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

CRM-M-32924 of 2020
Date of Decision: 15.10.2020

Asha

...Petitioner

Versus

The State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present:- Mr. H.K. Sammi, Advocate, for the petitioner.
Ms. Samina Dhir, DAG, Punjab.

DEEPAK SIBAL, J. (ORAL)

Case taken up through Video Conferencing.

Through the present petition filed under Section 482 Cr.P.C. a direction is sought to be issued to the State for registration of FIR against respondent No.4 for allegedly having committed offences under Sections 354, 354-A, 354-D, 376, 377, 504 and 506 IPC.

The petitioner alleges that on 23.07.2020 there was a birthday party at the house of one Sukhwant Kaur where both petitioner and respondent No.4 were present; on seeing the petitioner respondent No.4 started sending her whatsapp messages and insisted to meet her alone to which the petitioner refused; when the birthday party was over respondent No.4 committed rape and unnatural offences with the petitioner; on her raising hue and cry respondent No.4 ran away from the spot and was caught by some unknown persons on the street; the petitioner filed a complaint

SHAMSHER SINGH
2020.10.16 19:18
I attest to the accuracy and
integrity of this document
Chandigarh

with the concerned police station where respondent No.4 after admitting his guilt tendered his written apology and thereafter the petitioner filed a complaint to the Director General of Police, Punjab but when no action was taken she has approached this Court through the present petition for the aforesaid relief.

In ***Sakiri Vasu v. State of U.P. and others*** *(2008)2 SCC 409* the Supreme Court has held that in the event of the police not registering a FIR it is open to the aggrieved party to file an application under Section 156 (3) Cr.P.C. before the Magistrate concerned and on the filing of such application the Magistrate can direct the FIR to be registered along with issuance of directions for proper investigation, if so required. The Supreme Court further went on to hold that without availing of such remedy the aggrieved party should not rush to the High Court under Section 482 Cr.P.C. or through a writ petition.

The relevant observations by the Supreme Court in this regard read as under:

> "*11. In this connection we would like to state that if a person has a grievance that the police station isnot registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Policeunder Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactoryresult in the sense that either the FIR is still not registered, or that even after registering it no properinvestigation is held, it is open to the aggrieved person to file an application under Section 156 (3)Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156 (3) is*

SHAMSHER SINGH
2020.10.16 19:18
I attest to the accuracy and
integrity of this document
Chandigarh

> *filedbefore the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a properinvestigation to be made, in a case where, according to the aggrieved person, no proper investigationwas made. The Magistrate can also under the same provision monitor the investigation to ensure aproper investigation.*
>
> *x x x x x*
>
> *27. As we have already observed above, the Magistrate has very wide powers to direct registration ofan FIR and to ensure a proper investigation, and for this purpose he can monitor the investigationto ensure that the investigation is done properly (though he cannot investigate himself). The HighCourt 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 afterbeing registered, proper investigation has not been done by the police. For this grievance, theremedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of noavail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint underSection 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C."*

The above judgment was followed by the Supreme Court in ***Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and others*** *(2016) 6 SCC 277* and recently in ***M. Subramaniam and another v. S. Janaki and another*** *2020(6) Scale 204*.

It is admitted position that before rushing to this Court with a prayer for registration of a FIR the petitioner has not availed of her remedy

SHAMSHER SINGH
2020.10.16 19:18
I attest to the accuracy and
integrity of this document
Chandigarh

available to her under Section 156(3) Cr.P.C. and therefore, in the light of the law settled by the Supreme Court as above, without expressing any opinion on the merits of the matter the petitioner is relegated to avail of the aforesaid remedy available to her under Section 156(3) Cr.P.C.

The petition is disposed of in the above terms.

(DEEPAK SIBAL)
JUDGE

October 15, 2020
R.S.

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No

SHAMSHER SINGH
2020.10.16 19:18
I attest to the accuracy and
integrity of this document
Chandigarh