

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 233 of 2021

- Vinesh Kurrey S/o Late Hira Lal Kurre, Aged About 45 Years R/o Village Bhaiso, P.S. And Tahsil Pamgarh, District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Home, Mantralaya, P.S. Rakhi, Nawa Raipur, Atal Nagar, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Inspector General Of Police, Bilaspur Range, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
3. Superintendent Of Police, Janjgir, District Janjgir Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
4. Inspector General Of Police, Bilaspur District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
5. Director General Of Police, Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
6. Sammi Sagar Maheshwari, S/o Sukh Sagar Maheshwari, R/o Village Bhaiso, P.S. Pamgarh, District Janjgir Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
7. Pawan Diwakar, S/o Govardhan Diwakar, Aged About 27 Years R/o Village Bhaiso, P.S. Pamgarh, District Janjgir Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
8. Station House Officer, P.S. Pamgarh, District Janjgir Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
9. Assistant Sub Inspector Basu Rajpur, P.S. Pamgarh, District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Respondents

For Petitioners : Shri N.K. Chatterjee, Advocate

For Respondents : Shri Devendra Pratap Singh, Dy. A.G.

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

07.06.2021

1. The petitioner has filed this writ petition (Cr) under Article 226 of the

Constitution of India mainly contending that the son of Dinesh Kurrey, Bhupendra Kumar Kurrey aged about 22 years, resident of Bhaiso, District – Janjgir-Champa has gone to attend wine Murga party with one Sammi Sagar, Pawan Diwakar, Tuleshwar Diwakar and Shiv Prasad Bande. After consuming liquor Bhupendra and Narendra came back to their home and on the same day at about 07:00 pm at the house of petitioner deceased Bhupendra Kurrey was further called by the accused persons Sammi Sagar Maheshwari, Pawan Diwakar, Shiv Prasad Bande and Tuleshwar Diwakar who carried Bhupendra Diwakar to Bhagolwa Tank near Jhilmili Road at Baiso where Tuleshwar Diwakar and Shiv Bande had again given wine to the deceased Bhupendra. Sammi Sagar and Pawan Diwakar were also present there. Thereafter, deceased Bhupendra Diwakar was feeling pain as such the accused persons have given celphos in place of Hajmola which caused suffocation, thereafter, the petitioner Vinesh Kurrey reached there and took him to the hospital where he died.

2. On the basis of the report of the petitioner, FIR was lodged at Police Station Pamgarh against Tuleshwar Diwakar and Shiv Prasad Bandey for the offence punishable under Section 302,34 IPC and they were arrested and produced before the Judicial Magistrate First Class Pamgarh but no offence against Sammi Sagar Maheshwari and Pawan Diwakar has been made out. It was further contended that both the persons Sammi Sagar Maheshwari and Pawan Diwakar were also co-accused but no offence has been registered against them.
3. The petitioner has submitted applications before the Superintendent of Police, Janjgir, District Janjgir-Champa on 28.12.2020 and 04.03.2021 for registering the offence against Sammi Sagar Maheshwari and Pawan Diwakar but no attention was paid by the Superintendent of Police, therefore, he filed writ petition and prayed for following reliefs :-

“10.1 That this Hon'ble Court be pleased to allow the writ petition filed by the petitioner and pleased to

direct the SHO of P.S. - Pamgarh and SP Janjgir-Champa and the other superior officers to take needful action into the written complaint which has been sent by the Petitioner relating to the murder of Bhupendra Durrey by Salphas and on account of which Bhupendra Kurrey died on 05-12-2020.

10.2 Any other relief as deem fit and proper by this Hon'ble in the facts and circumstances of the petition may kindly be passed.”

4. From perusal of reliefs sought, it is quite clear that petitioner wants that on the basis of complaint, FIR should be registered against the persons namely Sammi Sagar Maheshwari and Pawan Diwakar for the offence of killing Bhupendra Kurrey who died on 05.12.2020.
5. I have heard learned counsel for the parties and perused the records annexed with the petition.
6. Learned counsel for the State would submit that from prayer clause, it is quite clear that the petitioner has filed the present petition for a direction to the police to register FIR against respondent No. 6 Sammi Sagar Maheshwari and respondent No. 7 Pawan Diwakar. The Hon'ble Supreme Court time and again deprecated filing of writ petition before High Court under Article 226 of the Constitution of India and directed that the complainant should file complaint under Section 200 of the Cr.P.C. for issuing a direction to the police to investigate on the complaint for registration of offence. The petitioner has the alternate remedy of filing complaint under Section 200 of the Cr.P.C. before Judicial Magistrate First Class, therefore, this writ petition is not maintainable before the High Court.
7. From perusal of Section 156 of the Cr.P.C., it is clear that the Magistrate may order for such investigation, if police officer is not investigating the cognizable offence. The Magistrate First Class, who is empowered under Section 190 of the Cr.P.C. can take cognizance of offence upon receiving a complaint, upon a police report of such facts or upon information received from any person other than a police officer or upon his own knowledge

that such offence has been committed. Section 200 of the Cr.P.C. provides for examination of complainant.

8. Since, the petitioner has remedy of filing the complaint under Section 156 (3) of the Cr.P.C. before the concerned Magistrate, the present writ petition is not maintainable. The Hon'ble Supreme Court in case of **Sakiri Vasu Vs. State of Uttar Pradesh & others**¹, has examined the issue in paragraphs 27 and 28, which are 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 Section 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 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.”

9. The judgment passed by Hon'ble the Supreme Court in **Sakiri Vasu** (Supra) has again come up for consideration before three judges bench in case of **M. Subramaniam & another Vs. S. Janaki & another**². The Supreme Court after considering the same judgment has held at para 7 & 9 which are as under:-

“7. The said ratio has been followed in ***Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage, in which it is observed: (SCC p. 278, paras 2-4)***

“2. This Court has held in **Sakiri Vasu v. State of U.P.**, that if a person has a grievance that his FIR has not been

¹ (2008) 2 SCC 409

² (2020) 16 SCC 728

registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156 (3) CrPC. If such an application under Section 156 (3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in *Sakiri Vasu case* because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156 (3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.

4. In view of the settled position in *Sakiri Vasu case*, the impugned judgment of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under Section 156 (3) CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned a change of the investigating officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police). Parties may

produce any material they wish before the Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.”

9. In these circumstances, we would allow the present appeal and set aside the direction of the High Court for registration of the FIR and investigation into the matter by the police. At the same time, our order would not be an impediment in the way of the first respondent filing documents and papers with the police pursuant to the complaint dated 18-09-2008 and the police on being satisfied that a criminal offence is made out would have liberty to register an FIR. It is also open to the first respondent to approach the court of the metropolitan magistrate if deemed appropriate and necessary. Equally, it will be open to the appellants and others to take steps to protect their interest.”

10. From analysis of the above legal provisions, it is crystal clear that the writ petition under Article 226 of the Constitution of India is not maintainable before the High Court. However, it is open to the petitioner to approach the court of Judicial Magistrate First Class having territorial jurisdiction over the place of offence if it deemed appropriate and necessary for filing of complaint, and in-turn Magistrate will follow the procedure prescribed under the provisions of the Cr.P.C. It is made clear that this Court has not expressed any opinion on merits of the case whether the complaint discloses any criminal offence or not.
11. Considering the facts and materials on record and in view of the law laid down by the Hon'ble Supreme Court, this Court is of the view that this writ petition is not maintainable.
12. Consequently, the writ petition being devoid of any substance is liable to be and is hereby dismissed with liberty as aforesaid granted in favour of the petitioner.

Sd-
(Narendra Kumar Vyas)
Judge