

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 36524 of 2018 (O&M)

Date of decision : 21.9.2018

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Priyanka

.....Petitioner

vs.

State of Punjab and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Ranjan Lakhanpal, Advocate
for the petitioner.

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H. S. Madaan, J.

This petition under Section 482 Cr.P.C. has been filed by petitioner Priyanka for issuance of direction to respondent-State to register a criminal case against respondent No.5 Subhash s/o Chander Shekher r/o House No. 1826, Singha Devi Colony, Naya Gaon, District Mohali, under Sections 498-A, 406/494, 323 IPC and other allied sections, as per facts of the case.

However, the Apex Court in authority **Sakiri Vasu vs. State of U.P. and others 2008 (1) RCR (Criminal) 392**, has observed that when the police does not register the FIR, a petition under Section 482 Cr.P.C. is not to be entertained and the petitioner should be relegated to Magistrate as Magistrate has power under Section 156(3)

Cr.P.C. to direct police to register FIR.

Learned counsel for the petitioner, in support of his contention that such type of direction can be issued by this Court, has referred to authority *Lalita Kumari vs. Government of U.P. and others*, in 1 Writ petition (Criminal) No. 68 of 2008, decided on 12.11.2013. however, a perusal of the judgment goes to show that in the concluding para it was held that :-

“111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under [Section 154](#) of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose

reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

112) With the above directions, we dispose of the reference made to us. List all the matters before the appropriate Bench for disposal on merits.”

Thus this authority does not specifically deals with issuance of direction by this Court to the police for registration of the FIR. However, the authority in *Sakiri Vasu's case (Supra)*, is very clear that when a petitioner approaches this Court with a prayer for issuance of direction to the police to register a FIR, then such

petitioner should be relegated to the Magistrate.

Accordingly, the present petition is disposed of relegating the petitioner to approach the Judicial Magistrate having jurisdiction under Section 156 (3) Cr.P.C. for redressal of her grievances.

21.9.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No