

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.18 of 2016

Baldev Singh Malwa, S/o Late Preetam Singh Malwa, aged about 76 years, R/o Malwa Market, G.E. Road, Durg, Tahsil and District Durg (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Home Department, Mahanadi Bhawan, Mantralaya, New Raipur (C.G.)
2. The Superintendent of Police, Durg, District Durg (CG)
3. The Station House Officer, Police Station Mohan Nagar. Durg, District Durg (C.G.)
4. Kishan Lal Ahuja, S/o Kanhaiya Lal Ahuja, aged about 42 years, R/o 337, Gurunanak Nagar, Station Road, Durg, Tahsil & District Durg (C.G.)

---- Respondents

For Petitioner: Mr. B.P. Singh, Advocate.

For State/Respondents No.1 to 3: -

Mr. Adhiraj Surana, Deputy Government Advocate
on advance copy.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08/02/2016

1. The petitioner herein has filed this writ petition seeking appropriate writ or direction commanding the respondent authorities to register criminal case against respondent No.4 for cognizance of cognizable offence and holding thorough and speedy investigation in the matter.

2. Mr. B.P. Singh, learned counsel for the petitioner, would submit that cognizable offence has been committed by respondent No.4 against which a report was made on 24-10-2015 against respondent No.4 to respondent No.2. Again the incident was reported by the petitioner on 16-1-2016 to the Station House Officer respondent No.3 and also to the Superintendent of Police respondent No.2 but yet, no action has been taken. Therefore, in the light of decision rendered by the Supreme Court in the matter of **Lalita Kumari v. Government of Uttar Pradesh and others**¹, the respondents be directed to proceed against respondent No.4.
3. On the other hand, learned State counsel appearing on behalf of the State/respondents No.1 to 3 on advance copy, would submit that if the petitioner is not satisfied with the action of the police authorities, she has alternative remedy of submitting application under Section 156 (3) of the Code of Criminal Procedure, 1973 (for short '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.

1 (2014) 2 SCC 1

2 (2008) 2 SCC 409

3 2009 (I) MPJR-CG 73

4. I have heard learned counsel for the parties on the question of admission.
5. In the case in hand, it would appear that the petitioner has made complaint against respondent No.4 on 24-10-2015 before respondent No.2 and to some other authorities, and later-on he has again made a new report to the Station House Officer respondent No.3 and respondent No.2 on 16-1-2016. The petitioner appears to have made complaint to the Superintendent of Police for the first time on 24-10-2015. 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 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 petitioner has 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

4 2011 (III) MPJR-CG 116

5 2011 (I) CGBCLJ 129

6 (2007) 6 SCC 171

Section 36 of the CrPC, the petitioner is entitled to make an application to the Magistrate under Section 156 (3) of the CrPC and also has 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 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 petitioner has 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 register FIR on the report made by the petitioner and the writ petition is liable to be dismissed and it is accordingly dismissed *in limine* but without imposition of cost(s). However, the petitioner shall be at liberty to avail other appropriate remedies, in accordance with law for registration of FIR is concerned as indicated by the Supreme Court in **Sakiri Vasu** (supra) and also at liberty to bring to the notice of said authorities the decision rendered by the Supreme Court in **Lalita Kumari** (supra).

Sd/-
(Sanjay K. Agrawal)
Judge