IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-43281 of 2016 (O&M)
Date of decision: December 3, 2016

Sukhdev Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms. Divya Godara, Advocate for
Mr. Jasvir Singh Dhaliwal, Advocate
for the petitioner.

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INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against State of Punjab and other respondents seeking direction to the respondents to conduct the investigations expeditiously and properly in case FIR No.61 dated 08.10.2016, registered at Police Station Jhunir, District Mansa, under Section 306 of Indian Penal Code and to submit the status report of the investigation conducted so far.

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

From the record, I find that the FIR in the matter has already been registered and investigation is going on. At the time of arguments, learned counsel for the petitioner argued that the Police of Police Station, Jhunir, District Mansa is not investigating the case properly and fairly. He further argued that even the status report of the investigation conducted so far has not been submitted by the prosecution agency.

I have heard learned counsel for the petitioner and have gone

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through the record. From the record, I find that if the petitioner is 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 petitioner is aggrieved from the fact that investigation is not being conducted properly, then he can approach Illaqa Magistrate, who has ample power to supervise and even monitor the investigation 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.*
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> *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*

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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?

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> *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.*
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> *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***.

As the petitioner has alternative remedies as stated in the above-said case, especially to approach the Judicial Magistrate, therefore, this petition cannot be entertained and the same is disposed of with liberty to the petitioner to approach the Magistrate to avail alternative remedies.

December 3, 2016 **(INDERJIT SINGH)**
Jasmine **JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable : No

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