

GAHC010073262024



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

Case No. : WP(C)/2035/2024

DEEPAK SARMAH
S/O- SRI PHANINDRA SARMAH,
RESIDENT OF BORATIGURI,
P.O.- GAMIRI,
DISTRICT- SONITPUR, ASSAM,
PIN- 784172.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
HOME DEPARTMENT, DISPUR,
GUWAHATI- 781006.

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
GUWAHATI
PIN- 781007.

3:THE COMMISSIONER OF POLICE
KAMRUP(M)
GUWAHATI
PIN- 781001.

4:THE OFFICER-IN-CHARGE
DISPUR POLICE STATION
GUWAHATI
PIN- 781006.

5:KUWALI MAHAJAN
W/O- MR. CHAMPAK KALITA

FLAT NO. 3H

3RD FLOOR
PURBASA APARTMENT

CHACHAL ROAD
SIXMILE
GUWAHATI-22

DISTRICT- KAMRUP(M)
ASSAM.
(MRS. KUWALI MAHAJAN
W/O- MR. CHAMPAK KALITA
PERMANENT R/O- CK DAS ROAD
W/NO. 9
TEZPUR- 784001
DISTRICT- SONITPUR
ASSAM)

Advocate for the Petitioner : MR B SINHA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 13-05-2024

Heard Mr. B. Sinha, learned counsel for the petitioner and Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent nos. 1 – 4.

2. The projected case of the petitioner is that he is the owner of a flat bearing no. 3H in the third floor of Purbasa Apartment, Chachal Road, Six Mile, Guwahati – 781022 [‘the subject-flat’, for short]. The subject-flat has been rented out to the respondent no. 5 by executing a deed of agreement dated 18.08.2023 and as per the said deed of agreement, the respondent no. 5 was obligated to pay a monthly rent of Rs. 18,000/- besides other amounts like electricity and security fees, etc. According to the petitioner, the respondent no.

5 failed to make payment of the monthly rents since December, 2023 and also failed to submit requisite documents for the purpose of police verification. Despite repeated attempts on the part of the petitioner to contact the respondent no. 5, the petitioner was not able to contact the respondent no. 5. The respondent no. 5 has continued to keep the subject-flat under lock and key for a long period of time. Suspecting that the respondent no. 5 is engaged carrying out unethical and immoral activities in the subject-flat, the petitioner stated to have filed a First Information Report [FIR] before the Officer In-Charge, Dispur Police Station on 13.03.2024. The petitioner has approached this Court by instituting the instant writ petition with the grievance that despite submission of the said FIR, the Officer In-Charge, Dispur Police Station has not yet registered the same. The petitioner has sought direction in the nature of mandamus to the respondent authorities to register the FIR dated 13.03.2024 lodged by him before the Officer In-Charge, Dispur Police Station.

3. On a query made to the learned counsel for the petitioner, Mr. Sinha, learned counsel for the petitioner has fairly submitted that apart from filing of the FIR, the petitioner has not approached any other authorities till date.

4. 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] of the Code of Criminal Procedure, 1973 or other police official referred to in Section 36, CrPC. If despite approaching the Superintendent of Police or the Officer referred to in Section 36, CrPC his grievance persists then he can approach the jurisdictional Magistrate under Section 156[3], CrPC instead of approaching to the High Court by way of a writ petition under Article 226 of the Constitution or a petition under Section 482, CrPC.

5. It has been observed in *Sakiri Vasu vs. State of Uttar Pradesh and others*, reported in [2008] 2 SCC 409, that 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]. It has been observed that the High Court should discourage the practice of filing a writ petition under Article 226 of the Constitution or a 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 kind of grievance, the remedy lies under Sections 36, CrPC and Section 154[3], CrPC before the police officers concerned, 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. It has been observed that an alternative remedy is not an absolute bar to prefer the writ petition but it is equally well settled that if there is an alternative remedy, the High Court should not ordinarily interfere.

6. In view of the fact that the petitioner has not yet approached the authorities under Section 154[3], CrPC or under Section 36, CrPC or under Section 156[3], CrPC, the instant writ petition is not entertained, reserving the liberty to the petitioner to approach the authorities, at first, as per the procedure laid down in Section 154[3], Section 36 and Section 156[3], CrPC.

JUDGE

Comparing Assistant