Court No. - 43
Case :- CRIMINAL MISC. WRIT PETITION No. - 19054 of 2023

Petitioner :- Kallo
Respondent :- State Of U.P. And 7 Others
Counsel for Petitioner :- Anil Pratap Singh Raghav
Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra,J.
Hon'ble Mohd. Azhar Husain Idrisi,J.

1. Heard learned counsel for the petitioner as well as learned A.G.A. for the State-respondents.

2. The present petition has been filed seeking direction to the respondent authorities to conclude the fair investigation of Case Crime No. 927 of 2023, under Sections 147, 364, 302 IPC, P.S. Khurja Nagar, District Bulandshahr.

3. The contention of learned counsel for the petitioner is that the police is acting in collusion with the accused persons and as yet neither the accused persons have been arrested nor any charge sheet has been filed against the accused persons.

4. Admittedly, petitioner is aggrieved by the manner of investigation said to have been conducted against private respondents.

5. The apex court in the case of ***Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage, (2016) 6 SCC 277***, following its earlier decision in ***Sakiri Vasu v. State of U.P., (2008) 2 SCC 409***, held as follows:

"2. This Court has held in Sakiri Vasu v. 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) Cr.P.C. 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 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) 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."

6. The power of the Magistrate to monitor investigation in exercise of his power under section 156(3) Cr.P.C. has also been recognized in the decision of the apex court in the case of ***T.C. Thangaraj v. V. Engammal, (2011) 12 SCC 328 : (2012) 1 SCC (Cri) 568***, where, in the light of the law laid down in ***Sakiri Vasu's case (supra)***, it has been observed as follows:

"12. It should also be noted that Section 156 (3) of the Code of Criminal Procedure provides for a check by the Magistrate on the police performing their duties and where the Magistrate finds that the police have not done their duty or not investigated satisfactorily, he can direct the police to carry out the investigation properly, and can monitor the same. (See Sakiri Vasu v. State of U.P.)."

7. Recently, the Hon'ble Supreme Court in ***M.Subramaniam and another v. S.Janaki and another, 2020 SCC online S.C. 341*** affirmed the view taken by the Supreme Court in ***Sakiri Vasu v. State of Uttar Pradesh (supra)*** and held as under:

"17. In our opinion Section 156 (3) Cr.P.C. 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) Cr.P.C., 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."

8. In view of the law noticed above, we dispose off this petition with liberty to the petitioner to invoke the power of the Magistrate available under the Code of Criminal Procedure in the light of the law laid down by the apex court as noticed above.

Order Date :- 8.12.2023
M. Tarik

Digitally signed by :-
MOHD TARIK
High Court of Judicature at Allahabad