

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

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CRM-M-52146-2019
Date of decision: 15.01.2020

Kulwant Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Virat Amarnath, Advocate
Legal Aid Counsel 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 4 to take appropriate legal action against respondents No.5 to 9 by registering an FIR after conducting an inquiry on the basis of representation dated 12.07.2019 **(Annexure P-2)** made by the petitioner.

2. The petitioner has pleaded that the petitioner is a social worker and works for the welfare of the people of his village Pohir, Block Delon, District Ludhiana. On 07.03.2017 the petitioner had given one complaint to Governor of Punjab regarding fraud being committed in Mahatma Gandhi National Rural Employment Guarantee Scheme (for short 'MGNREGA') by putting the money in the accounts of fake labourers in collusion with the respondent No.8-Sarpanch. Vide letter No.1776 dated 14.12.2017, the petitioner was called to join investigation on 27.12.2017. However, neither the petitioner was joined in the investigation nor investigation was conducted by visiting the spot and respondent No.5-Akbar Ali, the then Block Development and

Panchayat Officer (for short 'the B.D.P.O.') by recording the statements of persons named in the petition in a secret manner internally proved the above complaint to be false. Thereafter the petitioner filed Civil Writ Petition No.7317 of 2018 in this Court which was disposed of vide order dated 23.03.2018 with direction to the respondents to consider and decide the representation of the petitioner as expeditiously as possible but not later than four months. When no action was taken by the respondents, the petitioner filed contempt petition bearing COCP No.3228 of 2018 which was dismissed by this Court vide order dated 06.05.2019 on the basis of reply submitted by the respondents that the representation of the petitioner has already been decided by way of speaking order dated 20.08.2018 whereby his complaint has been rejected having been found incorrect. On 07.07.2018 a meeting of MGNREGA workers was held in which respondents No. 7 and 8 also participated who admitted that neither job cards were provided to MGNREGA workers nor any action was taken by respondent No.7 in this regard. It was also admitted that muster rolls were not properly maintained and MGNREGA workers were not informed that they will be given 100 days work who kept on continuously working. On 06.08.2018 one more complaint by way of joint statement of MGNREGA labourers was made that MGNREGA labourers had constructed the passage from the house of Gurdev Singh to the house of Mahinder Singh which was constructed by Jagpal Singh and Gurdev Singh as masons but respondent No.8-Sarpanch by making fake bills of other masons and labourers had committed embezzlement. Complaint in this regard was made to Deputy Commissioner, Ludhiana. When the

investigation of the above complaint reached respondent No.5 then he threatened the petitioner that he will get the petitioner arrested by police and also humiliated him and by obtaining false signatures and affidavits of labourers gave clean chit to respondent No.8-Sarpanch in respect of the fake bill. When the petitioner received the report sent by A.D.C. (Development), Ludhiana regarding said investigation, the petitioner again gave one complaint on 24.06.2019 to A.D.C. (Development), Ludhiana by enclosing affidavits of 8-9 labourers. On 09.05.2019 A.D.C. (Development), Ludhiana sought reply which was not given till 14.06.2019. On 24.06.2019 the petitioner again made complaint that by committing cheating of lakhs of rupees, respondents No.5 to 8 have usurped the hard earned money of the labourers. Lakhs of rupees have been embezzled by putting amounts mentioned in the accounts of the labourers named in the petition who have not done the work. However, no action was taken on the said complaint. One Jagpal Singh has worked for 387 days as mason but payment has not been made to him and he received only Rs.3190/- whereas in reply sent to A.D.C. (Development), Ludhiana payment of Rs.25780/- was claimed to have been made to him. A.D.C. (Development), Ludhiana vide letter dated 08.07.2019 asked the B.D.P.O. to conduct inquiry and submit report by 11.07.2019 but no reply was submitted. Thereafter, the petitioner made a detailed representation dated 12.07.2019 to respondents No.2 to 4 but nothing has been done in this regard. While relying on the observations on ***Lalita Kumari Vs. Govt. of U.P. And others : 2013(4) R.C.R.(Criminal) 979***, the petitioner has sought directions as mentioned above.

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

4. Learned Counsel for the petitioner has submitted that the petitioner had made detailed representation dated 12.07.2019 to respondents No.2 to 4 giving details of the job card holders who have not done any work but lakhs of rupees have been put in their accounts by respondents No.5 to 8 in collusion with each other but respondents No.2 to 4 did not take any action. Respondents No. 2 to 4 may be directed to consider representation dated 12.07.2019 of the petitioner and take appropriate legal action against respondents No.5 and 9.

5. In **Sakiri Vasu Vs. State of U.P. and others, 2008(1) RCR(Cr.) 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).”

6. 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.”

7. A perusal of the representation dated 12.07.2019 shows that the grievance of the petitioner is that legal action be taken against respondents No.5 to 9 who in collusion with each other have embezzled lakhs of rupees in MGNREGA Scheme. The grievance of the petitioner 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's Case (Supra)** before the Judicial Magistrate First Class having the requisite territorial jurisdiction. In view of availability of equally efficacious alternative remedy the petition is not

maintainable and issuance of directions to respondents No.1 to 4 in exercise of powers under Section 482 of the Cr.P.C. is not warranted.

8. 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.

15.01.2020

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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