

Criminal Misc. No. M- 41221 of 2017 (O&M)

Date of decision : February 09, 2018

Reshma Khatoon

.....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Manju Verma, Advocate for
Mr. G.S. Verma, Advocate
for the petitioner.

LISA GILL, J.

Prayer in this petition is for a direction to respondents No. 1 to 3 to protect the life, liberty and property of the petitioner at the hands of respondents No. 5 to 7.

As per the averments in the petition, marriage of the petitioner was solemnised with respondent No. 5 on 29.06.2013 at Gorakpur, U.P.. It is stated that the petitioner and her husband lived together at the native village in Gorakpur and at Ludhiana as well. However, in May 2016, the petitioner's husband - respondent No. 5 left for U.P.. He threatened the petitioner that, in case, she lodged any complaint against him, she alongwith her whole family would be eliminated. Allegations are raised that the police authorities have not taken any action against respondents No. 5 to 7 despite specific allegations of merciless beating due to non fulfilment of demands of dowry.

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

An opportunity was afforded to the petitioner to place on record document/documents to show that the petitioner and her husband had resided at Ludhiana as mentioned in this petition. No such document is forthcoming till date.

It is relevant to note that the petitioner has efficacious remedy available to her in respect to the matrimonial offences, if any, committed by respondents No. 5 to 7. It has been held by the Hon'ble Supreme Court in **Sakiri Vasu v. State of U.P., 2007(5) Law Herald (Supreme Court) 3910** as under:-

“24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and/or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper registration including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.

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) Cr.P.C.

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.”

Keeping in view the facts and circumstances of the case, I do not find any ground to interfere, at this stage, in exercise of jurisdiction

under Section 482 Cr.P.C.

In case, the petitioner has any apprehension to her life and liberty, necessary application can be moved by her in respect to the same before respondent No. 3, who shall needless to say, look into the matter and take action, if any/as may be required for protection of the petitioner's life and liberty in accordance with law. Needless to say the petitioner is at liberty to seek the remedy/remedies as may be available to her in respect to any other grievance in accordance with law. No interference is called for by this Court, at this stage.

Petition is, accordingly, disposed of. It is clarified that there is no expression on the merits of the case or the genuineness or otherwise of the averments in this petition.

February 09, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No