

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

116

CRM-M-54619-2019

Date of decision: 19.12.2019

Singara Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Kehar Singh Hissowal, Advocate for the petitioner.

ARUN KUMAR TYAGI, J

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.") for issuance of directions to respondents no.1 to 4 specially respondent No.2 to consider representation dated 19.10.2019 (**Annexure P-5**) made by the petitioner and take appropriate legal action against respondents No.5 and 6.

2. Briefly stated, the petitioner who belongs to the scheduled caste, has filed the petition on the averments that respondents No.5 and 6, who belong to the village of the petitioner and were working in an investment company M/s Singhland Investment Ltd., Head Office Ludhiana, came to the petitioner and allured him for making investment in their company at higher rate of interest. The petitioner and his son Daljit Singh having faith in them made investment of Rs.70,246/- each and receipts were issued to the petitioner and his son in this regard assuring that after one year they would get Rs.77,621.83 paise each on maturity. After one year, the petitioner and his son approached respondents No.5 and 6 to make the payment of Rs.77,621.83 paise each as they were entitled to the principal amount along with interest

but they did not make the payment of the entire money intentionally. In June, 2018, respondents No.5 and 6 made the promise in the presence of the prominent persons that in case the petitioner and his son would give Rs.1 lac more then they would make arrangement of settlement of his son in a good country of Europe. The petitioner and his son in the presence of some persons, gave Rs.1 lac to them but they again did not stand by their words and became dishonest. Thereafter, the petitioner and his son went to the village panchayat where respondents No.5 and 6 told that first of all they would give Rs.60,000/- in three instalments to which the petitioner and his son agreed but respondents No.5 and 6 again did not stand by their words. The petitioner gave representations dated 26.08.2019, 27.08.2019 and 19.10.2019 to Senior Superintendent of Police, Sangrur for taking action against respondents No.5 and 6 but nothing has been done in this regard.

3. I have heard learned counsel for the petitioner and perused the record.

4. Mr. Kehar Singh Hissowal, learned counsel for the petitioner has submitted that the petitioner made representations dated 26.08.2019, 27.08.2019 and 19.10.2019 to respondents No.1 to 4 but they did not take any action. Respondents No.1 to 4 specially respondent No.2 may be directed to consider his representations dated 26.08.2019, 27.08.2019 and 19.10.2019 and take appropriate legal action against respondents No.5 and 6.

5. In **Sakiri Vasu Vs. State of U.P. and others, 2008(1) RCR(Cr.) 392**, Hon'ble Supreme Court has held as under:-

“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.

29. In Union of India vs. Prakash P. Hinduja and another 2003 (6) SCC 195 (vide para 13), it has been observed by this Court that a Magistrate cannot interfere with the investigation by the police. However, in our opinion, the ratio of this decision would only apply when a proper investigation is being done by the police. If the Magistrate on an application under Section 156(3) Cr.P.C. is satisfied that proper investigation has not been done, or is not being done by the officer-in-charge of the concerned police station, he can certainly direct the officer in charge of the police station to make a proper investigation and can further monitor the same (though he should not himself investigate).”

6. In **Neha Chaudhary v. State of Haryana, (Punjab And Haryana) : Law Finder Doc Id # 902825** Hon'ble Single Bench of this

Court observed as under:-

“16. Thus, when a person informs his grievances to the police and the police is not registering the FIR, under Section 156 Cr.P.C., 1973 the complainant can approach the Senior Superintendent of Police by making an application in writing under Section 154 (3) Cr.P.C., 1973. If still, he does not find favour from the Senior Superintendent of Police, it is open to the complainant to file an application under Section 156(3) Cr.P.C., 1973 before the Magistrate concerned. In K.R. Ramkumar v. State represented by Inspector of Police, Kumbakonam 2004 (2) RCR (Criminal) 287 it has been held that when alternative remedy is available to the petitioner under Section 156(3) Cr.P.C., 1973 the remedy under Section 482 Cr.P.C., 1973 cannot be invoked. The inherent power of the High Court under Section 482 Cr.P.C., 1973 is different to that of Article 226 of the Constitution of India. The power under Section 482 Cr.P.C., 1973 cannot be invoked in respect of any matter covered by specific provisions of the Code as held in Kushi Ram v. Hashim, AIR 1959 Supreme Court 542. Further in the case of Arun Shankar Shukla v. State of Uttar Pradesh, 1999 (3) RCR (Criminal) 630 and Hari Singh v. Harbhajan Singh, 2000 (4) RCR (Criminal) 650 (SC) it has also been held by the Supreme Court that power under Section 482 Cr.P.C., 1973 cannot be exercised in the matter covered by specific provisions of the Code. In view of the judgment Sakiri Vasu (supra) the prayer of the petitioner under Section 482 Cr.P.C., 1973 for seeking direction to respondent No.2 register an FIR against the private respondents cannot be entertained and accepted. There is a specific provision under Section 156(3) Cr.P.C., 1973 whereby the Magistrate concerned has been empowered to issue such like directions. In such circumstances, the petitioner has got the available remedy to resort to the provision of Section 156(3) Cr.P.C., 1973 and, therefore, not competent to approach this Court under Section 482 Cr.P.C., 1973. There are specific provision

in the Code for the relief sought for. Therefore, this petition is held to be not maintainable. Even if it is presumed that the alternative remedy is a process, there is no ground to entertain the present petition under Section 482 Cr.P.C., 1973 while by passing the specific provision of the Code.”

7. A perusal of the representations dated 26.08.2019, 27.08.2019 and 19.10.2019 shows that the grievance of the petitioner is that the petitioner made investment on assurance given by respondents No.5 and 6 who did not return the amount despite compromise in village panchayat and thereby cheated/defrauded them. The grievance of the petitioner can very well be redressed by filing a complaint with application under Section 156(3) of the Cr.P.C. as held by Hon'ble Supreme Court in the case of **Sakiri Vasu (supra)** before the Judicial Magistrate First Class having the requisite territorial jurisdiction. In view of availability of equally efficacious alternative remedy the petition is not maintainable and issuance of directions to respondents No.1 to 4 in exercise of powers under Section 482 of the Cr.P.C. is not warranted.

8. Accordingly, the present petition is dismissed with liberty to the petitioner to avail the remedy of filing complaint before the Magistrate with application under Section 156(3) of the Cr.P.C., if so desired.

19.12.2019

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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