

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-38323 of 2016

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Date of decision:27.10.2016

Shinder Kaur and another

...Petitioners

v.

State of Punjab and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Amit Kumar Walia, Advocate for the petitioners.

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Inderjit Singh, J.

This criminal miscellaneous petition has been filed by petitioner under Section 482 Cr.P.C. for issuance of appropriate, specific and proper directions to respondents No.2 to 4 to investigate the grievances of the petitioners unfolded by them in the representation dated 31.8.2016 (Annexure-P.2) and followed by further representation dated 11.10.2016 (Annexure-P.5) and also to issue direction to respondents No.2 and 3 to hand over the investigation of FIR No.129 dated 31.8.2016 (Annexure-P.1) registered for the offence under Section 21 of NDPS Act, 1985, Police Station Sadar Sangrur, District Sangrur to any other Police Officer not below the rank of DSP outside District Sangrur.

At the time of arguments, learned counsel for the petitioners argued that the Police of Police Station, Sadar Sangrur is not investigating

the case properly and no arrest has been made so far. He further argued that the investigation of this case be handed over to a senior Police Officer outside Sangrur District.

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

From the record, I find that no ground is made out for handing over the investigation to other Police Officer not below the rank of DSP. If the petitioners are aggrieved from the investigation that it has not been conducted fairly and properly, he can avail the alternative remedies. It is settled law that Courts cannot interfere in the investigation. It is for the Investigating Officer to collect evidence against any of the accused or he may find from the investigation that he is innocent or not. Therefore, the Court cannot direct the Investigating Officer to conduct the investigation in a specific way. If the petitioners are aggrieved from the fact that investigation is not being conducted properly, then they can approach Illaqa Magistrate as per the law laid down by the Hon'ble Supreme Court in Sakiri Vasu v. State of U.P. and others, 2008 (1) RCR (Cr.) 392 (SC), in which it was 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.

[5]

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.

October 27, 2016.

(Inderjit Singh)
Judge

hsp

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