

**110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Misc. No. M- 8824 of 2018 (O&M)

Date of decision : March 01, 2018

Gurdev Singh

.....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ramdeep Partap Singh, Advocate
for the petitioner.

LISA GILL, J.

This petition has been filed seeking a direction to respondent No. 4 – Central Bureau of Investigation (CBI) to investigate/enquire into the murder of the petitioner's brother, which allegedly took place in the year 2014. It is argued that respondent No. 5 – wife of the deceased initiated numerous false and frivolous litigations against the petitioner and his family members including criminal proceedings under Section 376 IPC which have been found to be false. The petitioner's son and others were acquitted in one of the said proceedings. Civil suit initiated by respondent No. 5 was dismissed in default.

The petitioner, it is submitted, had earlier filed CRM-M-664-2017 for issuance of directions to the police authorities to decide his representation dated 22.08.2014. The said petition was disposed of on 13.01.2017 (Annexure P-13) while directing respondent No. 2/Senior Superintendent of Police, Gurdaspur to decide the said representation moved way back in the year 2014 by passing a speaking

order. The petitioner's representation was decided as reflected in report dated 05.01.2015 (Annexure P-14). Both the parties were associated in the enquiry. Statements of persons named therein were recorded. It is mentioned that both parties were present at the time of cremation of the petitioner's brother. Post mortem was not conducted. It is recommended after considering the facts and circumstances of the case that the complaint be filed. Aggrieved therefrom this petition has been filed seeking investigation of the matter to be handed over to CBI – respondent No. 4.

I have heard learned counsel for the petitioner at length.

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.”

In the present case, it is apparent that the petitioner has an efficacious alternate remedy. No exceptional or extra ordinary circumstance is pointed out which calls for interference by this Court in exercise of jurisdiction under Section 482 Cr.P.C. Needless to say the petitioner is at liberty to avail the remedy/remedies as may be available to him in accordance with law.

Present petition is, accordingly, disposed of.

(Lisa Gill)
Judge

March 01, 2018
rts

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