

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 27 of 2016**

1. Breejesh Kumar Singh @ Brajesh Kumar Singh S/o Shri Umakant Singh, Aged About 46 Years
2. Guddi Singh W/o Shri Breejesh Kumar Singh @ Brajesh Kumar Singh, Aged About 27 Years

Both R/o Vivekanand Nagar Nigam Colony, Near Maharana Pratap Chowk Bilaspur, Police Station Civil Line, District Bilaspur Chhattisgarh, Present Address College Chowk, Hardi Bazar, Police Station Kusmunda, District Korba Chhattisgarh

---- Petitioners

Versus

1. State of Chhattisgarh Through The Secretary, Department of Home and Police, Mantralaya, Mahanadi Bhawan, Raipur Chhattisgarh
2. The Director General Of Police, Raipur District Raipur Chhattisgarh
3. The Inspector General Of Police, Bilaspur, District Bilaspur Chhattisgarh
4. The Collector, Korba, District Korba, Chhattisgarh
5. The Superintendent Of Police, Korba, District Korba, Chhattisgarh
6. The City Superintendent Of Police, Darri, District Korba Chhattisgarh
7. The Station House Officer, Police Station Kusmunda, District Korba Chhattisgarh
8. The Out Post In-Charge, Police Out Post-Hardi Bazar, Police Station Kusmunda, District Korba Chhattisgarh
9. Shri Rupesh Narang, The Out Post In-Charge, Police Out Post Haradi Bazar, Police Station Kusmunda, District Korba Chhattisgarh
10. Shri Raj, Assistant Police Inspector, Police Out Post Hardi Bazar, Police Station Kusmunda, District Korba Chhattisgarh
11. Shri Akhilesh Pandey S/o Late Shri Ganga Prasad Pandey Aged About 50 Years R/o College Chowk Hardi Bazar, Police Station Kusmunda, District Korba Chhattisgarh
12. Smt. Mamata Pandey Shri Akhilesh Pandey, Aged About 45 Years R/o College Chowk Hardi Bazar, Police Station Kusmunda, District Korba Chhattisgarh
13. Diksha Pandey D/o Shri Akhilesh Pandey, Aged About 19 Years R/o College Chowk Hardi Bazar, Police Station Kusmunda, District Korba Chhattisgarh

14. Smt. Devkumari Rathour W/o Shri Pramod Rathour, Aged About 45 Years R/o College Chowk Hardi Bazar, Police Station Kusmunda, District Korba Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Rishi Rahul Soni, Advocate
For Res. No.1 to 8:		Mr. Adi Raj Surana, Dy.G.A., on advance copy

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

17/02/2016

1. The petitioners herein have filed this writ petition seeking appropriate writ, order or direction commanding the respondent authorities to make fresh investigation in fair and proper manner upon complaint lodged by petitioner No.1 against respondents No.11 to 14 at Police Out Post-Hardi Bazar, Police Station-Kusmunda by registering criminal case against them.
2. Mr.Rishi Rahul Soni, learned counsel appearing for the petitioners, would submit that official respondents are not being taken action against respondents No.11 to 14 despite the commission of offence punishable under Sections 294, 323, 324, 448, 451, 452 and 506/34 of the IPC in collusion with respondents No.9 and 10 and therefore, registration of offence against respondents No.11 to 14 and fair investigation be directed. Learned counsel relied upon the decision rendered by the Supreme Court in the matter of **Lalita Kumari v. Government of Uttar Pradesh and others**¹.
3. Mr.Adi Raj Surana, learned Deputy Government Advocate for respondents No.1 to 8/State, on advance copy, would submit that City Superintendent of Police, Korba has already submitted report to the

¹ (2014) 2 SCC 1

Superintendent of Police, Korba, in which it has been stated that the petitioners and respondent-Akhilesh Pandey both are neighbours and there is some dispute between them and pursuant to which, some preventive action under Sections 107/116(3) of the Code of Criminal Procedure, 1973 (for short “CrPC”) has been taken and *Ishtagasha* has been filed before the Executive Magistrate, which is pending consideration. He would further submit that if the petitioners are not satisfied with the action of the police authorities, they have alternative remedy of submitting application under Section 156 (3) of the CrPC, before the jurisdictional Magistrate as held by the Supreme Court in the matter of **Sakiri Vasu v. State of Uttar Pradesh and others**² or filing complaint before the jurisdictional criminal court under Section 200 of the CrPC. He would also rely upon the decision rendered by this Court in **Mohd. Anish Memon v. State of Chhattisgarh & Ors.**³

4. I have heard learned counsel for the parties on the question of admission.
5. At this stage, it would be pertinent to mention the decision rendered by the Supreme Court in **Sakiri Vasu** (supra) in which the Supreme Court has held as under in paragraphs 26 and 27: -

“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

2 2008) 2 SCC 409

3 2009 (I) MPJR-CG 73

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.”

6. Aforesaid decision of the Supreme Court has been followed by this Court in **Mohd. Anish Memon** (supra), **Ram Prakash Katiyar v. State of Chhattisgarh & Ors.**⁴ and **Bhagwan Das v. State of Chhattisgarh & Ors.**⁵.
7. Likewise, the Supreme Court in the matter of **Aleque Padamsee and others v. Union of India and others**⁶ has held that if any person is aggrieved by the inaction of police officials in registering the FIR, the modalities contained in Section 190 read with Section 200 of the Code of Criminal Procedure, 1973 are to be adopted and observed.
8. Thus, the petitioners have the efficacious statutory alternative remedy of approaching firstly before the Superintendent of Police under Section 154 (3) of the CrPC or other officer mentioned in Section 36 of the CrPC. Despite approaching the Superintendent of Police or other officer as mentioned in Section 36 of the CrPC, the petitioners are entitled to make

4 2011 (III) MPJR-CG 116

5 2011 (I) CGBCLJ 129

6 (2007) 6 SCC 171

an application to the Magistrate under Section 156 (3) of the CrPC and also have a further remedy of filing complaint under Section 200 of the CrPC. The Supreme Court in like situation has deprecated the practice of directly entertaining writ petition or petition under Section 482 of the CrPC by this Court and emphasized the fact that the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation in **Sakiri Vasu** (supra), and followed by this Court also in above-stated cases.

9. In view of the above, the petitioners have not properly approached the above stated forums as rendered in **Sakiri Vasu** (supra). I do not find any case of issuance of a writ to the police authorities to make fresh investigation on the complaint made by petitioner No.1 and the writ petition is liable to be dismissed and it is accordingly dismissed *in limine* but without imposition of cost(s). However, the petitioners shall be at liberty to avail other appropriate remedies, in accordance with law for registration of FIR as indicated by the Supreme Court in the matter of **Sakiri Vasu** (supra) and also at liberty to bring to notice of the said authorities the decision rendered by the Supreme Court in the matter of **Lalita Kumari** (supra).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-