

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Misc. No. M-26922 of 2015
Date of Decision: 14.08.2015**

Prem

...Petitioner(s)

Versus

State of Haryana & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. Karan Bhardwaj, Advocate
for the petitioner(s).

HARI PAL VERMA J.(Oral)

Through the instant petition filed under Section 482 CrPC, the petitioner seeks issuance of directions to respondents no.3 and 4 i.e. Superintendent of Police, District Kaithal and SHO, Police Station, Titram Mor, Tehsil and District Karnal to perform their imperative corresponding duty to protect rule of law and to register a case in pursuance of the report given to the police regarding missing of petitioner's son namely Nirmal.

As per the averments made in this petition, petitioner's son namely Nirmal is missing for last almost one month and the

petitioner apprehends that he might have been subjected to some heinous crime. Respondents no.2 to 4 are casual in redressing the grievance of the petitioner and they have not made any sincere effort to locate his son "Nirmal". It has been further averred that earlier also, the petitioner had filed a *habeas corpus* petition i.e. CRWP No.1024 of 2015, which was disposed of by this Court vide order dated 10.7.2015. The aforesaid order reads as under:-

"Learned counsel for the petitioner confines the relief claimed in this petition to the disposal of representation (Annexure P- 1) made by the petitioner to the Deputy Commissioner, Kaithal, who is competent authority to take further action in the matter under the Bonded Labour System (Abolition) Act, 1976.

In view of the above submissions this petition is disposed of with direction to respondent No.2-Deputy Commissioner, Kaithal to look into the representation (Annexure P-1) and take appropriate action in accordance with law."

Pursuant to the aforesaid order, premises of respondents no.5 to 7 were raided by the police, but that was an idle ceremony and the police washed off their hands by cutting a sorry figure that the son of the petitioner was not found at the place where the raid was conducted. But the fact remains that the son of the petitioner is still missing and the respondents have not registered a case against the guilty persons.

Learned counsel for the petitioner contends that the whereabouts of his son could not be known. The petitioner apprehends that his son is in some danger at the hands of respondents no.5 to 8 on account of the dispute pertaining to his daughter-in-law. Learned counsel further argued that in view of a Division Bench judgment of this Court in the case of **Human Rights Protection Council and another v. State of Punjab 2002(3) RCR Criminal 939**, the situation with regard to missing person/children is alarming and the police is required to register FIR instead of entering a DDR.

I have heard learned counsel for the petitioner.

Admittedly, pursuant to order dated 10.7.2015 (Annexure P-1), the official respondents have conducted raid at the premises, as pointed out by the petitioner, but they did not find the son of the petitioner there. Further, as per the Medical record (Annexure P3), treatment was taken by Nirmal Singh son of the petitioner, wherein the case of alleged intake of zinc phosphate has been pointed out.

In view of law laid down by Hon'ble the Supreme Court in the case of **Sakiri Vasu v. State of UP and others 2008(1) RCR (Criminal) 392**, if police is not registering FIR, a petition under Section 482 CrPC is not to be entertained, as the petitioner has remedy available under Section 156(3) CrPC to seek direction to the police to register FIR. The relevant observations made by Hon'ble

the Apex Court in the aforesaid judgment read as under:-

“24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is verybriefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. 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. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.

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.”*

At this stage, it is also relevant to reproduce Section 156

CrPC, which reads as under:-

156. Police officer's power to investigate cognizable cases

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as abovementioned."

In view of the law laid down by Hon'ble the Apex Court in the case of **Sakiri Vasu v. State of UP and others** (*supra*) coupled with the fact that this Court, vide order dated 10.7.2015 passed in CrWP No.1024 of 2015, has already directed the Deputy Commissioner, Kaithal to look into the representation of the petitioner and take appropriate action in accordance with law, no further direction is called for under Section 482 CrPC in the instant petition.

Accordingly, the present petition is dismissed.

August 14, 2015
AK

(HARI PAL VERMA)
JUDGE