

**Sasankan Vs. State of Chhattisgarh and Others**

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**Court :** Chhattisgarh

**Decided On :** Jan-23-2012

**Judge :** Satish K. Agnihotri

**Appeal No. :** Writ Petition No 2513 of 2001

**Appellant :** Sasankan

**Respondent :** State of Chhattisgarh and Others

**Judgement :**

(Writ Petition under Articles 226 of the Constitution of India)

1. Heard learned counsel for the parties.
2. By this petition, the petitioner seeks a direction to the respondents No.2 and 3 to register FIR under Section 306 read with Section 34 of the Indian Penal Code against the subject teacher of Hindi and Principal of MGM Higher Secondary School. The petitioner also seeks a direction for grant of compensation amounting to Rs.5,00,000/- for causing mental torture and harassment to his deceased daughter.
3. The facts, in brief, as projected by the petitioner, are that the petitioner is having two children who were studying in MGM Higher Secondary School, Sector VI, Bhilai Nagar, Durg. On account of unsatisfactory hand writing of the daughter of the petitioner namely; Summi (since deceased), the Hindi Teacher namely; Ms.

Eliza Beth had beaten and insulted her before the students of class X. Copy of the answer sheet was not provided to the deceased. On the said incident, the parents i.e. the petitioner and his wife advised the deceased not to take the matter seriously. Thereafter, on the next day also the Principal as well as the Hindi Teacher assaulted and insulted the deceased before all the students of the school just after the prayer, as a result of such act the deceased felt insulted. The deceased came back from the school, went to her room weeping and thereafter, committed suicide by hanging and when she was taken to the hospital, the doctors declared her brought dead. Newspaper clippings in this regard are Annexure - P/1.

4. Looking to the aforesaid incident, the police started investigation, however, all of a sudden the proceedings were dropped, for which the petitioner made a complaint before the respondent No.3 on 30-8-2001 (Annexure - P/2) and copy of the same was endorsed to the respondent No.2. Thereafter, the petitioner received a notice dated 13-9-2001 (Annexure - P/3) from the office of the City Superintendent of Police, Bhilai Nagar, by which the petitioner was directed to appear before him. Accordingly, the petitioner appeared before the CSP where his statement was recorded, however, the authorities threatened the petitioner with dire consequence and asked the petitioner to withdraw the complaint for which the petitioner made a complaint before the Collector, Durg, on 18-9-2001 (Annexure - P/4). Subsequently, the petitioner received one threatening letter for withdrawal of complaint for which the petitioner lodged FIR vide Annexure - P/5 and when no action has been taken by the police, the petitioner approached the Governor of the State. The Governor directed the respondent No.2 to register offence under Section 306 of the IPC against the subject teacher and the Principal of the school, but till date no action has been taken by the police. Thus, this petition.

5. Admittedly, the petitioner has not taken recourse to the provisions of Section 156 (3) of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.") by making an application to the Magistrate concerned for appropriate action on the complaints of the petitioner. Thus, at this stage, it would not be proper to interfere with the matter in exercise of writ jurisdiction when the proper and effective forum of making an application/complaint before the Magistrate under the provisions of the Cr.P.C., is available.

6. In the case on hand, the City Superintendent of Police, Bhilai Nagar, Durg, has made a full pledged enquiry and after making full pledged enquiry, he submitted the report dated 8-11-2001 (Annexure - R/1). It appears that the City Superintendent of Police in the process had examined all the concerned persons including the petitioner as well as his relatives and came to the conclusion that the allegations against the Principal and the teacher of MGM School were not found proved.

7. Section 156 (3) of the Cr.P.C. provides that any Magistrate empowered under section 190 may order such an investigation.

8. Section 190 of the Cr.P.C. reads as under:

"190. Cognizance of offences by Magistrates.--(1) Subject to the provisions of this Chapter, any Magistrate of the first class, specially empowered in this behalf under sub- section (2), may take cognizance of any offence-

(a) Upon receiving a complaint of facts which constitute such offence;

(b) Upon it police report of such facts;

(c) Upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

9. Under provisions of Section 190 of the Cr.P.C., the Magistrate can take cognizance of an offence on receipt of complaint of facts by any person. The Magistrate is not deprived of power to proceed with the matter. Even the Magistrate is not obliged to accept the report if he does not agree with the opinion formed by the police. The Magistrate has full power to take cognizance, despite there being an opinion of the police.

10. The Supreme Court in *Minu Kumari and Another v. State of Bihar and Others*<sup>1</sup>, observed as under :

"(10)...However, he is not deprived of the power to proceed with the matter. There is no obligation on the Magistrate to accept the report if he does not agree with the opinion formed by the police. The power to take cognizance notwithstanding formation of the opinion by the police which is the final stage in the investigation has been provided for in Section 190(1)(c)."

Also See : Gangadhar Janardan Mhatre v. State of Maharashtra and Others<sup>2</sup>.

11. The Supreme Court in Sakiri Vasu v. State of U.P. and others, has explained the scope of power under Section 156 (3) of the Cr.P.C., observed as under:

(14.) Section 156(3) states:

"156. (3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned."

The words "as abovementioned" obviously refer to Section 156(1), which contemplates investigation by the officer in charge of the police station.

(15.) Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr PC. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

(16.) The power in the Magistrate to order further investigation under Section 156(3) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide State of Bihar v. J.A.C. Saldanha (SCC : AIR para 19).

(27.) As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage

the practice of filing a writ petition or petition under Section 482 Cr PC 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) Cr PC before the Magistrate or by filing a criminal complaint under Section 200 Cr PC and not by filing a writ petition or a petition under Section 482 Cr PC."

12. Reliance of the learned counsel appearing for the petitioner upon the decision of the Supreme Court in *State of Punjab v. Central Bureau of Investigation and Others*, is of not much assistance. As far as inherent powers of the High Court is concerned, there is no restriction or limitation on the power of High Court to direct fresh investigation or re-investigation in order to secure the ends of justice. However, in the case of *Central Bureau of Investigation (supra)*, the facts were such as it became necessary to direct investigation by the Central Bureau of Investigation.

13. In *Central Bureau of Investigation (supra)* the Supreme Court observed as under:

"(29.) we find that the High Court was of the view that the investigating officer even of the rank of DSP was not in a position to investigate the case fairly and truthfully because senior functionaries of the State Police and political leaders were to be named and political and administrative compulsions were making it difficult for the investigating team to go any further to bring home the truth. It further observed that not less than eight police officials, political leaders, advocates, municipal councillors besides a number of persons belonging to general public had been named in the status report of the State local police."

The instant case is not one of the grave cases, where injustice to invoke extraordinary jurisdiction of the High Court, is writ large. There is no allegation that there is nexus of higher-ups or police officers or others to shield the alleged accused.

14. So far as submission of the petitioner, as averred in the petition, that the Governor directed the respondent No.2 to register the offence under Section 306 of the IPC against the Principal and teacher of MGM School is concerned, except the self-same statement no document has been produced in support of the said averment.

15. For the reasons mentioned hereinabove, without expressing any opinion on merits of the case, the petition is dismissed, reserving liberty to the petitioner to take appropriate steps, under the provisions of law, if so advised.

16. There shall be no order as to costs.

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