

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

128

CRM-M-43158-2020

Date of decision: 21.12.2020

Rakesh Jain

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Vipul Babuta, Advocate for the petitioner.

ARUN KUMAR TYAGI, J. (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for issuance of directions to respondents No.1 to 4 to take appropriate legal action on representation dated 10.07.2018 (Annexure P-3) made by the petitioner to respondents No.1 to 4 for registration of FIR against respondents No.5 to 10 and to conduct impartial and fair investigation and to provide protection and adequate security to the petitioner and his family members against harassment and illegal action of respondents No.5 to 10.

The petition has been filed on the averments that the petitioner is running the business of sale, manufacture and supply of hosiery goods and other allied products for the last 40 years under the name and style of M/s Knit-N-Craft, 34-35, Sunder Nagar, Ludhiana. Respondents No.5 to 10 are in business link with him for more than 35 years. The petitioner used to get the job work/stitching work done from

respondents No.5 to 10 on contract basis. In August, 2015 due to some financial crises, respondents No.5 to 10 offered space on rent in their building No.32-A at Sunder Nagar, Ludhiana to facilitate the petitioner to store his hosiery goods and raw material in the same. Respondents No.5 to 10 in connivance with each other started using the goods and raw material of the petitioner lying in their premises without his permission. Wife of the petitioner underwent heart surgery in March-April, 2016 and the petitioner could not look after his business for 2-3 months during which respondents No.5 to 10 misappropriated his entire goods and raw material. When the petitioner questioned them, respondents No.5 to 10 agreed to make payment of goods to the petitioner. In the course of business, the petitioner through his firm 'Knit N Craft' raised bills in the name of firm of respondents No.5 to 10 namely M/s Jain Udhay Apparels Pvt. Ltd. and M/s A2a Clothing Company. Other private respondents were signing the bills and other relevant documents whereas only Satish Aggarwal and Vinay Jain were Directors and on resignation by Vinay Jain, he was replaced by Bhavya Jain. Respondents No.5 to 10 have deceived the petitioner. Respondents No.5 to 10 did not clear dues against the goods which had been misappropriated by them and are trying to avoid their liability. In May, 2018 when the petitioner went to the office of respondents No.5 to 10 to settle the account they got annoyed, refused for settlement of account and threatened him. Respondents No.5 to 10 have also committed fraud of Rs.20 crores on the State Bank of India and defaulted in payment to the bank. The petitioner made representation dated 10.07.2018 to respondent No.3 but no action has been taken on

the same. Hence the present petition.

Learned Counsel for the petitioner has, while reiterating factual averments made in the petition, submitted that the representation dated 10.07.2018 made by the petitioner discloses commission of cognizable offences by respondents No.5 to 10 but no action has been taken on the same. Respondents No.2 to 4 may be directed to take appropriate legal action on the above said representation, register FIR against respondents No.5 to 10, conduct fair and impartial investigation and file status report and also to take appropriate action for protection of the life and liberty of the petitioner and his family members.

On consideration of the submissions made by learned Counsel for the petitioner and perusal of the relevant record, I am of the considered view that the petitioner has equally efficacious remedies available to him and the petition being not maintainable is liable to be dismissed.

In Sakiri Vasu Vs. State of U.P. and others : 2008(1)

R.C.R. (CrL.) 392, Hon'ble Supreme Court observed 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).”

A perusal of the representation dated 10.07.2018 shows that the grievance of the petitioner is that the petitioner stored goods in the building of respondents No.5 to 10 who cheated/defrauded him and misappropriated his goods and on being asked did not pay the amount due for the goods misappropriated by them and threatened to implicate him in false criminal cases. Respondents No.5 to 10 are forcing the petitioner to settle the matter as per their whims and desires and to

withdraw the complaint. The grievances of the petitioner in respect of cognizable offences committed by respondents No.5 to 10 can very well be redressed by filing a complaint with application under Section 156(3) of the Cr.P.C. as held by Hon'ble Supreme Court in the case of **Sakiri Vasu (supra)** before the Judicial Magistrate First Class having the requisite territorial jurisdiction. No blanket order of protection against registration of any criminal case against the petitioner can be passed in his favour and in case of registration of any such criminal case against the petitioner, the petitioner can avail of appropriate legal remedies in accordance with law. In view of availability of equally efficacious alternative remedies to the petitioner, the petition is not maintainable and issuance of directions to respondents No.2 to 4 in exercise of powers under Section 482 of the Cr.P.C. as prayed for by the petitioner is not warranted by the facts and circumstances of the case.

Accordingly, the present petition is dismissed with liberty to the petitioner to avail the appropriate legal remedies in accordance with law including the remedy of filing complaint before the Judicial Magistrate Ist Class having territorial jurisdiction with application under Section 156(3) of the Cr.P.C., if so desired.

21.12.2020

Vinay

**(ARUN KUMAR TYAGI)
JUDGE**

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