

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

W.P.(C) No. 861 of 2017

Smt. Nongmaithem Ongbi Bhanu Devi aged about 55 years, W/o
N. Ibomcha Singh of Heirok Part-II Laishram Leikai, P.S. Heirok,
Thoubal District, Manipur.

..... *Petitioner*

- Versus -

1. The State of Manipur represented by the Principle Secretary/
Commissioner (Home), Government of Manipur, Imphal.
2. The Superintendent of Police, Tengenoupal Government of
Manipur at Tengenoupal and
3. The Officer-in-charge Moreh P.S. Government of Manipur at
Moreh.

.... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR

16.05.2019

[1] Heard Ms. L. Sillori, learned counsel appearing for the
petitioner and Mr. RK Umakanta, learned GA appearing for the
respondents.

[2] The prayer in the writ petition reads as follows:

*“ii) after hearing the parties to issue a writ in the nature of
a mandamus directing the respondents to register a
regular FIR case in term of the reports dated 28-03-2017
(Annexure-A/1) and dated 16-08-2017 (Annexure-A/6) and
investigate into the missing of Nongmaithem Ibomcha
Singh (58 years) who went on missing since 23-03-2017,
from Mintha Village, Myanmar and find out the missing
person dead or alive.”*

[3] Mr. RK Umakanta, learned GA for the State pleaded that
the relief sought for the petitioner can be available before the
competent Trial Court and he relies upon the decision dated 18.03.2019

passed in W.P.(C) No. 349 of 2015 of this Court as follows:

“[4] Mr. RK. Umakanta, learned G.A. relies upon the decision of the Hon’ble Supreme Court in the **Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage & Ors.** reported in **(2016) 6 SCC 277** to plead that the petitioner has to approach the competent court.

“2. This Court has held in **Sakiri Vasu v. State of U.P.** 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) Cr.P.C. If such an application under Section 156 (3) Cr.P.C. 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 complaint must avail of his alternate remedy to approach the Magistrate concerned under Section 156 (3) Cr.P.C and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.”

[5] He further relies upon the decision passed in **Sakiri Vasu v. State 3 of Uttar Pradesh & Ors. Reported in (2008) 2 SCC**. In this case it was held as follows :

“11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C. then he can approach the Superintendent of Police under Section 154 (3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory

result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

13. The same view was taken by this Court in **Dilawar Singh v. State of Delhi**. We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156 (3) Cr.P.C. and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156 (3) Cr.P.C.

14. Section 156 (3) states :
“156. (3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.”

The words “as abovementioned” obviously refer to Section 156(1), which contemplates investigation by the officer in charge of the Police Station.

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

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

17. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C. though briefly worded, in our opinion, is very wide and it will include all such incidental power as are necessary for ensuring a proper investigation.

18. *It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially for its execution.*

19. *The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his **Statutory Construction**.*

“..... If these details could not be inserted by implication, the drafting of legislation would be an interminable process and the legislative intent would likely be defeated by a most insignificant omission.”

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 police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C. we are of the opinion that they are implied in the above provision.*

[6] In the light of the above decisions referred to by the learned G.A., writ petition is disposed of by giving liberty to the petitioner to move the Trial Court for appropriate relief.”

[4] Writ petition is disposed of as above.

CHIEF JUSTICE

Sapana