IN THE HIGH COURT OF MANIPUR
AT IMPHAL

WP(C) No. 328 of 2020

Shri G. Luwangjao Kabui, aged about 68 years, S/o (L) Poudedai Kabui, a resident of Lilong Chaobok Kabui Village, P.O. & P.S. Lilong and District – Thoubal, Manipur-795130.

……. Petitioner/s

– Versus –

1. The State of Manipur represented by **the Chief Secretary/Principal Secretary/Commissioner (Home)**, Government of Manipur, Old Secretariat, P.O.& P.S. Imphal, District- Imphal West, Manipur-795001;
2. **The Director General of Police (DGP)**, Govt. of Manipur, Babupara, P.O. & P.S. Imphal, District - Imphal West, Manipur-795001;
3. **The Superintendent of Police,** Thoubal District, Govt. of Manipur, P.O.,P.S. & District – Thoubal, Manipur-795138;
4. **The Officer-in-charge**, Lilong Police Station, Thoubal District, Manipur-795130.

…. Respondent/s

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioner/s	:	Mr. Deepak Prasad Sahu, Advocate
For the Respondent/s	:	Mr. H. Samarjit, GA
Date of hearing	:	20.07.2020
Date of Judgment & Order	**:**	**21.08.2020**

JUDGMENT & ORDER
(CAV)

The writ petition has been filed by the petitioner seeking direction on the respondents to take up the complaints submitted by him and to register the First Information Report against the accused persons.

[2] The case of the petitioner is that the land measuring an extent of 0.7480 hectare situated at No.17, Chaobok Village, Thoubal District in Dag No.2115 was inherited from his father and the revenue records were mutated in his name. After inheriting, the petitioner and his family members were physically possessed of the said land peacefully. While so, on 27.07.2016, some persons who are from the majority Muslim community came with deadly weapons and was trying to enter into the said land and they have also threatened by saying that the whole family of the petitioner would be killed, if they enter into the said agricultural land. Fearing the threat, the petitioner has lodged a complaint before the Officer-in-Charge, Lilong Police Station. Since, the Officer-in-charge, Lilong Police Station failed to consider the complaint, the petitioner has submitted complaint to the Superintendent of Police on 05.10.2016 requesting to take action.

Despite receipt of the complaints, the respondent police failed to register the FIR, nor taken action against the persons who threatened him and his family members and also prevented them from entering in the said land.

[3] Further case of the petitioner is that taking advantage of the non-registration of the FIR, the accused persons again entered into the land and destroyed the paddy field and they have also entered into the fish farm and caught fish by using fish nets. Again on 25.03.2020, when the petitioner and his family members were clearing the weeds in the fishing farm, the said persons along with some unknown persons with mask and cap came with deadly weapons started shooting with double barrel rifles. Being afraid, the petitioner and his family members ran out from the fish farm to save their lives. Immediately, on the same day, the petitioner made another complaint to the Officer-in-charge, Lilong Police Station against the said persons. Despite the receipt of the said complaint, the respondent police have not registered the FIR against the said persons. Hence, the petitioner has filed the present petition to direct the respondents to register the FIR.

[4] Residing the writ petition, the fourth respondent filed

affidavit-in-opposition stating that the land in question was a disputed land and both sides claiming ownership of the said land. In fact, the petitioner has failed to give any *prima facie* evidence about the contents that have been written in the complaint. It is stated that a civil suit is pending in the Court of Civil Judge (Junior Division), Thoubal in O.S. No.52 of 2016. Since the offence alleged by the petitioner is non-cognizable, the respondent police followed the provision of Section 155 Cr.P.C.

[5] The learned counsel for the petitioner submitted that the petitioner is the owner of the land in Dag No.2115 measuring an extent of 0.7480 hectare situated at No.17-Chaobok Village and he is cultivating the said land by raising paddy. While so, on 27.07.2016, some persons who are stated to belong to Muslim community came with deadly weapons and prevented the petitioner from entering or doing his agricultural work in the said land. He would submit that since the said persons threatened the petitioner, he has lodged a complaint before the fourth respondent. Since the fourth respondent failed to register FIR, the petitioner lodged another complaint before the third respondent.

[6] The learned counsel further submitted that taking advantage

of the non-registration of the FIR by the respondent police, the accused persons again entered into the paddy field and destroyed the same and they have also caught fish in the fish farm by using fishing net.

[7] The learned counsel next submitted that on 25.03.2020 when the petitioner and his family members were clearing weeds in the fishing farm, the said persons along with some unknown persons came to the fish farm with deadly weapons and started shooting with double barrel rifles. Fearing the incident, the petitioner and his family members ran out from the fish farm and made a complaint before the fourth respondent. Despite receipt of the complaint, the fourth respondent has not taken any action and/or registered the FIR against the accused persons. Hence, he prays that a direction be issued to the respondent police to register the FIR against the accused persons.

[8] Per contra, the learned Government counsel submitted that with regard to the land in Dag No.2115 measuring an area of 0.7480 hectares, both the petitioner and the accused persons are claiming ownership. He would submit that the nature of complaint is non-cognizable and therefore, the respondent police followed the provision of Section 155 Cr.P.C. The learned Government counsel

further submitted that based on the complaint dated 25.03.2020, the fourth respondent visited the spot i.e., fishing farm to prevent cognizable offence under Section 149 Cr.P.C. and in fact, the fourth respondent examined two accused persons. During enquiry, no evidence of gun fight and injury to anyone was found by them.

[9] The learned counsel then submitted that with regard to the land in question, a civil suit is pending between the parties and therefore, direction to register the FIR is not warranted and hence, prayed for dismissal of the writ petition.

[10] This Court considered the submissions made by the learned counsel for the parties and also perused the materials available on record.

[11] The grievance of the petitioner is that he is the owner of the land in Dag No.2115, Patta No.619 measuring an area of 0.7480 hectares situated at Village No.17-Chaobok, Thoubal District and the petitioner and his family members are cultivating the said land. They have also owned fish farm in the said land. While so, on 25.03.2020, some persons came to the land with deadly weapons and threatened the petitioner and his family members. Regarding the incident, the petitioner lodged a police complaint on the same day before the fourth

respondent and despite the receipt of the complaint, the fourth respondent has not registered the FIR.

[12] On the other hand, it is the say of the Government Advocate that with regard to the land in question, already a civil suit is pending between the petitioner and the accused persons and the petitioner is trying to convert the civil dispute into a criminal offence and the same cannot be entertained.

[13] In the affidavit-in-opposition, the fourth respondent clearly stated that a civil suit being O.S. No.52 of 2016 is pending between the parties before the Civil Judge (Jr. Division), Thoubal and both the parties are claiming ownership over the said land. When the plaintiff had already instituted the suit in respect of the property in question, it is the bounden duty of the petitioner to aver the same in the present petition, however, the petitioner has purposely failed to disclose the filing of the suit and its pendency in the writ petition.

[14] It is not the case of the petitioner that with regard to the land in question, a civil suit being O.S. No.52 of 2016 is pending between the petitioner and the accused persons, where both sides are claiming right over the land and fish farm etc. Thus, the plaintiff is trying to give the colour of civil dispute as criminal.

[15] In a catena of decisions, the Hon'ble Supreme Court and this Court held that when the dispute is of civil nature, giving its proceedings a criminal colour is abuse of process of law. This Court is of the view that filing of criminal complaint for settling the civil dispute is also abuse of process of law. Thus, the instant writ petition is clear abuse of process of law.

[16] In the case of ***M. Subramaniam and another v. S. Janaki and another***, ***Criminal Appeal No.102 of 2011, decided on 20.03.2020***, relied on by the learned Government Advocate, the Hon'ble Supreme Court held that a civil dispute should not be given the colour of a criminal offence. In the said judgment, the Hon'ble Supreme Court further held that mere pendency of the civil proceeding is not a good ground and justification not to register and investigate an FIR if a criminal offence has been committed.

[17] In the instant case, based on the complaint dated 25.03.2020, the fourth respondent proceeded to the spot to prevent cognizable offence and had also inspected and inquired about the incident and the said fact has not been disputed by the petitioner. On examination, the respondent police found that there was no gun fight as alleged by the petitioner and injury to anyone was found. On spot

inspection/enquiry, the fourth respondent police revealed that for the land in question, both sides claiming ownership and no evidence of draining out of waters from the paddy field was found and the nature of complaint is non-cognizable. It is the contention of the respondent police that in case of non-cognizable offence, provision of Section 155 Cr.P.C. would apply.

[18] It is settled that if a person has a grievance that an FIR has not been registered by the police or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not before the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) of Cr.P.C. If such an application under Section 156(3) is made and the Magistrate is, *prima facie,* satisfied, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter.

[19] From the above, it is clear that the complainant must avail of his remedy before the Magistrate concerned under Section 156(3) of Cr.P.C. if the respondent police failed to register the FIR and filing of the writ petition for direction to register the FIR against the accused

person is not appropriate. Thus, on this ground also, the instant writ petition is not maintainable.

[20] At this juncture, it is to be pointed out that the earlier complaint of the petitioner is dated 27.07.2016 and the last complaint is dated 25.03.2020. There is no evidence to show that in between i.e., 27.07.2016 and 25.03.2020 what had happened. Having given complaint initially in 2016 and kept quite for long number of four years, now based on the complaint dated 25.03.2020, the petitioner cannot complain of that the respondent police failed to take action on his complaint. As stated supra, the petitioner is trying to give the colour of civil dispute into criminal dispute and the same cannot be entertained.

[21] For all the above reasons, the writ petition is not maintainable and the same is dismissed. No costs.

JUDGE

FR/NFR

-Larson