

CRM-M-4436-2020 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**CRM-M-4436-2020 (O&M).
Decided on: February 12, 2020.**

Cyril Varghese

.. Petitioner

VERSUS

State of Haryana and others

.. Respondents

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Tushar Sharma, Advocate,
 for the petitioner.**

JASGURPREET SINGH PURI, J.

The present petition has been filed under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) seeking directions to the police to take cognizance of complaint dated 28.8.2019 (Annexure P7) filed by the petitioner and register an FIR and investigate the matter and take appropriate legal action against the private respondents.

The petitioner is aggrieved by the alleged fraudulent actions of the private respondents on the ground that they have duped the petitioner of his hard earned money and have also forged some documents and a Board resolution dated 11.6.2019 with a purpose to oust the petitioner

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from the respondent No.4 – company and various other grievances have also been raised with regard to the relationship with the company.

The petitioner had filed a representation/complaint dated 28.8.2019 (Annexure P7) to the SHO, Police Station, Sector 29, Gurugram, with a request to inquire into the matter, lodge the FIR and to send those persons behind bars for committing corporate fraud.

Learned counsel for the petitioner has submitted that despite representation/complaint dated 28.8.2019 (Annexure P7) given to the SHO, Police Station, Sector 29, Gurugram, no FIR has been registered against the private respondents and therefore, the present petition has been filed seeking directions to the police to register a FIR in this regard.

I have heard the learned counsel for the petitioner at length. A detailed and comprehensive representation/complaint dated 28.8.2019 (Annexure P7) was given to the SHO, Police Station, Sector 29, Gurugram, by stating that the petitioner was serving in Nairobi and was approached by a leading Talent Search Recruitment Agency with an offer to join the respondent - company as CEO. Negotiations were made with regard to the salary and also the incentives. It is alleged that the petitioner was allowed to join the company and they had offered various bonuses which have been reproduced in the representation/complaint (Annexure P7) in the tabulated form. Further, the grievance of the petitioner was that the private respondents had misrepresented that they were already having existing business in India which would generate enormous profits and therefore, assurance was given with regard to providing of incentives to the petitioner.

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The petitioner was accordingly required to take responsibility for establishing a new organization. Accordingly, the petitioner joined the company in September 2013 but the company stopped paying his salaries within six months of joining the company on the ground that no funds were available with the company despite huge paid up capital of the company and the petitioner had to pay salary of the staff from his own pocket which were later reimbursed and that the company humiliated him by not disbursing salary within time. Further, the petitioner was forced to lend huge interest free amounts to the company despite being just an employee. The petitioner was asked to transfer large amounts to the company which was lying outstanding on the ground that the company urgently requires funds in this regard. Thereafter, even the management of the company created false Board resolutions in order to commit cheating and forgery with the petitioner and he was compelled to resign as director of the company or to face immediate termination.

A perusal of the representation/complaint dated 28.8.2019 (Annexure P7) given to the SHO, Police Station, Sector 29, Gurugram, would show that basically there was a financial dispute between the petitioner and the company of which he was an employee and there are allegations that the petitioner was allured to join the company and was not paid the salary within time and that various resolutions were forged by the officers of the company and therefore, the petitioner was seeking action against the private respondents in this regard. A perusal of the same would further show that prima facie, it is an employer - employee dispute with

regard to the salary and some other dues for which the petitioner is seeking directions to the police to lodge FIR. The Hon'ble Supreme Court of India in *Sakiri Vasu Vs.State of U.P. and others, 2008 (1) RCR (Crl.) 392*, has held that if a person has a grievance that an FIR has not been registered by the police, his first remedy is to approach the Superintendent of Police and thereafter, in case the FIR is still not registered then the appropriate alternative remedy is to approach the concerned Magistrate by filing a criminal complaint instead of rushing to the High Court by filing a petition under Section 482 Cr.P.C. The relevant portion of *Sakiri Vasu (supra)* is reproduced as under:-

“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\(3\)](#).

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.”

In the present case, prima facie the dispute seems to be that of only an employer - employee relationship and financial dispute with regard to payment of salary, incentives and bonus etc. and it is not a case in which the High Court should interfere under Section 482 Cr.P.C. for issuing directions to register an FIR in this regard. The alternative remedy is already available with the petitioner for filing a criminal complaint in accordance with law and before appropriate Court/forum, if so advised and so desired and the petitioner should not have rushed to the High Court by filing the present petition under Section 482 Cr.P.C. in view of the law laid down by the Hon'ble Supreme Court in Sakiri Vasu (supra). Consequently, the present petition being devoid of any merits is dismissed.

February 12, 2020.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

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