

GAHC010094852023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2447/2023

ASSAM YUVAK ADARSHA CO OPERATIVE BAHUMUKHI SOCIETY
HAVING ITS REGD OFFICE AT VILLAGE- BARBILA BILPAR,
P.O- HAHARA,
P.S- SONAPUR, DIST- KAMRUP METRO.

REP. BY ITS SECRETARY NIKHIL BISWAS, AGE-39,
S/O- RAIDHAN BISWAS,
R/O- VILLAGE BORBILA BILPAR,
P.O- HAHARA,
P.S- SONAPUR, DIST- KAMRUP METRO, ASSAM, PIN-782402

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE COMMISSIONER OF POLICE
KAMRUP METRO
M G ROAD
PAN BAZAR
GUWAHATI- PIN -781001

4:THE DEPUTY COMMISSIONER
KAMRUP (M)
GUWAHATI

ASSAM
PIN-781001

5:THE OFFICER IN CHARGE
SONAPUR POLICE STATION
SONAPUR
DIST- KAMRUP (M)
ASSAM
PIN-782402

6:NITYA NANDA GOGOI
S/O- P GOGOI.
MEMBER OF TILA BASTI COOPERATIVE SOCIETY
VILLAGE- BORBILA BILPAR

P.O- HAHARA

P.S- SONAPUR
DIST- KAMRUP (M)
ASSAM
PIN-78240

Advocate for the Petitioner : MR. U K GOSWAMI

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

08.05.2023

Heard Mr. U.K. Goswami, learned counsel for the petitioner, who submits that the petitioner's FIR against the respondent No. 6, who is troubling the petitioner with intent to take away the land of the petitioner has not been registered by the police. He further submits that the police are not taking any action against the respondent No. 6, despite the FIR submitted by the petitioner.

Mr. K. Gogoi, learned counsel for the respondent Nos. 1, 2, 3, 4 & 5 submits that

in cases where persons have a grievance that the police are not registering FIRs, the petitioners would have to approach the jurisdictional Magistrate with their grievance under Section 156 (3) Cr.PC. In this regard he has relied upon the judgment of the Apex Court in the case of ***Sudhir Bhaskarrao Tambe VS Hemant Yashwant Dhage***, reported in ***2016 6 SCC 277***, where at para 5 & 6, it is stated as follows:

“5. This Court has held in Sakiri Vasu v. State of U.P. & Others, reported in AIR 2008 SC 907, that if a person has a grievance that his F.I.R. 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 concerned Magistrate 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 F.I.R. 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's 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.

6. 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 concerned Magistrate 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.”

In view of the law laid down by the Apex Court, this Court is of the view that the petitioner should approach the jurisdiction of Magistrate with regard to it's grievance that the Sonapur Police Station is not registering the FIR submitted by the petitioner.

The Writ petition is accordingly disposed of.

JUDGE

Comparing Assistant