

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

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CRM-M-7894-2020
Date of decision: 24.02.2020

Raman Masih

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Vikram Singh Chahal, Advocate
for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') for issuance of directions to respondents No.1 and 3 to proceed against respondents No.4 and 5 in accordance with law in view of representation dated 27.11.2019 (**Annexure P-5**) made by the petitioner.

2. The petitioner has pleaded that he was appointed as a peon-cum-watchman in the Government Senior Secondary School (Boys), Fatehgarh Churian, District Gurdaspur by the erstwhile Principal of the School vide resolution dated 05.01.2016 on a meager salary of Rs.3,000/-. The petitioner was provided the residential accommodation consisting of a small room in the premises of the school wherein he was living with his wife and two minor children. After joining the school respondent No.4 has in connivance with respondent No.5 started harassing the petitioner for compelling him to leave the job but the petitioner bearing all the odds at the hands of respondents No.4 and 5 for the sake of his family continued to perform

his duties. Respondents No.4 and 5 started threatening the petitioner that they will terminate the services of the petitioner and throw him and his family out of the school. The petitioner has instituted a suit against respondents No.4 and 5 before the court of law in Batala on 10.10.2019 praying for injunction orders against respondents No.4 and 5 from terminating services of the petitioner and from evicting him from the accommodation allotted to him. When the respondents No.4 and 5 were served with the summons of the trial Court on 21.10.2019, they asked the petitioner to sign some documents in English. When the petitioner refused to sign the same, they abused and threatened him with dire consequences. The petitioner has made representation dated 25.10.2019 to respondent No.2 for taking action against respondents No.4 and 5 but no action has been taken against them. Despite the pendency of the Court case, on a day when petitioner and his family members were away, respondents No.4 and 5 broke open the lock of his room and threw out his valuable items and put another lock on the door of the room. The petitioner and his family were thrown out of the school on the road. The petitioner again moved application dated 27.11.2019 to respondent No.2 but no action has been taken by him.

3. I have heard learned Counsel for the petitioner and perused the record.

4. Learned Counsel for the petitioner has submitted that the petitioner and his family are thrown out of the school on road by respondents No.4 and 5 without any means to survive. They are living on the mercy of the villagers for food and shelter. Studies of the minor children of the petitioner are also suffering. The actions of respondents

No.4 and 5 are illegal and criminal. The petitioner had made representations dated 25.10.2019 and 27.11.2019 to respondent No.2 but no action has been taken. Therefore, respondents No.2 and 3 may be directed to consider representation dated 27.11.2019 of the petitioner and take appropriate legal action against respondents No.4 and 5.

5. On consideration of the submissions made by learned Counsel for the petitioner and perusal of record, I am of the considered view that the petition is liable to be dismissed due to availability of equally efficacious remedies.

6. In ***Sakiri Vasu Vs. State of U.P. and others, 2008(1) RCR (Crl.) 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)."

7. 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."

8. A perusal of the representation dated 27.11.2019 shows that the grievance of the petitioner is that legal action be taken against respondents No.4 and 5 regarding his wrongful eviction and termination of his service. As per the averments made in the petition, the petitioner has already filed civil suit which is pending before learned Civil Court. The grievance of the petitioner regarding criminal acts of respondents No. 4 and 5 can very well be redressed by filing of complaint before Judicial Magistrate Ist Class of competent jurisdiction with application under Section 156(3) of the Cr.P.C., if so desired. In view of availability of equally efficacious alternative remedies the petition is not maintainable and interference by this Court by issuance of directions to respondents No.1 to 3 in exercise of powers under Section 482 of the Cr.P.C. as prayed for is not warranted.

9. Accordingly, the present petition is dismissed with liberty to the petitioner to avail the remedy of filing complaint before Judicial Magistrate First Class of competent jurisdiction with application under Section 156(3) of the Cr.P.C., if so desired.

24.02.2020

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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