

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

251

CRM-M-48089-2018

Date of decision: 19.02.2020

Tarlochan Singh and another

.....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Ms. Monika Thakur, Advocate
for the petitioners.

Mr. Sandeep Singh Deol, D.A.G., Punjab
for respondents No.1 to 5.

ARUN KUMAR TYAGI, J (ORAL)

The petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for direction to respondents No.1 to 5 to take appropriate action after conducting enquiry in a fair manner against all guilty persons who in connivance with respondents No.6 to 8 had cheated the petitioners by re-sanctioning the mutation in favour of respondent No.7 without appeal against order dated 18.12.2009 (**Annexure P-3**) of Sub Registrar rejecting mutation No.5600 between the same parties qua the same land.

The petitioners have further prayed for directing respondents No.1 to 5 to take action on the basis of enquiry reports dated 16.01.2015 and 05.12.2016 (**Annexures P-7 and P-9**) whereby respondents No.6 to 8 were held responsible for cheating and breach of trust along with other officials of the revenue department.

Further directions to respondents No.1 to 5 have also been sought to protect the life and liberty of the petitioners from danger at the hands of respondents No.6 to 8 and their family members.

Briefly stated, the petition has been filed on the averments that Dalip Singh father of petitioner No.1 and grand-father of petitioner No.2 and his brother Balwant Singh were owners of land measuring 24 kanals situated in village Buttan, Hadbast No.253, Tehsil and District Ludhiana. After death of Balwant Singh, his sons Balbir Singh and Hardev Singh inherited his share. Dalip Singh along with two co-owners leased out the said land to M/s Fine Bricks through its partner Kamlesh Sood (who died in 2012 and respondents No.6 and 7 became the partners in the firm lateron) vide lease deed dated 23.09.1992 with effect from 14.09.1992 to 13.09.2002. Thereafter, lease was extended vide lease deed dated 05.03.1999 (**Annexure P-1**) for the period from 13.09.2002 to 12.09.2012. Before expiry of the lease deed respondents No.6 and 7 conspired with respondent No.8 to exchange 1/4th share in the joint land with respondents No.6 and 7 with a view to grab 1/2 share of the petitioners. The petitioners filed objections on 14.12.2009 (**Annexure P-2**) before the Naib Tehsildar, Dhelon requesting the authorities not to register the transfer of land without hearing them. After receiving the objections, Naib Tehsildar, Dhelon rejected mutation No.5600 vide order dated 15.12.2009 conveyed to the petitioners vide intimation letter dated 18.12.2009 (**Annexure P-3**). Lateron, respondents No.6 to 8 got mutation No.5608 sanctioned on 07.01.2010. Once the mutation was rejected, the only remedy available to respondents No.6 to 8 was to file the appeal under Section 72 of the

Indian Registration Act, 1908. Respondent No.8 after getting transfer of the part of his joint land sanctioned in favour of respondent No.7 without knowledge of other lessors/owners got lease deed dated 05.03.1999 discharged qua his share. The petitioners received legal notice on 07.08.2012 (**Annexure P-4**) from one of the partners of M/s Fine Bricks asking for extension of lease deed for next ten years in which the fact of sanctioning of mutation No.5608 was mentioned. Petitioner No.1 submitted complaint dated 01.08.2013 (**Annexure P-5**) to Deputy Commissioner, Revenue District Ludhiana who sent the same to Police Commissioner, Ludhiana on 03.07.2014 and intimated the petitioners through letter dated 09.07.2014. Assistant Commissioner of Police, Rural Ludhiana submitted report dated 16.01.2015 holding respondents No.6 to 8 guilty and recommended for registration of FIR under Sections 420 and 120-B of the Indian Penal Code, 1860 (for short, "IPC") at Police Station Delhon. On 04.07.2016, petitioner No.2 moved complaint before Sub Divisional Magistrate (East), Revenue Ludhiana who submitted report to Deputy Commissioner, Revenue Ludhiana holding Patwari, Kanungo and Tehsildar to be guilty for sanctioning of mutation. However, subsequently Sub Divisional Magistrate (East), Ludhiana prepared fresh report dated 23.05.2017 (**Annexure P-11**) with the intention to save the above-said Revenue Officials. The petitioners moved application to Financial Commissioner, Revenue who disposed of the application on basis of the report of Sub Divisional Magistrate (East), Ludhiana. The lease expired on 12.09.2012 but respondents No.6 and 7 on the basis of mutation No.5608 in favour of respondent No.7 obtained ad interim injunction

from Civil Court, Ludhiana on the plea of being in possession of 1/4th share.

Vide order dated 31.10.2018, notice of the petition was given to respondents No.1 to 5.

Reply by way of affidavit dated 17.11.2018 of Sukhchain Singh Gill, IPS, Commissioner of Police, Ludhiana was filed and thereafter additional affidavit dated 13.01.2019 was also filed by him on behalf of respondents No.1 to 4 wherein it has been mentioned that the complaint was entrusted by the then Commissioner of Police, Ludhiana to the then Assistant Commissioner of Police Gill (Rural) Ludhiana who after conducting inquiry submitted report dated 16.01.2015 recommending registration of criminal case against respondents No.6 to 8 but the report was returned to him with direction to re-examine the revenue record and record the statements of revenue officials and on re-verification of the facts Assistant Commissioner of Police Gill (Rural) Ludhiana submitted report dated 12.06.2017 recommending that complaint made by petitioner No.1-Tarlochan Singh may be filed. On the basis of this subsequent enquiry report submitted by the then Assistant Commissioner of Police-Gill (Rural), Ludhiana, the complaint submitted by Tarlochan Singh petitioner No.1 was filed by the then Commissioner of Police, Ludhiana.

I have heard learned counsel for the petitioner and learned State counsel for respondents No.1 to 5 and perused the record.

In their respective submissions learned Counsel for the petitioners and learned State counsel have reiterated their respective stands taken in the petition and the reply affidavits respectively.

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).”

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.”

The petitioners have claimed that respondents No.4 to 8 along with others committed offences punishable under Sections 120-B and 420 of the IPC and have in fact sought directions to respondents No.1 to 5 for registration of FIR against respondents No.6 to 8 and protection of their life and liberty. The questions as to whether on rejection of mutation No.5600, mutation No.5608 could be sanctioned without filing of any appeal or not and whether sanctioning of mutation

No.5608 without filing of any such appeal constitutes any criminal offence have to be adjudicated upon by the Court of competent jurisdiction. The grievances of the petitioners in the present case can very well be redressed by filing a complaint with application under Section 156(3) of the Cr.P.C. before the Judicial Magistrate Ist Class concerned as held by Hon'ble Supreme Court in the case of **Sakiri Vasu (supra)** and on filing of such complaint Judicial Magistrate First Class 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 respondents No.1 to 5 for registration of FIR against respondents No.6 to 8 is not maintainable. In the facts and circumstances of the case, apprehension of the petitioners as to danger from respondents No.6 to 8 to their life and liberty does not appear to be real and genuine. In any case the respondents No.1 to 5 shall be bound to protect the lives and liberty of the petitioners in accordance with law and in case of any apprehension of danger from respondents No.6 to 8, the petitioners will also have the equally efficacious remedy of approaching them for protection of their life and liberty by making appropriate representation. In the facts and circumstances of the case, issuance of directions to respondents No.1 to 5 as prayed for by exercise of powers under Section 482 of the Cr.P.C. is not warranted and the petition is liable to be dismissed as being not maintainable due to availability of alternative remedy.

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.

19.02.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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