

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.M-14529 of 2014

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Date of decision:29.9.2015

Mandeep Sandhu

...Petitioner

v.

State of Punjab and others

...Respondents

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(2) Criminal Misc. No.M-12607 of 2015

.....

Surjit Singh

...Petitioner

v.

State of Punjab and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. A.S. Virk, Advocate for the petitioner in Cr. Misc. No.M-14529 of 2014 and for respondent No.4 in Cr. Misc. No.M-12607 of 2015.

Mr. Achin Gupta, Advocate for the petitioner in Cr. Misc. No.M-12607 of 2015 and for respondent No.4 in Cr. Misc. No.M-14529 of 2014.

Ms. Priyanka Sadar, Assistant Advocate General, Punjab for the respondent-State.

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Inderjit Singh, J.

This order will dispose of the above mentioned two petitions which have been filed by the wife and husband against each other under

Section 482 Cr.P.C. with a prayer for issuance of directions to the official respondents to take immediate necessary steps to register FIR against private respondents in both the petitions and their accomplices for committing offences of house trespass, house breaking, dacoity, criminal intimidation and rioting etc. punishable for the offences under Sections 448, 450, 452, 395, 506, 148 and 149 IPC.

I have heard learned counsel for the petitioners and have gone through the record.

The marriage of Surjit Singh was solemnized with Mandeep Sandhu in February 2008 at Village Shahkot, District Jalandhar and out of this wedlock, one daughter, namely, Parneet Kaur was born. After some time of marriage, it came to the notice of Surjit Singh that Mandeep Kaur was earlier also married with one Jaswinder Singh and this fact was not disclosed to him by her and her family members and as such, his consent was taken by fraud as she was pretended to be unmarried by her family members at the time of marriage. Therefore, matrimonial dispute arose between the husband and wife and by way of these petitions, they seek to issuance of directions for registration of FIRs against each other, their family members and relatives.

In Sakiri Vasu v. State of U.P. and others, 2008 (1) R.C.R. (Cr.) 392, the Hon'ble Supreme Court has held as under:-

“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.

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 F.I.R. 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.

18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers

which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

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 Cr.P.C. 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 Cr.P.C. 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) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. 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) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. 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 Cr.P.C. 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) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an

alternative remedy the High Court should not ordinarily interfere.”

The law laid down in this judgment has also been relied upon by the Hon'ble Supreme Court in T.C. Thangaraj v. V. Engammal and others, 2011 (3) R.C.R. (Cr.) 751.

Therefore, in view of the law laid down in Sakiri Vasu v. State of U.P. and others (supra) T.C. Thangaraj v. V. Engammal and others (supra), these petitions under Section 482 Cr.P.C. are not liable to be entertained and the same are dismissed. However, the petitioners are at liberty to avail the alternative remedy before the Magistrate etc. as held in these cases.

September 29, 2015.

(Inderjit Singh)
Judge

hsp