

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

109

**CRM-M-4952-2020
Date of decision : 04.02.2020**

Akbar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Mazlish Khan, Advocate for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

Prayer in the petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') is for issuance of directions to respondents No.2 and 5 to take appropriate legal action against respondents No.6 to 14 and their associates for causing injuries to the petitioner and his associates in view of MLR (**Annexure P-2**) issued by the Civil Hospital, Nuh. The petitioner has further prayed for issuance of directions to respondents No.2 to 5 that after taking proper legal action against the accused persons, the case may be investigated properly and fairly by constituting Special Investigation Team.

2. Learned Counsel for the petitioner has submitted that on 22.08.2019 respondents No.6 to 14 and their associates caused injuries to the petitioner and his associates. FIR No.0686 dated 24.08.2019 was registered under Sections 148, 323, 354, 452 and 506 read with Section 149 of the Indian Penal Code, 1860 at Police Station Nuh, District Nuh against the petitioner and others. The petitioner made representation (**Annexure P-3**) to the Director General of Police, Chandigarh but no action has been taken on the same. Therefore, directions has prayed for may be given to respondents No.2 to 5.

3. In **Sakiri Vasu Vs. State of U.P. and others, 2008(1)**

RCR (Criminal) 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).”

4. 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.”

5. 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 5 in exercise of powers under Section 482 of the Cr.P.C. is not warranted.

6. Needless to clarify that in case Judicial Magistrate Ist Class having territorial jurisdiction finds prima facie case disclosing sufficient ground to proceed against the accused named therein, the complaint will be triable as cross-case to the FIR regressed against the petitioner in accordance with law.

7. 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.

04.02.2020

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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