

GAHC010210102019



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

**Case No. : WP(C)/6458/2019**

PAWAN KUMAR BAGRI  
S/O- SRI BHAGWAN DAS BAGRI, R/O- GAUHATI ROLLER FLOUR MILL,  
G.S.ROAD, DISPUR, GHY-5, DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.  
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HOME DEPTT.,  
DISPUR, GHY-6, ASSAM

2:THE DIRECTOR GENERAL OF POLICE  
ASSAM ULUBARI  
GHY DIST- KAMRUP (M)  
PIN- 781007 ASSAM

3:THE DY. SECRETARY  
GOVT. OF ASSAM  
POLITICAL (A) DEPTT.  
DISPUR GHY-6 ASSAM

4:THE COMM. OF POLICE  
KAMRUP (M) ASSAM PANBAZAR  
GHY-01

5:OFFICER-IN-CHARGE  
BHANGAGARH P.S.  
BHANGAGARH

GHY-0

**Advocate for the Petitioner : MR. M NATH**  
**Advocate for the Respondent : GA, ASSAM**

**BEFORE  
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

**JUDGMENT**

**15.05.2023**

Heard Mr. M. Nath, learned senior counsel assisted by Mr. A. Roy, learned counsel for the petitioner and Mr. K. Gogoi, learned Additional Senior Government Advocate, Assam for all the respondents.

2. The case of the petitioner, as projected in the writ petition, in brief, is that he lent an amount of Rs. 8,80,000/- to one Mr. Gagan Ashok Khemka in the year 2006. The petitioner has contended that Mr. Gagan Ashok Khemka who borrowed the money from him, assured him to refund the said amount within a specified time period. The petitioner stated to have lent the said amount to the borrower [Mr. Gagan Ashok Khemka] through a cheque bearing no. 84513 drawn at ICICI Bank, Bhangagarh Branch on 01.11.2006 and the amount was duly credited to the borrower's bank account bearing no. 036601500438 maintained at Juhu Branch, ICICI Bank, Mumbai. When the borrower did not return the money despite several requests made by the petitioner, the petitioner stated to have lodged a First Information Report [FIR] before the Officer In-Charge, Bhangagarh Police Station on 06.02.2018. On receipt of the said FIR, a case has been registered by the Officer In-Charge, Bhangagarh Police Station being Bhangagarh Police Station Case no. 14/2018 under Sections 406/420, Indian Penal Code [IPC] against the borrower viz. Mr. Gagan Ashok Khemka.

2.1. The petitioner has contended that when he found the investigation of the case was not being done in an expeditious manner for a period of more than 1 ½ years and the investigation was not resulting into filing of any charge sheet/final report under Section 173, Code of Criminal Procedure, 1973 [CrPC], the petitioner reported the matter to the Commissioner of Police, Guwahati in writing by his Representations dated 02.05.2018 & dated 11.06.2018. When no response was received from the Commissioner of Police, Guwahati, the petitioner approached the Court of learned Judicial Magistrate, 1<sup>st</sup> Class, Kamrup [M] Guwahati by filing an application under Section 156[3], CrPC praying for a direction to the

respondent no. 5, that is, the Officer In-Charge, Bhangagarh Police Station to submit a report in connection with Bhangagarh Police Station Case no. 14/2018. The said application was registered and number as Petition no. 468/2018.

2.3. It transpires from the case records that the learned Judicial Magistrate, 1<sup>st</sup> Class, Kamrup [M], Guwahati by an order dated 28.09.2018 called for a status report from the Investigating Officer [I.O.] of the case and on 11.10.2018, the I.O. has submitted a status report of the investigation before the said Court stating that the investigation of the case was in progress. On receipt the status report of investigation, the learned Court by its order dated 11.10.2018 disposed of the application being Petition no. 458/2018. When despite elapse of sufficient time period, the petitioner found the investigation is progressing in a tardy manner, he has approached this Court by the instant writ petition under Article 226 of the Constitution of India seeking *inter alia* a direction to the respondent authorities, more particularly, the respondent no. 5 to complete the investigation in connection with Bhangagarh Police Station Case no. 14/2018 and to file a report under Section 173, CrPC before the Court of learned Chief Judicial Magistrate, Kamrup [M] Guwahati.

3. From the fact situation projected in this writ petition, this Court finds that the present writ petition is a misconceived one in view of the authoritative pronouncements of the Hon'ble Supreme Court of India in Sakiri Vasu vs. State of Uttar Pradesh and others, reported in [2008] 2 SCC 409, and Sudhir Bhaskarrao Tambe vs. Hemen Yashwant Dhage and others, reported in [2016] 6 SCC 277.

4. It has been explained in Sakiri Vasu [supra] to the effect that 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. It has been explained that though these powers have not been expressly mentioned in Section 156[3], CrPC, they are implied in the above provision.

4.1. The Hon'ble Supreme Court in Sakiri Vasu [supra] has further observed in the following manner :-

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.

4.2. The decision in *Sakiri Vasu* [supra] has been referred to in the subsequent decision of the Honble Supreme Court in *Sudhir Bhaskarrao Tambe* [supra] and it has been observed as under :-

2. 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 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 the investigating officer, so that a proper investigation is done in the matter. We have said this in *Sakiri Vasu* [supra] 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* [supra] 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 concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.

5. From the observations made by the Hon'ble Supreme Court of India in Sakiri Vasu [supra] and Sudhir Bhaskarrao Tambe [supra], this Court is of the unhesitant view that the petitioner has an adequate and efficacious remedy under law and the remedy is to approach the learned Magistrate under Section 156[3], CrPC by contending that there has not been proper investigation in the case i.e. Bhangagarh Police Station Case no. 14/2018 and if he does so and if the learned Court reaches the prima facie satisfaction that the investigation in Bhangagarh Police Station Case no. 14/2018 is not being carried out in a proper manner he can ensure proper investigation and also monitor the investigation in the manner, as observed in Sakiri Vasu [supra] and Sudhir Bhaskarrao Tambe [supra].

6. In the aforesaid view of the matter, this Court is of the considered view that the present writ petition with the reliefs sought for is not to be entertained as the petitioner has an adequate and efficacious remedy under the law. Consequently, this writ petition is not entertained, but liberty stands granted to the petitioner to approach the jurisdictional Magistrate under Section 156[3], CrPC in expeditious manner, if so advised. It is, however, made clear that this Court has not made any observation on the merits of the claims of the petitioner. There shall, however, be no order as to cost.

**JUDGE**

**Comparing Assistant**