

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

255

**CRM-M-34995-2018
Date of decision: 24.02.2020**

Jaspreet Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Ms. Benti Kaur, Advocate for
Mr. Kawaljyot Singh, Advocate
for the petitioner.

Mr. Arun Kaundal, DAG, Punjab
for respondents No.1 to 4.

None for respondent No.5.

Mr. Rajesh Madhok, Advocate
respondent No.8 in person and
for respondents No. 6 and 7

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 direction to respondent No.4 to complete the investigation in the complaint dated 25.07.2017 (**Annexure P-6**) which was marked for inquiry by the Senior Superintendent of Police, Jalandhar (Rural) to the Economic Office Wing on 28.07.2017 as despite the complaint disclosing cognizable offence, no action has been taken and respondent No.4 vide letter dated 02.02.2018 has refused to take further action.

2. Briefly stated, the petition has been filed on the averments that respondent No.5 borrowed a sum of Rs.1,00,000/- on 25.12.2016 from the petitioner with the promise to return the same within a week

and issued cheque dated 02.01.2017 for amount of Rs.1,00,000/-. On presentation, the cheque was returned vide memo dated 07.01.2017 with remarks 'refer to drawer'. Respondent No.5 did not pay the amount despite service of notice and sent reply alleging that the petitioner had executed agreement to sell dated 07.09.2016 agreeing to sell land measuring 9 marlas to respondent No.5. The petitioner filed complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') which is pending. Respondent No.5 to 7 want to usurp his land in connivance with a local Advocate of Tehsil Phagwara, District Kapurthala arrayed as respondent No.8. Respondent No.5 filed suit for specific performance on the basis of forged and fabricated agreement to sell dated 07.09.2016. The petitioner made complaint dated 25.07.2017 to the Senior Superintendent of Police, Jalandhar (Rural). Despite making of statements by attesting witnesses as to signing on blank papers and by scribe as to not personally knowing the petitioner, no action has been taken on the ground of pendency of litigation. The petitioner has accordingly prayed for issuance of directions to respondent No.4.

3. Vide order dated 16.08.2018 notice of the petition was issued to the respondents.

4. Respondents No.1 to 4 have filed reply by way of affidavit of Sh Lakhvir Singh, PPS, Deputy Superintendent of Police, Investigation, Jalandhar (Rural). In reply it has been submitted that civil suit filed by respondents No.5 and 6 for specific performance of agreement to sell and criminal complaint filed by the petitioner under Section 138 of the N.I. Act are pending. The dispute between the

parties is of civil nature. No police interference is necessary and the complaint of the petitioner was closed.

5. Respondent No.8-Mr. Rajesh Madhok, Advocate has appeared in person and also filed his power of attorney on behalf of respondents No.6 and 7. In reply filed on behalf of respondents No.6 and 7 it has been submitted that the petitioner took amount of Rs.5,00,000/- from respondent No.6 and executed agreement to sell dated 07.09.2016 with regard to the plot in question. Respondent No.6 on behalf of respondent No.5 made payment of Rs.4,00,000/- and amount of Rs.1,00,000/- was to be paid by way of cheque which was returned due to reason of financial inclusion whereas sufficient balance was available in the account. Respondent No.5 filed civil suit for specific performance which is pending. Therefore, the petition may be dismissed.

6. I have heard learned Counsel for the petitioner, learned State Counsel and respondent No.8 for himself and as Counsel for respondents No.6 and 7 and perused the record.

7. In their respective submissions learned Counsel for the petitioner, learned State Counsel and respondent No.8 for himself and as Counsel for respondents No.6 and 7 have reiterated their respective stands taken in the petition and the replies respectively.

8. 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).”

9. **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.”

10. The grievances of the petitioners in the present case can very well be redressed by filing a complaint before the Judicial Magistrate Ist Class having territorial jurisdiction as held by Hon'ble Supreme Court in the case of **Sakiri Vasu (supra)**. On filing of such complaint Judicial Magistrate First Class concerned may direct registration of FIR under Section 156(3) of the Cr.P.C. or adjourn the case for preliminary evidence under Section 200 of the Cr.P.C. In view of availability of equally efficacious alternative remedy, the present petition for direction to respondent No.4 to complete investigation in complaint dated 25.07.2017 and take action on the basis thereof is not maintainable.

11. Accordingly, the present petition is disposed of with liberty to the petitioner to avail the remedy of filing complaint before the Judicial Magistrate First Class having territorial jurisdiction.

24.02.2020
Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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