Item No.2
(Video Conferencing)

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

W.P(C) No. 503 of 2020

Shri Jonathan Pamei, aged about 58 years, S/o late Keirang Pamei, a resident of Maibam Kabui Khul, P.O. & P.S. Nambol, Bishnupur District, Manipur-795134.

…Petitioner

-Versus-

1. The State of Manipur through the Additional Chief Secretary (Home), Government of Manipur, South Block, Manipur Secretariat, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.

2. The Director General of Police, Manipur, Police Headquarter, Babupura, Near New Secretariat P.O. & P.S. Imphal, Imphal West District, Manipu-795001.

3. The Superintendent of Police, Bishnupur, P.O. & P.S. Bishnupur, Bishnupur District, Manipur-795126.

4. The Officer-in-Charge, Nambol Police Station, Bishnupur District, Manipur-795134.

… Respondents

5. Kamjei Kamei @ Kamei Binoy Kabui, aged about 56 years, S/o Themdei Kamei @ K. Themdei Kabui, a resident of Naorem Kabui Village, P.O. & P.S. Nambol, Bishnupur District, Manipur-795134.

6. Pupu Kamei @ Kamei Poujanglin, aged about 26 years, S/o Kamjei Kamei, a resident of Naorem Kabui Village, P.O. & P.S. Nambol, Bishnupur District, Manipur-795134.

7. Golmei Alex, aged about 46 years, S/o Abung Rongmei, a resident of Naorem Kabui Village, P.O. & P.S. Nambol, Bishnupur District, Manipur-795134.

8. Gangamlung Pamei, aged about 31 years, S/o P.K. Maipak @ Pamei Maipak Rongmei, a resident of Maibam Kabui Khul, P.O. & P.S. Nambol, Bishnupur District, Manipur-795134.

9. Makuthui Kamei, aged about 24 years, S/o Pouthoulung Kamei @ Kamei Paothaolung, a resident of Maibam Kabui Khul, P.O. & P.S. Nambol, Bishnupur District, Manipur-795134.

10. Khamgailu Pamei, aged about 26 years, D/O Sanathpi Pamei @ Pamei Sanathoi, a resident of Maibam Kabui Khul, P.O. & P.S. Nambol, Bishnupur District, Manipur-795134.

11. Meithailu Panmei, aged about 22 years, D/o Gaithoipu Panmei @ Rajen Panmei, a resident of Maibam Kabui Khul, P.O. & P.S. Nambol, Bishnupur District, Manipur-795134.

12. Lydialu Gangmei @ Lediya Gangmei, aged about 22 years, D/o Alex Gangmei, a resident of Maibam Kabui Khul, P.O. & P.S. Nambol, Bishnupur District, Manipur-795134.

13. James Gangmei, aged about 20 years, S/o Alex Gangmei, a resident of Maibam Kabui Khul, P.O. & P.S. Nambol, Bishnupur District, Manipur-795134.

14. Santra Gonmei @ Golmei Santala Kabuini, aged about 46 years, W/o Manidum Gonmei, a resident of Maibam Kabui Khul, P.O. & P.S. Nambol, Bishnupur District, Manipur-795134.

15. Lukhamlu Gonmei @ Golmei Lukhamlu Kabuini, aged about 41 years, W/o late Sachuilung Gonmei, a resident of Maibam Kabui Khul, P.O. & P.S. Nambol, Bishnupur District, Manipur-795134.

16. Machunna Pamei, aged about 36 years, W/o Houreilung Pamei, a resident of Maibam Kabui Khul, P.O. & P.S. Nambol, Bishnupur District, Manipur-795134.

17. Golmei Gaipu Rongmei @ Khamgangpu, aged about 31 years, S/o Gomei Gaishingpu, a resident of Maibam Kabui Khul, P.O. & P.S. Nambol, Bishnupur District, Manipur – 795134.

18. P.K. Maipak Rongmei, aged about 66 years, S/o late Kachangbung Rongmei, a resident of Maibam Kabui Khul, P.O. & P.S. Nambol, Bishnupur District, Manipur-795134.

19. P. Lungthaolu Rongmei, aged about 30 years, W/o P. Lungkurei Rongmei, a resident of Maibam Kabui Khul, P.O. & P.S. Nambol, Bishnupur District, Manpur-795134.

20. Kamei James Kabui, aged about 41 years, S/o Kamei Ahanjao Kabui, a resident of Chingphu Kabui Village, P.S. Wangoi, Bishnupur District, Manipur-795134.

21. Panmei Abunglaona, aged about 31 years, S/o Panmei Pouchalung Kabui, a resident of Langompokpi Kabui Village, P.O. & P.S. Nambol, Bishnupur District, Manipur-795134.

… Private Respondents

BEFORE
HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR

For the petitioner	:	Mr. Tungrei Ngakang, Advocate
For the respondents	:	Mr.R.K.Umakanta, GA
Date of Order	:	16.9.2020

ORDER(ORAL)

CJ

[1] Heard Mr. Tungrei Ngakang, learned counsel for the petitioner and Mr.R.K.Umakanta, learned Government Advocate for the State respondents.

[2] A preliminary objection on maintainability is raised by Mr. R.K.Umakanta, learned Government Advocate on the basis of the judgment and order of the Hon'ble Supreme Court dated 20th March, 2020 in the case of **M.Subramanium & anr. vs. S.Janaki & anr.** in **Criminal Appeal No.102 of 2011** wherein the decision of the Hon'ble Supreme Court reported in **(2016) 6 SCC 277, Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and others** is relied upon.

[3] In this case, the petitioner states that on 7th October, 2019, the private respondents and their people, demolished the dwelling house of the petitioner and his family members were also physically assaulted. The petitioner lodged a written complaint before the Officer-in-Charge, Nambol Police Station and a FIR case No.68(10)2019 NBM-PS under section 147/149/447/ 153(A)/322/34 IPC dated 7th October, 2019 was registered for investigation. The petitioner states that the accused were not arrested. Again on 16th July, 2020, while the FIR case is still pending, unknown miscreants burnt down the petitioner's dwelling house. A written complaint was lodged before the Officer-in-Charge, Nambol P.S. and FIR case No.43(7)2020 NBM-PS under section

436/34 IPC dated 12th July, 2020. Since there is no progress in the investigation, the petitioner claims that the petitioner and his family are taking shelter in a relative's house and seek a direction to the effect that a well qualified senior Investigating Officer not below the rank of Sub-Divisional Police Officer to investigate the case. The petitioner also seeks compensation and protection.

[4] The prayers in the writ petition are as follows:-

> "(i) to admit this writ petition and issue Rule Nisi;
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> (ii) to issue a writ in the nature of Mandamus or any other appropriate writ or order or direction thereby, directing the Respondents to transfer the investigation of the criminal case under FIR No. 43 (7) 2020 Nambol Police Station U/S 436/ 34 IPC and FIR No. 68 (10) 2019 Nambol Police Station under Section 147/149/447/153(A)/322/34 IPC to a well qualified senior investigating officer not below the rank of Sub-Divisional Police Officer so that he could proceed with the investigation and make all attempts to book the culprits, who are involved in the crime in accordance with law;
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> (iii) to issue a writ in the nature of Mandamus or any other appropriate writ or order or direction thereby, directing the Respondents to Rehabilitate and pay compensation to the Petitioner so as to enable him to resettle at his homestead land;
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> (iv) in the interim, to issue a writ in the nature of Mandamus or any other appropriate writ or order or direction thereby, directing the Respondents to take necessary steps for the Petitioner and his family to return to the village and resettle at their homestead land;
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> (v) in the interim, to issue a writ in the nature of Mandamus or any other appropriate writ or order or direction thereby, directing the Respondents provide necessary protection from the dangers of further attack by the Private Respondents and his parties;
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> (vi) in the interim, to issue a writ in the nature of Mandamus or any other appropriate writ or order or direction thereby, directing the private Respondents to allow the Petitioner and his family to return to the village and resettle at their homestead land;
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> (vii) to issue any other appropriate order or direction which the Hon'ble Court deems fit and proper in the facts and circumstances of the case."

[5] As far as the first relief is concerned i.e. the allegation of improper investigation, and therefore, there should be a change of investigating officer by

a senior investigating officer is concerned. As rightly pointed out by Mr.R.K.Umakanta, learned Government Advocate in the case of **M.Subramanium & anr. vs. S.Janaki & anr.** in **Criminal Appeal No.102 of 2011** dated 20th March, 2020 has clearly reiterated the scope of interference by this Court in exercise of power under Article 226 by referring to the case of Hon'ble Supreme Court in **Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and others. (2016) 6 SCC 277.** It will be appropriate to refer to the same.

> "6. The said ratio has been followed in **Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and Others**, (2016) 6 SCC 277 in which it is observed.
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> > "2. This Court has held in Sakiri Vasu v. State of U.P., that if a person has a grievance that his 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 to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, 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. We have said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.
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> > 3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.
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> > 4. In view of the settled position in Sakiri Vasu case, the impugned judgment of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under Section 156(3) CrPC and if he deems it necessary, he can also recommend to the SSP/SP

> concerned a change of the investigating officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police). Parties may produce any material they wish before the Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court."

[6] The petitioner, in the light of the above decision, is entitled to work out his remedy before the competent and appropriate forum on his allegation that investigation is not to his satisfaction. The second prayer relates to compensation. The petitioner is at liberty to move the Deputy Commissioner concerned at the appropriate stage, for compensation if a case is made out. In so far as protection is concerned, he is entitled to make a representation. The petitioner's counsel states that the petitioner has made a memorandum to the Director General of Police, Manipur on 9th October, 2019 at Annexure-A/2. The Director General of Police, Manipur is directed to deal with the memorandum himself or may direct the concerned Superintendent of Police to cause an inquiry and deal with the request for protection if there is a just or reasonable cause.

[7] The first relief is declined. In respect of the prayer Nos. 2 and 3 for compensation, the petitioner should approach the competent authority at the appropriate stage. In so far as the protection is concerned, the same stands disposed of with the direction as indicated above.

[8] With the above observation, the writ petition stands disposed of.

CHIEF JUSTICE

FR/NFR

Opendro

Yumkham Rother
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