

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.21347 of 2016
Date of Decision:17.10.2016

Sub. Sahdev Kumar (Retd.) and others

... Petitioners

Vs.

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MS. JUSTICE LISA GILL

Present : Mr. Abhimanyu Singh, Advocate for the petitioners.

S.S. Saron, J.

This petition has been filed by Sub. Sahdev Kumar (Retd.) and other Ex-Servicemen of Gurgaon in the nature of Public Interest litigation for issuing an appropriate writ, order or direction especially in the nature of mandamus directing the Director, Haryana State Vigilance Bureau, Panchkula and the Superintending Engineer, Dakshin Haryana Bijli Vitran Nigam Operation Circle, DHBVN, Mehrauli Road, Gurgaon (respondents No.2 and 3) to hold an enquiry into the complaints dated 18.4.2016 and 10.6.2016 (Annexures P-3 and P-4) respectively and take action on the same in accordance with law, as action in accordance with law is not being taken by the State of Haryana, the Director, Haryana State Vigilance Bureau, Panchkula and the Superintending Engineer, Dakshin Haryana Bijli Vitran Nigam Operation Circle, DHBVN, Mehrauli Road, Gurgaon (respondents No.1 to 3) against respondents No.4 to 6, who are Ex-Servicemen and working as Nodal Officer, Assistant and Clerk respectively and who it is alleged are indulging in large scale bungling, fraud, corruption,

embezzlement and misappropriation of public funds which is being collected in the name of electricity bills in collusion and in connivance with the officials of Dakshin Haryana Bijli Vitran Nigam Operation Circle, DHBVN (respondent No.3), besides, respondents No.4 to 6 are being shielded and protected for obvious reasons.

The grievance of the petitioners is that criminal offences, which are cognizable in nature, have been committed by respondents No.4 to 6 for which action in accordance with law is liable to be taken.

In respect of criminal offences making out cognizable offences, the appropriate procedure in terms of Section 154 of the Code of Criminal Procedure ('Cr.P.C.' - for short) is that information relating to the commission of a cognizable offence is to be given to the Incharge of the Police Station i.e. to the Station House Officer (SHO).

In **Sakiri Vasu v. State of U.P. and others** 2008 (1) RCR (Crl.) 392, it was held by the Supreme Court that in case police is not registering an FIR in respect of commission of a cognizable offence, the first remedy of the complainant 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 Cr.P.C., the grievance of the complainant 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, the complainant has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. It was held that when there were so many alternative remedies, a writ petition or a petition is not to be entertained.

Therefore, a petition in the High Court for registration of an FIR or conducting an inquiry is not to be lightly entertained. Besides, whenever allegations of commission of cognizable offences are alleged, the proper course is to lodge an FIR by giving information to the Incharge of the Police Station in terms of Section 154 (1) Cr.P.C. If the complainant is dissatisfied, he may approach the Superintendent of Police under Section 154 (3) Cr.P.C. or an Officer referred to in Section 36 Cr.P.C. If still the grievance of the complainant persists, he can approach a Magistrate under Section 156 (3) Cr.P.C. The Magistrate has power under Section 156 (3) Cr.P.C. to direct the police to register an FIR. Besides, he can monitor the investigation in an appropriate case. It is well known that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than which has been prescribed. Therefore, where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that the other methods of performance are necessarily forbidden. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. As such, when law provides for following a particular procedure, then that procedure alone is to be followed and the other procedures are necessarily forbidden.

In the present case, it is in fact not even shown by the petitioners that they had approached the Incharge of the Police Station concerned and given information specifying the commission of any cognizable offences, which are said to have been committed. A representation has been made to the Chief Minister and others but no complaint so far has been made to the Incharge of the Police Station

concerned, which is the requirement of law for setting the criminal law in motion and investigating the case relating to commission of cognizable offences.

In the circumstances, for the cognizable offences which are alleged to have been committed, the petitioners may avail their remedies in the first instance in accordance with law.

Accordingly, the present petition is dismissed. However, this would not preclude the petitioners from seeking alternative remedies in accordance with law.

(S.S. SARON)
JUDGE

17.10.2016
rajeev

(LISA GILL)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No