

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 245 of 2017

Niranjan Sahu S/o Nilkanth Sahu Aged About 36 Years R/o Nagar Panchayat Sargaon, Ward 15, Police Station Sargaon, District Mungeli, Chhattisgarh., Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its The Secretary, Department Of Home Ministerial Raipur, District Raipur, Chhattisgarh
2. The Collector, District Mungeli, Chhattisgarh
3. Superintendent Of Police, District Mungeli, Chhattisgarh
4. Station House Officer, Police Help Centre Sargaon, District Mungeli, Chhattisgarh
5. Kailash Singh Thakur R/o Village Pendari Tikat , Near Village Dauna, Police Station Pathariya, Tahsil Pathariya, District Mungeli, Chhattisgarh

---- Respondents

For Petitioner	:	Shri B.L.Sahu, Advocate
For State	:	Shri Manish Nigam, Panel Lawyer
For Respondent No.5	:	Shri Sunil Sahu, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

13/09/2018

This petition has been filed by the petitioner seeking direction for lodging FIR against respondent No.5 as also to issue direction to respondent No.5 to return the JCB machine along with due amount including rent.

2. According to learned counsel for the petitioner, the petitioner had given on rent his JCB machine to respondent No.5 on rental basis but respondent No.5 has not paid full rental amount and has also withheld the JCB machine and not returning the same. He submits that a *prima facie* case for commission of offence under Section 420 IPC is made out.
3. Reply has been filed by respondents.

4. After going through the records, it is found that the petitioner's grievance is that the respondent had dishonest intention..

5. If according to the petitioner, the machine was given to the petitioner by respondent No.5 on rental basis, therefore, it is not a fit case where this Court should invoke its jurisdiction under Article 226 of the Constitution of India. It is found that the police, after holding preliminary enquiry, has found it to be a case of civil nature and not registered any offence. In such a situation, remedy of filing complaint before the jurisdictional Magistrate would lie as held by the Supreme Court in the case of **Sakiri Vasu v. State of Uttar Pradesh and ors, 2008 (2) SCC 409**. In the case of **Sakiri Vasu** (supra), it was held -

“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 Section 36 and 154 (3) before the police officers concerned, 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.”

6. In view of above, this petition is dismissed with liberty to the petitioner to take recourse to remedy available to him under the law.

Sd/-
(Manindra Mohan Shrivastava)
Judge