

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CRM-M-44232-2014

Date of Decision: January 6, 2015

Umesh Kumar Garg

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Nitin Thatai, Advocate,
for the petitioner.

NARESH KUMAR SANGHI, J. (Oral)

1. Prayer in this petition, filed under Section 482, Cr.P.C., is for issuance of appropriate directions to respondent Nos. 2 and 3 to carry out investigation regarding complaint bearing CR No. 338/5D/ACP, dated 6.11.2014 (Annexure P-8), submitted by the petitioner against respondent Nos. 4 to 6, who were continuously threatening the petitioner to pay bribe to them in addition to the bribe paid earlier.

2. Learned counsel contends that respondent Nos. 4 to 6 are posted at Economic Offences Wing, Ludhiana; an FIR No. 126, dated 26.7.2013, for the offences punishable under Sections 177, 420, 465, 467, 468 and 471, IPC, was registered at Police Station, Division No. 5, Civil Lines, Ludhiana, and under the garb of the same, respondent No. 4, Gagandeep Singh Ghuman, Station House Officer, Economic Offences Wing, Ludhiana, summoned the petitioner on 27.7.2013 and pressurized him (petitioner) to part with Rs. 25,000/-; day-by-day the demand of respondent No. 4 increased and he by one way or the other pressurized the petitioner to part with hefty illegal gratification; and that in spite of repeated complaints to the higher police officers, appropriate proceedings have not been initiated against the culprits, i.e. respondent Nos. 4 to 6.

3. I have heard learned counsel for the petitioner and with his able assistance gone through the material available on record.

4. As per the case put up by the petitioner, his cousin, namely, Raman Garg, was exporting hosiery and readymade garments in and outside India from Punjab. Said Raman Garg received a legally issued VAT refund voucher, amounting to Rs. 1.56 crores on 26.3.2013, from the Excise and Taxation

Department, Ludhiana. On 9.5.2013, a team headed by the Assistant Excise and Taxation Commissioner raided the premises of M/s Jaldhara Exports and took away the entire software and other record available with Raman Garg. Subsequently, FIR No. 126, dated 26.7.2013, for the offences punishable under Sections 177, 420, 465, 467, 468 and 471, IPC, was registered at Police Station, Division No. 5, Civil Lines, Ludhiana, and investigation thereof was entrusted to the Economic Offences Wing, Ludhiana. The Station House Officer called the petitioner and forced him to part with a sum of Rs. 25,000/- as illegal gratification and thereafter on several occasions, under the grab of the above said FIR, respondent No. 4 and his accomplices, i.e. respondent Nos. 5 and 6 pressurized, forced and threatened the petitioner to give hefty amounts as illegal gratification. Seeing no other alternative, the petitioner moved representation dated 6.11.2014, before the Additional Deputy Commissioner of Police, Ludhiana, for registration of the case under the Prevention of Corruption Act and relevant provisions of the Indian Penal Code, against respondent No. 4, but no appropriate proceedings were initiated. Thereafter, the petitioner moved several other complaints and representations before different police authorities, but all in vain.

5. There is no doubt that if a complaint disclosing the commission of cognizable offence is presented before the police, in that eventuality the Station House Officer has no other option but to register the First Information Report against the culprits. Of course, if the allegations are found to be false, then he can proceed further in accordance with law. But the core question before this Court is as to whether without exhausting the alternative remedies available to the complainant, can he approach to the High Court by way of a petition under Section 482, Cr.P.C. or a writ petition under Article 226 of the Constitution of India. The said query was dealt with and answered by Hon'ble the Supreme Court in the matter of **Sakiri Vasu v. State of U.P.**, (2008) 2 SCC 409, wherein it was held as under:-

“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 CrPC. 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, first under Section 154(3) and

Section 36 CrPC before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned 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) CrPC or other police officer referred to in Section 36 CrPC. 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) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. 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 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 this grievance, the remedy lies under Sections 36 and 154(3) before the police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.

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.”

6. In **G.Arokiya Marie v. Superintendent of Police,** **2008 Criminal Law Journal 4257**, it was held that the aggrieved persons, who complained of the commission of offences under the Indian Penal Code and the offences under other Acts, shall resort to Sections 154(3), 190 read with 156(3) and 200 of Cr.P.C., as the case may be. The inherent jurisdiction of the High Court shall not be invoked in those cases to redress their grievance, for alternative remedy as detailed above is very much available.

7. After perusing the facts of the case, this Court is of the considered opinion that it is not an exceptional case where the High Court should exercise its inherent powers for issuance of a direction to the police authorities for registration of the FIR and investigate the matter. The petitioner, if so advised, can take

recourse to the alternative remedies available to him under law.

8. In view of above, there is no merit in the present petition and the same is hereby dismissed.

January 6, 2015
P Kapoor

(NARESH KUMAR SANGHI)
JUDGE