IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 3312 of 2020

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SNEHAL HIMANSHU DWIVEDI

Versus

STATE OF GUJARAT

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Appearance:
MR DIPAK H SINDHI(5710) for the Applicant(s) No. 1
for the Respondent(s) No. 2,3
MS NISHA THAKOR, ADDITIONAL PUBLIC PROSECUTOR(2) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**

Date : 11/08/2020

ORAL ORDER

1. Present petition under Article 226 of the Constitution of India has been filed by the petitioner seeking direction to respondent No.2, i.e. Police Inspector, Navrangpura Police Station to register First Information Report pursuant to the complaint of the petitioner dated 20.7.2020 under Sections 406, 420 and 114 of the Indian Penal Code.

2. The present petition is filed on the premise that though the petitioner had given written complaint dated 28.7.2020 to the Police Inspector, Navrangpura Police Station, i.e. respondent No.2 to register First Information Report for the offence under Sections 406, 420 and 114 of the Indian Penal Code against the accused persons, First Information Report has yet not been registered against the said persons for the reasons best known to the officer concerned. Hence, the petitioner has been constrained to approach this Court seeking appropriate direction to respondent No.2 to register the First Information Report.

3. Heard Mr.Dipak H. Sindhi, learned advocate for the petitioner and Ms.Nisha Thakor, learned Additional Public Prosecutor for the respondent State, through video conferencing.

4. At the outset, it is required to be noted that it is a well settled proposition of law that alternative remedy is not an absolute bar for entertaining writ petition, but if there is an alternative remedy, the High Court should not ordinarily interfere. In the context of the aforesaid well settled proposition, the judgment of the Apex Court in the case of *Sakiri Vasu vs. State of Uttar Pradesh*, reported in *(2008) 2 SCC 409*, is worth referring. The Apex Court, while dealing with the aspect of non-registration of First Information Report / improper investigation, held that alternative remedy is not an absolute bar to a writ petition by the High Court; however, if there is an alternative remedy, then the High Court should not ordinarily interfere. Relevant paragraphs 24 to 28 read thus:

> *"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 investigation 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.*
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> *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).*
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> *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."

5. Further, in the case of *Divine Retreat Centre vs. State of Kerala and Ors.,* reported in *(2008) 3 SCC 542*, the Hon'ble Apex Court has held in paragraphs 41 and 42 as under:

"41. It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an Investigating Officer mala fide. That power is to be exercised in rarest of the rare cases where a clear case of abuse of power and noncompliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code.

42. Even in cases where no action is taken by the police on the information given to them, the informants remedy lies under Sections 190, 200 Cr. P.C., but a Writ Petition in such a case is not to be entertained. This Court in Gangadhar Janardan Mhatre Vs. State of Maharashtra & ors. Held:

> *"13. When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take*

> *cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in All India Institute of Medical Sciences Employees Union (Regd.) V. Union of India. It was specifically observed that a writ petition in such cases is not to be entertained."*

6. The aforesaid principles enunciated in the case of *Sakiri Vasu (supra)* have been reiterated in the case of *Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and Ors.*, reported in *(2016) 6 SCC 277*, where in paragraph 2, it has been observed thus:

> *"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."*

7. Pertinently, the grievance of the petitioner is that despite there being a complaint filed by the petitioner, the police authorities have not registered the First Information Report.

8. In view of the aforementioned settled position, the petitioner has alternative remedy to approach concerned authority and/or the learned Magistrate under the provisions of the Code of Criminal Procedure, 1973, for the relief sought for in the present petition. Therefore, the

present petition is not entertained and the petitioner is at liberty to approach the competent authority/Court, if the petitioner so desire.

9. In view of the above, present petition stands disposed of. It is clarified that this Court has not examined the merits of the present petition. Direct service is permitted.

(SANGEETA K. VISHEN, J)

Bharat/RAVI P. PATEL