

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 182 of 2016

- Duryodhan Shrivass S/o Late Baijnath Shrivass, Aged About 50 Years R/o Ward No 8, Nearby BSNL Tower Jhilmila Checkpost, Saraipali, Police Station And Tahsil Saraipali, District Mahasamund Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Home Affairs, Manatralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. Director General Of Police, Police Head Quarters, Naya Raipur, District Raipur Chattisgarh
3. Inspector General Of Police, Police Range, Raipur Chhattisgarh
4. Superintendent Of Police, Mahasamund, District Mahasamund Chhattisgarh
5. Station House Officer, Police Station Saraipali, District Mahasamund Chhattisgarh

---- Respondent

For Petitioner
For Respondent /State

Mr. Yougeshwar Sharma, Advocate
Mr. UNS Deo, Government Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

19/9/2016

1. Heard.
2. The petitioner has prayed for a direction to respondent No.5 Station House Officer, Police Station Saraipali, District Mahasamund to register FIR against the persons named in the

complaint Annexure P/1 for committing offence under Sections 427, 447, 457, 149 and 153-A of IPC or any other relevant penal provision.

3. The prayer has been made on the strength of the law laid down by the Supreme Court in the matter of ***Lalita Kumari Vs. Government of Uttar Pradesh and others, (2014) 2 SCC 1.***
4. The complaint filed by the petitioner would disclose that a mob of about 59 persons named in Annexure P/1 forcefully entered his house, created nuisance, criminally intimidated him and destroyed the asbestos sheet by committing mischief by forming unlawful assembly. In the process, they have raised a flag for construction of a temple.
5. In the matter of ***Sakiri Vasu Vs. State of Uttar Pradesh and others, (2008) 2 SCC 409,*** the Supreme Court has held that when the concerned Police fails to register an FIR, the complainant has remedy under Section 156(3) or Section 200 of CrPC and ordinarily, a writ petition should not be entertained. It is held thus in para 26 & 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 officers 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. In view of the above, the writ petition is disposed of with liberty to the petitioner to move a duly constituted application under Section 156(3) CrPC or a complaint under Section 200 CrPC.

Sd/-

Judge

(Prashant Kumar Mishra)