

GAHC010169622023



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

Case No. : WP(C)/4459/2023

M/S PHOENIX TEA AGRICULTURAL FIRM PRIVATE LIMITED AND ANR
REPRESENTED BY ITS DIRECTOR SRI VINOD AGARWAL, HAVING ITS
HEAD OFFICE AT 33/1, NETAJI SUBHAS ROAD, 444, MARTIAL HOUSE,
KOLKATA-700001 AND FACTORY OFFICE AT GHORAMORE, P.O. LAHOAL,
DIST. DIBRUGARH, PIN- 786010.

2: VINOD AGARWAL
S/O- KISHANLAL AGARWAL
DIRECTOR OF M/S PHOENIX TEA AGRICULTURAL FIRM PRIVATE
LIMITED
HAVING ITS HEAD OFFICE AT 33/1
NETAJI SUBHAS ROAD
444
MARTIAL HOUSE
KOKATA-700001

VERSUS

THE STATE OF ASSAM AND 3 ORS
SERVICE THROUGH THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF HOME, DISPUR, GUWAHATI-781006.

2:THE SUPERINTENDENT OF POLICE

DIBRUGARH
DIST. DIBRUGARH
ASSAM
PIN- 786001.

3:THE OFFICER-IN-CHARGE
CHABUA POLICE STATION
DIST. DIBRUGARH
PIN- 786184.

4:MANOJ SONOWAL
S/O- PADMO SONOWAL
RESIDING AT P.O. MULLUKGAON
P.S. CHABUA
PIN- 78618

Advocate for the Petitioner : MR T H HAZARIKA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 06-12-2023

Heard Mr. T.H. Hazarika, learned counsel for the petitioners and Mr. J. Handique, learned Junior Government Advocate, Assam for the respondent nos. 1, 2 & 3.

2. The instant writ petition under Article 226 of the Constitution of India has been preferred by the petitioners seeking *inter alia* a direction to the respondent authorities, more particularly, the respondent no. 3 to register forthwith a case against a private individual, impleaded herein as party-respondent no. 4, on the basis of a complaint stated to have been filed by the petitioners on 11.02.2023 before the respondent no. 2 and the respondent no. 3, followed by two reminders, dated 21.02.2023 & dated 25.02.2023; to conduct proper investigation into the offences alleged in the complaint/reminder; and to file a report in Final Form thereafter, before the competent court of law in accordance with law. The projections made in this writ petition are *inter alia* to the effect that the petitioner no. 2 is the owner of an area of land measuring about 5 Bighas 4 Kathas 15 Lessas situate at Village – Boragadhoi, P.O. – Mullukgaon,

Chabua, Dibrugarh ['the subject-land', for short] under differed patta nos. and dag nos., as described in a table. The petitioner no. 1 which is a company incorporated under the provisions of the Companies Act, 1956, had been carrying out cultivation in the subject-land, after being permitted by the petitioner no. 2. It is the allegation of the petitioners that in January, 2023, they noticed encroachment of a part of the subject-land by the respondent no. 4. The petitioners have stated that on noticing such illegal encroachments on a part of the subject-land, they had filed the complaint and the reminders, mentioned above, before the respondent no. 2 and the respondent no. 3 on 11.02.2023, 21.02.2023 & 25.02.2023 respectively. Alleging that the respondent no. 2 and the respondent no. 3 did not proceed with the matter as per law and in view of non-registration of the complaint and the reminders as a First Information Report [FIR], the petitioners are compelled to approach this Court seeking the reliefs, mentioned above.

3. This Court on 20.11.2023, while expressing a *prima facie* view that the scope of interference by a writ court in such matter is limited, had, however, directed the learned State Counsel to obtain instructions as to whether there were any materials in the complaint and the reminders disclosing any cognizable offence.

4. Mr. Handique, learned State Counsel has placed a Communication bearing no. RB/8/WPC/2023/1561 dated 01.12.2023, sent to him by the respondent no. 2, enclosing a Report which was submitted by the respondent no. 3 before the respondent no. 2 on 30.04.2023. As per the said Report of the respondent no. 3, an enquiry was made through a Sub-Inspector of Police on receipt of the complaint/reminder from the petitioner no. 2 on 25.02.2023 and in the course

of enquiry, it was found that the dispute was of civil nature. On the basis of such finding, the Sub-Inspector of Police had raised one Non-FIR proceeding vide Chabua Police Station Non FIR Case no. 29/2023 under Section 107, Code of Criminal Procedure, 1973 and submitted it before the District Magistrate through the Prosecuting Inspector, Dibrugarh Court on 02.09.2023.

5. Mr. Hazarika, learned counsel for the petitioner has drawn attention to the complaint dated 11.02.2023 to submit that there was forceful encroachment and land grabbing of a part of the subject-land on the part of the respondent no. 4 and the same have clearly made out offences under Sections 447/448/506/34, Indian Penal Code r/w Sections 4/5 of the Assam Land Grabbing Act, 2010. Controverting such observations made in the Report dated 30.04.2023, he has submitted that the complaint and the reminders had clearly made out commission of cognizable offences.

6. Considering the submissions of the learned counsel for the petitioners, it has emerged that the petitioners are not satisfied with the observations made in the Report, submitted by the respondent no. 3, on the basis of the findings reached through the enquiry, caused after receipt of the complaint and the reminders.

7. It has further emerged that after approaching the respondent no. 2 and the respondent no. 3, the petitioners have straightaway approached this Court by this writ petition under Article 226 of the Constitution of India seeking the above directions, on the premise that the measures taken by the said respondents are not at all satisfactory. Admittedly, the petitioners have not approached the jurisdictional Magistrate by filing any application under Section 156[3], Code of Criminal Procedure, 1973 [CrPC] by highlighting their

grievances in respect of non-registration of the complaint and the reminders as a crime case for cognizable offences and/or improper/perfunctory investigation. According to the petitioners, the complaint and the reminders have disclosed commission of cognizable offences. The petitioners have also complained about not conducting the investigation in an appropriate manner.

8. In this connection, it would be apposite to refer to the following observations made by the Hon'ble Supreme Court of India in *Sakiri Vasu vs. State of Uttar Pradesh and others*, reported in [2008] 2 SCC 409 :

“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.

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13. The same view was taken by this Court in *Dilawar Singh vs. State of Delhi* [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 order[s] as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156[3] CrPC.

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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.

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 re-opening of the investigation even after the police submits the final report, vide State of Bihar vs. J.A.C. Saldanha [SSC AIR para 19].

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.

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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] CrPC 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] CrPC, 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 CrPC. 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, firstly under Section 154[3] and Section 36 CrPC before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate 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] 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?

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 CrPC 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 concerned police officers, and if that is of no avail, under Section 156[3] CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.”

9. The observations made by the Hon'ble Supreme Court of India in *Sakiri Vasu* [supra] have again been reiterated in the subsequent decision in *Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and others*, reported in [2016] 6 SCC 277 in the following manner :

"2. This Court has held in *Sakiri Vasu Vs. 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] 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 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 ensure a proper investigation in the matter, and he can also monitor the investigation.

4. In view of the settled position in *Sakiri Vasu* case, the impugned judgment of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under Section 156[3] CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned a change of the investigating officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate [as investigation is the job of the police]. Parties may produce any material they wish before the Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.”

10. The observations made in *Sakiri Vasu* [supra] and *Sudhir Bhaskarrao Tambe* [Supra] have also been followed in the three-Judges Bench decision in *M. Subramaniam and another vs. S. Janaki and another*, reported in [2020] 6

SCC 728.

11. In the above fact situation obtaining in the case, as have been projected briefly above, and in the light of the observations of the Hon'ble Supreme Court of India in Sakiri Vasu [supra] and Sudhir Bhaskarrao Tambe [supra], this writ petition seeking the above directions is not entertained, reserving the liberty, however, to the petitioner to avail the remedy of approaching the jurisdictional Magistrate under Section 156 [3], CrPC, if so advised. While not entertaining the writ petition, this Court would like to clarify that this Court has not expressed any opinion on merits including on the aspect whether any cognizable offence is made out or not. Taking cue from the observations made in M. Subramaniam and another [supra], it is also clarified that a civil dispute should not be given colour of criminal offence and at the same time, pendency of a civil dispute cannot be a ground and justification not to register and investigate a FIR, if commission of a cognizable offence has been made out.

12. The Communication bearing no. RB/8/WPC/2023/1561 dated 01.12.2023 of the respondent no. 2 is kept as part of the record, by marking it as Document-'X'.

JUDGE

Comparing Assistant