

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No.131 of 2017**

Shankar Vaishnav S/o Kanhaiya Das Vaishnav, Aged About 35 Years
R/o Ward No. 11, Janakpur Road, Takhatpur, Tah. Takhatpur, Dist.
Bilaspur (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary Home Department,
Mahanadi Bhawan, New Raipur, Dist Raipur (Chhattisgarh)
2. Inspector General Of Police, Bilaspur, Range, Bilaspur
(Chhattisgarh)
3. Superintendent Of Police, Bilaspur, District Bilaspur
(Chhattisgarh)
4. S. H. O. Takhatpur, District Bilaspur (Chhattisgarh)
5. Mohit Vaishnav @ Bholu, S/o Ishwar Das Vaishnav, R/o Ward
No. 11, Janakpur Road, Takhatpur, Tah. Takhatpur, Dist.
Bilaspur (Chhattisgarh)
6. Parmeshwar Vaishnav, S/o Ishwar Das Vaishnav, R/o Ward No.
11, Janakpur Road, Takhatpur, Tah. Takhatpur, Dist. Bilaspur
(Chhattisgarh)

---- Respondents

For Petitioner : Mr. H.V. Sharma, Advocate
For State : Mr. Gary Mukhopadhyay, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

17/04/2017

(1) The petitioner herein has filed this writ petition seeking appropriate writ or direction commanding the respondent authorities to register criminal case against private respondents No.5 & 6 for cognizance of cognizable offence and holding

thorough and speedy investigation in the matter.

(2) Mr. H.V. Sharma, counsel appearing for the petitioner, would submit that the cognizable offence has been committed by the respondents 5 & 6 against which, a report has been lodged and thereafter, again the matter has been reported to the higher authorities including Inspector General of Police, Superintendent of Police & S.H.O. but yet, no action has been taken against them in the light of decision rendered by the Supreme Court in the matter of *Lalita Kumari Vs. Government of Uttar Pradesh and others*¹ and respondents be directed to proceed against respondents No.5 & 6.

(3) On the other hand, learned State counsel appearing on behalf of the State/respondents No.1 to 4, would submit that if the petitioner is not satisfied with the action of the police authorities, he has alternative remedy of submitting an application under Section 156(3) of the Code of Criminal Procedure, 1973 (for short 'the CrPC'), before the jurisdictional Magistrate as held by the Supreme Court in the matter of *Sakiri Vasu Vs. State of Uttar Pradesh and others*² or filing complaint before the jurisdictional criminal court under Section 200 of the CrPC. He would also rely upon the decision rendered by this Court in *Mohd. Anish Memon Vs. State of Chhattisgarh & Ors*³.

(4) I have heard learned counsel for the parties on the question

1 (2014) 2 SCC 1

2 (2008) 2 SCC 409

3 2009 (I) MPJR-CG 73

of admission.

(5) In the case in hand, it would appear that the petitioner has made written complaint against respondents No.5 & 6 on 21.03.2017 before the police authorities. At this stage, it would be pertinent to mention the decision rendered by the Supreme Court in *Sakiri Vasu* (supra) in which the Supreme Court has held as under in paragraphs 26 and 27:-

“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) of CrPC or other police officer referred to in Section 36 CrPC. 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) of CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. 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 of CrPC simply

because a person has a grievance that his FIR has not been registered by the police , for 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 police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.”

(6) Aforesaid decision of the Supreme Court has been followed by this Court in *Mohd. Anish Memon*³ (supra), *Ram Prakash Katiyar Vs. State of Chhattisgarh & Ors.*⁴ and *Bhagwan Das Vs. State of Chhattisgarh & Ors*⁵.

(7) Likewise, the Supreme Court in the matter of *Aleque Padamsee and others Vs. Union of India*⁶ and others has held that if any person is aggrieved by the inaction of police officials in registering the FIR, the modalities contained in Section 190 read with Section 200 of the Code of Criminal Procedure, 1973 are to be adopted and observed.

(8) Thus, the petitioner has the efficacious statutory alternative remedy of approaching first before the Superintendent of Police under Section 154 (3) of the CrPC or other officer mentioned in Section 36 of the CrPC. Despite approaching the Superintendent of Police or other officer as mentioned in Section 36 of the CrPC,

4 2011 (III) MPJR-CG 116

5 2011 (I) CGBCLJ 129

6 (2007) 6 SCC 171

the petitioner is entitled to make an application to the Magistrate under Section 156(3) of the CrPC and also has a further remedy of filing complaint under Section 200 of the CrPC. The Supreme Court in like situation has deprecated the practice of directly entertaining writ petition or petition under Section 482 of the CrPC by this Court and emphasized that the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation in *Sakiri Vasu*² (*supra*), and followed by this Court also in above-stated case.

(9) In view of the above, the petitioner has not properly approached the above stated forums as rendered in *Sakiri Vasu*² (*supra*). I do not find any case of issuance of a writ to the police authorities to register FIR on the report made by the petitioner and the writ petition is liable to be dismissed and it is accordingly dismissed in *limine* but without imposition of cost(s). However, the petitioner shall be at liberty to avail other appropriate remedies, in accordance with law for registration of FIR is concerned as indicated by the Supreme Court in *Sakiri Vasu* (*supra*) and also at liberty to bring to the notice of said authorities the decision rendered by the Supreme Court in *Lalita Kumari*¹ (*supra*).

Sd/-

(Sanjay K. Agrawal)
Judge

L/-