

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.M-27976 of 2017

.....

Date of decision:3.8.2017

Hasan Mohd.

...Petitioner

v.

State of Haryana and others

...Respondents

.....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Mazlish Khan, Advocate for the petitioner.

.....

Inderjit Singh, J.

This criminal miscellaneous petition has been filed by the petitioner under Section 482 Cr.P.C. with the prayer seeking direction to official respondents No.2 to 4 to investigate the matter fairly and with impartial manner to the extent FIR No.135 dated 19.4.2017 for the offences registered under Sections 147, 148, 323 and 506 IPC at Police Station Tauru, District Mewat and take strict legal action against respondents No.5 to 10 expeditiously as even after three months has been passed still no action has been taken. It has been further prayed to issue direction to official respondents No.2 to 4 to add Section 316 IPC in the present case which provides for causing death of quick unborn child by act amounting to culpable homicide. It has been further prayed for adding of Section 326 IPC

in the above FIR.

At the time of arguments, learned counsel for the petitioner argued that the Police of Police Station, Nuh is not investigating the case fairly and properly and no arrest has been made since 19.4.2017. He has also contended that the offences under Sections 316 and 326 IPC may be added in this case.

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

As regards the fair and impartial investigation of the case, I find that it is settled law that Courts cannot interfere in the investigation. It is for the Investigating Officer to collect evidence against any of the accused or he may find from the investigation whether he is innocent or not. Therefore, the Court cannot direct the Investigating Officer to conduct the investigation in a specific way. If the petitioner is aggrieved from the fact that investigation is not being conducted properly, then he can approach Illaqa Magistrate as per the law laid down by the Hon'ble Supreme Court in Sakiri Vasu v. State of U.P. and others, 2008 (1) RCR (Cr.) 392 (SC), in which it was observed 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 and the same is disposed of with liberty to the petitioner 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.

August 3, 2017.

(Inderjit Singh)
Judge

hsp

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