

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-20173 of 2014

.....

Date of decision:12.4.2016

Harpal Singh and others

.....Petitioners

v.

State of Punjab and others

.....Respondents

.....

Present: Mr. Ravi Malhotra, Advocate for the petitioners.

Mr. P.S. Grewal, Deputy Advocate General, Punjab for
the respondents No.1 to 3-State.

Mr. R.K. Dhiman, Advocate for respondents No.4 to 6.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for issuance of direction to respondents No.1 to 3 to register case against respondents No.4 and 5 for committing offences under Sections 323, 452, 504 and 506 IPC, with further prayer to direct the Police not to harass and torture the petitioners and to protect their life and liberty.

Notice of motion has been issued in this case.

Mr. P.S. Grewal, learned Deputy Advocate General, Punjab has put in appearance on behalf of respondents No.1 to 3-State and Mr. R.K. Dhiman, learned Advocate has appeared for respondents No.4 to 6 and contested this petition. Replies have also been filed on behalf of the respondents.

I have heard learned counsel for the petitioners as well as learned Deputy Advocate General, Punjab and learned counsel for respondents No.4 and 6 and have gone through the record.

From the record, I find that firstly, the petitioners want to get registered the FIR for the offences under Sections 323, 452, 504 and 506 IPC against respondents No.4 and 5. In the reply filed by respondents No.1 to 3, it has been stated that the complaint dated 30.11.2013 given by petitioner No.1 was inquired into by ASI Dilbag Singh, wherein the allegations made by him were not found to be carrying any substance and accordingly, the same was recommended to be filed in the office on 2.12.2013. Thereafter, petitioner No.1 gave the complaint to the Senior Superintendent of Police, S.A.S. Nagar, which was marked to the then DSP City-1, S.A.S. Nagar, wherein petitioner No.1 himself got his statement recorded that he did not want to get any action taken on his complaint and the same was recommended to be filed in the office. Otherwise also, the Hon'ble Supreme Court in Sakiri Vasu v. State of U.P. and others, 2008 (1) R.C.R. (Cr.) 392, 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

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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.

18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which

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would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

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?

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.

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.”

The law laid down in this judgment has also been relied by the Hon'ble Supreme Court in T.C. Thangaraj v. V. Engammal and others, 2011

(3) R.C.R. (Cr.) 751.

As regards, the protection to life and liberty of the petitioners, I find that there is no DDR got registered regarding any occurrence. There is no allegation that any injuries have been caused or the petitioners have been attacked by the private respondents nor any specific particulars have been mentioned regarding any occurrence and no specific particulars have been mentioned on which date, month or year the threat was given by the private respondents.

Therefore, in view of the law laid down in Sakiri Vasu v. State of U.P. and others (supra) 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.

April 12, 2016.

(Inderjit Singh)
Judge

hsp