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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No.158 of 2017**

1. Niyaz Ahmad S/o. Yasim Khan, Aged About 51 Years R/o. Village Adarsh Nagar Ward No. 05, Kawardha, Police Station And Tehsil Kawardha, District Kabirdham (Chhattisgarh)
2. Rubina Begam W/o Shekh Rahban Khan, Aged About 26 Years R/o. Korba, Tehsil And Disrict Korba (Chhattisgarh)
3. Afrin Bano, W/o. Shekh Hamid, Aged About 24 Years At Present Address Ward No. 05, Kawardha, Police Station And Tahsil Kawardha, District Kabirdham (Chhattisgarh)

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Secretary Department Of Home, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)
2. Director General Of Police, Police Headquarter, Raipur, District Raipur, Chhattisgarh
3. Superintendent Of Police, Kabirdham, District Kabirdham, Chhattisgarh
4. Station House Officer, Police Station, Kawardha, District Kabirdham (Chhattisgarh)
5. Altaf @ Gama S/o. Late Mohammad Gour, Aged About 40 Years President Of Madarsha, Ward No. 06, Behind Police Station Kawardha, Police Station And Tahail Kawardha, District Kabirdham (Chhattisgarh)
6. Nasiruddin @ Nassu S/o. Mehbub Khan, Aged About 42 Years Vice President Of Madarsha, Ward No. 06, Behind Police Station Kawardha, Police Station And Tahail Kawardha, District Kabirdham (Chhattisgarh)
7. Nizam W/o. Chand Miyan, Aged About 52 Years Up Mutwalli Muslim Trust Kawardha, R/o. Adarsha Nagar Kawardha, Police Station And Tahail Kawardha, District Kabirdham (Chhattisgarh)
8. Abdulla Kari W/o. Rojdar Manjholo, Head Master Madarsha, Ward No. 06, Police Station And Tahail Kawardha, District Kabirdham (Chhattisgarh)
9. Hafiz Abdul Qayyum, Imam Jama Maszid, Kawardha, Police Station And Tahail Kawardha, District Kabirdham (Chhattisgarh)

---- Respondents

For Petitioners : Mr. Dharmesh Shrivastava, Advocate
 For State : Mr. UNS Deo, Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****15/05/2017**

(1) The petitioners herein have filed this writ petition seeking appropriate writ or direction commanding the respondent authorities to register criminal case against private respondents No.5 to 9 for cognizance of cognizable offence and holding thorough and speedy investigation in the matter.

(2) Mr. Dharmesh Shrivastava, counsel appearing for the petitioners, would submit that the cognizable offence has been committed by the respondents No.5 to 9 against which, a report has been lodged and thereafter, again the matter has been reported to the higher authorities including Director General of Police, Superintendent of Police and Station House Officer, 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 private respondents No.5 to 9.

(3) On the other hand, learned State counsel appearing on behalf of the State/respondents No.1 to 4, would submit that if the

¹ (2014) 2 SCC 1

petitioners are 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 of admission.

(5) In the case in hand, it would appear that the petitioners have made written complaint against respondents No.5 to 9 on 24.11.2016 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

2 (2008) 2 SCC 409

3 2009 (I) MPJR-CG 73

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*

4 2011 (III) MPJR-CG 116

5 2011 (I) CGBCLJ 129

*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 petitioners have 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, the petitioners are 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 petitioners have 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 petitioners and the writ petition is liable to be dismissed and it is accordingly

⁶ (2007) 6 SCC 171

dismissed in *limine* but without imposition of cost(s). However, the petitioners 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/-