institute of Medical Sciences's case* (supra), *Gangadhar's case* (supra), *Hari Singh's case* (supra) and *Minu Kumari's case* (supra). The

correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to its notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Sections 190 read with Section 200 of the Code. It appears that in the present case initially the case was tagged by order dated 24.2.2003 with WP(C) 530/2002 and WP(C) 221/2002. Subsequently, these writ petitions were de-linked from the aforesaid writ petitions.

8. The writ petitions are finally disposed of with the following directions:

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

(4) We make it clear that we have not expressed any opinion on the merits of the case.