

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-6329 of 2016

.....

Date of decision:23.2.2016

Sameera

...Petitioner

v.

State of Punjab and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Krishan Singh Dadwal, Advocate for the petitioner.

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Inderjit Singh, J.

The petitioner has filed this petition under Section 482 Cr.P.C. with a prayer to quash the enquiry report dated 14.9.2015 (Annexure-P.5) submitted by respondent No.3-Deputy Superintendent of Police, Chabbewal and approved by respondent No.2-Senior Superintendent of Police, Hoshiarpur without taking into consideration the seriousness of the allegations as well as the statement of the petitioner/victim dated 3.9.2015 (Annexure-P.4) and other persons and on the basis of the political pressure, a one sided enquiry report has been given and for the intervention of this Court for ordering remedial action specially the registration of the FIR against respondents No.5 to 7.

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

From the record, I find that earlier also the present petitioner filed a petition in which this Court vide order dated 23.7.2015 disposed of the same with a direction to Senior Superintendent of Police, Hoshiarpur to dispose of the representation dated 30.6.2014 within 45 days from the date of receipt of copy of that order. After that the Senior Superintendent of Police got conducted enquiry, which is Annexure-P.5 on the file.

Learned counsel for the petitioner argued to quash the enquiry report and give direction to register the FIR. The learned counsel has challenged the findings of the Enquiry Officer. There is nothing, at this stage, to show that this enquiry report is not as per law and nothing is there to set aside this enquiry report. Otherwise also, learned counsel for the petitioner mainly argued for registration of the FIR and to take action against respondents No.5 to 7, namely, Parminder Singh, Member Panchayat, Village Chabbewal, respondent No.6-Jaspreet Kaur wife of Parminder Singh and respondent No.7 Jahangir Khan brother-in-law of the petitioner.

The petitioner can avail alternative remedy of filing criminal complaint etc. as held by the Hon'ble Supreme Court Sakiri Vasu v. State of U.P. and others, 2008 (1) R.C.R. (Cr.) 392, which is 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,

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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.”

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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), finding no merit in this petition filed under Section 482 Cr.P.C., the same is dismissed. However, the petitioner is at liberty to avail the alternative remedy before the Magistrate etc. as held in these cases.

February 23, 2016.

(Inderjit Singh)
Judge

hsp