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Date of decision: 21st January, 2015

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W.P.(CRL) 1256/2014

RAJU

..... Petitioner

Through: Mr Ali Abbas, Adv.
versus

STATE & ORS

..... Respondent

Through: Mr. Saleem Ahmad, Standing Counsel
(Crl.) for Govt. of NCT of Delhi /R-1 to 4

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

: SUNITA GUPTA, J. (ORAL)

1. This is a petition under Article 226 of the Constitution read with Section 482 Cr.PC moved by the petitioner for issuance of writ of certiorari and in the nature of mandamus for transferring the investigation to Crime Branch, Delhi on the ground that on 16.04.2014, the petitioner went to the government tube well at Pul Prahladpur and saw that Neel Kanth, Ashok Pandey, Prem, Neeraj and Subhash all residents of Pul Prahaladpur were quarrelling with Amir and Shahrukh and were threatening them. The petitioner requested them not to abuse and harass the children whereupon accused abused the petitioner and threatened to teach a lesson. After sometime, they forcibly and illegally entered into his house and assaulted the petitioner and his brother. PCR was called and the petitioner was taken to hospital where he was provided medical aid and the doctor opined the injuries to be grievous. The petitioner approached the police of Police Station Pul Prahladpur for registration of an FIR, but in vain and instead an FIR was registered against the petitioner. The petitioner approached the DCP for taking legal action against the accused persons but no action has been taken as such the investigation be transferred to Crime Branch.

2. Status report has been filed by the State stating therein that on receipt of PCR call vide DD No.39A regarding quarrel at K-51A, Northern Basti, Lal Kuan on 16/17.04.2014, SI Pankaj alongwith with staff reached the spot where no quarrel was found. Local inquiries revealed that injured were taken to the hospital by PCR van.

After receipt of DD No.9A dated 17.04.2014, SI Pankaj reached at Trauma Centre, AIIMS where injured Nilkanth Kumar who is a practicing advocate and his family members were found admitted who sustained injuries. Thereafter, a case vide FIR No.150/2014 under Sections 452/308/354/34 IPC at Police Station Pul Prahlad Pur was registered against the petitioner and others. Though MLC of the petitioner was also prepared which reflected history of assault by unknown persons, the petitioner could not be contacted at his home or in AIIMS Trauma Centre nor he came to Police Station for giving his statement/complaint. A complaint made to DCP by the petitioner was received in Police Station Pul Prahladpur on 02.05.2014. Inquiries with respect to FIR No.150/2014 revealed that Raju (the present petitioner) and others have assaulted Neelkanth and his family members. The complaint is pending inquiry. His brother Khazan Singh also filed a complaint before the High Court of Delhi which was dismissed.

3. I have heard Mr Ali Abbas, learned counsel for the petitioner and Mr. Saleem Ahmad, Standing Counsel (Crl.) for Govt. of NCT of Delhi.

4. By way of instant petition, the petitioner is seeking transfer of investigation to Crime Branch which is opposed by learned Standing Counsel for the State on the ground that in *Sakiri Vasu v. State of U.P. and others*, (2008) 2 SCC 409, the Apex Court has given directions that when there is an alternative remedy available then the High Courts ought not encourage writ petitions.

5. In *Sakiri Vasu (supra)*, the son of appellant was Major in the Indian Army. His dead body was found at Mathura Railway Station. The matter was investigated and a detailed report was submitted stating that death was due to accident or suicide. Thereafter Army officials at Mathura also held two Courts of Inquiry and both times submitted the report that the deceased had committed suicide. The father of deceased filed a writ petition that the matter be investigated by Central Bureau of Investigation, which was rejected. Hence, an appeal was filed by way of special leave. While dismissing appeal, a copy of the judgment was ordered to be circulated to all the High Courts that such practice of rushing to the High Courts should not be encouraged. It will be advantageous to reproduce the relevant observations:

“10. It has been held by this Court in ***CBI & another vs. Rajesh Gandhi and***

another 1997 Cr.L.J 63 (vide para 8) that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

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.

12. Thus in **Mohd. Yousuf vs. Smt. Afaq Jahan & Anr.** JT 2006(1) SC 10, this Court observed:

The clear position therefore is that any judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a

Magistrate does not say in so many words while directing investigating under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

13. The same view was taken by this Court in **Dilawar Singh vs. State of Delhi** JT 2007 (10) SC 585 (vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C.

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?*

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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 view of the above observations / directions of Hon'ble Apex Court coupled with the fact that as per the status report filed by the SHO Police Station Pul Prahladpur, Delhi, the complaint filed by the petitioner is still pending inquiry, moreover, if the petitioner is aggrieved by the action/inaction of police officials he has alternative remedy available to him under law which ought to have been resorted to instead of filing a writ petition before this Court.

7. In view aforesaid observations, the petition is dismissed.

There shall be no orders as to costs.

(SUNITA GUPTA)
JUDGE

JANUARY 21, 2015/*rd*