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Crl. O.P. Nos. 19197, 19198, 19343 and 19359 to 19363 of 2016

Sugesan Transport Pvt. Ltd. v. Assistant Commissioner of Police

2016 SCC OnLine Mad 9348 : (2016) 5 CTC 577 : (2016) 3 MWN (Cri) 236 : (2016) 2 LW (Cri) 499

In the High Court of Madras
(BEFORE P.N. PRAKASH, J.)

Sugesan Transport Pvt. Ltd. represented by its Director Rajendra Sheth No. 7C, Second Canal Cross Road Gandhi Nagar Adyar, Chennai 600 020 ..... Petitioner

v.

1. The Assistant Commissioner of Police J-2, Adyar Police Station Adyar, Chennai 600 020
2. The Inspector of Police J-2, Adyar Police Station Adyar, Chennai 600 020 ..... Respondents

For petitioner in Crl.O.P. No. 19197/16 Mr. Nithyaesh Natraj

For respondents in Crl.O.P. No. 19197/16 Mr. M. Rajarathinam, Public Prosecutor assisted by Mr. C. Emalias Addl. Public Prosecutor

Crl. O.P. Nos. 19197, 19198, 19343 and 19359 to 19363 of 2016

Decided on September 27, 2016

Prayer in Crl.O.P. No. 19197 of 2016:

Criminal Original Petition filed under Section 482 Cr.P.C. seeking a direction to the respondents to register the petitioner's complaint dated 17.08.2016.

COMMON ORDER

P.N. PRAKASH, J.:— These Criminal Original Petitions are filed seeking a direction to the respondents to register the petitioners' complaints dated 17.08.2016.

2. Every Judge who is assigned the Section 482, Cr.P.C. portfolio has to perforce undergo an unenviable task of dealing with petitions praying for a direction to the police to register an FIR on the complaint that is said to have been given by the petitioners. Each Judge would devise his or her own mechanism to deal with the spate of such petitions which will be in hundreds week after week.

3. When I assumed this portfolio, I too had to deal with these petitions and the method I evolved was to read the complaints, hear the counsel for the petitioners and the Additional Public Prosecutor and pass the following orders, depending upon the facts obtaining in each case:

i. Direction is given to the respondent police to register the complaint, if cognizable offence is made out and take action in accordance with the law laid down by the Supreme Court in *Lalita Kumari* v. *Government of Uttar Pradesh-IV* [(2014) 2 SCC 1] (for brevity "Lalita Kumari-IV);

ii. If the dispute essentially appears to be civil in nature or involves money transaction, the case is closed with liberty to the petitioner to work out his remedy in the manner known to law;

iii. In the event there being a counter case, the petition is closed directing the respondent police to enquire into the main case and the counter case;

iv. On the basis of the petitioner's complaint, if petition enquiry is conducted and closed, the petition is closed by handing over a copy of the closure report to the

counsel for the petitioner across the Bar, with liberty to the petitioner to work out his remedy in the manner known to law;

v. In case the petition is sent by post, the petition is closed by directing the petitioner to appear in person before the respondent police with a further direction to the respondent police to enquire into the complaint and take action thereon in accordance with law, if it discloses the commission of a cognizable offence or drop action, if found otherwise; and

vi. If FIR has already been registered, the petition will be closed by recording the factum of registration of the FIR.

4. While things were passing thus, on 06.09.2016, the present petitions, viz., Crl.O.P. Nos. 19197, 19198, 19343 and 19359 to 19363 of 2016 filed for a similar relief, came up before me for admission and Mr. Nithyaesh Natraj, learned counsel for the petitioners fairly submitted that a petition under Section 482, Cr.P.C. for such a direction is not maintainable, unless the petitioner has exhausted the alternative remedies available under Section 154(1), 154(3) and 156(3) Cr.P.C., in the light of the law laid down by the Supreme Court in *Sakiri Vasu* v. *State of Uttar Pradesh* [(2008) 2 SCC 409] (for brevity "Sakiri Vasu").

5. In view of the aforesaid submission made by Mr. Nithyaesh Natraj, this Court passed the following order:

> "2. A reading of the above judgment, clearly shows that a petition filed under 482 of Cr.P.C. for a direction to the respondent police to register an FIR is not maintainable, unless the party exhausts all the alternative remedies available under the Cr.P.C. However, over a period of time, this Court has been entertaining such petitions, on account of which, this practice has come to stay and it requires a careful relook in the light of the judgment of the Supreme Court in *Sakiri Vasu's case* (supra) and in view of the huge number of cases that are being filed for this relief, thereby, much time of the Court gets expended in deciding these petitions. This Court does not immediately want to depart from this procedure without giving an opportunity to the Bar to place its views.
>
> 3. Under such circumstances, the Registry is directed to notify the following proposition in the cause list enabling the members of the Bar to address this Court on 12.09.2016.
>
> Ø In the light of the law laid down by the Supreme Court in *Sakiri Vasu's case* (supra), can a petition under Section 482 Cr.P.C. be maintained for a direction to the respondent-police to register an FIR on the complaint given by a party without the party first exhausting the alternative remedies available under the Code?
>
> 4. The Bar members are requested to make their submissions on this issue on 12.09.2016.
>
> Post on 12.09.2016."

6. In pursuance of the aforesaid order, on 12.09.2016, members of the Bar appeared in larger numbers and placed their submissions. On the directions of Mr. M. Rajarathinam, learned State Public Prosecutor, senior police officers were present in the Court and they were accorded a seat at the aisle enabling them to make note of the submissions of the Bar so that they can issue appropriate instructions to their subordinate officers.

7. During the course of hearing, this Court framed three additional questions for the consideration of the members of the Bar.

> Ø Does this Court have the power to step into the shoes of the Station House Officer, read the complaint and give a direction as prayed for?
>
> Ø In the event of this Court dismissing the petition, will the petitioner still have the remedy to go under Section 154(1), 154(3) and 156(3) Cr.P.C.?

Ø In the event of this Court coming to a positive conclusion in favour of the petitioner and gives a direction to the police to register an FIR, can this Court entertain an application filed by the accused seeking quashment of the same FIR?

8. The arguments of learned Senior Counsel, *viz.*, M/s. V.T. Gopalan, S. Ashok Kumar, Arvindh Pandian and Gomathinayagam, other learned counsel, *viz.*, M/s. R.C. Paul Kanakaraj, K. Selvaraj, N. Vijayaraghavan, R. Sankarasubbu, V. Raghavachari, T. Mohan, Nalini, Sesubalan Rajan and M. Venkadeshan and Traffic Ramasamy-Party-in-person, were in favour of retaining the present procedure.

9. Contra submissions were made by M/s. I. Subramaniam and A. Ramesh, learned Senior Counsel and Mr. Anand Venkatesh and Mr. R. Neelakantan, learned counsel. Mr. N. Jothi, advocate, filed written submissions after the case was reserved for orders.

10. The submissions of Mr. M. Rajarathinam, learned State Public Prosecutor were more like that of an *Amicus Curiae.*

11. This Court does not intend to repeat the submissions and judgments relied upon at the Bar individually and make this judgment prolix and verbose. Instead, suffice it to crystallise the propositions propounded by them. The propositions propounded by one section of the Bar for the continuance of the present procedure, are as under:

i. When the common man goes to the police station, he is treated with disrespect unless he is influential and wealthy. Police do not even touch the complaint with a barge pole. For example, a complaint for loss of a vehicle is not accepted on the premise that the vehicle must have been seized by the Financier. By the time, the police is convinced that the vehicle has been really lost and FIR registered, the Insurance Companies successfully repudiate the claim on the ground of delay in lodging the complaint, resulting in serious prejudice to an honest victim. This example is one of many such genuine grievances;

ii. It is the police who exhort the complainant to go to the High Court and get "some direction" to deal with the complaint.

iii. Why should the apple cart be disturbed now when everyone is happy with the stereotype orders that are routinely passed by this Court?

iv. If it is held that only after exhaustion of alternative remedies, a petition under Section 482, Cr.P.C. seeking registration of FIR is maintainable, the practice of junior advocates will be adversely affected.

v. Protection money has to be paid to Bar strongmen in the Magistrate Court if a counsel from another Bar were to go there for filing a petition under Section 156 (3) Cr.P.C.

vi. Magistrates do not pass orders under Section 156(3), Cr.P.C. immediately and keep the petition pending for months on end.

vii. Even if an order under Section 156(3) is passed, the police pay scant respect to the order.

viii. The mere fact that a very large number of such petitions are being filed can be no reason to shut the doors of the Court.

ix. Having accepted the onerous responsibility of a Judgeship in the High Court, a Judge cannot abdicate his responsibilities and say that he or she will not look into the complaint and take a decision.

x. The fact that more number of petitions are being filed, is, by itself, a proof to show that people have not lost faith in the judiciary.

xi. If an FIR registered on the directions of the High Court u/s 482 Cr.P.C. is subsequently challenged by the accused by an application for quashing under Section 482, Cr.P.C., the Judge who had issued the earlier direction should recuse himself and post the quash petition before some other Judge.

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xii. The judgment of the Supreme Court in *Sakiri Vasu* has to be declared as *per incuriam.*

xiii. Existence of alternative remedies is not a bar to the power of the Court to entertain such petitions filed under Section 482, Cr.P.C.

xiv. The judgment of the Supreme Court in *Sakiri Vasu* has become irrelevant pursuant to *Lalita Kumari-I to V.*

xv. The acceptance of the judgment of the Supreme Court in *Sakiri Vasu* is tantamount to changing the contours of Section 482, Cr.P.C.

xvi. When a victim has a fundamental right under Article 21 of the Constitution of India for investigation of an offence committed against him, the Court cannot refuse to entertain his petition under Section 482, Cr.P.C.

xvii. Section 154, Cr.P.C. is the only Section which speaks about the registration of an FIR and Section 156(3) deals with investigation of a case and therefore, it is not an alternative remedy to Section 154, *ibid*.

xviii. This Court cannot define what is an ordinary case and what is an extraordinary case for the exercise of powers under Section 482, Cr.P.C. The Registry cannot be permitted to decide this aspect.

xix. Article 144 of the Constitution of India casts a duty on the High Court to act in aid of the Supreme Court.

xx. In view of the judgment in *King Emperor* v. *Khwaja Nazir Ahmad*, AIR 1945 PC 18 (for brevity "Khwaja Nazir Ahmad"), the directions of the Supreme Court in *Sakiri Vasu* that the Magistrate can monitor the investigation, is not sustainable.

12. The submissions of the learned counsel of the opposite school of thought are as under:

i. The Court cannot arrogate to itself, the power of the Station House Officer and take a decision one way or the other.

ii. Section 482, Cr.P.C. can be pressed into service only when there are proceedings before an inferior Court and not in a vacuum.

iii. The judgment of the Supreme Court in *Sakiri Vasu* has been reiterated recently in *Sudhir Bhaskarrao Tambe* v. *Hemant Yashwant Dhage* [(2016) 6 SCC 277] (for brevity "Sudhir Bhaskarrao Tambe") and therefore, this Court cannot declare *Sakiri Vasu* as *per incuriam*.

iv The power conferred under Section 482, Cr.P.C. is an extraordinary one and the same cannot be invoked when there are specific powers in the Code for dealing with a situation.

v. The judgment of the Supreme Court in *Sakiri Vasu* has been affirmed by a Division Bench of this Court in *R. Ramachandran* v. *The Principal Secretary to Government, Home Department, Secretariat, Chennai* [2011 SCC OnLine Mad 883] (for brevity "Ramachandran") and therefore, this Court cannot refuse to follow the judgment of the Supreme Court in *Sakiri Vasu*.

13. The submissions of Mr. M. Rajarathinam, learned State Public Prosecutor, in nutshell, are as under:

i. Usage of the expression "the commission" in Section 154 Cr.P.C. has to be given its due emphasis while interpreting the scope of this provision; and

ii. The State is ready to strengthen the police system and address the general grievance of the common man that police officers are not entertaining complaints whenever the same are handed over to the Station House Officer.

14. The judgments cited by various learned counsel will be dealt with during the course of the discussion hereafter.

15. It was brought to the notice of this Court that an earlier attempt was made by some Hon'ble Judges of this Court to streamline these petitions in the light of the

judgment in *Sakiri Vasu*, but, for some reason or the other, the influx of such petitions remains unabated.

16. In *G. Arokiya Marie* v. *The Superintendent of Police, Sub Inspector of Police* [2008-1-LW (Crl.) 484] (for brevity "Arokiya Marie"), *M. Jeyapaul, J.* considered the judgment in *Sakiri Vasu* and held as follows:

> "15. In view of the above, it is held that if the complaint reflects commission of murder, dowry death, attempt to murder where the victim sustained grievous injury, robbery, dacoity, rape and attempt to rape and the Station House Officer refuses to register the complaint of such allegation, then the court will have to necessarily give a direction to the Station House Officer to register the case invoking the jurisdiction under section 482 of the Code of Criminal Procedure.
>
> 16. The aggrieved persons, who complain of the commission of other offences under the Penal Code, 1860 and the offences under the other Acts, shall resort to sections 154(3), 190 read with 156(3) and 200 of the Penal Code, 1860 as the case may be. The inherent jurisdiction shall not be invoked in those cases to redress their grievance, for, alternative remedy as detailed above is very much available."

17. Subsequently, in *A. Sowfila* v. *The Commissioner of Police, Madurai City, The Deputy Commissioner of Police, (Law and Order), Commissioner Office Chamber, Madurai* [2008-2-LW (Crl.) 843] (for brevity "Sowfila"), *K.N. Basha, J.*, diluted the classification of offence propounded by *M. Jeyapaul, J.*, as follows:

> "55. I respectfully agree with the view of my learned Brother Judge. In the said order, the learned Brother Judge has classified certain offences which would require immediate inspection of the scene of crime, recovery of material objects and collection of other potential evidence in heinous crimes may be highly warranted such as the commission of the offences of murder, dowry death, attempt to murder wherein the victim sustained grievous injuries, robbery, dacoity, rape and attempt to rape. I am of the considered view that the above categorization and classification of offences are only illustrative and not exhaustive and this Court can very well exercise the power under Section 482 Cr.P.C. in order to secure to ends of justice in respect of other serious and complicated offences depending upon the facts and circumstances of each case and this Court cannot stipulate hard and fast rule by classifying certain offences. There is no frequent grievances in respect of the petitions filed under Section 482 for the serious offence of murder, dowry death, attempt to murder, robbery, dacoity, rape and attempt to rape and only certain exceptional cases police have not taken immediate action. Therefore, this Court cannot brush aside the undisputed fact that even in certain other offences, namely, abetment to commit suicide, forgery, cheating involving land grabbing and other offences of cheating involving huge amounts, misappropriation, kidnapping for ransom and kidnapping minor girls, etc., the police investigation is just and essential to fix and arrest the culprits and thereafter, to recover the articles and to collect the other evidence to prove the case before the Court of law, otherwise it would result in grave miscarriage of justice to the defacto complainants."

18. In the aforesaid judgment, *K.N. Basha, J.*, allowed one batch of petitions directing the police to register FIRs and dismissed another batch of petitions, with liberty to the petitioners to resort to alternative remedies, as held by the Supreme Court in *Sakiri Vasu.*

19. In *Kathiravan* v. *State rep. by the Commissioner of Police and the Inspector of Police*, P.R. Shivakumar, J., placing reliance upon the judgments in *Sakiri Vasu, Arokiya Marie and Sowfila*, held as follows:

> "26. The offences listed in *Arokiya Marie's case* as heinous crimes regarding which a direction can be issued under Section 482 Cr.P.C to register a case in order to ensure that the evidence of such crime do not get erased by passage of time can

be supplemented by other offences of grave nature and the offences exclusively triable by the court of sessions. In such cases also the High Court under Section 482 Cr.P.C shall exercise its discretion under Section 482 Cr.P.C to issue a direction for registration of a case. In other cases, the High Court shall not issue a positive direction to register cases.

29. In view of the foregoing discussions, it is ordered as follows:-

i ......

ii ......

iii The Station House Officer in each one of the following cases is directed to either to register a case, if he comes to the conclusion that a cognizable case has been made out by the contents of the complaint or to refer the informant to the Magistrate as per Section 155(1) Cr.P.C, if the complaint discloses commission of non-cognizable offence/non-cognizable offences alone and in case the Station House Officer comes to the conclusion that no offence has been made out either cognizable or noncognizable, he can close the complaint and inform the informant of the fact of such closure.

....

The above said direction shall be complied with within two weeks from the date of receipt of a copy of this order. The learned Government Advocate (Crl. Side) representing the respondents shall be provided with a copy of this order, who in turn, will communicate the same to all the respondents herein."

20. In the three cases referred to above, the learned Single Judges appear to have gone into the complaints individually and passed orders. It may be relevant to state here that the aforesaid judgments were delivered prior to the judgment of the Constitution Bench of the Supreme Court in *Lalita Kumari-IV.*

21. Before delving deep into the legal issues, some of the peripheral submissions are worth addressing.

22. It is an incontrovertible fact that some policemen still work with a colonial and fiercely feudalistic mindset. That is why, even after 69 years of independence, we are forced to retain Section 162, Cr.P.C. and Section 25 of the Evidence Act. One can proclaim without fear of contradiction that the common Indian is an embodiment of simplicity, self-contentment and peace. The intriguing aspect is, when he chooses to adorn the khaki uniform, how and why does he change his colour? Perhaps, the system that he enters into is the reason for this metamorphosis. The directions I propose to issue may help in marginally mitigating the travails of the common man.

23. I am in complete agreement with the submission at the Bar that a person who has come forward to accept Judgeship cannot be overawed at the size of his cause list and device specious ways and means to cut short litigations. However, I am unable to persuade myself to agree with the submission that mere filing of large number of such cases itself is indicative of people's faith in the judiciary. This argument is normally touted by members of the Indian judiciary in law seminars, un-supported by any empirical data and is merely a subjective self-proclamation. On the contrary, the following sagely words of the Supreme Court in *Subrata Roy Sahara* v. *Union of India* [(2014) 8 SCC 470) would speak volumes about the actual state of affairs in this country.

"191. The Indian judicial system is grossly afflicted, with frivolous litigations. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part."

24. It is only the people who know the intricate working of the Indian judicial system, exploit it to their advantage and leave the poor and the needy to fend for themselves outside of the system. An attempt by the noted jurist *Fali Nariman* by introducing a Private Member's Bill titled The Judicial Statistics Bill, 2004, in the Rajya Sabha for gathering real judicial statistics hit a *cul-de-sac*. Therefore, without any empirical data these appeals to rhetoric can lead us only to self deception.

25. The contention that junior lawyers will starve if such petitions are not entertained, is best answered in the words of *V.R. Krishna Iyer, J.* in his article *"Indian Justice - Perspectives and Problems".*

> "I shall now address myself to the reforms that the legal profession urgently needs, although Bench reform without Bar reform may baulk Justice process reform. The lawyer is the potential judge and the Bench is pathologically sensitive to the Bar lobby. Moreover, although the court chariot is steered by the 'robed' brethren, the lawyers collectively do back-seating driving. Never-the-less, I must leave the lawyer well alone here and reserve my 'submissions' to them to a later occasion. Some day, Lawyer Power must strengthen People's power. That will be their finest hour."

26. Should we continue to permit the lawyers' lobby to do the backseat driving?

27. Though Judges and lawyers are two sides of a coin, yet, they are not members of a secret cartel established to foster each other's pecuniary interests. We must remember that the entire judicial system is for the benefit of the common man. A young junior, in the initial years of his practice, may make immediate monetary gains, without much effort, by filing petitions under Section 482 and getting orders directing registration of FIRs. However, in the long run, when he is ousted by freshers, he is sure to be in the wilderness. Therefore, in their own interests, young juniors must be trained to begin their practice at the Magisterial level for providing succor to the common man who is exposed to the lowest tier of the judiciary and then graduate upwards slowly and steadily by gaining experience, which is a hard, but the best teacher. When raw and young turks with moral conviction start besieging the Magistrate Courts, the protection-money syndicate that is said to operate there will vanish. If this obnoxious practice of Bar members demanding protection money from their brethren is not nipped in the bud at the Magistrate Court level, sooner or later, the cancer will spread to the Sessions Court and eventually to the High Court as well. This issue, if really is existing, has to be sorted out by the right thinking members of the Bar through the Bar Council which is "*by the lawyers; for the lawyers; and of the lawyers*". The Judges cannot fit anywhere into this scheme of things. When a lawyer makes a complaint to a Magistrate in writing that protection money is being demanded, he should send this complaint with his covering letter to the Bar Council for disciplinary action.

28. The time has now come for the members of the Bar to address these vital issues which are threatening their very survival. This Court will be doing the greatest injustice by pampering junior lawyers instead of providing a level playing field for them in the Trial Courts to display their forensic abilities and increase their erudition.

29. Why should the apple cart be disturbed now when everyone is happy, was one of the refrains. Passing stereotype orders, as aforecited, may keep everyone, including me, happy, for, in the farewell address of the Advocate General, he will recount the total number of cases disposed by me and these disposals will hugely add to the numbers. But, is this quality justice? By my acquiescence, am I not playing a fraud on the system? In numerous FIRs, the police candidly write that the case has been registered on the directions of the High Court by even quoting the number of the Criminal Original Petition. If the actual order passed by this Court is read, in most cases, this Court would have only directed the police to register a case if a cognizable

offence is made out. This is misconstrued by the police as a positive direction by the Court to register an FIR. This clearly demonstrates that the police need some order from the High Court to conveniently hide underneath. Can we reduce the solemnity of judicial orders to pander to the needs of the police?

30. Now, coming to the arguments on law, it is quite interesting to note that the directions in *Sakiri Vasu* had their genesis in a Division Bench judgment of this Court in *Venu Srinivasan* v. *Krishnamachari, Secy., Divya Desa Parambariya Paadhukaappu Peravai, Trichy-6* [2005 (2) MWN (Cr.) 35 (DB)] (Markandey Katju, C.J. and F.M. Ibrahim Kalifulla, J.). The relevant paragraphs of the said judgment read as under:

> "8. We are at this stage not going into the merits of the controversy as we are of the opinion that the writ petition itself should have been dismissed on the ground of alternative remedy.
>
> 9. In our opinion, whenever it is alleged that a criminal offence has been committed, the complainant should ordinarily first avail of his remedy of filing an F.I.R. in the police station under Section 154(1) of the Cr.P.C.
>
> 10. Under that provision information relating to the commission of cognizable offence can be given to an officer in charge of the police station. Section 154(3) of the Cr.P.C. states that if an officer in charge of the police station refuses to record the information referred to in sub section (1) of Section 154 of the Cr.P.C. the complainant can send the substance of the information in writing by post to the Superintendent of Police concerned. Thus, if the Station House Officer of a police station refuses to register an FIR, the complainant has an alternative remedy of approaching the Superintendent of Police under Section 154(3) of the Cr.P.C.
>
> 11. If the Station House Officer as well as the Superintendent of Police refuse to register the FIR, or having registered it do not hold a proper investigation, the complainant then has a second alternative remedy by filing an application under Section 156(3) of the Cr.P.C. before the Magistrate concerned. On such complaint the Magistrate can direct registration of the FIR and/or proper investigation into the alleged offence, and he can also monitor the investigation, vide *Devarapalli V.* v. *Narayana*, AIR 1976 SC 1672: *Madu Bala* v. *Suresh Kumar*, AIR 1997 SC 3104, etc.
>
> 12. Apart from that, the complainant has a 3rd alternative remedy by way of filing a private complaint under Section 200 Cr.P.C.
>
> 13. Thus, there are three clear alternative remedies available to the complainant, if he alleges that a crime has been committed, and hence it is not proper for this Court to straightaway entertain a writ petition without insisting that the complainant first avails of those alternative remedies."

31. The judgment in *Sakiri Vasu* was rendered by Markandey Katju, J. (for himself and A.K. Mathur, J.) and the relevant portion of the judgment reads as follows:

> "24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and/or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.
>
> 25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating

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

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) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. 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) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions 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 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the police officers concerned, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere."

32. *Sakiri Vasu* is not a stand alone order. In *Sudhir Bhaskarrao Tambe* which was decided on 12.04.2010, but, reported in *(2016) 6 SCC 277*, the Supreme Court has reiterated the law laid down in *Sakiri Vasu.* The judgment of the Supreme Court in *Sudhir Bhaskarrao Tambe* came up for consideration once again before the Supreme Court in *Hemant Yashwant Dhage* v. *State of Maharashtra* [(2016) 6 SCC 273], in which, there is a reference to the *Sakiri Vasu* decision. The relevant portion from *Sudhir Bhaskarrao Tambe* reads as under:

"2. This Court has held in *Sakiri Vasu* v. *State of UP* (2008) 2 SCC 409 that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156 (3) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation."

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

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ensure a proper investigation in the matter, and he can also monitor the investigation."

33. Furthermore, a Division Bench of this Court, in *Ramachandran* (supra), has implicitly followed *Sakiri Vasu* and has held as under:

"10. In such circumstances, the learned Single Judge rightly refused to entertain the writ petition and held that the appellant has not made out any case for grant of any damages on the ground of public tort. The learned Single Judge by placing reliance on the decision of the Hon'ble Supreme Court in *Sakiri Vasu* v. *State of U.P.* [(2008) 2 SCC 409], declined to direct the CBI to investigate into the matter. As observed by the Hon'ble Supreme Court in the said decision, if a person has a grievance that his F.I.R has not been registered by the Police, first remedy is to invoke Section 154(3) CrPC and if despite approaching the Superintendent of Police under the said provision, he still has a grievance that he can approach a Magistrate under Section 156(3)CrPC. The person so aggrieved has a further remedy of filing a criminal complaint under Section 200 CrPC. In such circumstances, the Hon'ble Supreme Court held that writ petitions or petitions under Section 482 CrPC should not be entertained."

34. Long before the judgment in *Sakiri Vasu*, in *All India Institute of Medical Sciences Employees' Union (Regd.) through its President* v. *Union of India*, [(1996) 11 SCC 582], (for brevity "AIIMS Employees Union"), the Supreme Court has held as follows:

"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."

35. In *Gangadhar Janardan Mhatre* v. *State of Maharashtra* [(2004) 7 SCC 768] and *Hari Singh* v. *The State of U.P.* [(2006) 5 SCC 733], the Supreme Court reiterated the law laid down in *AIIMS Employees' Union.*

36. In *Aleque Padamsee* v. *Union of India* [(2007) 6 SCC 171], a 3 Judge Bench of the Supreme Court, has categorically held as under:

"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."

37. In *Divine Retreat Centre* v. *State of Kerala*, [(2008) 3 SCC 542], the Supreme Court held as under:

"42 Even in cases where no action is taken by the police on the information given to them, the informant's remedy lies under Sections 190, 200 Cr.P.C. but a writ petition in such a case is not to be entertained."

38. Heavy reliance was placed upon a recent judgment dated 05.09.2016 of the Supreme Court in *Prabhu Chawla* v. *State of Rajasthan* [2016 SCC OnLine SC 905]. In the said judgment, a special Bench of 3 Judges was constituted to reconcile the law propounded in *Dhariwal Tobacco Products Ltd.* v. *State of Maharashtra* [(2009) 2 SCC 370] and *Mohit alias Sonu* v. *State of Uttar Pradesh* [(2013) 7 SCC 789]. The Special Bench relied upon the judgment in *Madhu Limaye* v. *State of Maharashtra* [(1977) 4 SCC 551] and held that even though a remedy under Section 397, Cr.P.C. exists, yet, the inherent power of the High Court under Section 482, Cr.P.C. will not stand eclipsed. On the strength of this recent ruling, learned counsel contended that the existence of alternative remedies under Section 154(1), 154(3) and 156(3), Cr.P.C. will not, in any way, abridge the power of this Court under Section 482, Cr.P.C.

39. This Court gave its anxious consideration to the aforesaid submission. It is pertinent to point out that *Prabhu Chawla* relates to exercise of power under Section 482, Cr.P.C. in matters governed by revisional jurisdiction of the High Court/Sessions Court. The issue in *Prabhu Chawla* is not relatable to the remedy available to a person if the police fail to register an FIR. In a catena of judgments of the Supreme Court right from *AIIMS Employees' Union* upto *Hemant Yashwant Dhage* the categorical view of the Court is that if the police fail to register an FIR, the complainant should take recourse to Sections 154(3) or 156(3) or 190, Cr.P.C. read with Section 200, ibid. These judgments of the Supreme Court squarely cover the issue at hand and therefore, this Court cannot afford to ignore these line of judgments and take cover under *Prabhu Chawla* for entertaining a petition under Section 482, Cr.P.C., notwithstanding the existence of remedies under Sections 154(3), 156(3), 190 and 200 Cr.P.C.

40. Under Section 397, Cr.P.C., the High Court has been conferred with revisional powers to call for the records of any proceedings before any inferior Criminal Court and test the correctness, legality or propriety of such an order or proceeding. The inherent power under Section 482, Cr.P.C. can be invoked in matters that are covered by Section 397, *ibid*. But, can Section 482, for instance, be invoked when a matter is covered by a specific mention? The answer to this question is an emphatic "*no*". Where specific provisions exist under the Code to deal with a given situation, the invocation of Section 482, is clearly barred. This has been vividly explained by the Privy Council in *Lala Jairam Das* v. *The King Emperor* [1945 MWN (Cr.) 62], where, the issue before the Privy Council was whether the High Court can grant bail by exercise of its inherent power to a person whose conviction has been confirmed by the High Court and leave has been granted to move the Privy Council, pending decision of the Board. In that context, the Privy Council held that inherent power cannot be exercised to grant bail, however, desirable it may be. The following passages from the said judgment are instructive and will dispel the doubts in this regard.

"Section 561 A of the Code confers no powers. It merely safeguards all existing inherent powers possessed by a High Court necessary (among other purposes) to secure the ends of justice.

. . . Finally their Lordships take the view that Chapter XXXIX of the Code together with S.426 is, and was intended to contain, a complete and exhaustive statement of the powers of a High Court in India to grant bail and excludes the existence of any inherent additional power in a High Court relating to the subject of bail. They find themselves in agreement with the views expressed by Richardson J., Henderson J. and Bose J. in the three cases referred to earlier in this judgment.

. . . . Their Lordships fully appreciate the propriety and utility of such a power,

exercisable by judges acquainted with the relevant facts of each case, and (if exercised) with power to order that the bail period be excluded from the term of any sentence. But in their Lordships' opinion this desirable object can only be achieved by legislation." (emphasis supplied)

41. Reliance was placed on the judgment of the Supreme Court in *Ramesh Kumari* v. *State (NCT of Delhi)* [AIR 2006 SC 1322], wherein, the Supreme Court has held that the High Court should not have dismissed the petition for a direction to the police to register an FIR on the ground of non-exhaustion of alternative remedy. On a careful reading of the said judgment, it is seen that in a civil litigation, the High Court had granted interim stay protecting the possession of the complainant, despite which, the complainant was dispossessed by the accused. The complainant lodged two complaints to the police, but, to no avail. Aggrieved by the inaction, the complainant approached the High Court in writ proceedings for a direction to the police to register an FIR which was dismissed by the High Court on the ground of non-exhaustion of alternative remedy without even indicating what was the alternative remedy available to the appellant. Only in those circumstances, the Supreme Court had to interfere with the order of the High Court and in that context, the Supreme Court held that the High Court should not have dismissed the writ petition on the ground of non-exhaustion of alternative remedy.

42. In the issue at hand, primary remedies, *viz.*, Section 154(3), 156(3) and 190 read with Section 200, Cr.P.C. are available in the statute and they have been reiterated by the Supreme Court in *Sakiri Vasu* line of cases. Therefore, a solitary judgment on the peculiar facts of a case cannot be pressed into service to dislodge the law laid down by the Supreme Court in *Sakiri Vasu* line of cases.

43. It was brought to the notice of this Court that Madhya Pradesh High Court, Punjab and Haryana High Court, Gujarat High Court, Delhi High Court, Karnataka High Court, Kerala High Court and Jharkhand High Court implicitly follow *Sakiri Vasu* and do not issue directions to register FIRs.

44. It is the prerogative of the Bar to submit that this Court should declare *Sakiri Vasu* as *per incuriam* and should, instead, follow *Prabhu Chawla* Article 141 of the Constitution of India does not inhibit such arguments, but, clearly prohibits this Court from deviating from the law laid down by the Supreme Court. Any such deviation by this Court would not only amount to judicial overreach, but is also tantamount to judicial arrogance.

45. Relying upon the judgment of the Privy Council in *Khwaja Nazir Ahmad*, an argument was advanced at the Bar that Magistrates have no power to monitor the investigation as that would be an encroachment by the judiciary into the domain of the executive and therefore, this Court should not take note of the judgment of the Supreme Court in *Sakiri Vasu.*

46. It is true that in India, judiciary and the police work complementary to each other and not at cross-purposes. "Monitoring" does not mean "supervision". Under Section 172 Cr.P.C., the Magistrate has the power to call for the case diary and peruse the same. "Monitoring" simply means perusing the case diary and asking the Investigating Officer as to why he did not do this, that or the other and not directing him to do this, that and the other. In this regard, it will be in the fitness of things to point out that, in *Hemant Yashwant Dhage*, the Supreme Court has gone one step further and has approved the action of the Pune Magistrate in issuing certain directions to ensure that the investigation is on the right lines. To that extent, the Supreme Court has extended the powers of the Magistracy.

47. The *Lalita Kumari* conundrum began in 2008 and ultimately, ended in 2014. The chronology is as follows:

Ø Lalita Kumari - I (2008) 7 SCC 164

Ø Lalita Kumari - II (2008) 14 SCC 337
Ø Laiita Kumari - III (2012) 4 SCC 1
Ø Lalita Kumari - IV (2014) 2 SCC 1
Ø Lalita Kumari - V (unreported order dated 05.03.2014)

48. It is true that there is a reference to *Sakiri Vasu* in *Lalita Kumari-III*. But, the Supreme Court has not dissented from *Sakiri Vasu*. Ultimately, in *Lalita Kumari-IV*, the Constitution Bench of the Supreme Court dealt with the provisions of Section 154, Cr.P.C. and declared that when the complaint discloses commission of a cognizable offence, the Station House Officer is bound to register an FIR. The Supreme Court has clearly held that registration of an FIR under Section 154, Cr.P.C. is different and distinct from investigation of the case under Section 157, Cr.P.C. However, after holding so, in the operative portion of the order, the Supreme Court has issued the following directions, whereby, a preliminary enquiry is permitted in certain classes of cases. Paragraph no. 120.6 and 120.7 of the said judgment read as under:

"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 case
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 enquiry.

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 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry."

49. Mr. Nithyaesh Natraj, learned counsel, brought to the notice of this Court that the time period of seven days fixed in *Lalita Kumari-IV* at paragraph no. 120.7 (supra) has been further extended by the Supreme Court in *Lalita Kumari-V*, vide order dated 05.03.2014, which runs as follows:

"Heard Mr. Sidharth Luthra, learned Additional Solicitor General.

After hearing him and in the light of the grievance expressed in the present criminal miscellaneous petition filed in the writ petition, we modify clause (vii) of paragraph 111 of our judgment dated 12th November 2013 in the following manner:

"(vii) 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 cause of it must be reflected in the General Diary entry."

To this extent, clause (vii) of paragraph 111 of the judgment is modified.

Criminal Miscellaneous Petition is, accordingly, disposed of."

50. Thus, *Lalita Kumari-IV* has effectively given the police, enough time for even conducting preliminary enquiry and pursuant to *Lalita Kumari-IV* the Director General of Police has issued Standing Instructions-58/2013 dated 27.11.2013, incorporating the directions issued by the Supreme Court in paragraph no. 120 of the judgment in *Lalita Kumari-IV* and directing all the Commissioners of Police in cities and all Superintendents of Police in districts, to give suitable instructions to all the Station

House Officers in their respective cities/districts that the directions of the Supreme Court in *Lalita Kumari-IV* should be followed in letter and in spirit.

51. It is the grievance of the Bar that despite the aforestated directions issued by the Director General of Police, yet, at the ground level, the police officers are refusing to entertain the complaints and that the victims are ping ponged back and forth. This grievance of the Bar cannot be lightly ignored and this Court cannot toy under an idealistic delusion that the police officers in this State behave like their counterparts in England. What then is the panacea for this problem? Is a direction petition under Section 482 Cr.P.C. the panacea?

52. After *Lalita Kumari - IV and V*, the police can have no excuse to refuse entertaining a complaint, as that would visit the police officer with disciplinary proceedings, as mandated in paragraph no. 120.4 of *Lalita Kumari* - IV which is as follows:

> "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."

53. As pointed out at the Bar, no police officer has till now been convicted and sentenced for contempt and that has emboldened them to flout Court orders, even if it is that of the Supreme Court. In *D.K. Basu* v. *State of West Bengal* [AIR 1997 SC 610], the Supreme Court held as under:

> "37. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of Court and the proceedings for contempt of Court may be instituted in any High Court oif the country, having territorial jurisdiction over the matter."

54. In *Lalita Kumari*-IV, the Supreme Court has not stated that contempt action can be initiated in the concerned High Court, if there is a failure by the police to follow the time frame in a given case. In the absence of such an observation, I am afraid that this Court has no power to initiate contempt action in our High Court for the violation of the mandates of *Lalita Kumari - IV*.

55. Now, the seminal question that requires to be addressed is whether under Section 482, Cr.P.C., this Court has the power to step into the shoes of the Station House Officer and read the complaint and issue directions to register an FIR, if found necessary.

56. It was argued across the Bar that this Court has wide powers to give such directions in the interests of justice. Section 482, Cr.P.C. reads as under:

> "482. Saving of inherent powers of High Court:
>
> Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to:
>
> Ø any order under this Code, or
>
> Ø to prevent abuse of the process of any Court, or
>
> Ø otherwise to secure the ends of justice."

57. The issue as to whether the expression "to secure the ends of justice" found in Section 482 Cr.P.C. covers an administrative/executive act under the Code, came up for consideration before *Janarthanam, J.* in a batch of cases. The learned Judge, upon considering the decisions at the Bar, made the following reference to a Division Bench to resolve the issue:

> "The phraseology 'to secure the ends of justice', if properly interpreted, as adverted to earlier, would mean in the context that it is in relation to a proceeding in the High Court or any Subordinate Court and that proceeding too must have a judicial character and not of an Executive or Administrative one."

58. The aforesaid reference was answered by the Division Bench of this Court in *K. Rajamanickam* v. *State of Tamil Nadu, Inspector General and Superintendent, Central Prison*, [2015 (3) MWN (Cr.) 379 (DB)] (for brevity "Rajamanickam") which agreed with the interpretation of the said expression by *Janarthanam, J.* and held that executive functions under the Code cannot be interfered with under Section 482, Cr.P.C. Registration of an FIR by the police is an executive function.

59. This view has been affirmed by the Supreme Court in *State of West Bengal* v. *Sujit Kumar Rana* [(2004) 4 SCC 129] (for brevity "Sujit Kumar Rana") and the relevant paragraph reads as under:

> "33 From a bare perusal of the aforementioned provision, it would be evident that the inherent power of the High Court is saved only in a case where an order has been passed by the criminal court which is required to be set aside to secure the ends of justice or where the proceeding pending before a court amounts to abuse of the process of court. It is, therefore, evident that power under Section 482 of the Code can be exercised by the High Court in relation to a matter pending before a court; which in the context of Code of Criminal Procedure would mean 'a criminal court' or whence a power is exercised by the court under the Code of Criminal Procedure."

60. In *State of Punjab* v. *Davinder Pal Singh Bhullar* [(2011) 14 SCC 770], the Supreme Court considered and approved *Sujit Kumar Rana* and further affirmed beyond cavil, the reference made by Janarthanam, J. in *Rajamanickam.* The following passages of the said judgment are apposite:

> "63 Application under Section 482 Cr.P.C. lies before the High Court against an order passed by the court subordinate to it in a pending case/proceedings. Generally, such powers are used for quashing criminal proceedings in appropriate cases. Such an application does not lie to initiate criminal proceedings or set the criminal law in motion. Inherent jurisdiction can be exercised if the order of the Subordinate Court results in the abuse of the "process" of the court and/or calls for interference to secure the ends of justice. The use of word "process" implies that the proceedings are pending before the Subordinate Court. When reference is made to the phrase "to secure the ends of justice", it is in fact in relation to the order passed by the Subordinate Court and it cannot be understood in a general connotation of the phrase. More so, while entertaining such application the proceedings should be pending in the Subordinate Court. In case it attained finality, the inherent powers cannot be exercised. The party aggrieved may approach the appellate/revisional forum. Inherent jurisdiction can be exercised if injustice is done to a party, e.g., a clear mandatory provision of law is overlooked or where different accused in the same case are being treated differently by the Subordinate Court. *(emphasis supplied).*
>
> 64 An inherent power is not an omnibus for opening a Pandora's box, that too for issues that are foreign to the main context. The invoking of the power has to be for a purpose that is connected to a proceeding and not for sprouting an altogether new issue. A power cannot exceed its own authority beyond its own creation. . . . . ."

61. *A fortiori*. in the teeth of the above judgments, Section 482, Cr.P.C. does not confer power on this Court to step into the shoes of the Station House Officer and read the complaint in order to take a decision either this way or that way. Section 482, Cr.P.C. can be invoked only in respect of proceedings pending on the file of a Court and not otherwise. A petition to quash an FIR is entertained under Section 482, Cr.P.C., because, the FIR is sent to the Magistrate in terms of Section 157, Cr.P.C.

62. The expression "otherwise to secure the ends of justice" is not akin to the expression "for doing complete justice" used in Article 142(1) of the Constitution of India. That the inherent power of the High Court cannot be invoked in regard to

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matters which are directly covered by specific provisions in the Code, is no more *res integra* in view of a catena of judgments of the Supreme Court right from *Lala Jairam Das*. This principle has been reiterated in *Palaniappa Gounder* v. *The State of Tamil Nadu* [AIR 1977 SC 1323] wherein, it is held as under:

> "3. A provision which saves the inherent powers of a Court cannot override any express provision contained in the statute which saves that power. This is put in another form by saying that if there is an express provisions in a statute governing a particular subject matter there is no scope for invoking or exercising the inherent powers of the Court because the Court ought to apply the provisions of the statute which are made advisedly to govern the particular subject-matter."

63. As pointed out by Mr. M. Rajarathinam, learned State Public Prosecutor, Section 154, Cr.P.C. states that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced in writing by him or under his direction and be read over to the informant. Here, the thrust is on the "*the commission*" and "*giving*". The statute does not contemplate "*sending the information*", but, on "*giving the information*". In the context in which the word "given" is used, the law mandates that the person should give the information orally or in writing for the police officer to act upon. At that time, the police officer will be satisfied whether there has been commission of a cognizable offence and then, register or refuse to register an FIR. The phraseology used in Section 154 of the 1898 Code has been incorporated verbatim in Section 154 of the 1973 Code. In 1898, the only mode of giving information to the police was by personally going to the police station and tendering the same. This provided a great opportunity for the police to see the complainant in flesh and blood and to hear his version. On account of technological advancement, the word "given" may not bear the same weight now. The present day police can even register an FIR based on a complaint given over phone or sent by email or through Skype. It is left to his best judgment and discretion in such cases. We may take a day-to-day example to drive home this point. A lawyer can comfortably draft notice or pleading when the instructions are given by his client in person *(emphasis supplied)*. Of course, even based on email correspondence, notices and pleadings can be drafted. But, experience has shown that when the client comes in person and interacts, the quality of the pleadings will be far superior.

64. Unfortunately, a High Court Judge does not have this opportunity of seeing the complainant face to face and hearing him and reading the complaint given by him directly, to infer the commission of a cognizable offence. What is produced before a High Court Judge is only a copy of the complaint in the typed set of papers and with that, it is impossible for the Judge to decide that a cognizable offence has been committed. A complaint can be so well drafted that it can contain all the ingredients of a cognizable offence. But, to ensure that a cognizable offence has been committed, requires a little more.

65. This can be best explained by way of an illustration. "A" is a respectable person in the society and he has fixed his daughter's marriage. While so, "B" gives a complaint by post that 500 gms. of heroin is there under a sofa in "A's" house. This complaint discloses cognizable offence. If the police were to register an FIR straightaway without ensuring that there has been a commission of cognizable offence, irreparable and disastrous consequences will befall "A's" family. A mere paper news that an FIR has been registered by the police against "A" for allegedly possessing 500 gms. of heroin in his house, by itself, will devastate him and his family.

66. This is exactly the reason why the Supreme Court, in *Lalita Kumari-IV* and V, had permitted the police to conduct preliminary enquiry and had even extended the

time period for completing the same. Therefore, the contention of the members of the Bar that this Court should step into the shoes of the police officer and issue directions after reading the complaint in the typed set of papers either to register an FIR or not to register an FIR, would lead to travesty of justice. A complaint may be ill-drafted where a genuine offence has been committed. On account of such ill-drafting of a complaint resulting in this Court dismissing the petition, the consequences for the victim will be equally disastrous. In the 1882 Code, there was no provision akin to Section 156(3) Cr.P.C. The lawmakers were aware that the police do not register FIRs, for various reasons, leaving poor victims in the lurch. Only to obviate that, a parallel remedy has been provided in Section 156(3), Cr.P.C.

67. Now, it may be relevant to quote Section 2(d) of Cr.P.C. which defines the expression "complaint".

> "2(d) Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

68. The argument that Section 154 Cr.P.C. contemplates registration of FIR and Section 156(3), *ibid* contemplates investigation and therefore, they are different and distinct from each other, has already been answered by the Supreme Court in *Mohd. Yousuf* v. *Afaq Jahan (Smt.)* [(2006) 1 SCC 627] in the following terms:

> "11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

69. In *Priyanka Srivastava* v. *State of Uttar Pradesh* [(2015) 6 SCC 287] (for brevity "*Priyanka Srivastava*"), the Supreme Court has further directed that the Magistrates should obtain an affidavit from the complainant before acting under Section 156(3), Cr.P.C.

70. It was contended at the Bar that even if the Magistrates are approached, orders are not passed in time and rather, it only leads to further delays in investigation, by which time, valuable evidence is lost.

71. This argument can equally apply to a petition filed under Section 482, Cr.P.C. before the High Court, where, orders are not passed on the very day the cases are filed, for, the rules require that the petition should be passed, numbered and listed before the Court. Even after the case is listed, an order is passed only after hearing the learned Additional Public Prosecutor, by which time, loss of evidence complained of can occur.

72. In fact, under Section 156(3), Cr.P.C., a victim can consider approaching the Magistrate Court and give a statement to him orally, based on which, a direction can be issued after getting an affidavit from him as directed in *Priyanka Srivastava*. As a matter of fact, this is less time consuming than approaching High Court invoking Section 482, Cr.P.C.

73. Strong reliance was placed upon the judgment of the Supreme Court in *State of*

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West Bengal v. *Committee for Protection of Democratic Rights, West Bengal* [(2010) 3 SCC 571], wherein, a Constitution Bench of the Supreme Court has held that the victim of a crime has a right under Article 21 of the Constitution of India which right must be enforced by the Courts for his protection.

74. One can have no quarrel with the aforesaid proposition of law. But, one should not lose sight of the fact that the statute itself has provided certain remedies for the victim of a crime and those remedies provide an in-built safeguard for protecting his fundamental rights. As stated above, the inherent power under Section 482, Cr.P.C. is not a remedy mandating the High Court to step into the shoes of the Station House Officer and take a decision based on a copy of the complaint enclosed in the typed set of papers, without anything more.

75. When this Court posed a question as to whether an FIR registered by the police by virtue of a direction given under Section 482, can be quashed by the High Court under Section 482 Cr.P.C., one of the learned counsel submitted that the Judge who issued the direction to register the FIR should recuse himself, leaving the matter to another Judge to decide the quashing of the FIR independently.

76. This argument is indeed conveniently ignorant of the fact that the High Court is a single institution, albeit comprising many a Judge. Clauses 7 and 36 of the Amended Letters Patent of the High Court of Madras (1865) provide a complete answer to this contention in the following words:

> "7 Writs, etc. to issue in name of the Crown, and under seal:
>
> And We do hereby further grant, ordain, and appoint that all writs, summons, precepts rules, orders and other mandatory process to be used, issued or awarded by the said High Court of Judicature at Madras, shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the seal of the said High Court.
>
> 36. Single Judges and Division Courts:-
>
> And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Madras, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose. . ."

77. Needless to state that all orders of the High Court are sent under the hand and seal of the Hon'ble Chief Justice of the High Court and it is designated as the order of the High Court and not as the order of "X" Judge of the High Court.

78. It was also submitted that for quashing an FIR, this Court would see additional materials produced by the accused and therefore, there is no such dichotomy.

79. The Supreme Court has laid down the parameters in *State of Haryana* v. *Bhajan Lal* [1992 Supp (1) SCC 335] for quashing an FIR and it does not easily admit of looking at untested materials for quashing the FIR unless they are of sterling and unimpeachable quality.

80. If one Judge reads a complaint and steps into the shoes of the Station House Officer and issues a direction to the respondent police to register an FIR and after the change of portfolio, if the successor Judge reads the same complaint and decides to quash it, which he is perfectly entitled to do in exercise of his sound wisdom, the High Court will be a laughing stock in the eyes of the public. To obviate this dichotomy, it will be well advised to preserve the powers of the High Court to quash the FIR, rather than to assume a non-existing power of stepping into the shoes of the Station House Officer and directing him to register an FIR after reading the copy of the complaint in the typed set of papers. Viewed from that perspective, the question of exhaustion of alternative remedies under the Code of Criminal Procedure does not arise at all.

81. If a party had moved the Magistrate under Section 156(3) Cr.P.C. and a judicial

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order is passed, this Court will automatically get the power under Section 482 Cr.P.C. to look into the grievance of the complainant. Until then, the non-acceptance of the complaint by the police officer under Section 154 Cr.P.C. cannot confer jurisdiction on this Court to issue directions as prayed for.

82. This Court does not want to merely state the law and leave it at that, by ignoring the ground reality that police do not even receive the complaint given by a victim. The power for the police to detect an offence and bring the offender to justice flows from Section 21 of the Tamil Nadu District Police Act, 1859, (for brevity "the District Police Act") which reads as follows:

> "21. Duties of Police-Officers:
>
> Every Police-officer shall, for all purposes in this Act contained, be considered to be always on duty and shall have the powers of a Police-officer in every part of the General Police District. It shall be his duty to use his best endeavours and ability to prevent all crimes, offences and public nuisances; to preserve the peace; to apprehend disorderly and suspicious characters; to detect and bring offenders to justice; to collect and communicate intelligence affecting the public peace; and promptly to obey and execute all orders and warrants lawfully issued to him."

83. This power has been channelised by Chapter XII of the Cr.P.C. If a police officer fails in his duty to register an FIR, he can be prosecuted under Section 44 of the District Police Act and can also be subjected to disciplinary action under paragraph no. 120.6 of *Lalita Kumari-IV*. This is distinct from the power of the Magistrate to proceed under Section 156(3) Cr.P.C. or under Section 190, *ibid*.

84. In *the Superintendent of Police, Tiruvannamalai District, Tiruvannamalai* v. *the Judicial Magistrate Court, Cheyyar, Tiruvannamalai District* [2015-2-L.W. (Crl.) 320], this Court has elaborately explicated, the methodology to prosecute a police officer under Section 21 read with Section 44 of the District Police Act. Such prosecution should be entertained by Magistrates when it is alleged that the police officer has ignored the mandates of *Lalita Kumari-IV and V*. Such prosecutions are the immediate panacea to reign in recalcitrant policemen. No sanction is required for a prosecution under Section 44, but, it is subject to the limitation of three months laid down under Section 53 of the District Police Act.

85. Section 166-A IPC reads as follows:

> "166-A Public servant disobeying direction under law:
>
> Whoever, being a public servant-
>
> a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or
>
> b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or
>
> c) fails to record any information given to him under subsection (1) of section 154 of the Code of Criminal Procedure, 1973(2 of 1974), in relation to cognizable offence punishable under section 326-A, section 326-B, section 354, section 354-B, section 370, section 370-A, section 376, section 376-A, section 376-B, section 376-C, section 376-D, section 376-E or section 509, shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine."

86. The Parliament, in its wisdom, by introduction of 166-A in the IPC, has created a new offence for punishing police officers who fail in their duty to register FIRs in matters relating to certain classes of offences enumerated therein.

87. A Constitution Bench of the Supreme Court, in *Anita Kushwaha* v. *Pushap Sudan* [2016 SCC OnLine SC 772] (for brevity "Anita Kushwaha") has held that access to justice is a fundamental right of a citizen and the four main facets of constituting the essence of access to justice have been enumerated therein as follows:

i The State must provide an effective adjudicatory mechanism;

ii The mechanism so provided must be reasonably accessible in terms of distance;

iii The process of adjudication must be speedy; and

iv The litigant's access to the adjudicatory process must be affordable.

88. In *Priyanka Srivastava*, the Supreme Court issued guidelines to the Magistrates for dealing with a petition under Section 156(3), Cr.P.C. If a victim in a remote corner of the State is aggrieved by the refusal of the police to register an FIR, he need not have to come all the way to the State capital for invoking the jurisdiction of Section 482, Cr.P.C. In the light of the judgment of the Supreme Court in *Anita Kushwaha*, justice should be delivered to the victim by the nearest Magistrate by exercise of powers under Section 156(3), Cr.P.C. The complaint to the Magistrate under Section 156(3), Cr.P.C. is normally lodged in the manner in which plaints/petitions are drafted, which, in the opinion of this Court, is unnecessary. It would suffice if the victim gives a written representation addressed to the Magistrate in first person, either in Tamil or English, setting down his grievance, affixing the necessary Court fee stamp. The affidavit, as mandated by *Priyanka Srivastava*, can be in the formal form and it can accompany the representation. There should be an averment in the accompanying affidavit that the averments in the complaint are true.

89. In paragraph no. 31 of *Priyanka Srivastava*, the Supreme Court has held as under:

> "31 We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. . . ."

90. The Magistrate is required to follow the aforesaid dictum before ordering investigation on the complaint given by the complainant. After reading a copy of the complaint and the original affidavit filed, the Magistrate should send the original complaint and a copy of the affidavit to the police along with a copy of the order directing the police to investigate the case. Normally, the Magistrate merely writes on the docket of the Section 156(3) petition and sends it directly to the police. This procedure should not be adopted. The Magistrate should retain a photocopy of the complaint, original affidavit and the order must be recorded in the order sheet, so that the complainant can apply for the certified copy of the order passed by the Magistrate. The drafted order, together with the original complaint and photocopy of the affidavit should be sent to the police for investigation. The complaint sent by the Magistrate should form the basis for the police to register an FIR and not the accompanying affidavit. Despite the order of the Magistrate under Section 156(3), Cr.P.C., if the police do not register an FIR, the Magistrate can initiate prosecution against the Station House Officer under Section 21 read with Section 44 of the District Police Act before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate. Such a prosecution can also be launched by the complainant before the Chief Metropolitan

Magistrate or the Chief Judicial Magistrate and not before the Magistrate who had issued the direction under Section 156(3), Cr.P.C.

91. There is a practice in the State for the police to issue Community Service Register (CSR) receipt to the complainant in certain cases. In *Geetha @ Sharmila* v. *State, represented by Inspector of Police, W.26, All Women Police Station, Ashok Nagar, Chenai*, [2009 (2) MWN (Cr.) 212], a learned Single Judge of this Court has referred to the CSR procedure as under:

> "5. . . . . The Government of Tamil Nadu introduced a procedure, whereby, in matters relating to matrimonial and other minor offences, the police officers may, before even registering the case and after making entry in the Community Service Register, conduct a preliminary enquiry by summoning both the parties in dispute. Such procedure has been adopted only to avoid unnecessary litigation and harassment for the parties. Further if a compromise could be reached even at the stage of preliminary enquiry, such course is resorted to, else if the dispute could not be resolved and if a cognizable offence seems to be made out, usual procedure is applied by registering a case."

92. In *Santhanam Rajeshkumar* v. *The Home Secretary, Secretariat, Chennai - 9* [W.P. (MD) No. 10314 of 2014], the petitioner filed a writ petition under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the Home Secretary and Director General of Police to instruct all the Station House Officers not to issue CSR. The said writ petition was dismissed by a Division Bench of this Court vide order dated 31.08.2015.

93. This system cannot be totally faulted because *Lalita Kumari* itself provides for a preliminary enquiry in certain classes of cases and therefore, issuance of CSR receipt in cases where an FIR is not registered, is essential.

94. If a person who loses his vehicle comes up with the complaint to the police, the police shall issue him a CSR receipt immediately. If after enquiry, it is found that the financier has not seized the vehicle and that the person had really lost the vehicle, the CSR should be converted to an FIR so that the victim does not lose his right to make a claim from the insurer on the ground of delay in lodging the complaint. When a person loses his vehicle, his natural conduct will be to immediately go to the police station and give a complaint. This Court takes judicial notice of the fact that the police receive such complaints, but, deliberately sleep over them like *Rip Van Winkle* for various reasons. Section 114 of the Evidence Act permits this Court to draw such a presumption relating to natural course of human conduct. Though Section 114 states that the Court may presume that the official's acts have been regularly performed, this presumption will apply only when an act is performed by an official and not for the inaction of an official. In other words, there is no presumption in favour of the official for inaction. But, there can be a presumption in favour of the victim that he would have gone to the police and lodged a complaint immediately.

95. This Court directs the Director General of Police, Tamil Nadu, to issue a fresh Circular in supersession of the earlier Standing Instructions-58/2013 dated 27.11.2013, directing all the Station House Officers to scrupulously follow the mandates of the law laid down in *Lalita Kumari-IV and V* within one month from the date of receipt of a copy of this order. In certain agencies like Central Crime Branch and District Crime Branch, which normally investigate cases relating to cheating, land grabbing, etc., there is no procedure of issuing a CSR receipt. This Court directs the authorities to introduce the CSR system in Central Crime Branch and District Crime Branch as well. The Director General of Police shall also direct the Central Crime Branches and District Crime Branches to issue CSR receipt to the complainant. The Director General of Police, Tamil Nadu, shall issue such directions within a period of one month from the date of receipt of a copy of this order.

96. Coming to Union Territory of Puducherry, the situation appears to be no different. Therefore, similar directions require to be issued to the authorities of Puducherry. It is informed that there is no CSR system prevailing in Puducherry. Nevertheless, if the Station House Officer decides to conduct preliminary enquiry, he should make an entry in the General Diary and give a receipt to the complainant for having received the complaint. The receipt can either be an endorsement on the copy of the complaint itself or by way of a separate receipt. This Court directs the Secretary, Home Department, the Secretary, Law Department and the Director General of Police, Government of Puducherry to issue a circular to all the police stations within the jurisdiction of Union Territory of Puducherry to follow the mandates of the law laid down in *Lalita Kumari - IV and V* within a period of one month from the date of receipt of a copy of this order.

97. Last but not the least, we have the Legal Services Authority Act, 1987, under which, in the State of Tamil Nadu, a viable mechanism for providing access to justice to anyone in need of it, has been put in place. In every Taluk in the State, a judicial officer in the rank of Civil Judge or Senior Civil Judge (Munsif cadre/Sub Judge cadre) has been appointed as the Chairman of the Taluk Legal Services Committee. Likewise, in every District, a judicial officer in the rank of Senior Civil Judge (Principal Sub Judge) has been appointed as the District Legal Services Authority. Under Article 144 of the Constitution of India, it is the duty of these authorities also to act in aid of the Supreme Court and therefore, they should also ensure that the mandates of *Lalita Kumari-IV and V* are implemented. Any person who is aggrieved by refusal of the police to register an FIR on his complaint or issue a CSR receipt, can approach the local Legal Services Authority and on being approached, the Authority shall entertain the complaint and ensure the implementation of the directions of the Supreme Court in *Lalita Kumari - IV and V*.

98. The Member Secretaries, Tamil Nadu State Legal Services Authority and Union Territory of Puducherry Legal Services Authority are directed to circulate a copy of this order to all the Legal Services Authorities functioning under them for implementation.

99. Under Article 144 of the Constitution of India, a duty is cast upon this Court to act in aid of the Supreme Court. In *Lalita Kumari-IV and V*, the Supreme Court has given a time table for the police to act. This is the law declared by the Supreme Court under Article 141 of the Constitution and a duty is cast upon this Court to implement this law under Article 144 of the Constitution. When it is demonstrated to this Court that the police have failed to adhere to the time table in *Lalita Kumari - IV and V*, this Court derives jurisdiction under Article 144 of the Constitution of India read with Section 482, Cr.P.C. to issue a direction to the police to straightaway register an FIR on the petitioner's complaint, without stepping into the shoes of the Station House Officer and reading the complaint. In other words, breach of duty by the police gives power to this Court to interfere with under Article 144 of the Constitution of India read with Section 482, Cr.P.C. In such an event, the onus will be on the police to demonstrate to this Court that they have not violated the mandates of *Lalita Kumari-IV and V*. To assume this jurisdiction, it is imperative for the petitioner to wait for the outer limit of 6 weeks prescribed in *Lalita Kumari-V* to get over and then, approach this Court by filing an affidavit complaining of breach by the police. In the meantime, if there is an emergency, the party can move the Magistrate under Section 156(3), Cr.P.C. He may then approach the High Court, if aggrieved either by inaction or otherwise of the Magistrate, in the aforesaid proceedings.

100. As discussed above, this Court will not shut its door completely and deny access to justice. This Court will entertain an application under Section 482, Cr.P.C. on the failure of the police to follow the time table in *Lalita Kumari-IV and V* or not paying heed to the order passed by the Magistrate under Section 156(3), Cr.P.C. At present, the relief under Section 482, Cr.P.C. is being sought by way of a mere petition. Taking

cue from the dictum laid down by the Supreme Court in *Priyanka Srivastava*, this Court is of the view that the complainant must file an affidavit before this Court setting down the dates on which the complaint was given to the Station House Officer under Sections 154(1) and 154(3) Cr.P.C. with supporting proof. This Court is insisting on an affidavit, because, in several instances, it came to the notice of this Court that the complaint sent to the police differed from the copy of the complaint annexed in the typed set of papers. To obviate such sharp practices, this Court directs that a petition under Section 482, Cr.P.C. should be accompanied by an affidavit of the petitioner detailing the steps taken by him to give complaint under Section 154 Cr.P.C. to the Station House Officer and under Section 154(3) Cr.P.C. to the Superintendent of Police with supporting materials. It is made clear that this Court will not entertain complaints addressed to the Hon'ble Chief Minister of the State, Chief Secretary, Home Secretary, Director General of Police and other gubernatorial authorities. The complaint must be addressed to the Station House Officer at the first instance under Section 154(1), Cr.P.C. and thereafter, to the Superintendent of Police/Deputy Commissioner of Police under Section 154(3), Cr.P.C.

101. As a sequel to the aforesaid discussion, the following directions are issued:

i A petition under Section 482, Cr.P.C. for a direction to register an FIR on the complaint of the petitioner circumventing the time table prescribed by the Supreme Court in *Lalita Kumari-IV and V* is not maintainable.

ii This Court directs all the Station House Officers in the State of Tamil Nadu and Union Territory of Puducherry to receive any complaint relating to the commission of cognizable offence by a common man and if the Station House Officer wants to conduct a preliminary enquiry, he shall immediately issue a CSR receipt (in case of *Tamil Nadu*) or issue a separate receipt (in case of *Union Territory of Puducherry*) to the complainant and after making the necessary entries in the Station General Diary, as directed by the Supreme Court in *Lalita Kumari-IV and V*, conduct preliminary enquiry. In *Lalita Kumari-IV*, the Supreme Court has directed that after conducting preliminary enquiry, if the police come to the conclusion that no FIR need be registered, a duty is cast upon the police to furnish a copy of the closure report to the complainant. After getting the closure report, it is open to the complainant to file a petition under Section 156 (3) Cr.P.C. or private complaint under Section 190 read with Section 200 Cr.P.C. disclosing the facts and persuading the Magistrate to take cognizance of the offence. Such a petition/private complaint should disclose the closure report of the police. After taking cognizance of the offence, the Magistrate can also order police investigation under Section 202, Cr.P.C. to a limited extent. The closure report cannot be subject to judicial review under Section 482, Cr.P.C.

iii If the Station House Officer refuses to receive the complaint, the complainant shall send the complaint together with a covering letter to the Superintendent of Police/Deputy Commissioner of Police by *Registered Post with Acknowledgment Due* under Section 154(3), Cr.P.C.

iv If there is inaction on the part of the Station House Officer and the Superintendent of Police, the complainant is at liberty to move the jurisdictional Magistrate under Section 156(3) Cr.P.C.

v The complaint shall be given to the Magistrate either in Tamil or in English in the form of a representation in first person addressed directly to the Magistrate.

vi The complaint shall be accompanied by an affidavit as mandated by the Supreme Court in *Priyanka Srivastava.*

vii On receipt of the complaint, the Magistrate shall pass orders thereon within 15 days, either issuing directions or dismissing the petition.

viii If the Magistrate decides to order police investigation, he should pass a judicial

order to that effect in the record sheet.

ix A copy of the order, together with original complaint and copy of the affidavit, shall be forwarded by the Magistrate to the jurisdictional police officer for investigation.

x If the police officer does not register FIR within a period of one week from the date of receipt of the Magistrate's order, the Magistrate shall initiate prosecution against him under Section 21 read with Section 44 of the District Police Act before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be.

xi If no FIR is registered by the police within one week from the date of receipt of a copy of the order of the Magistrate under Section 156(3), Cr.P.C., the complainant can approach this Court under Section 482, Cr.P.C.

xii If the police fail to complete the preliminary enquiry within six weeks as mandated by the Supreme Court in *Lalita Kumari-V*, the complainant can approach this Court under Article 144 read with Section 482, Cr.P.C.

xiii The aforesaid petition under Article 144 read with Section 482, Cr.P.C. must be accompanied by an affidavit sworn to by the complainant with satisfactory materials to show that the police have not completed the preliminary enquiry within six weeks, as mandated by the Supreme Court in *Lalita Kumari-V*. In such a petition, this Court will not read the complaint, but, issue directions to the police to register an FIR on the complaint for the very failure of the police to follow the mandates of *Lalita Kumari-IV and V*. The Registry of this Court shall not number the petition filed under Section 482, Cr.P.C. seeking a direction to register an FIR unless it is accompanied by an affidavit containing the above details.

xiv In suitable cases, this Court shall also direct disciplinary action to be taken against the police officer for the violation of the mandates of *Lalita Kumari - IV and V*.

xv If the police officer fails to register the FIR pursuant to the directions of this Court, he will be liable for contempt of Court, besides facing disciplinary action.

xvi The aggrieved party can also approach the local Legal Services Authority and the Authority shall take immediate steps to ensure that an FIR is registered or CSR receipt issued to the complainant.

xvii Every police station shall have a board giving the name and telephone number of the local Legal Services Authority.

102. Before parting with the matter, this Court places on record, its profound gratitude and appreciation to all the learned counsel who made their submissions and assisted this Court with their erudition.

103. In the upshot, these Criminal Original Petitions are dismissed with liberty to the petitioners to follow the aforesaid directions and thereafter, approach this Court, if necessary.

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