

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-22403-2019

Date of Decision: 17.05.2019

Himalyani Gupta and another

...Petitioners

Versus

State of Haryana and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aadil Singh Boparai, Advocate for the petitioners.

ANIL KSHETARPAL, J.

In the present petition, petitioners have filed this petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short) with following substantive prayer:-

“Pass an order directing the respondent/Police to register an FIR against the accused persons i.e. Shri Kapil Prakash and Smt. Madhu Prakash under Sections 404, 406, 418, 420, 467, 468, 471, 474 and 120-B of the Indian Penal Code.”

It may be noted, at the outset, that the petitioners earlier also filed a petition vide CRM-M-10715-2018, which was disposed of on the very date by directing the Station House Officer, Police Station, Ambala Cantt, District Ambala, to look into the said representation and decide the same expeditiously by passing a speaking order within 90 days, as per law.

The concerned SHO has passed a detailed order dated 14.06.2018 (Annexure P-12), while observing that nature of the case is civil.

Now, once again the petitioners, as noted above, have filed a fresh petition.

Some facts are required to be noticed that Late Rai Bahadur Banarasi Das was initially married with Asa Devi. Thereafter, he lived with Late Smt.Prem Kaur from whom he had two sons and one daughter namely Kuldeep Prakash, Kulbhushan Prakash, and Kulwanti. He allegedly executed a registered Will dated 27.10.1936. He also executed a deed on 03.03.1938, donating the properties mentioned in Schedule A and B for philanthropic purposes. As per the wishes, Trust was constituted on 03.03.1938 and Trust Deed was prepared on 04.03.1938. Late Rai Bahadur Banarasi Das died on 10.03.1938. The petitioners are daughters of Kuldeep Parkash aged more than 60 years. Kuldeep Parkash (father of the petitioners) remained member of the Educational Institution run by the Trust from 30.06.1941 to 02.01.2011, whereas Smt. Sita Prakash (mother of the petitioners) remained member from 11.05.1981 to 07.07.2014. Mother and father of the petitioners stayed in the property of the Trust i.e. Stoke Cottage, Shimla from 01.01.2013 to 31.12.2013 and paid rent to the Trust. Thus, it is apparent that father and mother of the petitioners never disputed the ownership of the Trust. Late Sh.Kuldeep Parkash (father of the petitioners) also filed a Revision No.4244 of 1998 for becoming permanent member of the Trust, which was initially rejected by the Chairman but the matter was compromised.

It has also come in the order passed by the SHO, neither the complainant nor the other party produced the original Will or the Trust Deed. After having enquired from the registration office, it was revealed that Record Room has been shifted from Tehsil to Secretariat and, therefore, search of the record is going on. However, it has been found that an attested copy of the Will executed by Late Sh. Rai Bahadur Banarasi Das was

produced before Hon'ble High Court of Lahore in Probate Case No.8/1939 and copies verified from the Record Room, Ambala City, has been produced. In charge of Record Room has himself certified that copy of Will dated 27.10.1936 is true and correct as per the record. The concerned SHO has also noted from the enquiry that the Will and the Trust Deed as of now are correct and true as per the record. It has further been noted that the complainants are regularly filing complainants. The matter is pending before the Civil Court. Rather it is the petitioners, who with intention to take possession of M/s AUSA Factory, took law in their hand and Case No.85 dated 21.03.2016 was registered at Ambala Chavani. It is apparent that the petitioners have woken up after a period of more than 80 years.

In these circumstances, this Court is called upon to decide as to whether directions should be issued for registration of the FIR or not in exercise of powers under Section 482 Cr.P.C.

The issue, whether directions are required to be issued in exercise of powers under Section 482 Cr.P.C. for registration of First Information Report (FIR) has already been examined by the Hon'ble Supreme Court in more than one judgments. In the case of **Aleque Padamsee and others Vs Union of India and others, (2007) SCC 171**, Hon'ble the Supreme Court held that if any person is aggrieved by the inaction of the police officials in registering the FIR, the modalities contained in Section 190 read with Section 200 Cr.P.C. are to be adopted and observed. Again, in the case of **Sakri Vasu Vs State of Uttar Pradesh and others, (2008) 2 SCC 409**, the Hon'ble Supreme Court, after detailed discussion, found that the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation. 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.

In view of the above, this Court finds no reason to issue such directions, as prayed for in exercise of extraordinary jurisdiction under Section 482 Cr.P.C. However, the petitioners shall be at liberty to file a criminal complaint before the trial court.

In view of the above, the present petition is dismissed.

17.05.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No