

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No.M-31771 of 2016

Date of Decision: September 26, 2016

Manohar Singh

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Nitin Kant Setia, Advocate
for the petitioner.

JASPAL SINGH, J.

Instant petition has been preferred under Section 482 Cr.P.C for quashing of order/communication dated 22.06.2016 (Annexure P-5) passed by respondent No.4 with further direction to respondents No.1 to 3 to investigate the matter in accordance with law enunciated by the Hon'ble Apex Court in ***Lalita Kumari v. State of UP; 2014 (2) SCC 1.***

While relying upon various observations laid down in ***Lalita Kumari's*** case (supra), it has been contended by learned counsel for the petitioner that registration of FIR is mandatory under Section 154 Cr.P.C., if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. Further that police officer cannot avoid his duty in registering FIR if cognizable offence is disclosed. Similarly, an action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable

offence. Moreover, the scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that when the alternative remedies are available, then the petition under Section 482 Cr.P.C. cannot be entertained. The petitioner has mainly sought the issuance of direction to official respondents to register FIR against the culprits. The petitioner has the remedy to approach learned Judicial Magistrate under Section 156(3) Cr.P.C. for the above-said relief. The petitioner has also alternative remedy to file criminal complaint. The Hon'ble Supreme Court in **Sakiri Vasu v. State of U.P. and others, 2008 (1) R.C.R. (Cr.) 392** has held that the petition under Section 482 Cr.P.C. should not be entertained in routine and it is 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.

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 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 above judgment has also been relied upon by the Hon'ble Supreme Court in *T.C. Thangaraj vs. V. Engammal and others, 2011 (3) R.C.R. (Cr.) 751.*

A glance at the afore-said judgment makes it crystal clear that though availability of other remedy is not an absolute bar to file a writ petition under Section 482 Cr.P.C. but at the same time, it is also equally well neigh settled that if there is an alternative remedy is available, the High Court should not ordinarily interfere.

As the petitioner has alternative remedies as stated in the above, especially to approach the Judicial Magistrate by way of regular complaint, therefore, this petition cannot be entertained and the same is dismissed.

However, petitioner shall be at liberty to avail alternative remedies provided under law including lodging of a regular complaint to the Jurisdictional Magistrate.

September 26, 2016
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(JASPALSINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No