

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

Criminal Misc. No. M-42644 of 2013

Date of decision: 02.11.2015

Chaudhary Gurmail Singh

-----Petitioner

Versus

State of Punjab and others

-----Respondents

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. A.S. Barnala, Advocate for the petitioner.

Mr. Anil Kumar Lamdharia, Addl. P.P. UT Chandigarh
for respondents No. 2 and 3.

HARI PAL VERMA, J.(Oral)

The instant petition under Section 482 Cr.P.C. has been filed by the petitioner with a prayer for issuance of direction to respondents No. 1 and 2 to register an FIR against private respondents in view of the report dated 12.07.2013 (Annexure P-3). Further prayer has also been made for taking departmental action against SHO, Police Station Sector 36, Chandigarh-respondent No.3, for not considering the report dated 12.07.2013 and giving clean chit to the private respondents.

Learned counsel for the petitioner submits that petitioner read an advertisement of Healthy Way Immigration Pvt. Ltd. and thus for imparting education to his daughter Poonam, contacted Amit Kakkar-respondent No.4 for sending his daughter to UK for further studies, upon which he assured the petitioner that his daughter shall be enrolled in a college duly approved by UK Government and guided him

the required funds as well as charges of Rs.1,50,000/- which includes services like funds, air ticket, all filing expenses, college registration fees, offer letter charges, confirmation and approval of studies, airport pickup and one week stay. He further submits that when VISA of petitioner's daughter was approved, travel agent has not provided the air ticket and after reaching U.K. even one week's stay as promised was also not provided. The college in which petitioner's daughter was got admitted closed down in March 2012 and ultimately petitioner's daughter was arrested by the UK Police and later on deported to India and thus the private respondents have ruined the life of the petitioner and duped for an amount of Rs.30,00,000/-. Petitioner made a complaint Annexure P-1 to respondent No.1 upon which ADA (Legal) has given opinion dated 12.07.2013 (Annexure P-3) finding a prima facie case u/s 420 IPC, however, in the enquiry report dated 22.10.2013 (Annexure P-4) conducted by respondent No.3, a clean chit has been given to respondent No.4. Hence the present petition.

Looking into the facts of this case, I am of the considered view that no indulgence of this Court is required. Various options are available to the petitioner to pursue his remedy of this nature.

Hon'ble Supreme Court in **Sakiri Vasu v. State of UP and others 2008(1) RCR (Criminal) 392**, has held that if police is not registering FIR, a petition under Section 482 Cr.P.C. is not to be entertained, as the petitioner has remedy available under Section 156(3) Cr.P.C. 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 very briefly 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.”*

In view of the above and keeping in view the facts and circumstances of the case, this matter does not need indulgence of this Court in exercise of its inherent powers under Section 482 Cr.P.C. The petitioner may have recourse of alternative remedies.

With the above observations, the instant petition stands dismissed.

November 02, 2015

ANJAL

**(HARI PAL VERMA)
JUDGE**