Azadi Ka Amrit Mahotsav

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE: ROHINI COURTS, DELHI

No. 26240-26309 Genl.I/F. 3(A)/RC/2022 Delhi, dated 08/09/22

Sub: Judgment dated 05.08.2022 passed by the Hon'ble Supreme Court of India in Criminal Appeal No. 1184/2022 titled "XYZ vs The State of Madhya Pradesh and Ors."

Letter bearing No. 30273-393/Genl./HCS/2022 dt. 27.08.2022 alongwith copy of Judgment dated 05.08.2022 passed by the Hon'ble Supreme Court of India in Criminal Appeal No. 1184/2022 titled as "XYZ vs The State of Madhya Pradesh and Ors.", as received from o/o the Pr. District & Sessions Judge (HQ), Tis Hazari Courts, Delhi on the above cited subject, is being forwarded for information and necessary compliance to:-

1. All the Ld. Judicial Officers **(DHJS and DJS)**, **North-West & North** District, Rohini Courts, Delhi .

2. The Dealing Official, Computer Branch, Rohini Courts, Delhi for uploading the same on WEBSITE.

3. The Dealing Official, R & I Branch, Rohini Courts, Delhi for uploading the same on LAYERS.

(SEEMA MAINI)
Principal Judge, Family Court
Officer In-charge, General Branch-I
North-West & North Disrict
Rohini Courts Complex, Delhi

Encl: As above

Azadi Ka Amrit Mahotsav

Most Urgent/Out at once

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE (HQ): DELHI

No. 30273-393 Genl./HCS/2022 Dated, Delhi the 27 AUG 2022

Sub: Judgment dated 05.08.2022 passed by the Hon'ble Supreme Court of India in Criminal Appeal No. 1184/2022 titled "XYZ vs. The State of Madhya Pradesh and Ors."

Copy of the letter no. 18789-X/SLP dated 24.08.2022 alongwith copy of the covering letter bearing D.No. 4084/2022/SEC-II-A dated 16.08.2022 of the Hon'ble Supreme Court of India and also a copy of Judgment dated 05.08.2022 passed by Hon'ble Supreme Court of India in Criminal Appeal No. 1184/2022 titled as "XYZ vs. The State of Madhya Pradesh and Ors." is circulated for information and necessary compliance to : -

1. All the Ld. Principal District & Sessions Judges, Delhi, New Delhi and Rouse Avenue Court Complex (except Central District) with request to circulate the same amongst the Judicial Officers under your kind control.
2. All the Ld. Judicial Officers posted in Central District, Tis Hazari Courts, Delhi.
3. The Ld. Registrar General, Hon'ble High Court of Delhi, New Delhi for information.
4. PS to Ld. Principal District & Sessions Judge (HQs), Tis Hazari Courts, Delhi for information.
5. The Chairman, Website Committee, Tis Hazari Courts, Delhi with the request to direct the concerned official to upload the same on the Website of Delhi District Courts.
6. The Director (Academics), Delhi Judicial Academy, Dwarka, New Delhi for information as requested vide letter no.DJA/Dir.(Acd)/2019/4306 dated 06.08.2019.
7. Dealing Assistant, R&I Branch for uploading the same on LAYERS.
8. For uploading the same on Centralized Website through LAYERS.

N/W

जिला एवं सत्र न्यायालय (उत्तर पश्चिम)
Office of District & Sessions Judge (NW)
रजिस्ट्री एवं प्राप्ति सीट/Outside Receipt Seat
जमा की सं./Diary No. 3137
30 AUG 2022
रोहिणी न्यायालय, दिल्ली
Rohini Courts, Delhi

27/08/22

(RAKESH PANDIT)
Officer-in Charge, Genl. Branch, (C)
Addl. District & Sessions Judge,
Tis Hazari Courts, Delhi.

Encl.: As above.

(1)

Immediate

IN THE HIGH COURT OF DELHI AT NEW DELHI

1636 2022

No. 18789/SLP

Dt. 24/8/22.

From: The Registrar General
High Court of Delhi
New Delhi

To

1. The Principal District & Sessions Judge, Tis Hazari Courts (HQs), Delhi
(With a request to apprise all the concerned Trail Courts about the directions passed by The Hon'ble Supreme Court)
2. The Joint Registrar-Cum-PA, Office Of Registrar General, Delhi High Court
(For Information Only)
3. The Joint Registrar (Establishment-II), Delhi High Court, New Delhi

Dated the New Delhi the 24/08/2022

Petition for Supreme Court Criminal Appeal No. 1184 / 2022

XYZ ..Petitioner(s)/Appellant(s)

VERSUS

THE STATE OF MADHYA PRADESH AND OTHERS ...Respondent(s)

Sir,

I am directed to forward herewith for information and compliance a copy of Judgment dated 05/08/2022 and covering letter D.No. 4084/2022/SEC-II-A dated 16/08/2022 recieved from the Supreme Court of India in the above noted case.

Please acknowledge the receipt.

THE SEAL OF DELHI HIGH COURT NEW DELHI

Yours faithfully

24/8/22

Admn officer(J)(Civil-V)
for Registrar General

Genl. By.

P-DJSJ (Hqrs)
25/08/22

All Communications Should be Addressed to Registrar by Designation and not by Name.
Pin Code - 110001

THE HIGH COURT OF DELHI (Judicial Receipt Section)
Diary No. 1602

D. No. 4084/2022
SEC-II-A
SUPREME COURT OF INDIA
NEW DELHI
16th August, 2022

From:
The Assistant Registrar,
Supreme Court of India, New Delhi.

To,

1 THE REGISTRAR,
HIGH COURT OF ANDHRA PRADESH AT AMRAVATI,
DISTRICT- HYDERABAD, ANDHRA PRADESH
— PID: 101915/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

2 THE REGISTRAR,
HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD,
DISTRICT- HYDERABAD, TELANGANA
PID: 101916/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

3 THE REGISTRAR,
GAUHATI HIGH COURT,
DISTRICT- GUWAHATI, ASSAM
PID: 101918/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

4 THE REGISTRAR GENERAL,
HIGH COURT OF JUDICATURE AT PATNA,
DISTRICT- PATNA, BIHAR
PID: 101919/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

5 THE REGISTRAR,
HIGH COURT OF JUDICATURE AT BOMBAY,
DISTRICT- MUMBAI, MAHARASHTRA
PID: 101920/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

6 THE REGISTRAR,
HIGH COURT OF CHHATISGARH AT BILASPUR,
DISTRICT- BILASPUR, CHHATTISGARH
PID: 101921/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

7 THE REGISTRAR,
HIGH COURT OF DELHI AT NEW DELHI,
DISTRICT- NEW DELHI, DELHI
PID: 101922/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

8 THE REGISTRAR,
HIGH COURT OF GUJARAT AT AHMEDABAD,
DISTRICT- AHMEDABAD, GUJARAT
PID: 101923/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

9 THE REGISTRAR,
HIGH COURT OF HIMACHAL PRADESH AT SHIMLA,
DISTRICT- SHIMLA, HIMACHAL PRADESH
PID: 101924/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

10 THE REGISTRAR,
HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU,
DISTRICT- JAMMU, JAMMU & KASHMIR
PID: 101925/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

11 THE REGISTRAR,
HIGH COURT OF JHARKHAND AT RANCHI,
DISTRICT- RANCHI, JHARKHAND
PID: 101926/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

12 THE REGISTRAR,
HIGH COURT OF KARNATAKA AT BENGALURU,
DISTRICT- BANGALORE, KARNATAKA
PID: 101927/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

13 THE REGISTRAR,
HIGH COURT OF KERALA AT ERNAKULAM,
DISTRICT- ERNAKULAM, KERALA
PID: 101928/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

14 THE REGISTRAR,
HIGH COURT OF M.P PRINCIPAL SEAT AT JABALPUR,
DISTRICT- JABALPUR, MADHYA PRADESH
PID: 101929/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

15 THE REGISTRAR,
HIGH COURT OF ORISSA AT CUTTACK,
DISTRICT- CUTTACK, ORISSA
PID: 101930/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

16 THE REGISTRAR,
HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH,
DISTRICT- CHANDIGARH, PUNJAB
PID: 101931/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

17 THE REGISTRAR,
HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR,
DISTRICT- JODHPUR, RAJASTHAN
PID: 101932/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

18 THE REGISTRAR,
HIGH COURT OF SIKKIM AT GANGTOK,
DISTRICT- EAST, SIKKIM
PID: 101933/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

19 THE REGISTRAR
HIGH COURT OF JUDICATURE AT MADRAS AT CHENNAI,
DISTRICT- CHENNAI, TAMIL NADU
PID: 101934/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

20 THE REGISTRAR,
HIGH COURT OF JUDICATURE AT ALLAHABAD,
DISTRICT- ALLAHABAD, UTTAR PRADESH
PID: 101935/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

21 THE REGISTRAR,
HIGH COURT OF UTTARAKHAND AT NAINITAL,
DISTRICT- NAINITAL, UTTARAKHAND
PID: 101936/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

22 THE REGISTRAR,
HIGH COURT AT CALCUTTA,
DISTRICT- KOLKATA, WEST BENGAL
PID: 101937/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

23 THE REGISTRAR,
HIGH COURT OF MANIPUR AT IMPHAL,
DISTRICT- IMPHAL WEST, MANIPUR
PID: 101938/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

24 THE REGISTRAR,
HIGH COURT OF MEGHALAYA,
DISTRICT- EAST KHASI HILLS, MEGHALAYA
PID: 101939/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

25 THE REGISTRAR,
HIGH COURT OF TRIPURA AT AGARTHALA,
DISTRICT- WEST TRIPURA, TRIPURA
PID: 101940/2022 IN CRL.A. NO.1184/2022 (SEC II-A)

CRIMINAL APPEAL No. 1184 OF 2022

XYZ ... Petitioner(s)

Versus

THE STATE OF MADHYA PRADESH AND OTHERS ... Respondent(s)

Sir,

I am directed to forward herewith, a certified copy of the signed reportable judgment dated 05th August, 2022 passed by this Hon'ble Court in the matter above-mentioned for your information, necessary action and compliance.

Please acknowledge receipt.

You are requested to apprise all the concerned Trial Courts about the directions passed by this Hon'ble Court.

Yours faithfully,

ASSISTANT REGISTRAR 17/8/22

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No 1184 of 2022
(Arising out of SLP(Crl) No 1674 of 2022)

XYZ

... Appellant(s)

Versus

044759

State of Madhya Pradesh & Ors

...Respondent(s)

Certified to be true copy
Assistant Registrar (Judl.)
Supreme Court of India

JUDGMENT

Dr Dhananjaya Y Chandrachud, J

1. Leave granted.

2. This appeal arises from a judgment of a Single Judge dated 6 January 2022 at the Gwalior Bench of the High Court of Madhya Pradesh, dismissing an application under Section 482 of the Code of Criminal Procedure 1973.[1]

3. The appellant is working as a yoga instructor at Lakshmibai National Institute of Physical Education, Gwalior.[2] The second respondent was, at the material time, the Vice-Chancellor of the Institute. The appellant alleges that in March 2019, the second respondent touched her inappropriately at the Institute, upon which she disengaged herself and shouted at him. On 14 October 2019, she lodged a complaint at Police

1 "CrPC"
2 "Institute"

Station Gole Ka Mandir, Gwalior. Apprehending that the police had not taken any action, she furnished a complaint to the Superintendent of Police, City Centre, Gwalior on 15 October 2019. Finding that no action had been taken on her complaint, the appellant submitted another complaint to the Superintendent of Police on 18 February 2020 and to both the Superintendent as well as at the PS Gole Ka Mandir again on 24 February 2020. Eventually, the appellant moved the Judicial Magistrate First Class,[3] Gwalior under Section 156(3) of the CrPC. On 26 February 2020, the JMFC directed the police to file a status report. It appears that the proceedings before the JMFC were delayed due to the onset of the Covid-19 pandemic.

4. In the meantime, the appellant moved the High Court of Madhya Pradesh in a writ petition under Article 226 of the Constitution with the grievance that no inquiry was being conducted into her allegations, which were to be enquired into under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Protection and Redressal) Act 2013.

5. An Internal Complaints Committee[4] was constituted on 29 May 2020, with the approval of the Ministry of Youth Affairs and Sports. The report of the ICC dated 21 September 2020 found that the allegations which were levelled against the second respondent stood established. A dissenting note was submitted by one of the five members of the ICC. The second respondent has, this Court is informed, lodged an appeal against the findings of the ICC.

6. On 11 November 2020, the then Vice-Chancellor of the Institute addressed a communication to the second respondent stating that the DVRs containing an audio-

3 "JMFC"
4 "ICC"

video recording for the months of August and September 2019 of the CCTV cameras installed in the chamber of the Vice-Chancellor had been handed over to him in a sealed packet, according to the then in-charge Registrar, in terms of the oral direction of the second respondent. The second respondent was directed to make available the sealed packet containing the DVRs of the audio-video recording for the months of August and September 2019.

7. On 21 December 2020, the JMFC directed that a status report be sought from the concerned Police Station and that a letter be issued to the Station In-charge for that purpose. On 8 July 2021, a status report was filed by the officer in-charge, Police Station Gole Ka Mandir, District Gwalior before the JMFC, noting that during the course of the investigation, the statements of the complainant and the accused persons were recorded "wherein from the entire investigation, departmental proceedings was conducted against the complainant...due to departmental deficiencies and the occurrence of any offence was not found".

8. On 23 July 2021, a communication was addressed by the in-charge Vice-Chancellor to the second respondent once again reiterating the demand for the DVRs of the CCTV cameras placed in his office, which were stated to have been handed over to him by the in-charge Registrar.

9. On 16 August 2021, the station in-charge of the Police Station informed the JMFC that the investigation in the matter had not been completed and that time should be granted for submitting a further status report. A reminder was addressed by the JMFC to the station in-charge of the Police Station to submit a status report before the Court by 9 September 2021. Thereafter, a letter dated 11 September 2021 was

addressed by the JMFC to the Superintendent of Police, seeking a direction to the station in-charge to submit a report by 20 September 2021. On 20 September 2021, the JMFC recorded that the status report had been received and accordingly, the proceedings were posted for hearing the arguments of the applicant on 22 October 2021.

10. On 29 October 2021, the in-charge Vice-Chancellor at the Institute addressed a communication to the station in-charge of the Police Station alleging that a sealed packet of the DVRs had been handed over to the second respondent, the then Vice-Chancellor, on his oral directions and that despite communications for producing the DVRs, they have not been made available. The communication noted that the DVRs of the audio-video recording had been sought time and again by the appellant and were found to be unavailable at the Institute, having been unauthorizedly removed in an act of theft.

11. By an order dated 2 November 2021, the JMFC found that the appellant had filed a complaint alleging that the second respondent, who was the Vice-Chancellor of the Institute, had been sexually harassing her and, that she had been threatened with discharge from service on having refused his demands. The complainant narrated that in order to damage her records, other officers of the Institute, namely, the Head of the Department, a teacher and the Registrar, conspired with the second respondent by fabricating documents. In this backdrop, the JMFC observed:

> "The serious allegations have been made against the accused persons by the complainant, from perusal of the documents in this regard, statements of the complainant are found satisfactory. Though an enquiry report has been submitted by the Police Station, Gole Ka Mandir, wherein it has been mentioned during

> the course of investigation of the complaint, in the statements of the complainant recorded, the complainant has alleged about fabricating and tampering with her rightful documents as also putting pressure upon her as well as creating illegal compulsion upon the complainant by the accused persons Indi Bora, Payal Das, Vivek Pandey, Col. Janak Singh Shekhawat and Dilip Dureha, due to getting leave as also touching with bad intention by accused Dilip Dureha previously lodging a complaint in the Police Station, Gola Ka Mandir against the aforesaid accused persons and the Writ Petition No. 5625/2020, stated to be pending before the Hon'ble High Court. In the status report, it has also been mentioned that previously itself, a complaint was lodged by the complainant in the Police Station Gola Ka Mandir in the aforesaid regard, which was investigated by the Sub Inspector, Rashmi Bhadoria. During the course of investigation, statements of the complainant and the accused were recorded, wherein from the entire investigation, departmental proceedings against the complainant due departmental deficiencies, and occurrence of any incident or offence were not found. In the case, merely on the basis of the evidences collected through the court, the case may be adjudicated. From the facts stated by the complainant in the complaint, prima facie, occurrence of the offence by the accused persons are shown. In this regard, it is possible that the case can be decided without collecting the evidences from the police. In these circumstances, it does not appear just and proper to act upon the case filed on behalf of the complainant under section 156(3) Cr.P.C., The complaint filed on behalf of the complainant under section 156(3) Cr.P.C. will be treated as complaint case and if so desired, the complainant may present her statements against the accused persons under sections 200 and 202 Cr.P.C. Thereafter, registration will be considered.
>
> The case is fixed for further action.
>
> The case may be put up for further action on 13.12.21."

12. By the above order, the JMFC came to the conclusion that, *prima facie*, "occurrence of the offence by the accused persons" was "shown". Nonetheless, the JMFC held that the case could be decided without collecting evidence from the police and it did not appear just and proper to act on the case filed on behalf of the appellant under Section 156(3) CrPC. The JMFC proceeded to treat the complaint as a complaint

case by granting liberty to the appellant to be present for the recording of her statements under Sections 200 and 202 CrPC.

13. The order of the JMFC was questioned by the appellant under Section 482 CrPC. By an order dated 6 January 2022, a Single Judge of the High Court dismissed the application. The High Court held that the JMFC was not under an obligation to direct the police to register the FIR and the use of the expression "may" in Section 156(3) CrPC indicated that the JMFC had the discretion to direct the complainant to examine witnesses under Sections 200 and 202 CrPC, instead of directing an investigation under Section 156(3). The High Court also held that if the JMFC decided to proceed by examining witnesses under Sections 200 and 202 of CrPC, she would still have the option of seeking an investigation by the police, at that stage, by directing an inquiry under Section 202.

14. We have heard Ms Anitha Shenoy, senior counsel appearing on behalf of the appellant, Mr R Basant, senior counsel appearing on behalf of the second respondent, Mr Abhay Singh, counsel appearing on behalf of the third to sixth respondents and Mr Gopal Jha, counsel appearing on behalf of the State.

15. *First*, we find it appropriate to reiterate the duty of police to register an FIR whenever a cognizable offence is made out in a complaint. A Constitution Bench of this Court in **Lalita Kumari v Government of Uttar Pradesh**[5] has laid out the position of law as summarized in the following extract of the decision:

> "119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is

5 (2014) 2 SCC 1

> mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

16. We cannot help but note that the police's inaction in this case is most unfortunate. It is every police officer's bounden duty to carry out his or her functions in a public-spirited manner. The police must be cognizant of the fact that they are usually the first point of contact for a victim of a crime or a complainant. They must abide by the law and enable the smooth registration of an FIR. Needless to say, they must treat all members of the public in a fair and impartial manner. This is all the more essential in cases of sexual harassment or violence, where victims (who are usually women) face great societal stigma when they attempt to file a complaint. It is no secret that women's families often do not approve of initiating criminal proceedings in cases of sexual harassment. Various quarters of society attempt to persuade the survivor not to register a complaint or initiate other formal proceedings, and they often succeed. Finally, visiting the police station and interacting with police officers can be an intimidating experience for many. This discomfort is often compounded if the reason for visiting the police station is to complain of a sexual offence.

17. This being the case, the police ought not to create yet another obstacle by declining to register an FIR despite receiving a complaint regarding sexual harassment. Rather, they should put the complainant at ease and try to create an atmosphere free from fear. They ought to be sensitive to her mental state and the fact that she may have recently been subjected to a traumatic experience.

18. Whether or not the offence complained of is made out is to be determined at the stage of investigation and / or trial. If, after conducting the investigation, the police find that no offence is made out, they may file a B Report under Section 173 CrPC. However, it is not open to them to decline to register an FIR. The law in this regard is clear - police officers cannot exercise any discretion when they receive a complaint which discloses the commission of a cognizable offence.

19. *Second*, we deal with the issue of the discretion granted to a Magistrate vis-a-vis the exercise of powers under Section 156(3) CrPC. On this issue, the High Court has held that the JMFC was not under an obligation to direct the police to register the FIR and the use of the expression "may" in Section 156(3) CrPC indicated that the JMFC had the discretion to direct the complainant to examine witnesses under Sections 200 and 202 CrPC, instead of directing an investigation under Section 156(3).

20. A division bench of this Court in **Sakiri Vasu v. State of U.P.**[6] expounded upon the Magistrate's powers under Section 156(3) of the CrPC. In this decision, the Court noted:

> 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 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that

6 (2008) 2 SCC 409

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

...

13. The same view was taken by this Court in Dilawar Singh v. State of Delhi[3] (JT vide para 17). 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) CrPC, 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) CrPC.

...

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. 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.

...

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

...

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal

> complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?
>
> **(emphasis supplied)**

21. It is clear from the above extract that the Magistrate has wide powers under Section 156(3) which ought to be exercised towards meeting the ends of justice. A two-judge Bench of this Court in **Srinivas Gundluri v. SEPCO Electric Power Construction Corpn.,**[7] further clarified the powers of a Magistrate and held that whenever a cognizable offence is made out on the bare reading of complaint, the Magistrate may direct police to investigate:

> 23. To make it clear and in respect of doubt raised by Mr Singhvi to proceed under Section 156(3) of the Code, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceeding, may direct the police for investigation. In the case on hand, the learned Single Judge and the Division Bench of the High Court rightly pointed out that the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding and, therefore, we are of the view that the Magistrate has not committed any illegality in directing the police for investigation. In the facts and circumstances, it cannot be said that while directing the police to register FIR, the Magistrate has committed any illegality. As a matter of fact, even after receipt of such report, the Magistrate under Section 190(1)(b) may or may not take cognizance of offence. In other words, he is not bound to take cognizance upon submission of the police report by the investigating officer, hence, by directing the police to file charge-sheet or final report and to hold investigation with a particular result cannot be construed that the Magistrate has exceeded his power as provided in sub-section (3) of Section 156.

22. In the present case, the narration of facts makes it clear that upon the invocation of the jurisdiction of the Magistrate under Section 156(3) of CrPC, the JMFC came to

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7 (2010) 8 SCC 206

the conclusion that serious allegations had been levelled against the accused by the appellant and, that, from a perusal of the documents in this regard, the statements of the complainant were satisfactory. After taking note of the fact that the police had at an earlier stage reported that the occurrence of an incident or offence was not found, the JMFC opined that, from the facts which were set out by the complainant in the complaint, *prima facie*, the occurrence of an offence was shown.

23. It is true that the use of the word "may" implies that the Magistrate has discretion in directing the police to investigate or proceeding with the case as a complaint case. But this discretion cannot be exercised arbitrarily and must be guided by judicial reasoning. An important fact to take note of, which ought to have been, but has not been considered by either the Trial Court or the High Court, is that the appellant had sought the production of DVRs containing the audio-video recording of the CCTV footage of the then Vice-Chancellor's (i.e., the second respondent) chamber . As a matter of fact, the Institute itself had addressed communications to the second respondent directing the production of the recordings, noting that these recordings had been handed over on his oral direction by the then Registrar of the Institute as he was the Vice-Chancellor. Due to the lack of response despite multiple attempts, the Institute had even filed a complaint with PS Gole Ka Mandir on 29 October 2021 for registering an FIR against the second respondent for theft of the DVRs.

24. Therefore, in such cases, where not only does the Magistrate find the commission of a cognizable offence alleged on a *prima facie* reading of the complaint but also such facts are brought to the Magistrate's notice which clearly indicate the need for police investigation, the discretion granted in Section 156(3) can only be read

as it being the Magistrate's duty to order the police to investigate. In cases such as the present, wherein, there is alleged to be documentary or other evidence in the physical possession of the accused or other individuals which the police would be best placed to investigate and retrieve using its powers under the CrPC, the matter ought to be sent to the police for investigation.

25. Especially in cases alleging sexual harassment, sexual assault or any similar criminal allegation wherein the victim has possibly already been traumatized, the Courts should not further burden the complainant and should press upon the police to investigate. Due regard must be had to the fact that it is not possible for the complainant to retrieve important evidence regarding her complaint. It may not be possible to arrive at the truth of the matter in the absence of such evidence. The complainant would then be required to prove her case without being able to bring relevant evidence (which is potentially of great probative value) on record, which would be unjust.

26. In this backdrop, we are clearly of the view that the JMFC ought to have exercised jurisdiction under Section 156(3) of CrPC to direct the police to investigate.

27. At this stage, the Court is not called upon to decide upon the veracity of the allegations in the complaint, save and except to underscore the importance of an investigation by the police in a matter where the CCTV footage (or other evidence) is not under the possession or control of the appellant, but to be inquired into in the course of an investigation by the police. The discretion which has been conferred upon the Magistrate by Section 156(3) CrPC, must be exercised in a judicious manner.

28. In the facts of the present case and bearing in mind the position of law which has been laid down by this Court, recourse to the jurisdiction under Section 156(3) CrPC was warranted.

29. For the above reasons, we are inclined to set aside the impugned judgement of the High Court and to direct that the JMFC Gwalior shall, in terms of the observations contained above, order an investigation by the police under Section 156(3) CrPC. Having regard to all the facts and circumstances, including the need for a fair investigation, we direct that the investigation shall be supervised by a woman officer not below the rank of Superintendent of Police to be nominated by the DIG of the zone concerned. The judgement of the High Court dated 6 January 2022 shall accordingly stand set aside. The directions which have been issued by the JMFC to the effect that the complaint could be treated as a complaint case shall accordingly, to that extent, stand set aside and be substituted in terms of the directions which have been issued above.

30. *Finally*, we wish to once again reiterate the importance of courts dealing with complainants of sexual harassment and sexual assault in a sensitive manner. It is important for all courts to remain cognizant of the fact that the legal process tends to be even more onerous for complainants who are potentially dealing with trauma and societal shame due to the unwarranted stigma attached to victims of sexual harassment and assault. At this juncture, especially in cases where the police fails to address the grievance of such complainants, the Courts have an important responsibility. As the Delhi High Court held in **Virender v State of NCT of Delhi,**[8] courts have to remain alive to both treating the victim sensitively while also discharging the onerous task of

8 2009 SCC OnLine Del 3083

ensuring that the complete truth is brought on record so as to facilitate adjudication and answering the basic question regarding the complicity of the accused in the commission of the offence. In that case, the High Court held that:

> 22. It is to be noted that the embarrassment, and reservations of those concerned with the proceedings including the prosecutrix, witnesses, counsel may result in a camouflage of the trauma of the victim's experience. The judge has to be conscious of these factors and rise above any such reservations to ensure that they do not cloud the real facts and the actions which are attributable to the accused persons. **The trial courts must be alive to the onerous responsibility which rests on their shoulders and be sensitive in cases involving sexual abuse.**
>
> **(emphasis supplied)**

31. While the Delhi High Court made these observations while dealing with a case of rape; courts must remain alive to their duty to treat victims sensitively in cases alleging all forms of sexual harassment and sexual assault. The Courts must try to ensure that the process of attempting to bring alleged perpetrators to justice is not onerous for the victims. Aggrieved persons should not have to run from pillar to post for the mere registration of a complaint and initiation of investigation especially when a cognizable offence is *prima facie* made out in their complaint.

32. In **Aparna Bhat v State of Madhya Pradesh,**[9] a two-judge Bench of this Court took note of the "entrenched paternalistic and misogynistic attitudes that are regrettably reflected at times in judicial orders and judgments." In that case, Justice S. Ravindra Bhat observed and we reiterate:

> 31. The role of all courts is to make sure that the survivor can rely on their impartiality and neutrality, at every stage in a criminal proceeding, where she is the survivor and an aggrieved party. Even an indirect undermining of this responsibility cast upon the

9 2021 SCC OnLine SC 230

> court, by permitting discursive formations on behalf of the accused, that seek to diminish his agency, or underplay his role as an active participant (or perpetrator) of the crime, could in many cases, shake the confidence of the rape survivor (or accuser of the crime) in the impartiality of the court. The current attitude regarding crimes against women typically is that "grave" offences like rape are not tolerable and offenders must be punished. This, however, only takes into consideration rape and other serious forms of gender-based physical violence. The challenges Indian women face are formidable : they include a misogynistic society with entrenched cultural values and beliefs, bias (often sub-conscious) about the stereotypical role of women, social and political structures that are heavily male-centric, most often legal enforcement structures that either cannot cope with, or are unwilling to take strict and timely measures. Therefore, reinforcement of this stereotype, in court utterances or orders, through considerations which are extraneous to the case, would impact fairness.
>
> ...
>
> 43. The instances spelt out in the present judgment are only illustrations; the idea is that the greatest extent of sensitivity is to be displayed in the judicial approach, language and reasoning adopted by the judge. Even a solitary instance of such order or utterance in court, reflects adversely on the entire judicial system of the country, undermining the guarantee to fair justice to all, and especially to victims of sexual violence (of any kind from the most aggravated to the so-called minor offences).

33. The legislature has, at places, moulded criminal procedure to enable victims of sexual crimes to seek justice. This has been done in recognition of the gravity of sexual crimes and the need to handle such cases in an appropriately sensitive manner. For instance, Section 327 CrPC provides for in camera trials to be conducted with respect to offences punishable under Sections 376, 376A, 376B, 376C or 376D of the Indian Penal Code 1860.

34. This Court, too, has had its role to play in ensuring that justice does not remain inaccessible. In **State of Maharashtra v. Bandu @ Daulat,**[10] this Court directed that special centres be set up in each state in order to facilitate depositions by vulnerable

10 (2018) 11 SCC 163

witnesses, including victims of sexual offences. In **Smruti Tukaram Badade v. State of Maharashtra,**[11] a two judge bench of this Court (of which one of us, Dr. DY Chandrachud, J. was a part) supplemented the directions issued in **Bandu @ Daulat** (supra) with respect to setting up such special centres.

35. It is the duty and responsibility of trial courts to deal with the aggrieved persons before them in an appropriate manner, by:

a. Allowing proceedings to be conducted in camera, where appropriate, either under Section 327 CrPC or when the case otherwise involves the aggrieved person (or other witness) testifying as to their experience of sexual harassment / violence;

b. Allowing the installation of a screen to ensure that the aggrieved woman does not have to see the accused while testifying or in the alternative, directing the accused to leave the room while the aggrieved woman's testimony is being recorded;

c. Ensuring that the counsel for the accused conducts the cross-examination of the aggrieved woman in a respectful fashion and without asking inappropriate questions, especially regarding the sexual history of the aggrieved woman. Cross-examination may also be conducted such that the counsel for the accused submits her questions to the court, who then poses them to the aggrieved woman;

d. Completing cross-examination in one sitting, as far as possible.

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11 2022 SCC OnLine SC 78

36. Before closing, it is necessary to clarify that this Court has not expressed any opinion on the allegations which have been levelled in the complaint. It is for the investigating officer to investigate those allegations in accordance with law.

37. The appeal shall stand allowed in the above terms.

38. Pending application, if any, stands disposed of.

[redacted]

.....J.

[Dr Dhananjaya Y Chandrachud]

[redacted]

.....J.

[J B Pardiwala]

New Delhi;
August 05, 2022
-S-

(21)

Section: II-A

AMENDED CAUSE TITLE

IN THE SUPREME COURT OF INDIA

(Criminal Appellate Jurisdiction)

CRIMINAL APPEAL NO. 001184/2022

(Arising out of Judgment and final order dated 06th January, 2022 of the HIGH COURT OF M.P AT GWALIOR, GWALIOR BENCH MADHYA PRADESH in MCRC No. 63392 of 2021)

1# XYZ
R/O HOUSE NO. 15, LNIPE, GWALIOR , DISTRICT: GWALIOR ,MADHYA PRADESH — APPELLANT

VERSUS

1 THE STATE OF MADHYA PRADESH
THROUGH S.H.O., P.S.GOLE KA MANDIR,
DISTRICT GWALIOR, MADHYA PRADESH — ...RESPONDENT NO. 1

2* DILIP KUMAR DUREHA
PROFESSOR, AT DEPARTMENT OF PHYSICAL EDUCATION FACULTY OF ARTS,
B.H.U, VARANASI, U.P. (EX-VICE CHANCELLOR LNIPE, GWALIOR) OFFICIAL ADDRESS:
DEPARTMENT OF PHYSICAL EDUCATION FACULTY OF ARTS, B.H.U, VARANASI, U.P-221005, RESIDENCE ADDRESS: G 18, ARVINDO COLONY, DISTRICT: VARANASI ,UTTAR PRADESH \
P.S. LANKA, NEAR RAVIDAS GATE LANKA, VARANASI, U.P. -221005 — ...RESPONDENT NO. 2

3* INDU BORA,
PROFESSOR (EXHOD YOGA DEPARTMENT), LNIPE, GWALIOR R/O HOUSE NO. 73, LNIPE CAMPUS, MELA ROAD, SHAKTI NAGAR, RACE COURSE ROAD, LAKSHMIBAI NATIONAL INSTITUTE OF PHYSICAL EDUCATION, GWALIOR MADHYA PRADESH-474002 — ...RESPONDENT NO. 3

P.S. THANA GOLE KA MANDIR, NEAR ASTHA HOSPITAL, MAHAVEER, MORAR, GWALIOR, MADHYA PRADESH-474004

4* PAYAL DAS — ...RESPONDENT NO. 4
ASSISTANT PROFESSOR (YOGA DEPARTMENT), LNIPE, GWALIOR R/O HOUSE NO. 23, LNIPE CAMPUS, MELA ROAD, SHAKTI NAGAR, RACE COURSE ROAD, LAKSHMIBAI NATIONAL INSTITUTE OF PHYSICAL EDUCATION , DISTRICT: GWALIOR ,MADHYA PRADESH-

22

474002

P.S. THANA GOLE KA MANDIR NEAR ASTHA HOSPITAL, MAHAVEER, MORAR, GWALIOR, MADHYA PRADESH-474004

5* VIVEK PANDEY
PROFESSOR, PRESENTLY INCHARGE VICE CHANCELLOR LNIPE, GWALIOR, R/O 75, LNIPE CAMPUS, MELA ROAD, SHAKTI NAGAR, RACE COURSE ROAD, LAKSHMIBAI NATIONAL INSTITUTE OF PHYSICAL EDUCATION, GWALIOR, MADHYA PRADESH-474002
P.S. THANA GOLE KA MANDIR, NEAR ASTHA HOSPITAL MAHAVEER, MORAR, GWALIOR, MADHYA PRADESH-474004 ...RESPONDENT NO. 5

6* JANAK SINGH SHEKHAWAT
EX REGISTRAR LNIPE, GWALIOR R/O PLOT NO. 34, KUBER NAGAR GANDHI PATH WEST, VIASHALI NAGAR, JAIPUR RAJASTHAN-302034

P.S. VAISHALI NAGAR, 13, VAISHALI MARG, NEMI NAGAR EXTENSION, BLOCK A, JAIPUR, RAJASTHAN-302021 ...RESPONDENT NO. 6

* The accused persons has been impleaded as respondent nos. 2 to 6 vide order dated 03.03.2022 of this Hon'ble Court.

Sd/(14.03.2022)
ASSISTANT REGISTRAR

The name of the appellant has been shown as XYZ as directed by Hon'ble Court vide order dated: 05.08.2022.

17/8/22
ASSISTANT REGISTRAR