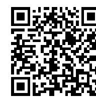


THE HON'BLE SMT.JUSTICE VENKATA JYOTHIRMAI PRATAPA

WRIT PETITION Nos.29945 & 30004 OF 2023

COMMON ORDER:

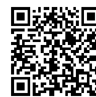
Above enumerated Writ Petitions are filed under Article 226 of the Constitution of India, by different petitioners, and they commonly pray for;

> *"....a writ of Mandamus, directing the respondents specifically Respondent No.4 to take cognizance of the petitioners' complaints dated 04.11.2023 and 06.11.2023 respectively and follow the due process of law as laid down by the Hon'ble Supreme Court of India in* ***Lalita Kumari v. Government of Uttar Pradesh and others in 1 Writ Petition (Criminal) No.68 of 2008*** *as any contrary would be violative of the said judgment".*

2. These Writ Petitions were heard together as the same question of law is involved and the same are disposed of by way of this common order at admission stage, with the consent of learned counsel representing both parties. Before venturing into the determination of the prayers sought, it is essential to draw the contours of necessary facts that are emanating from the W.Ps.

3. *The facts which led to filing of W.P.No.29945 of 2023, are*:

i. It is the case of the Petitioner that he is a distant relative of one Santosh Kumar Bavisetty. It is stated that one Malathi, W/o. Santosh



Kumar and her brother Mahesh, with an intention to harass the Petitioner, falsely implicated him along with her husband in Crime No.11 of 2022 at Kasinagar Police Station, Odisha for the offences under Sections 498-A, 323, 313, 294 read with 34 IPC and Section 4 of the Dowry Prohibition Act. He would submit that due to his false implication in a criminal case, he was forced to seek an anticipatory bail, resulting in unnecessary expenditure of money and energy. He further stated that he did not commit any crime. The Police, after investigation, deleted his name in the charge sheet, since no incriminating material is found against him.

ii. It is stated that he has sent a letter to Respondent No.4, dated 04.11.2023 elaborating all the issues with a request to initiate appropriate action by registering a case under relevant Sections of Indian Penal Code and Information Technology Act as due to the false implication, he suffered social stigma, death threats and hatred.

iii. It is his case that registration of FIR is mandatory as per Section 154(1) of Code of Criminal Procedure, 1973[1] when the information discloses commission of a cognizable offence and in such cases no preliminary inquiry is permissible, vide ***Lalita Kumari v. Government of Uttar Pradesh & Ors*[2].** Hence, W.P.

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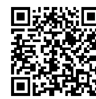
[1] In short "Cr.P.C"
[2] (2014) 2 SCC 1

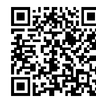


4. *The facts which led to the filing of W.P.No.30004 of 2023 are:*

i. It is the case of the Petitioner herein is that one Yernagula Malathi is his wife. His marriage with her took place on 15.06.2019, while so, they have been living separately since 29.04.2021 due to some issues. His version is that his wife filed several matrimonial cases against him. He made multiple complaints against his wife and her family members at local Police Stations.

ii. It is his further case that, on 28.10.2023 at 8.00 p.m., his wife Malathi along with some unidentified persons, with an intention to criminally intimidate the Petitioner and his parents and to unlawfully steal some important documents and other materials criminally trespassed the house of the petitioner which was captured in the CCTV Camera. He further states that, had the petitioner or his old aged parents been present at the residence, it would lead to a serious incident.

iii. It is also further case that, though he addressed a letter to Respondent No.4, dated 06.11.2023 elaborating the incident to initiate appropriate action against the accused by registering a case under relevant Sections of Indian Penal Code and Information Technology Act, they have not registered the case.



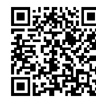
iv. It is his case that registration of FIR is mandatory when the information discloses commission of a cognizable offence and no preliminary inquiry is permissible, vide *Lalita Kumari* (referred supra). Hence, W.P.

Arguments advanced at the Bar:

5. Heard Sri Umesh Chandra PVG, learned counsel for the Petitioner and Sri N. Nirmal Kumar, learned Assistant Government Pleader for Home.

6. Learned counsel for the Petitioner would submit that Respondents have violated the guidelines issued by the Hon'ble Apex Court in *Lalita Kumari*'s case referred supra. He would submit that the Petitioners herein are not seeking a direction to the Police to register the case based on the representations made by them, but they are complaining about the inaction of the Police on the representations for failing to follow the guidelines issued in *Lalita Kumari* (referred supra).

7. Learned counsel for the Petitioner further submits that, the issue in the present petitions is not covered under the judgment of the Coordinate Bench of this Court in W.P.13993 of 2022, dated 09.11.2022 since the issue in the said case is relating to Zero F.I.R. He would submit that their case is on different footing, i.e., seeking indulgence of the Court to take



action against the erring officers who failed to follow the guidelines issued in *Lalita Kumari*'s case. Finally, exhaustive reliance was placed by the learned counsel on ***Lalita Kumari's case*** (referred supra) and the decision rendered by a learned Single Judge of the Composite High Court of Andhra Pradesh in ***T.V.G.Chandrasekhar v. State of A.P.***[3]

8. Refuting the above submissions, learned Assistant Government Pleader for Home submits that the accused against whom the Petitioners presented representation to the Police to register a case, are not made parties in the petitions and in their absence, the matter cannot be decided. He further submits that, bypassing their prayer in the petitions, learned counsel argued the matter at length seeking a direction to take action against the officers who failed to register the Crime. For this as well, Learned Assistant Government Pleader submits that such officials are not made parties to these W.Ps.

9. Learned Assistant Government Pleader further would argue that, as per the written instructions received in W.P.No.29945 of 2023, the petitioner failed to visit the Police Station though the Police called him for a preliminary inquiry, since it is connected to a matrimonial dispute.

10. Learned Assistant Government Pleader would argue that the question in the present petitions as to issuing a Writ of Mandamus to the

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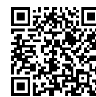
[3] (2014) 1 ALD(Crl.) 507



Police to register a criminal case, is squarely covered under the judgments of the Coordinate Bench of this Court in W.P.No.28407 of 2023, dated 27.10.2023, W.P.No.13993 of 2022, dated 09.06.2022, W.P.No.7346 of 2020, dated 08.09.2020, W.P.No.8384 of 2020 and its batch dated 30.07.2020.

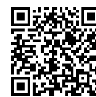
Point for Determination:

11. Having regard to the nature of prayer and arguments advanced by the learned counsels on both sides, the point that would emerge for determination is:

> *"Could a Writ of Mandamus be issued to direct the police officers to perform their duties, vide Section 154 (1) of Cr.P.C., in view of the Constitutional Bench decision in Lalita Kumari (referred supra), despite the availability of alternative statutory remedies under Cr.P.C.,1973?"*

Determination by the Court:

12. There is abundant guidance to this Court, both from the Cr.P.C., and the precedential law of Hon'ble Supreme Court and High Courts, to answer the issue ensuing in this matter. Therefore, it is apposite to chalk out the provisions of law and then the interpretation offered by precedents.



13. Chapter XII of Cr.P.C.,from Sections 154 to 176 of the Cr.P.C. deals with "*Information to the Police and their Powers to Investigate*". A bare reading of Section 154(1) of the Cr.P.C., provides that any information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station shall be reduced into writing by him or under his direction. This information given to the police is colloquially called as First Information Report/FIR. The act of entering such information in the said form as prescribed by the provision is called registration of crime/case. Vide Section 154(3), on being aggrieved by non-performance under Section 154(1), the substance of such information may be sent to the Superintendent of Police concerned, who if satisfied of disclosure of a cognizable offence, shall either investigate or direct the same to be carried on by a subordinate.

14. Next, Section 156 deals with "*Police Officer's power to investigate cognizable case*". Section 156(1) empowers a police officer to investigate any cognizance "case". Section 156 (3) provides that a Magistrate may order such investigation as mentioned in clause 1. The power under Section 156(3) is to be exercised when there is failure to do so by Section 156(1). The Hon'ble Apex Court in ***Priyanka Srivastava and another v. State of Uttar Pradesh and others***[4]held that an application filed

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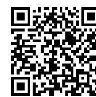
[4] (2015) 6 SCC 287



under Section 156(3) is to be supported by an affidavit duly sworn along with prior applications under Section 154(1) and (3). This view is fortified in various decisions including ***Babu Venkatesh and others v. State of Karnataka and another***[5].

15. Further, under Section 190, the Magistrate is empowered to take cognizance of any offence upon receipt of complaint of facts containing allegation constituting the offence; or on a police report of such facts; or on information received by any other person (other than a police officer) or on his own knowledge about the commission, except for offences under Chapter XX of Indian Penal Code, 1860. Section 200 entails filing of complaint, oral or written before the Magistrate, who would in turn hear on the question of taking cognizance.

16. In that view of the matter, it is aptly clear that Cr.P.C. offers various avenues to the informant to initiate criminal proceedings, be it about a cognizable or non-cognizable offence. Meaning, this arrangement would also come in the way of a writ court in exercising jurisdiction under Art.226 as it would be called an "alternate remedy". Writ of Mandamus is one of the prerogative writs issued by Courts. Issuance of a writ depends on the satisfaction of its ingredients and sound judicial discretion of the court, subject to the well-established principles of law. A Constitutional Bench of

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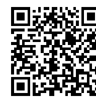
[5] (2022) 5 SCC 639

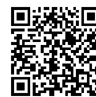


the Hon'ble Apex Court in ***Thansingh Nathmal v. Supdt. of Taxes***,[6] defined the exercise of jurisdiction under Art.226 as follows;

> "*7. ....The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles.* ***But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute.*** *Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief.* ***Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up***."

(emphasis supplied)

[6] AIR 1964 SC 1419



17. In ***M/s. Richmark Shipping & Logistics Pvt. Ltd., v. The Commissioner of Customs and others***[7]**,** a Division Bench of this Court has reiterated the settled legal position on alternate remedy vis-à-vis exercise of jurisdiction vide Art.226 as follows;

> "11. *Further, the position of rule of alternate remedy vis-à-vis maintainability of writ petitions, has been examined by several judgments of the Hon'ble Apex Court and this Court as well, but it is profitable to refer to a judgment rendered by the Hon'ble Supreme Court in* ***M/s Radha Krishan Industries v. State of Himachal Pradesh and others***[8]*, relying on* ***Whirlpool Corporation v Registrar of Trademarks, Mumbai,***[9] *and* ***HarbanslalSahnia v Indian Oil Corpn. Ltd,***[10] *summed up the principles at para 27 which read thus;*
>
> > *"**27.1** The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.*
> >
> > ***27.2*** *The High Court has the discretion not to entertain a writ petition.* ***One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.***
> >
> > ***27.3*** *Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.*
> >
> > ***27.4 An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the***

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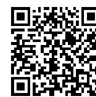
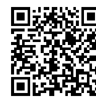
[7] 2023 (4) ALT 538 (DB)
[8] (2021) 6 SCC 771
[9] (1998) 8 SCC 1
[10] (2003) 2 SCC 107



> ***Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.***
> ***27.5 When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience, and discretion.***
> ***27.6*** *In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."*
>
> (emphasis supplied)

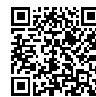
18. The fulcrum of the above discussion is that the power of a Court to issue a Writ, in this context, "of mandamus" is well defined by certain self-imposed limitations. Availability of an effective alternate remedy is one such predicament. Primarily, as already discussed, the remedies available under various provisions of the Cr.P.C. come in the way of exercising jurisdiction. Proceeding further, it is essential to identify whether the proposition of law laid down in ***Lalita Kumari's case***(referred supra)provides a way to entertain writ jurisdiction in the instant matter or not. The decision was rendered by the Constitutional Bench of the Hon'ble Apex Court in the context of answering the following;



"*The important issue which arises for consideration in the referred matter is whether "a police officer is bound to register the first information report (FIR) upon receiving any information relating to commission of 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 'preliminary inquiry' in order to test the veracity of such information before registering the same"?*"

19. Ultimately, in ***Lalita Kumari's case***(referred supra), it was held that the Station House Officer is under statutory obligation to register a crime, when the complaint discloses commission of a cognizable offence. Para 120 of the decision encapsulates the law laid down as follows;

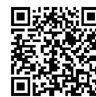
"120. In view of the aforesaid discussion, we hold:
120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
120.2. If the information received does not disclose 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"

(emphasis supplied)

20. More so, the Hon'ble Bench in ***Lalita Kumari's case***(referred supra),was neither posed with the question of deciding the maintainability

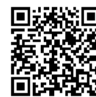


of writ petition in failure to lodge FIR nor has it differed with the view taken in ***Aleque Padamsee and Ors. v. Union of India and Ors.***[11]*a*nd ***Sakiri Vasu v. State of U.P. &Ors.***[12]**.**

21. In ***Aleque Padamsee's case*** (referred supra),the Hon'ble Apex Court held as follows;

> "*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 Employees' Union (Regd.) Vs. Union of India, (1996) 11 SCC 582 and reiterated 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 Janardan Mhatre Vs. State of Maharashtra, (2004) 7 SCC 768, Hari Singh Vs. State of U.P. (2006) 5SCC 733, Minu Kumari Vs. State of Bihar, (2006) 5 SCC 733, and Ramesh Kumar Vs. (NCT of Delhi) (2006) 2 SCC 677, 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 reiterated in Lallan Chaudhary and Ors. V. State of Bihar (AIR 2006 SC 3376). The course available,*

[11] (2007) 6 SCC 171
[12] (2008) 2 SCC 409

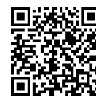


when the police does not carry out the statutory requirements under Section 154 was directly in issue in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Hari Singh's case(supra) and Minu Kumari's case (supra). ***The correct position in law, therefore, is that the police 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***
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…."

(emphasis supplied)

22. In ***Sakiri Vasu's case*** (referred supra), it was laid down as follows;

"*26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC.* ***Why then should writ petitions or Section 482petitions be entertained when there are so many alternative remedies?***
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 CrPC 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 police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC."*

(emphasis supplied)

23. Further, both the decisions referred supra, have been reiterated once again in ***Sudhir Bhaskar Rao Tambe v. Hemant v. Yashwant Dhage and Ors***[13]***,*** wherein it was observed as follows;

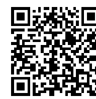
"*3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned 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.*"

(emphasis supplied)

24. In ***M.Subramaniam & Another v S. Janaki & Another,***[14] while hearing an appeal from a decision of a High Court directing the police to register FIR, a three-Judge Bench of the Hon'ble Apex Court had expressed its surprise over such direction and has reiterated the law laid down in

[13] (2016) 6 SCC 277

[14] CDJ 2020 SC 401



SakiriVasu's case and ***Sudhir's case***(referred supra) to set aside the order passed. Whereas, in ***Sindhu Janak Nagargoje v. State of Maharashtra and others***[15]***,*** while hearing an appeal against the judgment of High Court declining to direct the police to register FIR, a two-Judge Bench of the Hon'ble Apex Court allowed the appeal and directed the respondents to proceed further with the complaints in accordance with law. It appears that the decisions rendered in ***M. Subramaniam's case, Sakiri Vasu's case***and ***Sudhir's case***(referred supra)were not referred in the judgment of ***Sindhu Janak Nagargoje's case (***referred supra).

25. This Hon'ble High Court also interpreted the legal position on this subject at various instances. Certain decisions with relevance to the instant matter are to be discussed. A learned Single Judge of this Court in ***Sri Chegireddy Venkata Reddy v. Government of Andhra Pradesh,***[16] dealt with a series of writ petitions seeking action against the police department for their alleged failure in registering FIR based on the reports lodged. In this batch, the argument of the Petitioners was that the registration of an FIR is mandatory, vide law laid down in ***Lalita Kumari's case***(*referred supra)*,and since the Police did not carry out this solemn duty, Writ Petition becomes maintainable to enforce it and that erring officials can be proceeded, vide para 120 (4) of the said judgment. Whereas, the argument

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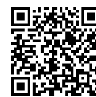
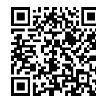
[15] SLP (Crl.) No. 5883 of 2020- Hon'ble Supreme Court of India- Dated 08.08.2023
[16] (2020) 5 ALT 24



of the Respondent was that Writ is not a proper remedy in view of the available alternative remedies, relying on ***M.Subramaniam's case*** *(referred supra),* and that ***Lalita Kumari's case*** *(referred supra)* had not considered the issue of maintainability of writ petition. The learned Single Judge, identified the "*sublime essence*" of the decision in ***Lalita Kumari's case****(referred supra)*and held thus;

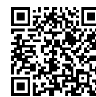
> "*26.* ***A close examination of the orders and the ultimate decision in Lalita Kumari case shows that the main issue or the crux of the matter that fell for consideration was whether the Police were bound to register the FIR if an offence is made out or if they had a discretion or latitude to conduct 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 varieties of cases, as spelt out in the judgment. 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.*
>
> *27. 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."*
>
> (emphasis supplied)

26. After sieving through the catena of decisions relied on by both the sides, the learned Single Judge in ***Sri Chegireddy's case*** (referred



supra)contrasted the anguish expressed by the Hon'ble Supreme Court in each set as follows;

> *"36. It is clear from chronological analysis of Lalita Kumari case (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 decided 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 (supra), Sudhir Bhaskara Rao Tambe case (supra),Aleque Padamsee case (supra) and M. Subramaian case (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 (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 Lalita 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 Lalita Kumari case (CB) to the issues raised in the present batch of writ petitions****."* (emphasis supplied)



27. Ultimately, it was concluded in ***Sri Chegireddy's case*** (referred supra)that when an efficacious alternative remedy is in place, the writ petition should not be entertained and a mandamus cannot be granted. It was also noted that the Magistrate by virtue of the powers conferred vide Cr.P.C. is very much competent to get into the questions of fact and consequently direct registration of FIR and ensure proper investigation. This was termed as a much more efficacious remedy than a Writ Petition.

28. This Court has also reiterated position laid down in ***Sri Chegireddy's case*** (referred supra) in ***Nagisetti Kodanda Ramaiah v. State of Andhra Pradesh & Others***[17]and refused to direct registration of crime, but granted liberty to the Petitioner to work out remedies vide law.

29. Once again, a Learned Single Judge of this Court in ***A. Venkata Narasu Babu v. State Of Andhra Pradesh***[18] dealt with the appropriateness of issuing a writ of Mandamus when the prayer was made, 'to declare action of Respondent/police authorities in not registering Crime/FIR as illegal, arbitrary, and unconstitutional, and to consequently direct registration of such Crime.' Having referred to various precedents, it was held that this Court cannot issue any direction by way of Mandamus, when an alternative remedy is available under the provisions of Cr.P.C. At para

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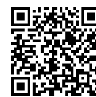
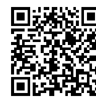
[17] 2023 SCC OnLine AP 3141
[18] [2020] Supreme (AP) 510



30, the learned Single Judge encapsulated the series of options available, which read thus;

> "*30. Thus, two options are available to these petitioners. One is to follow the procedure under Section 154(3) Cr.P.C or alternatively file a private complaint before the jurisdictional Magistrate by following the procedure under Cr.P.C. But, this procedure was not followed by these petitioners strictly, but complaining that Respondent Nos.3 to 6 are not adhering to the directions issued by the Apex Court in Lalita Kumari v. State of Uttar Pradesh (referred supra).* ***When the petitioners failed to adhere to the procedure contemplated under Cr.P.C, they cannot insist this Court to exercise discretionary jurisdiction under Article 226 of the Constitution of India on the ground that the public officers failed to discharge their public duty, more so, when an alternative remedy is available to the petitioners to file a private complaint.*** *On the other hand, the Apex Court in Lalita Kumari v. State of Uttar Pradesh (referred supra) made it clear that in the event of failure to comply with the directions issued by the Apex Court, action must be taken against erring officers who do not register F.I.R if information received by them discloses a cognizable offencevide Paragraph No.111(iv) of the judgment.* ***Therefore, the petitioners are at liberty to take appropriate action in terms of the judgment of the Apex Court in Lalita Kumari v. State of Uttar Pradesh (referred supra), by taking action against the concerned erring police officials after strict adherence to the procedure prescribed under Section 154(3) Cr.P.C, but the law declared in Lalita Kumari v. State of Uttar Pradesh (referred supra) did not give rise to a cause of action to approach the High Court, invoking extraordinary jurisdiction under Article 226 of the Constitution of India.***"
>
> (emphasis supplied)



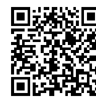
30. It is apposite to refer to the decision rendered in ***K.V.Bhaskar v. State of Andhra Pradesh & others***[19]***,***wherein a learned Single Judge of this Court was prayed to issue direction to take cognizance of the filed report and lodge FIR/Zero FIR. The learned Single Judge at para 5, observed as follows;

> *"**5.** The dispute is commonplace, facts are simple, law is well settled, yet a combat. As usual, this Court is once again called upon to answer whether a writ for mandamus to direct the police to register F.I.R. is maintainable or not."*
>
> (emphasis supplied)

31. Being aware of the decision in ***K.V. Bhaskar's case*** (referred supra), when this Court expressed that the instant matter is covered by the said decision, the Learned Counsel for the Petitioner submitted that he was the petitioner counsel in ***K.V. Bhaskar's case*** *(referred supra)*as well and it is related to the issue of Zero FIR. On a perusal of the said decision, this Court finds that this very point was dealt by the learned Single Judge as follows;

> *"**28.** No such law is laid down either in the Lalita Kumari case or in the aforesaid judgments of the Delhi High Court and the Karnataka High Court. **Therefore, the petitioner cannot rely on those judgments and seek to maintain the present Writ Petition filed for a mandamus to direct the police to register an F.I.R. or a Zero F.I.R.** So, the contention of the learned counsel for the petitioner that in view of the law laid down by the Apex Court in Lalita Kumari case, and in Umapathi S. case (of Karnataka High Court) and Neelu Shrivastava case (of Delhi High Court), that the writ for mandamus is maintainable*

[19] (2023) 1 AmLJ 117

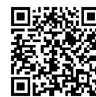


> *and direction is to be given to the police to register the Zero F.I.R. is misconceived and unsustainable under law.* ***The appropriate remedy is not the writ and the party has to avail the remedies contemplated under Cr.P.C. as discussed in detail supra, as per the settled law****."*

(emphasis supplied)

32. Further, when similar argument of giving direction to the police to give effect to the decision rendered by the Constitutional Bench in ***Lalita Kumari's case***(referred supra)was made in ***K.V. Bhaskar's case***(referred supra), the Learned Single Judge held as follows;

> *"The contention of the learned counsel for the petitioner that as the Constitution Bench of the Apex Court held in Lalita Kumari case that registration of F.I.R. is mandatory in the cases which disclose commission of cognizable offence, that a direction is to be given to the police by the High Court by entertaining the writ petitions to register the F.I.R. to give effect to the said judgment of the Constitution Bench of the Apex Court is devoid of merit. In fact, when a similar contention was raised before this Court earlier in a batch of cases, in the case of Chegireddy Venkata Reddy, this Court clearly explained with lucid elucidation the distinction between the ratio laid down by the Constitution Bench of the Apex Court in Lalita Kumari case and the ratio laid down by the Apex Court in Sakiri Vasu case and other cases and clearly held that Lalita Kumari case did not deal with any law relating to the remedy available to the aggrieved person when report disclosing commission of a cognizable offence was not registered and clarified that the remedies are dealt with in Sakiri Vasu case and clearly held that writ is not an appropriate remedy seeking direction to the police to register the case. It is held that the aggrieved party can approach even the Magistrate under Section 156(3) Cr.P.C. seeking direction to the police to register the F.I.R. and to investigate the same and he has to*



avail the said remedies. ***Thus, this Court has clearly held while relying on the ratio laid down in Sakiri Vasu case and other cases rendered subsequently on the point by the Apex Court, that the writ petition is not maintainable under Article 226 of the Constitution of India seeking direction to the police to register the F.I.R. and to investigate the same."***

(emphasis supplied)

33. In ***T.V.G. Chandrasekhar's case***(referred supra), the Learned Single Judge expressed deep concern at the state of non-registering of the FIRs despite the decision rendered in ***Lalita Kumari's case***(referred supra). In the said case, the complaint filed by the Petitioner was kept pending for a period of over 2 years. The Learned Single Judge had directed the Director General of Police to issue a comprehensive circular to all SHOs regarding the guidelines for registration of the cases vide Section 154 and steps to be taken against erring officials. This Court is of the view that the reliance placed by the learned counsel of Petitioner is not helpful in view of the settled legal position and for the factual matrix of the instant case.

34. An exhaustive exercise was undertaken on this point by the Hon'ble Division Bench of the High Court of Allahabad in ***Waseem Haider v. State of U.P. and others***[20]. The concise summary of the settled legal position was put forth in para 45 of the judgment as follows:

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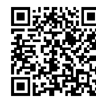
[20] 2021 Cri LJ 1503



*"**45.** Before parting, the conclusion arrived at based on the above discussion and analysis is delineated below for ready reference and convenience :-*

(1) Writ of mandamus to compel the police to perform its statutory duty under Section 154 Cr.P.C. can be denied to the informant/victim for non-availing of alternative remedy under Sections 154(3), 156(3), 190 and 200 Cr.P.C., unless the four exceptions enumerated in decision of Apex Court in the case of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 1, come to rescue of the informant/victim.

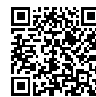
(2) The verdict of Apex Court in the case of Lalita Kumari v. Government of U.P. reported in (2014) 2 SCC 1 does not pertain to issue of entitlement to writ of mandamus for compelling the police to perform statutory duty under Section 154 Cr.P.C. without availing alternative remedy under Section 154(3), 156(3), 190and 200 Cr.P.C.

(3) The informant/victim after furnishing first information regarding cognizable offence does not become functus officio for seeking writ of mandamus for compelling the police authorities to perform their statutory duty under Section 154 Cr.P.C. in case the FIR is not lodged.

(4) The proposed accused against whom the first information of commission of cognizable offence is made, is not a necessary party to be impleaded in a petition under Article 226 of the Constitution of India seeking issuance of writ of mandamus to compel the police to perform their statutory duty under Section154 Cr.P.C."

(emphasis supplied)

35. It is an absolutely settled legal position that vide Section 154(1), it is the bounden duty of the police official and upon failure, the remedies, vide Sections 154(3), 156(3),190,200, come into rescue of the informant. Because of these readily engrafted provisions, writ remedy cannot be



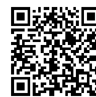
exercised in a routine or casual manner. Thus, it is safe to conclude that the writ of mandamus can be declined when it is sought to direct registration of FIR, before/without exhausting the available statutory remedies. However, being an extraordinary jurisdiction, this Court may exercise its jurisdiction in special and grave situations, which are exceptional in nature depending on the facts and circumstances of the case.

36. In the light of the discussion supra, this Court finds it apt to summarise the legal position emanating from the provisions of law and the judicial precedents in the form of the following table;

Information as to commission of crime received in the Police Station

(Sec.154 Cr.P.C)

S.No.	Nature of the offence	Registration of F.I.R	Preliminary Enquiry	General Diary/Station Diary/Daily Diary Entry	Duration of Enquiry	Information to Informant/Victim	Remarks
1	**Cognizable Offence**	Yes	No	Yes	No	Yes	---
2	**Preliminary Enquiry discloses cognizable offence**	Yes	Yes	Yes	7 days (In case of delay, entry to be made in GD about the fact and cause of delay)	Yes	Suggested (a) Matrimonial disputes/Family disputes (b) Commercial Offences (c) Medical Negligence Cases (d) Corruption Cases (e) Delay of every three months in reporting the matter without sufficient reason (Not exhaustive)
3	**Preliminary Enquiry does not disclose cognizable offence**	No	Yes	Yes	7 days (In case of delay, entry to be made in GD about the fact and cause of delay)	Yes	---
4	**Cognizable & Non Cognizable**	Yes	No	Yes	No	Yes	---
5	**Only Non-Cognizable**	No	No	Yes	No	Refer the informant to the Magistrate Court	---



37. Further, in the cases where the informant is aggrieved by non-registration of FIR in a cognizable offence, the avenues of remedies available are as follows;

a. Send the information in writing by post to the Superintendent of Police Section, vide 154(3).

If not registered even then,

b. Approach the Jurisdictional Magistrate's Court by filing a private complaint, vide Sections 190, 200 and 156(3).

38. Before parting with these cases, it apposite to mention that at least plural number of matters of this nature i.e., '*seeking direction to the police to register complaints'*, are being on the list each day. In this regard, this Court finds it appropriate to issue the following directions to the Director General of Police, State of Andhra Pradesh to take appropriate steps;

i. To circulate a copy of the judgment in ***Lalita Kumari v. Govt. of U.P. & Ors., (2014) 2 SCC 1***, once again, along with a translated copy in Telugu for better understanding among the police personnel.

ii. To sensitize the police personnel at every cadre about the guidelines issued at para 120 therein, to achieve the object in letter and spirit.

iii. To develop a mechanism to inform the informant/complainant about the stage and result thereafter, in cases where F.I.R. is not registered within 24 hours, as it requires preliminary enquiry.

39. In result, these Writ Petitions are disposed of, with the above observations. This Court is not inclined to interfere in these Writ Petitions, considering the discussion supra.

However, the Petitioners herein are at liberty to work out their remedies as available under the Cr.P.C., before appropriate forum, if so advised.

40. It is also made clear that no opinion is given on the merits of the matters.

Pending Miscellaneous Petitions, if any, shall also stand closed.

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JUSTICE VENKATA JYOTHIRMAI PRATAPA

Date: 23.11.2023
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HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

W.P.Nos.29945 & 30004 of 2023

Dt.23.11.2023

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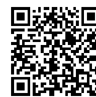


2023:APHC:43541

IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI

****

WRIT PETITION Nos.29945 & 30004 OF 2023

W.P.No.29945 OF 2023

Between:
Kaja Rama Rao,
Aged about 71 years, Occ:Owner of United Medicals,
R/o.Shop No.5 & 6, KSR Complex,
Seethammadhara, Visakhapatnam – 530013,
Andhra Pradesh. …. Petitioner

And

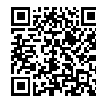
1. The State of Andhra Pradesh,
Represented by its Principal Secretary,
Home Department, Secretariat, Andhra Pradesh.
2. The Director General of Police,
Andhra Pradesh Police Headquarters,
Mangalagiri, Guntur District, Andhra Pradesh.
3. The Deputy Commissioner of Police,
Zone 1, Visakhapatnam, Andhra Pradesh.
4. The Station House Officer,
Maharanipeta Police Station,
Visakhapatnam, Andhra Pradesh. ... Respondents

W.P.No.30004 OF 2023

Between:
Santosh Kumar Bavisetty,
S/o.Bavisetty Seetha Ramayya,
Aged about 36 years, Occ: Employed in the Private Sector,
R/o.LIG-B:289, Sagar Nagar,
Visakhapatnam. …. Petitioner

And

1. The State of Andhra Pradesh,
Represented by its Principal Secretary,
Home Department, Secretariat,
Velagapudi, Guntur District, Andhra Pradesh.
2. The Director General of Police,
Andhra Pradesh Police Headquarters,
Mangalagiri, Guntur District, Andhra Pradesh.



3. The Deputy Commissioner of Police,
   Zone 1, Visakhapatnam, Andhra Pradesh.
4. The Station House Officer,
   Arilova Police Station,
   Dwaraka Sub-division,
   Visakhapatnam - 530040, Andhra Pradesh. ... Respondents

DATE OF JUDGMENT PRONOUNCED**: 23.11.2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SMT.JUSTICE VENKATA JYOTHIRMAI PRATAPA

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes/No

3. Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

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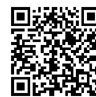
JUSTICE VENKATA JYOTHIRMAI PRATAPA



*** THE HON'BLE SMT.JUSTICE VENKATA JYOTHIRMAI PRATAPA**

+ WRIT PETITION Nos.29945 & 30004 OF 2023

% 23.11.2023

W.P.No.29945 OF 2023

Between:
Kaja Rama Rao,
Aged about 71 years, Occ:Owner of United Medicals,
R/o.Shop No.5 & 6, KSR Complex,
Seethammadhara, Visakhapatnam – 530013,
Andhra Pradesh. …. Petitioner

And

1. The State of Andhra Pradesh,
Represented by its Principal Secretary,
Home Department, Secretariat, Andhra Pradesh.
2. The Director General of Police,
Andhra Pradesh Police Headquarters,
Mangalagiri, Guntur District, Andhra Pradesh.
3. The Deputy Commissioner of Police,
Zone 1, Visakhapatnam, Andhra Pradesh.
4. The Station House Officer,
Maharanipeta Police Station,
Visakhapatnam, Andhra Pradesh. ... Respondents

W.P.No.30004 OF 2023

Between:
Santosh Kumar Bavisetty,
S/o.Bavisetty Seetha Ramayya,
Aged about 36 years, Occ: Employed in the Private Sector,
R/o.LIG-B:289, Sagar Nagar,
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Represented by its Principal Secretary,
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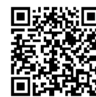

2. The Director General of Police,
   Andhra Pradesh Police Headquarters,
   Mangalagiri, Guntur District, Andhra Pradesh.
3. The Deputy Commissioner of Police,
   Zone 1, Visakhapatnam, Andhra Pradesh.
4. The Station House Officer,
   Arilova Police Station,
   Dwaraka Sub-division,
   Visakhapatnam - 530040, Andhra Pradesh. ... Respondents

! Counsel for petitioner in
W.P.Nos.29945 & 30004 of 2023 : Sri Umesh Chandra PVG

^ Counsel for Respondents in
W.P.Nos.29945 & 30004 of 2023 : Sri N. Nirmal Kumar, Learned Assistant Government Pleader for Home

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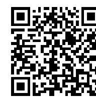
> Head Note:

? Cases referred:

1. (2014) 2 SCC 1
2. (2014) 1 ALD (Crl.) 507
3. (2015) 6 SCC 287
4. (2022) 5 SCC 639
5. AIR 1964 SC 1419
6. 2023 (4) ALT 538 (DB)
7. (2021) 6 SCC 771
8. (1998) 8 SCC 1
9. (2003) 2 SCC 107
10. (2007) 6 SCC 171
11. (2008) 2 SCC 409
12. (2016) 6 SCC 277
13. CDJ 2020 SC 401



14. SLP (Crl.) No. 5883 of 2020- Hon'ble Supreme Court of India-Dated 08.08.2023
15. (2020) 5 ALT 24
16. 2023 SCC OnLine AP 3141
17. (2020) Supreme (AP) 510
18. (2023) 1 AmLJ 117
19. 2021 Cri LJ 1503

This Court made the following: