

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-1784 of 2016

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Date of decision:19.1.2016

Jagar Singh and others

...Petitioners

v.

State of Punjab and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. J.S. Mundi, Advocate for the petitioners.

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Inderjit Singh, J.

The petitioners have filed this petition under Section 482 Cr.P.C. with a prayer for issuance of appropriate directions to respondents No.3 and 4 for arresting the accused in case FIR No.188 dated 30.9.2015 registered at Police Station Sadar, Tehsil Khanna, District Ludhiana for the offence under Section 409 IPC, as the custodial interrogation of the accused persons is must in the present case and for the issuance of appropriate directions to respondents No.3 and 4, whereas the concerned Police authorities are sitting over the matter for the last almost four months and have not initiated any action in either arresting the accused persons or taking the investigation to its logical end etc.

I have heard learned counsel for the petitioners and have gone

through the record.

From the record, I find that it is settled law that this Court cannot interfere in the investigation and the Court, in no way, can direct the Investigating Officer to investigate the matter in a specific way. No direction can be given for arrest of private respondents during the investigation. It is for the investigating officer to investigate the matter and to collect the evidence during investigation. If he collects some evidence and finds the involvement of any person it is for him to arrest the accused or not. Similarly, it is for the Investigating Officer to see whether challan is to be presented under Section 173 Cr.P.C. or some cancellation report etc. is to be filed. So, this relief as claimed by the petitioners under Section 482 Cr.P.C. cannot be granted. If the petitioners are aggrieved from the fact that the investigation is not being conducted in fair and proper manner, then they can approach the Illaqa Magistrate. The Illaqa Magistrate has ample powers to supervise the investigation as well as to monitor the investigation as held in Sakiri Vasu v. State of U.P. and others, 2008 (1) R.C.R. (Cr.) 392, in which the Hon'ble Supreme Court has held as under:-

“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.

17. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

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 Cr.P.C. 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 concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.”

The law laid down in this judgment has also been relied upon by the Hon'ble Supreme Court in T.C. Thangaraj v. V. Engammal and others, 2011 (3) R.C.R. (Cr.) 751 and held as under:-

“It should also be noted that Section 156 (3) of the Code of Criminal Procedure provides for a check by the Magistrate on the police performing their duties and where the Magistrate finds that the police have not done their duty or not investigated satisfactorily, he can direct the Police to carry out the investigation properly and can monitor the same.”

Therefore, keeping in view of the law laid down by the Hon'ble Supreme Court in Sakiri Vasu v. State of U.P. and others (supra) and T.C. Thangaraj v. V. Engammal and others (supra), this petition under Section 482 Cr.P.C. is not liable to be entertained and the same is dismissed. However, the petitioners are at liberty to avail the alternative remedy before the Magistrate etc. as held in these cases, who has enough powers under Section 156(3) Cr.P.C. to supervise the investigation. Even the Magistrate

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can monitor the investigation as held by the Hon'ble Supreme Court in the above mentioned cases. Therefore, the petitioners having other alternative remedies seeking the issuance of any direction by this Court in exercise of its inherent powers under Section 482 Cr.P.C. would be wholly improper besides being premature.

January 19, 2016.

(Inderjit Singh)
Judge

hsp