

Supreme Court of India

K Ramaswamy, G Pattanaik, JJ.

All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India

29 October, 1996

Constitution of India, Article 226 - Criminal Procedure Code, 1973 (II of 1974) - Writ jurisdiction - 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.

ORDER

1. This special leave petition has been filed against the order of the Delhi High Court made on May 14, 1996 in CWP No. 1946/96 directing institution proceedings against one, Dr. S.K. Kacker, former Director of the All India Institute of Medical Sciences for the alleged cognizable offence punishable under Section 409, Indian Penal Code. The Division Bench refused to issue mandamus to the police to investigate into the allegations made against the said doctor.

2. Shri Deshpande, learned Counsel for the petitioner, contended that the petitioner had laid all the necessary information before the Director as well as the Minister concerned and also the Prime Minister bringing to their notice all the offences committed by the doctor but no action in that behalf had been taken. As a result, the petitioner was constrained to move the High Court under Article 226 of the Constitution to take the steps as required under the law. The High Court, therefore, was not right in refusing to entertain the writ petition and giving directions in this behalf. We find that the stand taken by the petitioner is not correct in law.

3. The Code of Criminal Procedure, 1973 (for short, the 'Code') prescribes the procedure to investigate into the cognizable offences defined under the Code. In respect of cognizable offence, Chapter XII of the Code prescribes the procedure: information to the police and their powers to investigate the cognizable offence. Sub-section (1) of Section 154 envisages 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 to writing by him or under his direction, and be read over to the informant: and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf." On such information being received and reduced to writing, the officer in charge of the police station has been empowered under Section 156 to investigate into the cognizable cases. The procedure for investigation has been given under Section 157 of the Code, the details of which are not material. After conducting the investigation prescribed in the manner envisaged in Chapter XII,

charge-sheet shall be submitted to the court having jurisdiction to take cognizance of the offence. Section 173 envisages that: (1) Every investigation under this Chapter shall be completed without unnecessary delay. (2) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report in the form prescribed by the State Government giving details therein. Upon receipt of the report, the Court under Section 190 is empowered to take cognizance of the offence. Under Section 173(8), the investigating officer has power to make further investigation into the offence.

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 cognisance 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.

6. The special leave petition is accordingly dismissed. It, however, does not preclude the petitioner to follow either of the procedure as indicated above, if so advised and deemed appropriate.

Equivalent citations: 1996 IXAD SC 4, 1997 (1) ALD Cri 206, 1996 (4) Crimes 180 SC, 1996 (8) SCALE 383, (1996) 11 SCC 582, 1996 Supp 8 SCR 138, 1997 (1) UJ 68 SC