

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-9608 of 2014

.....

Date of decision:6.5.2016

Amarjit Kaur and another

...Petitioners

v.

State of Punjab and others

...Respondents

.....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vaneet Kumar Sharma, Advocate for the petitioners.

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Inderjit Singh, J.

The petitioners have filed this petition under Section 482 Cr.P.C. for transferring the investigation of case FIR No.6 dated 11.1.2013 for the offences under Sections 447, 448, 511, 427, 380 and 420 IPC registered at Police Station Nakodar, District Jalandhar Rural from Nakodar Police to any independent agency preferably to Central Bureau of Investigation as the same has been got registered falsely by respondent No.5 using the influence of respondent No.6 in counter-blast to the civil suit filed by the petitioners and an ad-interim injunction issued by the learned Civil Court, Nakodar and further the Punjab Police is not conducting investigation in free and fair manner in the case, working against the petitioners in a mala fide way and are trying to use the case as a weapon of

extortion to usurp the land of the petitioners.

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

From the record, I find that the FIR has been registered against the petitioners for not so serious offences. The petitioners are alleging that this is a false FIR and the investigation should be handed over to C.B.I. or any other independent agency, no ground is made out for handing over such type of cases to independent agency or Central Bureau of Investigation. From the arguments of the learned counsel for the petitioners, it looks that the petitioners are aggrieved from the fact that fair and impartial investigation is not being conducted. As per the law laid down by the Hon'ble Supreme in Sakiri Vasu v. State of U.P. and others, 2008 (1) R.C.R. (Cr.) 392, the Magistrate has ample powers to supervise the investigation and even monitor the investigation under Section 156(3) Cr.P.C. Therefore, the petitioner should avail the alternative remedy as per law laid down in Sakiri Vasu v. State of U.P. and others (supra), in which 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

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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 of 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 and the same is dismissed. However, the petitioners are 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. Even the Magistrate

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can monitor the investigation as held by the Hon'ble Supreme Court in the above mentioned cases.

May 6, 2016.

(Inderjit Singh)
Judge

hsp