

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.M-33209 of 2016 (O&M)

.....

Date of decision:28.9.2016

Baljinder Singh

...Petitioner

v.

State of Punjab and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Bhupinder Ghai, Advocate for the petitioner.

.....

Inderjit Singh, J.

This criminal miscellaneous petition has been filed by petitioner under Section 482 Cr.P.C. seeking transfer of investigation with respect to FIR No.18 dated 24.1.2014 registered at Police Station City Kharar for the offences under Sections 420, 465, 467, 468, 471 and 120-B IPC to the Crime Branch of the State or to an independent agency as the matter was reported to respondent No.2 and the same was sent for investigation to Economic Offences Wing and after finding a prima facie case, FIR in question was ordered to be registered, but even after the registration of FIR there is no headway to the subsequent investigation by respondent No.3 in spite of the fact that investigation agency had found a cognizable offence committed by respondents No.4 and 5, but even thereafter and in spite of the lapse of about two years and eight months there is no progress in the investigation of the case.

I have heard learned counsel for the petitioner and have gone

through the record.

Learned counsel for the petitioner on 19.9.2016 argued that Station House Officer against whom allegations have been levelled in the FIR that he is not considering the documents intentionally, is now the same Station House Officer of the concerned police station, who is holding the investigation. He was directed to file affidavit qua this fact on the next date of hearing. The affidavit has been filed, but at the time of arguments, it is admitted that he is not the same SHO, who is investigating the matter but he is different SHO. A perusal of the record shows that no ground for transfer of investigation is made out.

Learned counsel for the petitioner argued that fair and impartial investigation is not being conducted in this case and report under Section 173 Cr.P.C. has not been filed so far. Even if the petitioner is aggrieved from the fact that fair and impartial investigation has not been conducted by the investigating agency, he has an alternative remedy to approach the Illaqa Magistrate, who has ample powers to supervise and even to monitor the investigation as held in Sakiri Vasu v. State of U.P. and others, 2008 (1) RCR (Cr.) 392 (SC), in which the Hon'ble Supreme Court has observed 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 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. However, the petitioner is 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 can monitor the investigation as held by the Hon'ble
Supreme Court in the above mentioned cases.

With the above observations, this petition is disposed of.

September 28, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No