

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-2401 of 2017

.....

Date of decision:3.3.2017

Vikram Malik

...Petitioner

v.

State of Haryana and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sandeep Vema, Advocate for the petitioner.

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Inderjit Singh, J.

This criminal miscellaneous petition has been filed by petitioner under Section 482 Cr.P.C. for issuance of directions to the respondents to transfer the investigation of case FIR No.4 dated 2.1.2017 registered for the offences under Sections 148, 149, 323, 341 and 506 IPC and Section 3(2)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'SC & ST Act') at Police Station Shahabad, District Kurukshetra, to any independent agency or to an officer not below the rank of Senior Superintendent of Police, in order to ensure that the investigation conducted in fair and proper manner.

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

A perusal of the record shows that the FIR was registered on

2.1.2017 and still investigation is going on. Keeping in view the nature of the offences which are under Sections 148, 149, 323, 341 and 506 IPC and Section 3(2)(i) of the SC & ST Act, no ground is made out for handing over the investigation to the Senior Superintendent of Police. If the petitioner is aggrieved from the fact that the investigation is not being conducted fairly and properly, then he has an alternative remedy to apply before the Illaqa Magistrate as held by the Hon'ble Supreme Court in Sakiri Vasu v. State of U.P. and others, 2008 (1) RCR (Cr.) 392 (SC), 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.

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

With the above observations, this petition is dismissed.

March 3, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No