

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-43095 of 2015

.....

Date of decision:19.2.2016

Ashish

...Petitioner

v.

State of Haryana and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Lalit Rishi, Advocate for the petitioner.

Mr. Himmat Singh, Deputy Advocate General, Haryana for
the respondent-State.

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Inderjit Singh, J.

The petitioner has filed this petition under Section 482 Cr.P.C. with a prayer to direct respondents No.2 to 4 to register an FIR under Sections 148, 149, 323, 325, 307, 391, 393 and 506 IPC read with Sections 120-B and 34 IPC against respondent No.6 along with her 15 to 20 unknown accomplices, whom the petitioner can identify for causing simple as well as grievous hurts to the petitioner on 20.11.2015 regarding which Police instead of registering an FIR, had only registered DDR No.15 dated 20.11.2015 (Annexure-P.9).

Notice of motion was only issued to Advocate General,

Haryana for report regarding status of the complaint sent by the petitioner.

Mr. Himmat Singh, learned Deputy Advocate General, Haryana has put in appearance on behalf of the respondent-State and contested this petition. Today, learned State counsel filed the reply on behalf of the respondent-State in which it is stated that the petitioner moved an application to the Police that on 20.11.2015 he came to Court to attend the case pending against him. He went to upstairs to know the fate of the proceedings and few persons along with his wife came from back scuffled and started pushing him and some persons came and gave beating to him at the instance of his wife. In this regard, he sustained some injuries regarding which DDR No.15 dated 20.11.2015 was recorded in Police Station Central, Faridabad. It is also in the reply-cum-status report that the matter was entrusted to HC Rajinder, who got medico-legally examined the complainant/petitioner and as per MLR simple injuries on his person were found. It is also stated that thereafter on the complaint of Smt. Shashi Bala, Stenographer Gr.III that on 20.11.2015 her husband Ashish Hasija when coming from the Court, extended threat to kill her and her child and also used filthy language against her, in this regard, DDR No.20 dated 20.11.2015 was recorded. It is also in the reply that the Inquiry Officer prepared calendra proceedings against Shashi Bala and Ashish Hasija and submitted before DCP Central, Faridabad under Sections 107/151 Cr.P.C. for maintaining law and order and preventing dispute in future. It is also stated that this dispute between the parties is regarding non-cognizable offence and the matter is sub-judice before DCP Central, Faridabad.

Keeping in view the reply and in view of the fact that the injuries were found simple and that were also caused without any weapon and in view of the fact that it is a case of matrimonial dispute between husband and wife and further the proceedings under Sections 107/151 Cr.P.C. as per reply, have already been put up before the DCP, Central, Faridabad, I find that no further action is required to be taken in this case. Otherwise also, petition under Section 482 Cr.P.C. is not to be entertained in routine when the alternative remedies are available as 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, in which it has been 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

[4]

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 by the Hon'ble Supreme Court in T.C. Thangaraj v. V. Engammal and others, 2011 (3) R.C.R. (Cr.) 751.

Therefore, in view of the law laid down in Sakiri Vasu v. State of U.P. and others (supra) 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.

As regards the protection, nothing has been shown except this

[7]

incident of pushing and giving beating etc., therefore, no further action is required to be taken in this petition and the same is disposed of with the aforesaid observations.

February 19, 2016.

(Inderjit Singh)
Judge

hsp