

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-13098 of 2018

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Date of decision:10.8.2018

Sewa Singh

...Petitioner

v.

State of Punjab and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Kuljit Singh Bal, Advocate for the petitioner.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. with a prayer for directing the respondents No.1 to 3, for taking appropriate legal action against respondents No.4 and 5, for the commission of cognizable offences under Indian Penal Code and Prevention of Corruption Act i.e. for committing culpable homicide not amounting to murder along with demanding illegal gratification to the tune of ₹50,000/- in the light/ observation of judgment in “Lalita Kumari v. Govt. of U.P. and others, 2013 (4) R.C.R. (Cr.) 979” of Hon'ble Supreme Court. It has further been prayed that a strict action may be taken against the guilty police officials for non-registration, delaying and for non-complying in accordance with the Supreme Court guide-lines.

I have heard learned counsel for the petitioner and have gone

through the record.

From the record, I find that the petitioner is seeking for registration of case against private respondents No.4 and 5. In Sakiri Vasu v. State of U.P. and others, 2008 (1) R.C.R. (Cr.) 392, the Hon'ble Supreme Court has held 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 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.

On the other hand, learned counsel for the petitioner placed reliance on the judgment of Hon'ble Supreme Court in Lalita Kumari v. Govt. of U.P. and others, 2013 (4) R.C.R. (Cr.) 979. I have gone through the law laid down in this judgment. In this case, the Hon'ble Supreme Court has nowhere held that the remedy with the petitioner is to file petition under Section 482 Cr.P.C. In this case, the Hon'ble Supreme Court has laid down that in cognizable offences registration of FIR under Section 154 Cr.P.C. is mandatory if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation etc.

Therefore, in view of the law laid down in Sakiri Vasu v. State

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of U.P. and others (supra) 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.

August 10, 2018.

(Inderjit Singh)
Judge

hsp

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