2020:APHC:10531

HIGH COURT OF ANDHRA PRADESH

THURSDAY ,THE THIRTIETH DAY OF JULY

TWO THOUSAND AND TWENTY

PRSENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION NO: 7537 OF 2020

Between:

1. Kalari Siva Prasad S/o Venkata Radha Krishnaiah,
   Aged about 72 years, resident of 27-6-17, 5th Line, Kannavarithota,
   Guntur-522004, Guntur District.

...PETITIONER(S)

AND:

1. Station House Officer, Nagarampalem P.S., Guntur, Guntur District.
2. The Superintendent of Police , Guntur (Urban), Guntur District.
3. The State of A.P., represented by its prl. Secretary, Home department, Secretariat, at Amaravathi.

...RESPONDENTS

Counsel for the Petitioner(s): SATYANARAYANA NIMMALA

Counsel for the Respondents: GP FOR HOME (AP)

The Court made the following: ORDER

*** HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+ WRIT PETITION Nos.8384, 7537, 7580, 7648, 7655, 7663, 7845, 8887, 9625, 9748, 10122, 10166, 10202, 10245, 10743, 11069 and 11665 of 2020

% **30th July, 2020**

W.P.No.8384 of 2020

Sri Chegireddy Venkata Reddy

… Petitioners

AND

$ The Government of Andhra Pradesh, rep. by its Principal Secretary, Department of Home, Secretariat Building, Velagapudi, Amaravai.

… Respondents.

! Counsel for the Petitioners : Sri N.A.Ramachandra Murthy

^ Counsel for the 1st to 5th respondents : Government Pleader for Home

^ Counsel for the 6th respondent : Sri P. Prabhakar Rao

< Gist:

> Head Note:

? Cases referred:

- (2014) 2 SCC 1
- CDJ 2020 SC 401
- (2008) 2 SCC 409
- (2016) 6 SCC 277
- 2018 SCC OnLine Ker 1785
- W.P.No.38397 of 2018 and Batch

- (2015) 6 Supreme Court Cases 287
- AIR 1993 SC 43
- AIR 2003 SC 3184
- (2008) 7 SCC 164
- (2012) 4 SCC 1
- (1996) 11 SCC 582
- (2007) 6 SCC 11
- (2014) 4 Supreme Court Cases 268

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION Nos.8384, 7537, 7580, 7648, 7655, 7663, 7845, 8887, 9625, 9748, 10122, 10166, 10202, 10245, 10743, 11069 and 11665 of 2020

COMMON ORDER:

This batch of Writ petitions are filed seeking a writ of mandamus against the Police Department for their alleged failure to register an FIR based upon reports said to have been lodged by the petitioners. This is the common grievance in these cases. In some cases, more than one report was given but the FIRs were not registered. Since common questions of law have arisen in all these batch of matters, they were all taken up for hearing with the consent of the learned counsels, who appeared for the petitioners in view of the objection raised by the learned Government Pleader for Home about the maintainability of the writ.

The essential submission of all the learned counsels is that

the registration of an FIR is mandatory if the report discloses that a cognizable offence was committed. In all these cases, learned counsels urged that the failure of the police authorities in registering the FIR has compelled them to approach this Court under Article 226 of the Constitution of India for a Writ of mandamus for registration of the FIRs. All of them uniformly rely upon the Constitutional Bench judgment in **Lalita Kumari Vs State of Uttar Pradesh** to argue that as a mandatory duty was not carried out by the Police they had to file a writ petition and seek redress.

With the consent of the learned Government Pleader for Home and for the learned counsels of the petitioners arguments were agreed to be advanced in W.P.No.8384 of 2020, particularly as a counter affidavit was filed in this W.P.No.8384 of 2020.

In the counter affidavit that has been filed it was specifically pointed out that in view of the various judgments of the Hon'ble Supreme Court of India including the judgment in Crl.Appeal No.102 of 2011, which is pronounced on 20.03.2020 (**M.Subramaniam & Another *v* S. Janaki & Another)**, a Writ petition is not a proper remedy. Learned Government Pleader for Home thus raised an objection about maintainability of the Writ Petition itself relying on the case law, in view of the existence of an effective alternate remedy. It was also argued

that **Lalita Kumari case (1 supra)** did not consider this issue.

Petitioners' Contentions:

Sri N.A. Ramachandra Murthy, learned counsel for the petitioner in W.P.No.8384 of 2020 took the lead in arguing the matter. It is his contention that the Constitution Bench of the Hon'ble Supreme Court of India has clearly held that the police are bound to register an FIR if the complaint / report discloses the commission of the cognizable offence. Therefore, he argued that if this duty, that is cast upon the police, is not carried out the petitioners have a right to file a writ petition. It is also his contention that there are no specific restrictions on the power of this Court to exercise the jurisdiction under Article 226 of the Constitution of India and that the restrictions that are imposed are only self imposed restrictions. He also argues that the mere existence of alternative remedy, as advocated by the learned Government Pleader for Home, should not be a ground to reject the case at the threshold itself particularly as a Constitution Bench judgment is not being followed. It is his contention that unless and until this Court comes to the aid and rescue of the petitioners they would be left remediless.

He also submits that Sri P.V.A.Padmanabham, learned counsel appearing in W.P.No.6610 of 2018 will argue the matter and that Sri P.V.A.Padmanabham should be permitted to make

the balance submissions. All the other counsels, who are present during the video conferencing, were also of the opinion that Sri P.V.A.Padmanabham should advance the arguments.

Sri P.V.A.Padmanabham, learned counsel for the petitioner put in a lot of effort and argued the matters at length.

He also filed a compilation of case law in W.P.No.8384 of 2020 with a brief written note listing of the sum and substance of his objections to the "maintainability issue" that were raised by the learned Government Pleader for Home.

Sri P.V.A.Padmanabham in essence argues that the Constitution Bench judgment of the Hon'ble Supreme Court of India viz., **Lalita Kumari Case** (1 supra) clearly held that there is a mandatory duty cast upon the police officials to register an FIR, once the report or complaint discloses a cognizable offence. He states that this decision of the Hon'ble Supreme Court of India is a decision of a Constitution Bench. It is his contention that under Section 154 (2) of the Code of Criminal Procedure (in short "Cr.P.C.") it is mandatory for a Police Officer to register the FIR if the information / report discloses the commission of a cognizable offence. Relying upon the conclusions of the Hon'ble Supreme Court of India in para-120 of **Lalita Kumari's case (1 supra)** learned counsel argues with great vehemence that once this has been held to be a mandatory statutory duty, a Writ

Petition is maintainable to enforce the said duty. He also points out that the erring officials, who fail to register the FIR, can also be proceeded against as per para-120(4) of the Constitution Bench judgment.

Learned counsel for the petitioners also argues that the judgments relied upon by the learned Government Pleader for Home, which are filed along with counter affidavit, are not good law. He points out that the earlier two judgments of **Sakiri Vasu *v* State of U.P.** or **Sudhir Bhaskararao Tambe *v* Hemant Yashwant Dhage and Others** are "impliedly" overruled in view of the Constitution Bench judgment in **Lalita Kumari case (1 supra)**. He also submits that the decision of the Hon'ble Supreme Court of India in **M.Subramaniam case (2 supra)** pronounced on 20.03.2020 is also not good law for it overlooks the Constitution Bench judgment in **Lalita Kumari case** (1 supra). Learned counsel also relies upon the other case law to highlight the fact that the decision in **Lalita Kumari case (1 supra)** of the Constitution Bench is binding as per Article 141 of the Constitution of India and that everybody, including this High Court, are bound by the pronouncement of law in the Constitutional Bench judgment. Learned counsel also argues that the State is attempting to whittle down the law declared by

the Constitution Bench of the Hon'ble Supreme Court of India. He also argues that the case law relied upon by the learned Government Pleader for Home, apart from the three judgments of the Hon'ble Supreme Court of India viz., the Division Bench Judgment of the High Court of Kerala in **Fr.Sebastian Vadakkumpadan v Shine Varghese and others**and the judgment of the learned single Judge of the High Court for the State of Telangana in **Govind Raju Sami *v* The State of Telangana** are not good law as per him as they have misinterpreted **Lalitha Kumari case**. He states that neither of the cases has properly considered the ratio laid down in the Constitution Bench Judgment of **Lalita Kumari-(1 supra).** Therefore, he argues that these two cases need not be followed or looked into even for persuasive value.

This argument has been adopted by all the learned counsels appearing for the petitioners.

Contentions of the learned Government Pleader for Home:

In reply to this the learned Government Pleader for Home argues that he is only bringing the position of law to the attention of this court and he is not either citing bad case law, overruled case law or otherwise trying to mislead the Court. It is his contention that the judgments cited by him

still continue to hold the field and cannot be said to be impliedly overruled. He contends that the issues considered in all the three judgments of the Hon'ble Supreme Court of India cited by him are about the maintainability of a Writ Petition itself when there is an effective alternative remedy, to approach the concerned Magistrate under Cr.P.C. in such cases. He submits that the High Courts are flooded with various types of cases and that is the reason why if there is an effective alternative remedy the High Courts and / or the Supreme Court of India rely on the self imposed restriction and refuse to entertain the Writ. He also points out that nothing has been submitted by the learned counsels to justify why the procedure stipulated before the concerned Magistrate under Section 156 (3) of Cr.P.C. and / or under Section 190 and 200 of Cr.P.C etc., is not "effective or efficacious". He also points out that the Division Bench of Kerala High Court and the learned single Judge of the High Court for the State of Telangana considered the ratio in **Lalita Kumari case (1 supra)** and thereafter came to a conclusion that there is an effective alternative remedy and that the Writ is not the appropriate remedy in cases of this nature. He also argues that the case law cited is still good law and that therefore the objection raised has to be sustained. He points out that after the judgment of **Lalita Kumari case (1 supra)**, the Hon'ble

Supreme Court of India pronounced orders in **Priyanka Srivasthava and Another *v* State of Uttar Pradesh and Others** which also mandates filing of an affidavit along with the complaint before the Magistrate. Therefore, the learned Government Pleader argues that a person having the grievance about the f non-registration of FIR can set out all the facts both in the complaint and in the supporting affidavit before the Magistrate. According to the learned Government Pleader, thereafter a trained judicial mind/Magistrate would evaluate the complaint and see if an offence is made out or not. Therefore, he states that it is not only an effective remedy but it is also a better /more efficacious remedy.

For all these reasons, learned Government Pleader for Home argues that the Writ Petition is not a remedy for non-registration of FIR. He prays that the Writ Petition should be dismissed leaving it open to the petitioners to approach the concerned jurisdictional Magistrate.

CONSIDERATION BY THE COURT –

- **What is the "sublime essence" of the decision in Lalitha Kumari case?**

In the unique language used by the Justice V.R.Krishna Iyer, every judgment has a "sublime essence" apart from the

content. This sublime essence is what we call the ratio decidendi. This ratio is to be discerned and understood from the reading of the entire judgment. The facts in case also have an important bearing on the conclusions. The Hon'ble Supreme Court of India has time and again emphasized the manner in which the precedents are to be understood. In **the Commissioner of Income Tax *v* Sun Engineering Works Private Ltd.,** it was held as follows:

> "While applying the decision to a latter cases, the court must carefully try to ascertain the true principle laid down by the decision of Supreme Court and not to pick out words or sentences from the judgments divorced from the context of question under consideration by the court to support their reasoning".

Similarly, in **Megh Singh *v* State of Punjab** it was held as follows:

> "Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases or between two accused in the same case. Each case depends on its own facts and a close similarity between one case and another is not enough because a single significant detail may alter the entire aspect."
>
> In **Escorts Ltd vs CCE (2004(8) SCC 335** it was held that courts should not place reliance on a decision without discussing how the fact situation fits with the fact situation of the decision on which reliance is placed.
>
> In other cases like **PNB vs RC Vaid 2004(7) SCC 698** and other cases it was held that a difference in one single

significant detail can alter the entire aspect.

The law on this aspect is so well settled that it does not require further repetition.

In order to ascertain what exactly were the facts / issues and the decision in **Lalita Kumari (1 supra)** and in line with the arguments of the learned counsel for the petitioner Sri P.A.V.Padmanabham, this Court is proposing to look into the judgments in **Lalita Kumari *v* State of U.P. (1)**, **Lalita Kumari *v* State of U.P.(2)** and Constitution Bench judgment in **Lalita Kumari *v* State of U.P.(3) (1 supra)** in seriatum.

Lalita Kumari case-1 (10 supra) was heard on 14.07.2008. The issue pending before the Hon'ble Supreme Court of India was (para 3)

> "3. The grievance in the present writ petition is that the occurrence had taken place in the month of May and, in that very month, on 11.05.2008, the written report was submitted by the petitioner before the officer in charge of the police station concerned, who sat tight over the matter. Thereafter, when the Superintendent of Police was moved, a first information report (for short "FI") was registered. Even thereafter, steps were not taken either for apprehending the accused or recovery of the minor girl child."

In para-6 of the said order the direction proposed to be given is set out. Thereafter notices were issued to the States and the Union Territories. The direction in para-6 is as follows:

> "6. In view of the above, we feel that it is high time to give

directions to the Governments of all the States and Union Territories besides their Director Generals of Police/Commissioners of Police as the case may be to the effect that if steps are not taken for registration of FIRs immediately and copies thereof are not made over to the complainants, **they may move the Magistrates concerned by filing complaint petitions to give direction to the police to register case immediately upon receipt / production of copy of the orders and make over copy of the FIRs to the complainants, within twenty-four hours of receipt/production of copy of such orders.** It may further give direction to take immediate steps for apprehending the accused persons and recovery of kidnapped/abducted persons and properties which were the subject-matter of theft or dacoity. In case FIRs are not registered within the aforementioned time, and/or aforementioned steps are not taken by the police, the Magistrate concerned would be justified in initiating contempt proceeding against such delinquent officers and punish them for violation of its orders if no sufficient cause is shown and awarding stringent punishment like sentence of imprisonment against them inasmuch as the disciplinary authority would be quite justified in initiating departmental proceeding and suspending them in contemplation of the same."

The matter came up for further hearing in **Lalita Kumari case-2 (11 supra)**. Three judges of the Hon'ble Supreme Court of India pronounced the Order on 27.02.2012. The extracts of Para Nos.96 and 97 are important –

"96. It is quite evident from the ratio laid down in the aforementioned cases that different Benches of this Court have taken divergent views in different cases. In this case also after this Court's notice, the Union of India, the States

> and the Union Territories have also taken or expressed divergent views about the interpretation of Section 154 Cr.P.C.
>
> 97. We have carefully analysed various judgments delivered by this Court in the last several decades. **We clearly discern divergent judicial opinions of this Courton the main issue: whether under Section 154 CrPC, a police officer is bound to register an FIR when a cognizable offence is made out or he (police officer) has an option, discretion or latitude of conducting some kind of preliminary enquiry before registering the FIR."** (emphasis supplied)

In view of the divergent opinions which were dealt with briefly in paras 93 to 95.4, the three learned Judges of the Hon'ble Supreme Court of India requested the Hon'ble Chief Justice to refer the main issue to a Constitution Bench.

Accordingly, a Constitution Bench heard the matter and a final judgment in **Lalita Kumari (Constitution Bench or C.B. for brevity) (1 supra)** was pronounced on 12.11.2013.

The very first paragraph of the Constitution Bench decision sets out the issue that fell for consideration before the Hon'ble Constitution Bench. The same is reproduced hereunder –

> "The important issue which arises for consideration in the referred matter is whether "a police officer is bound to register a first information report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 (in short "the Code") or the police officer has the power to

conduct a 'preliminary inquiry' in order to test the veracity of such information before registering the same"?

In paragraphs 44 to 49 of **Lalita Kumari case-CB (1 supra)** the Constitution Bench discussed Section 154 of Cr.P.C. and on a plain language interpretation the Constitution Bench came to the conclusion that the provisions of Section 154 of Cr.P.C. are mandatory and held that an officer is the duty bound to register the case. In paragraphs 50 to 56 the finding in para-49 is again reiterated by interpreting the word "shall". In these paragraphs it is held that the use of the word "shall" in Section 154 makes it mandatory for the officer to register the complaint, if the information discloses commission of cognizable offence. Later on the discussion continued in paragraph 80 on the question whether the police officer can conduct a preliminary inquiry to test the veracity or the correctness of the information supplied. Again in paragraph105 it was held that provisions of Sections 154 of Cr.P.C. are mandatory. After discussing the further scheme of the Cr.P.C., the Constitution Bench came to a conclusion that registration of FIR is mandatory but the Constitution Bench culled out certain cases as "exceptions" in paragraph 115 wherein a preliminary inquiry could be conducted. Ultimately, the conclusions / directions are given in paragraph 120 in sub paragraphs 120 (1) to 120 (8) –

"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.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

This Court has no reason to disagree with the submission of Sri P.V.A. Padmanabham that this judgment is binding. The judgment of the Constitution Bench of the Hon'ble Supreme Court of India, consisting of five Judges, (till it is overruled) constitutes the law which has to be followed throughout the length and breadth of this country.

But the main question in the opinion of this Court is what exactly is the "ratio or the sublime essence" in **Lalita**

Kumari case-CB (1 supra).

A close examination of the orders and the ultimate decision in **Lalitha Kumari case** shows that the main issue or the crux of the matter that fell for consideration was whether the Police were bound to register the FIR if an offence is made out or if they had a discretion or latitude to conduct a preliminary enquiry before registering the FIR? This was referred to the Constitution Bench which came to the conclusions mentioned above that the Police have to register an FIR if a cognizable offence is made out and that they can hold a preliminary enquiry only in a few varities of cases, as spelt out in the judgement. This in the opinion of this court is the sublime essence or the ratio of **Lalita Kumari case**. The facts of the case and the ratio are thus clear and limited to the question posed and decided.

This Court also finds that **Lalita Kumari's case** (if all the three cases are read in conjunction) the Honourable Supreme Court was not called upon to decide the question being raised now- about the alternative remedy that is available viz., the procedure under Section 156(3) read with 190 / 200 of Cr.P.C. and maintainability of a Writ. This issue was not raised at all.

The judgments relied upon by the learned Government Pleader for Home on the other hand deal with this exact

question. In case of **Sakari Vasu (3 supra),** in paragraph-11 it was held as follows:

> "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."**

Then after discussing the other case laws in the succeeding paragraphs in paragraph-17 it was concluded as follows:

> "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."

Thereafter, in paragraphs 24 and 25 the following was said–

> "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) CrPC 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) CrPC, 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 CrPC before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned under Section 156(3)."

The Learned Judges of the Hon'ble Supreme Court of India noticed and held that the High Courts are being flooded with such petitions and that the alternative remedy should be followed. Similarly, in **Sudhir Bhaskara Rao Tambe (4 supra)** in paragraph-3 it was held as follows:

> "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 unde Section 156(3) CrPCP 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."

In **All India Institute of Medical Sciences Employees Union *v* Union of India** a writ was filed to issue directions to the Police to investigate into the allegations against a doctor. The Honourable Supreme Court of India held as follows in para Nos.4 to 6 –

"4. When the information is laid with the police but no action in that behalf was 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 inquire 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 concerned police to investigate into the 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 complain/ evidence recorded prima facie discloses offence, he is empowered to take cognizance of the offence and would issue process to the accused.

5. In this case, the petitioner had not adopted either of

the procedure provided under the Code. As a consequence, without availing of the above procedure, the petitioner is not entitled to approach the High Court by filing a writ petition and seeking a direction to conduct an investigation by the CBI which is not required to investigate into all or every offence. The High Court, therefore, though for different reasons, was justified in refusing to grant the relief as sought for.

6. The special leave petition is accordingly dismissed. It, however, does not preclude the petitioner to follow either of the procedure as indicated above, if so advised and deemed appropriate".

Similarly, in **Alque Padamsee and others *v* Union of India and Others** the Hon'ble Supreme Court of India held as follows –

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

- **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.**
- **It is open to any person aggrieved by the inaction of the police officials to adopt the remedy in terms of the aforesaid provisions.**
- 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.
- We make it clear that we have not expressed any opinion on the merits of the case." (Emphasis supplied)
- A reading of this judgment would make it clear that the writ was filed because the police did not register the FIR and

hence directions were sought.

Ultimately, in March, 2020 another three Judges' Bench went into the issue in the case of **M. Subramaniam (2 supra).** In this case also, as can be seen from paragraph-1, a writ petition was filed and the Madurai Bench, Madras High Court directed the Inspector of Police, Trichy to register an FIR. This order was the subject matter of challenge. Ultimately, after considering the law laid down in various cases, the Hon'ble Supreme Court of India, in this judgment came to the following conclusion –

> "8. In these circumstances, we would allow the present appeal and set aside the direction of the High Court for registration of the FIR and investigation into the matter by the police. At the same time, our order would not be an impediment in the way of the first respondent filing documents and papers with the police pursuant to the complaint dated 18.09.2018 and the police on being satisfied that a criminal offence is made out would have liberty to register an FIR. It is also open to the first respondent to approach the court of the metropolitan magistrate if deemed appropriate and necessary. Equally, it will be open to the appellants and others to take steps to protect their interest."

A reading of all these judgments of the Hon'ble Supreme Court of India in conjunction with the judgment of the Hon'ble Supreme Court of India in **Lalita Kumari cases 1 to 3 (1, 10 and 11 supra)** makes it clear that the specific questions that

were decided in **Lalita Kumari case** are totally different from the questions that were before the Hon'ble Supreme Court of India in **Sakari Vasu case (3 supra), Sudhir Bhaskara Rao Tambe case (4 supra), Aleque Padamsee case (12 supra) and M. Subramaian case (2 supra) etc**.

It is clear from chronological analysis of **Lalita Kumari case (1 supra)** that the issues that were ultimately decided by the Constitutional Bench are not at all issues that were considered in the other judgments referred to above and relied upon by the learned Government Pleader for Home. In the judgments referred to above the issue raised and decided was about the existence of an alternative remedy in case the FIR was not registered. The sum and substance or the ratio decidendi / the sublime essence of these judgments is that once there is an effective alternative remedy a writ is not maintainable. The anguish expressed by the Hon'ble Supreme Court of India about the Courts being flooded with such writ petitions cannot also be lost sight of. In contra distinction to this anguish, the anguish expressed in **Lalita Kumari case** was about the inaction of an officer to register the crime even if the report discloses the cognizable offence. This Court is therefore of the opinion that the ratio in **Sakari Vasu case (3 supra), Sudhir Bhaskara Rao**

Tambe case (4 supra), Aleque Padamsee case (12 supra) and M. Subramaian case (2 supra) etc., continue to be good law and cannot be said to be overruled either impliedly or expressly by the judgment of the Constitution Bench of the Supreme Court of India in **Lalita Kumari case (1 supra)**. The law of precedents and of interpretation of judgments makes it clear that the ratio/essence would depend on the facts. As stated earlier the Honourable Supreme court has said that - a single significant difference can alter the entire aspect. This court finds that there is a very significant difference in the issues /facts considered in **Lalitha Kumari case** and the cases relied upon by the respondents in this case. This makes a vital difference in the applicability of the ratio in **Lalitha Kumari case (CB)** to the issues raised in the present batch of writ petitions.

This Court also agrees with the reasoning adopted by the Division Bench of the High Court of Kerala in **Fr.Sebastian case (5 supra)** and the reasoning adopted by the learned single judge of the Telangana High Court in **Govind Raju Sami case (6 supra)** i.e.,W.P.No.38397 of 2020 and Batch. Both these cases considered the Constitution Bench decision in **Lalitha Kumari case** and then concluded that even if the registration of the FIR is mandatory the remedy open in case the Police do not register

the case is to approach the Magistrate under the Cr.P.C. only.

In the opinion of this Court, if there is an effective alternative remedy the writ petition should not be entertained and a mandamus should not be granted. In view of the clear march of law from **Lalita Kumari case-1 to Lalita Kumari case-3**, the three judge decisions in **Aleque Padamsee case (12 supra)** and three judge decision in **M. Subramaniam case (2 supra)** followed by the judgment in **Priyanka Srivasthava case (7 supra),** this Court is of the firm opinion that as there is a clear and efficacious alternative remedy, the Writ Petition is not maintainable. As held by the Hon'ble Supreme Court of India in **U.P. State Bridge Corporation Ltd., and Others *v* U.P. Rajya Setu Nigam S. Karamchari Sangh** alternative remedy should be raised and decided at the threshold itself.

This Court holds that the Magistrate by virtue of the powers conferred upon him can also go into the questions of fact that have arisen in a given case and can direct the registration of the FIR but can also ensure proper investigation and also monitor the same. This Court opines that the same is a much more efficacious remedy than the Writ Petition.

The preliminary objection is therefore upheld and the writ petitions are rejected with a direction to the petitioners to avail

their alternative remedy if they are so advised. No comments are also made on the merits of any of the matters. There shall be no order as to costs.

The Court places on record its deep sense of gratitude for the excellent support rendered by Sri P.V.A. Padmanabham, Sri N.A.Ramachandra Murthy, Sri V. Maheswara Reddy, learned Government Pleader for Home and other learned counsels appearing in these matters.

As a sequel, pending miscellaneous petitions, if any, shall also stand rejected.

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D.V.S.S.SOMAYAJULU, J

Date:30.07.2020
Note: LR copy to be marked
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