

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

CRWP-2084-2019

Date of Decision: 27.05.2020

Kamla Devi

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Argued by: Mr. J.S. Thind, Advocate
for the petitioner.

Mr. Arjun Singh Yadav, A.A.G, Haryana
for respondents No.1 to 3.

ARUN KUMAR TYAGI, J.

The petitioner has filed present writ petition under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus/certiorari directing the official respondents No.1 to 3 to protect the life and liberty of the petitioner and her family members from danger at the hands of private respondent No.4-Pritam Singh and his associates of harassing as well as involving the petitioner and her family members in false and fabricated cases in connivance with the police officials and political persons.

2. Briefly stated the petition has been filed on the averments that the petitioner had taken a loan of Rs.3,00,000/- from respondent No.4 for her treatment repayable with interest at the rate of 10% (but period of rests is not mentioned in the petition). The petitioner repaid the loan on different dates. The petitioner had even taken loan of Rs.7,80,000/- from the bank and paid the abovesaid amount to

respondent No.4. The petitioner had paid amount of Rs.20,00,000/- in total for loan of Rs.3,00,000/-. Respondent No.4 by taking advantage of illiteracy of the petitioner and her family members got agreement to sell executed from the petitioner in respect of her house on 28.02.2016 on the pretext of the amount of loan/interest being due against her. Thereafter, respondent No.4 claimed that amount of Rs.12,00,000/- was due against the petitioner and threatened the petitioner and her family members to pay the amount of Rs.12,00,000/- or to vacate the house. The petitioner submitted application dated 22.11.2018 **(Annexure P-1)** to the Commissioner of Police, Faridabad and application **(Annexure P-3)** to the SHO, Dabua, Faridabad for taking action against respondent No.4 for committing fraud and fraudulently preparing the documents but no action has been taken on the same. One Renu, who is daughter of maternal uncle of respondent No.4, lodged FIR No.102 dated 18.12.2018 under Sections 376-D, 506 read with Section 120-B of the Indian Penal Code, 1860 (for short 'the IPC') at Women Police Station NIT, Faridabad against her son Sonu and Azad, inter alia, alleging rape by Sonu and Azad but on investigation the FIR was found to be false and cancellation report dated 11.04.2019 **(Annexure P-2)** was submitted by the SHO, Police Station Mahila, NIT, Faridabad. FIR No.146 dated 31.12.2018 under Sections 457 and 380 of the IPC was lodged by one Ashok Kumar alleging theft of milk, 3 kg. cow ghee and amount of Rs.4,000/- from his dairy by some unknown person. Subsequently, Suresh Chand, husband of the petitioner was falsely involved in the case and arrested by the SHO concerned after about five months of the alleged FIR. One Jai

Bhagwan submitted application dated 14.03.2019 to the SHO, Police Station Ballabhgarh alleging that his wife Guddi and sister-in-law Heena (niece of mother-in-law of respondent No.4) who had gone to Fatehpur Beloch to attend marriage on 06.03.2019 were missing. FIR was registered and statement of Heena was got recorded on 13.04.2019 who alleged that the petitioner, her son Sonu and Mukesh had kidnapped Guddi and her (Heena) and Sonu and Mukesh had committed rape on her (Heena). On investigation, the petitioner was exonerated by the SHO, Police Station Ballabhgarh vide report dated 17.07.2019 which was accepted by the Assistant Commissioner of Police, Ballabhgarh, Faridabad on 24.07.2019 **(Annexure P-4)**. Respondent No.4 has tried to involve the petitioner and her family members in false cases. The petitioner submitted complaint dated 07.05.2019 to the Commissioner of Police, Faridabad for taking action against respondent No.4 and Yoginder etc. but no action has been taken by the police.

3. Reply was filed on behalf of official respondents No.1 to 3 by Gajender Kumar, HPS, Assistant Commissioner of Police, NIT, Faridabad. In the said reply it has been submitted that the petitioner made complaint dated 22.11.2018 to the Commissioner of Police, Faridabad and inquiry was got conducted which revealed that the petitioner had taken loan from respondent No.4 who got the agreement to sell executed from the petitioner; that both the petitioner and respondent No.4 are relatives and there are money transactions between them and that no cognizable offence was disclosed by the facts verified. It has been further submitted that in FIR No.102 dated

18.12.2018 registered under Sections 376-D, 506 read with Section 120-B of the IPC cancellation report was prepared. FIR No.146 dated 31.12.2018 was registered in which husband of the petitioner was involved. It has been further submitted in the reply that if any complaint is received, a proper inquiry is made and if the complaint is found false, no action is taken against the petitioner. While claiming that no complaint dated 07.05.2019 was made by the petitioner to the Commissioner of Police, Faridabad, the respondents No.1 to 3 have accordingly prayed for dismissal of the petition.

4. I have heard learned Counsel for the petitioner and learned State Counsel and have gone through the relevant record.

5. Learned Counsel for the petitioner has submitted that the petitioner had taken loan from respondent No.4 but paid the entire amount even by taking loan from the bank. Respondent No.4 fraudulently got agreement to sell regarding the house of the petitioner executed from her and is now claiming amount of Rs.12,00,000/- to be due against the petitioner and is coercing the petitioner and her family members to pay the amount or vacate the house. Respondent No.4 got false case filed against the petitioner and her family members for exerting pressure upon them. The petitioner submitted complaint to the police but no action has been taken against respondent No.4. Respondent No.4 is harassing the petitioner and her family members by implicating them in false and fabricated cases in connivance with the police officials and political persons. Directions may, therefore, be issued to official respondents No.1 to 3 to protect the life and liberty of the petitioners and her family members from danger at the hands of

respondent No.4 and his associates of harassing as well as involving the petitioner and her family members in false and fabricated cases in connivance with the police officials and political persons.

6. On the other hand, learned State Counsel has argued that on receipt of complaint made by the petitioner inquiry was conducted and it was found that the matter involves civil liability under monetary transactions and agreement to sell and no case as to commission of any cognizable offence is made out on which the complaint was filed. If any complaint is received, a proper inquiry is made and if the complaint is found false, no action is taken against the petitioner. The petitioner is not entitled for any relief. Therefore, the petition may be dismissed.

7. On consideration of the submissions made by learned Counsel for the petitioner and perusal of record, I am of the considered view that the petition is liable to be dismissed due to availability of equally efficacious remedies.

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

RCR (Criminal) 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.” (emphasis supplied)

9. Admittedly, the petitioner and respondent No.4 are relatives and the petitioner had taken loan from respondent No.4. The petitioner is claiming to have repaid the entire amount but as per her own version respondent No.4 is claiming amount of Rs.12,00,000/- to be due against her. The petitioner has claimed that respondent No.4 had got agreement to sell executed from her fraudulently but the petitioner has not denied her signatures/thumb impression on agreement to sell and has not given requisite particulars of fraud. In the absence thereof, the matter involves question of liability under the monetary transactions between them and the agreement to sell executed by the petitioner in favour of respondent No.4. Alternative remedies of filing civil suit for appropriate relief is available to the petitioner. As per reply filed by the respondents No. 1 to 3 the complaint made by the petitioner to the Commissioner of Police, Faridabad was filed as the same did not disclose commission of any cognizable offence by respondent No.4. The petitioner has got equally efficacious remedy of filing complaint before the Judicial Magistrate First Class having jurisdiction. The complaints made by Renu, Ashok Kumar and Jai Bhagwan/FIRs registered on the basis thereof cannot prima facie be said to have been made/registered at the instance of respondent No.4. The petitioner and her family members, who are alleged to have been falsely implicated therein, can avail appropriate equally efficacious judicial remedies available to them under the law. There is no material to substantiate reasonable apprehension of

physical harm to the petitioner or her family members from respondent No.4. In case of any such reasonable apprehension of physical harm from respondent No.4 arises in future, the petitioner or her family members can make appropriate representation to the Commissioner of Police, Faridabad/SHO of the Police Station having territorial jurisdiction. In the facts and circumstances of the case, no blanket order prohibiting making of any complaint/lodging of any FIR against the petitioner and members of her family, granting protection against arrest in any such case or police protection can be passed in the disguise of protection order. As the petitioner and her family members can avail equally efficacious remedies available to them in accordance with law, the petition is not maintainable and issuance of writ in the nature of certiorari or mandamus as prayed for by the petitioner is not warranted by the facts and circumstances of the case.

10. Accordingly, the petition, being devoid of any merit, is dismissed with no order as to costs.

27.05.2020
Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No