

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 453 of 2018**

- Smt. Sona Bai W/o Shri Leela Das Manikpur Aged About 50 Years Caste Panika, R/o Belpur Road, Near Bridge, At Present R/o Govt. Indira Girls School, Chulghat Road, Takhatpur, Tahsil Takhatpur, District Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Home Mantralaya, Mahanadi Bhavan, Naya Raipur, Raipur, Chhattisgarh, District : Raipur
2. Superintendent Of Police, Bilaspur, District Bilaspur, Chhattisgarh,
3. The Station House Officer, Police Station Takhatpur, Civil And Revenue District Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Mirza Hafeez Bai, Advocate
For State	:	Shri Ashish Shukla, Dy.A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****20/09/2018**

On the last date of hearing, this Court had directed presence of Station House Officer, Police Station – Takhatpur along with records in connection with the written report (Annexure P/1) of the petitioner.

2. In the complaint, the petitioner made an allegation that the alleged accused came to her house and removed the roof. However, when no offence was registered, this petition came to be filed.

3. Learned counsel for the petitioner would submit that once the petitioner submitted report of commission of cognizable offence, it was the duty of the police officer to register the offence against the culprit but the police is not registering offence and as disclosed now, an *istagasha* has been submitted on making a preliminary enquiry into the matter which is not in accordance with law.

4. Learned State counsel submits that it is not a case where after the complaint lodged by the petitioner, no steps were taken to hold any enquiry. He submits that in respect of the property in dispute, revenue proceedings are going on and the revenue officers have passed interim orders with regard to construction. He further submits that the police officer held a preliminary enquiry in the matter and recorded statement of the petitioner and many other persons and after the preliminary enquiry, the officer was satisfied that present is not a case where it requires registration of FIR in the background of dispute existing between the parties and certain interim orders were passed by the revenue authorities. An *istagasha* for under Section 107 and 116 CrPC has now been submitted. Therefore, as far as the respondent authorities are concerned, it cannot be said that they are guilty of inaction.

5. Relevant records have been perused by this Court. This Court finds that after report was submitted by the petitioner, preliminary enquiry was made and the officer has submitted an *istagasha*. The record also reveals that there are disputes between the parties and certain interim order was passed staying the construction. If in this background, upon preliminary enquiry, the officer has chosen not to register the offence but submitted *istagasha*, in the opinion of this Court, at this stage, in the writ petition, no interference is called for.

6. During the course of hearing, learned counsel appearing for the petitioner submits that he himself has gone to the police station and the SHO has misbehaved with him. If this is the allegation, it is open for him to approach the competent authority for such allegations.

7. It is not a case where after submission of report, no enquiry has been done. Once, the police, after holding preliminary enquiry, does not register any offence, the course of action which may be adopted by the petitioner has been laid down by the Supreme Court in the case of **Sakiri Vasu v. State of Uttar Pradesh and ors, 2008 (2) SCC 409**. In the aforesaid case, 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.”

8. Thus, the petitioner has remedy of filing complaint under Section 200 CrPC before the Magistrate and take further action in the matter. The petition is, accordingly, finally disposed off.

Sd/-

(Manindra Mohan Shrivastava)
Judge