

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-38232 of 2015

.....

Date of decision:4.4.2016

Krishan Chand Chauhan and others

...Petitioners

v.

State of Haryana and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Kul Bhushan Sharma, Advocate for the petitioners.

Mr. D.R. Singla, Deputy Advocate General, Haryana for
the respondent-State.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. for issuance of directions to respondent No.10-C.B.I. to investigate into the matter and to register the FIR against the culprits and prosecute them in accordance with law.

Notice of motion was issued only to respondents No.1 to 3-State. Mr. D.R. Singla, learned Deputy Advocate General, Haryana has appeared on behalf of respondent-State and contested this petition.

I have heard learned counsel for the petitioners as well as learned Deputy Advocate General, Haryana and have gone through the record.

It is stated in the petition that petitioner No.1 is retired Head of Human Resources of the Company, namely, Lakhani India Limited and he retired on 12.6.2015. Petitioner No.2 is the General Secretary of the Union Karkhana Mazdoor Sangathan Indore, AITUC and petitioner No.3 is the Legal Advisor to the said Union. A perusal of the record shows that the petitioners want to get registered the FIR against private respondents and to investigate the matter through the C.B.I. As per the petition, the private respondents have not made the payment of the provident fund dues, arrears to the Provident Fund Department. They have taken the loan from the Banks and that loan had not been repaid. There are also allegations that respondents No.4 to 6 sold out the plant and machinery despite the order of attachment of immovable property by the Department of Provident Fund. It is also stated that the Company had defrauded the workers including the petitioners, creditors and share-holders.

The State has filed the reply by stating that Mohan Nimje, General Secretary of Karkhana Mazdoor Sangathan AITUC, New Devas Road, Indore made complaint to the Commissioner of Police, Faridabad, for taking legal action against respondents No.4 to 9, who have misappropriated Provident Fund and salary of the workers. On this complaint, inquiry was marked. From the statement of the complainant, it reveals that the workmen, who were doing service in the factory, which is situated at Indore (MP) and authorized representatives, did not deposit Provident Funds in the account of workmen and also not paid salaries of the employees of the Company and respondents No.4 to 9 misused the deduction of funds and

salaries. It is stated that dispute between the complainant and respondents No.4 to 9 is transaction, which is civil in nature and jurisdiction of complaint falls within the territorial jurisdiction of Indore (MP), hence the complaint was filed.

I agree with the augments of the learned State counsel and also regarding the fact that the present petitioners are asking for the legal action against respondents No.4 to 9 for non-depositing of Provident Fund etc. and selling the plant and machinery etc. at Indore and this Court has no jurisdiction. Secondly, I find that no FIR has been registered in the present case. The petitioners have alternative remedies with them. It has been held by the Hon'ble Supreme Court in Sakiri Vasu v. State of U.P. and others, 2008 (1) R.C.R. (Cr.) 392, that petition under Section 482 Cr.P.C. should not be entertained in routine.

In Sakiri Vasu v. State of U.P. and others (supra), 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.

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 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.

On the face of it, it looks that the dispute between the parties is

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of Workers Union as well as the management of the factory. If the respondents have taken loan from the Banks, the Banks have every remedy to avail against the private respondents. These petitioners have no cause of action on that ground. Similarly, if during the attachment of the immovable property, they have sold the plant and machinery or anything, then the grievance lies with the Provident Fund Department.

Otherwise also, from the perusal of the record, no ground is made out to entrust the inquiry to C.B.I. in this matter.

Therefore, from the above, I do not find any merit in the present petition and the same is dismissed.

April 4, 2016.

(Inderjit Singh)
Judge

hsp