

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-37553 of 2015

.....

Date of decision:3.11.2015

Mani Ram and another

...Petitioners

v.

State of Haryana and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rajinder Singh Raj, Advocate for the petitioners.

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Inderjit Singh, J.

This criminal miscellaneous petition has been filed by petitioner under Section 482 Cr.P.C. for directing respondents No.1 to 4 to take appropriate action and submit status report in FIR No.23 dated 1.2.2013, FIR No.92 dated 23.4.2013, FIR No.100 dated 27.4.2013 and FIR No.4 dated 4.1.2014 registered at Police Station Rania, District Sirsa and to provide protection of life, liberty and property to the petitioners and members of their families from respondents No.5 to 20.

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

At the time of arguments, leaned counsel for the petitioners argued that the investigation has not been conducted properly in the above said FIRs by the Police. As per the decision of the Hon'ble Supreme Court

in Sakiri Vasu v. State of U.P. and others, 2008 (1) RCR (Cr.) 392 (SC), it was held that the Illaqa Magistrate has ample powers to supervise and monitor the investigation. If the petitioners are aggrieved from the investigation and interrogation, they can avail the alternative remedy, but the petitioners have not availed the alternative remedy so far. It is also held in Sakiri Vasu v. State of U.P. and others (supra) 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.

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.”

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 and held as under:-

“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.”

As regards the second relief for providing the protection of life, liberty and property of the petitioners and their family members, I find that it is admitted at the time of arguments that the present petitioners have not approached the competent authority by filing any representation for the relief. They have not approached the concerned SSP or Police Commissioner, and have directly asked for the relief from this Court. The petitioners are to first approach the competent authority by filing the representation etc. and if no action is taken, then they can approach this Court. Without approaching the competent authority, this petition filed under Section 482 Cr.P.C. directly to the High Court is not as per law. Therefore, finding no merit in the present petition, the same is dismissed.

However, the petitioners are at liberty to avail the alternative remedies before the Illaqa Magistrate etc. as well as the competent authority as discussed above.

November 3, 2015.

(Inderjit Singh)
Judge

hsp