

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM No.M-18981 of 2014 (O&M)
Date of Decision: January 19, 2017**

Neeraj Bakshi

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rakesh Bhatia, Advocate
for the petitioner.

Mr.Deep Singh, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Hemant Sarin, Advocate
for respondent No.5.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against State of Punjab and other respondents for directing respondents No.2 to 4 to get the FIR registered as respondent No.3 conducted enquiry as per directions of this Court, whereby respondent No.2 was directed to consider the representation of the petitioner and take necessary action in accordance with law and respondents No.2 to 4 in spite of the fact that respondent No.3 has conducted enquiry and during enquiry it was found that respondent No.5 and its directors have committed fraud and still the respondents are not getting the FIR registered and investigation conducted in this case.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.5 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

From the record, I find that earlier Assistant Commissioner of Police, Ludhiana, conducted enquiry and stated that a cheque was presented in the bank and a fraud was committed with the complainant but in the enquiry itself, it is written that it will be appropriate to take opinion from D.A. Legal and after obtaining the report from D.A. Legal, as the case would be made out, suitable action will be taken. The opinion of DA legal was also taken, which is placed on record as Annexure R-1, where D.A. Legal has given opinion that learned trial Court is already seized of the matter and is the best judge to decide the issues/disputes in between the petitioner and M/s Siel Chemicals and gave the report that representation may be filed and the decision of the Court of SDJM, Rajpura may be awaited.

The perusal of the record show that M/s Siel Chemical has already filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioner and his firm, which is pending before the Court of learned SDJM, Rajpura. The case of the present petitioner is that, the cheque has been misused and a fraud has been played. This fact, whether the cheque was issued for legally enforceable liability or fraud has been committed, is to be decided by the concerned Court.

It is settled law that petition under Section 482 Cr.P.C. should not be entertained in routine by the High Court for registration of the FIR. The petitioner has alternative remedies as held by the Hon'ble Supreme Court in **Sakiri Vasu v. State of U.P. and others, 2008 (1) R.C.R. (Cr.) 392** 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, 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.”

The law laid down in above judgment has also been relied upon by the Hon'ble Supreme Court in **T.C. Thangaraj vs. V. Engammal and others, 2011 (3) R.C.R. (Cr.) 751.**

As the petitioner has alternative remedies as stated in the above-said case, especially to approach the Judicial Magistrate, therefore, this petition cannot be entertained and the same is dismissed with liberty to the petitioner to approach the Magistrate to avail alternative remedies.

January 19, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No