

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 251 of 2021

- Birfal Ram S/o Sudhram Rajwade Aged about 48 years by Cast Rajwar R/o Village Mutki- P. S. Udaipur Dist.- Surguja (C.G.).

---- Petitioner

Versus

1. State of Chhattisgarh through Superintend of Police Ambikapu, Dist- Surguja (C.G.).
2. S. H. O. Lakhanpur Dist. Surguja C.G.
3. Kamendra S/o Ghuran Ram aged about 19 years R/o Village Mutki P.S.- Lakhanpur Dist. Surguja (C.G.).
4. Devcharan S/o Shivrath Kavar aged about 18 years R/o Village Mutki P.S.- Lakhanpur Dis. Surguja (C.G.).
5. Khelsai S/o Mohan aged about 19 years R/o Village Mutki P.S.- Kakhanpur Dist.- Surguja (C.G.).

---- Respondents

For Petitioner	: Shri Sanjay Pathak, Advocate
For Respondents	: Shri Gurudev I. Sharan, Government Advocate

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 he has lodged a written complaint to the Superintendent of Police, Ambikapur Surguja (C.G.) regarding murder of his son namely- Nageswar who died on 11.02.2019.
2. Learned counsel for the petitioner submits that on the date of incident i.e. 11.02.2019 at about 12.00 pm, Kamindra Paikra & Jagade Paikra took his son from his house and committed murder of his son by stone. The petitioner has lodged the written

complainant on 17.06.2019 before the Superintendent of Police, Ambikapur Surguja (C.G.) for initiating criminal action against the Respondent No. 3- Kamendra Paikra, Respondent No. 4- Devcharan & Respondent No. 5- Khelsai but no action has been taken against them.

3. The petitioner, therefore, has filed present writ petition and prayed for following reliefs :-

- “(i) That, the respondent No. 1 & 2 may kindly be directed to register FIR against respondent No. 3 to 5 on the complaint of the petitioner.
- (ii) That this Hon'ble Court may kindly be directed respondent authorities to conduct fair and proper investigation in the complain of the petitioner.
- (iii) That, any other relief which this Hon'ble Court deems fit and proper may also kindly be granted to the petitioner in the interest of justice along with costs of the petition.”

4. From perusal of the reliefs sought, it is quite clear that petitioner wants that on the basis of written complaint, FIR should be registered against the persons namely Kamendra Paikra, Devcharan & Khelsai for the offence of killing Nageswar who died on 11.02.2019.

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. 3- Kamendra Paikra, Respondent No. 4- Devcharan & Respondent No. 5- Khelsai. 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.**

¹ (2008) 2 SCC 409

Janaki & another². 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 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

² (2020) 16 SCC 728

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

Amita