

GAHC010087792024



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

Case No. : WP(C)/2512/2024

BADAR UDDIN
SON OF LATE HARAN ALI, RESIDENT OF VILLAGE- AMBARI, P.S.
ABHAYAPURI, DIST.- BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HOME DEPARTMENT, DISPUR, GUWAHATI-781006

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI- 781007

3:THE SUPERINTENDENT OF POLICE
BONGAIGAON
P.O. AND DISTRICT- BONGAIGAON
ASSAM
PIN- 783380

4:THE OFFICER-IN-CHARGE
ABHAYAPURI POLICE STATION
P.O. ABHAYAPURI
DISTRICT- BONGAIGAON
ASSAM
PIN- 78338

Advocate for the Petitioner : MR. N J DUTTA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

15.05.2024

Heard Mr. N. Ahmed, learned counsel for the petitioner and Ms. S. Baruah, learned Junior Government Advocate, Assam for all the respondents.

2. The petitioner has approached this Court by the instant writ petition under Article 226 of the Constitution of India with the following projections :-

2.1. In connection with the death of the petitioner's daughter under the suspicious circumstances, the petitioner lodged a First Information Report [FIR] before the Officer In-Charge, Abhayapuri Police Station on 10.03.2024 against five nos. of accused persons. In the said FIR, the petitioner had alleged that his daughter was killed by the accused persons by hanging her with a scarf [uroni] and the accused persons had thereafter, projected the incident as a case of suicide. On receipt of the said FIR, the Officer In-Charge, Abhayapuri Police Station registered the same as Abhayapuri Police Station Case no. 79/2024 for the offence under Section 302, Indian Penal Code [IPC] read with Section 34, IPC and entrusted the investigation to a Sub-Inspector of Police, attached to the Abhayapuri Police Station.

2.2. Though the FIR has been registered and the investigation has been entrusted to an Investigating Officer [I.O.], the investigation has not been carried in a proper and impartial manner. Alleging lackadaisical investigation by the I.O. Of the case, the petitioner has already submitted a Representation before the Superintendent of Police, Bongaigaon on 20.03.2024 seeking his interference and for carrying out a fair, proper and impartial investigation into the case. As the Superintendent of Police, Bongaigaon has not taken any discernible action on the basis of the said Representation, the petitioner has approached this Court by the present writ petition seeking inter-alia a direction to the respondent authorities to take necessary and immediate action in connection with the case, Abhayapuri Police Station Case no. 79/2024 and

after investigating into the matter and arresting the accused persons, to submit a charge-sheet as per law.

3. If a person has a grievance that the police station is not registering his FIR under Section 154, CrPC, then he can approach the Superintendent of Police under Section 154[3], CrPC 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], CrPC before the jurisdictional Magistrate. If such application under Section 156[3], CrPC is filed before the jurisdictional 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 is being made. The jurisdictional Magistrate can also under the said provision, monitor the investigation to ensure a proper investigation. It has been observed by the Hon'ble Supreme Court of India in **Sakiri Vasu vs. State of Uttar Pradesh**, reported in [2008] 2 SCC 409, that the power in the Magistrate to order investigation under Section 156[3], CrPC is an independent power and exercising such power, the Magistrate can ensure a proper investigation. It has been observed that if the Magistrate is satisfied that a proper investigation has not been done by the police, he can direct the Officer In-Charge of the police station concerned to hold a proper investigation and to take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. It has further 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 such 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 jurisdictional Magistrate or by filing a criminal complaint under Section 200, CrPC and not by filing a writ petition under Article 226 of the Constitution of India or a petition under Section 482, CrPC.

4. Since filing of a writ petition like the one in the case in hand, is discouraged and the jurisdictional Magistrate has the authority and jurisdiction to ensure proper investigation in a case like the present one, the instant writ petition is not entertained, reserving the liberty to the

petitioner to seek redressal of his grievance under Section 154[3], CrPC and/or before the jurisdictional Magistrate under Section 156[3], CrPC.

JUDGE

Comparing Assistant