

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 468 of 2021

Reserved on 30.07.2021

Delivered on 07.09.2021

- Padam Jain S/o Gyanmal Jain Aged About 27 Years R/o Gwalipara, Durg, Distt.- Durg (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Home Affairs, Mantralaya, Naya Raipur, Distt, Raipur, Chhattisgarh – 492001.
2. Director General Of Police Police Headquarter, Raipur (Chhattisgarh)
3. Superintendent Of Police Durg, Distt. - Durg (Chhattisgarh)
4. Station-House-Officer Thana - Padmanabhpur, Distt.- Durg (Chhattisgarh)

---- Respondents

For Petitioner	: Shri Anand Shukla, Advocate
For Respondents/State	: Shri Sudeep Verma, Dy. G. A.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV ORDER

1. The petitioner has filed this writ petition (Cr) under Article 226 of the Constitution of India mainly contending that he has filed a complaint for registration of FIR before Police Station Padmanabhpur, District- Durg(C.G.) as well as Superintendent of Police District Durg alleging that Devkumar Sinha purchased the property from the petitioner which is situated at Village Borsi, Patwari Halka No.19/23, Khasra No.256/25 area admeasuring 0.018 hectare plot No.7 through registered sale deed dated 02.02.2017 and after the lapse of 6 months Devkumar Sinha raised objection that the petitioner has sold the Government land and created dispute therefore, he has executed an agreement with Devkumar Sinha on 22.02.2018 and issued a cheque of Rs.11,60,000/- and transferred Rs.1,50,000/- and gave cash of Rs.6,00,000/- to Devkumar Sinha as consideration amount. After receipt of money Devkumar Sinha as refused to sell the property and asked for cancellation of agreement and assured that he will return whole consideration amount back to the

petitioner but instead, he has made a false complaint against the petitioner that petitioner had sold him a government land.

2. It has been further submitted by learned counsel for the petitioner that he has demanded amount which has been given to Devkumar Sinha then he informed that he is ready to execute the agreement of sale and also agreed to execute power of attorney in favour of petitioner, but he has neither returned the money nor executed the agreement.
3. The petitioner has sent legal notice to Devkumar Sinha and in reply he has admitted that an amount of Rs.11,60,000/- has been received from petitioner but stated that the money was for some another transaction. Petitioner has made a complaint to Nodal Officer and also forwarded a copy to the Superintendent of Police, Durg on 12.10.2020 along with all the documents.
4. The officer-in-charge investigated the matter and recorded statements of both the parties wherein Devkumar Sinha has admitted in his statement with regard to the receiving the money from the petitioner. This clearly establishes that the petitioner has been cheated by Devkumar Sinha, still FIR has not been registered and no action has been taken on the complaint by the petitioner, therefore, petitioner has filed present petition and prayed for following relief:-

“10.1 That the Hon'ble Court may kindly be pleased to call for the entire records of the case of the petitioner.

10.2 That the Hon'ble Court may kindly be pleased to direct the respondent state to register the FIR for the offence U/s 415, 420 of IPC.

10.3 Any other relief which may suitable in the facts and circumstances of the case may also be allowed.

10.4 The cost of the petition may also be awarded to the petitioner.”

5. Learned counsel for the petitioner would submit that the Hon'ble Supreme Court reported in 2006(12) SCC 229 in case of Lallan Chaudhary and others Vs. State of Bihar and another has held that as per the duty of the Police Officer to register the case, if,

cognizable offence is made out in the complaint and he would refer to Paras 8 to 12 of the said judgment which are extracted below:-

“8. Section 154 of the Code thus casts a statutory duty upon police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation. The mandate of Section 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option except to register the case on the basis of such information.

9. In the case of Ramesh Kumari v. State (NCT of Delhi) and Ors. (2006) 2 SCC 677 this Court has held that the provision of Section 154 is mandatory. Hence, the police officer concerned is duty-bound to register the case on receiving information disclosing cognizable offence. Genuineness or credibility of the information is not a condition precedent for registration of a case. That can only be considered after registration of the case.

10. The mandate of Section 154 of the Code is that at the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not relevant or credible. In other words, reliability, genuineness and credibility of the information are not the conditions precedent for registering a case under Section 154 of the Code.

11. In the present case, undisputedly, the cognizable offences disclosed in the complaint, were under Sections 147, 148, 149, 448, 452, 323 and 395 IPC. The complaint was filed before the Sub-Divisional Judicial Magistrate and the same was endorsed to SHO of concerned Police Station for registering the FIR under Section 154 of the Code. The concerned SHO of the Police Station registered the case only under Sections 452/380/323/34 IPC. Section 395 IPC, which had been disclosed in the complaint, was excluded from the purview of the FIR and resultantly no investigation was carried out by the Police in terms of Section 156 and 157 of the Code of Criminal Procedure. It is well settled principle of law that in criminal trial, investigation is proceeded by an FIR on the basis of written complaint or otherwise disclosing the offence said to have been

committed by the accused. In the present case, a grave miscarriage of justice has been committed by the SHO of concerned Police Station by not registering an FIR on the basis of offence disclosed in the complaint petition. The concerned police officer is statutorily obliged to register the case on the basis of the offence disclosed in the complaint petition and proceed with investigation in terms of procedure contained under Sections 156 and 157 of the Code. The FIR registered by the Police would clearly disclose that the complaint for offence under Section 395 IPC has been deliberately omitted and, therefore, no investigation, whatsoever, was conducted for the offence under Section 395 IPC.

12. It is unfortunate that the Trial Magistrate has failed to notice that in the complaint filed before the Sub-Divisional Judicial Magistrate an offence under Section 395 IPC has been disclosed, amongst others. The Trial Magistrate accepted the charge framed under Sections 452/323/34 IPC mechanically without application of mind. The District and Sessions Judge also failed to take notice the miscarriage of justice by the Trial Judge. It is, in these circumstances that the High Court has, in our view, justly corrected the error committed by two Courts. In our view, therefore, the impugned order of the High Court does not suffer from any infirmities.”

6. From perusal of reliefs sought, it is quite clear that petitioner wants that on the basis of complaint, FIR should be registered against Devkumar Sinha.
7. The petitioner has made a complaint before the Superintendent of Police Durg, contending that Dev Kumar Sinha even after taking the entire money to the tune of Rs.19,10,000/- has not executed the sale deed of the property and despite his request for return of money, he has not returned the money. Thus, he has committed fraud.
8. I have heard learned counsel for the parties and perused the records annexed with the petition.
9. 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 Devkumar Sinha. 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 or 156(3) 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.

10. 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.
11. 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

¹ (2008) 2 SCC 409

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.”

12. The judgment cited by the petitioner is not applicable to the present facts of the case as in that case an FIR under Section 452, 380, 323, 34 of IPC has been registered but offence under Section 395 of IPC has not been registered therefore, the Hon'ble Supreme Court has directed for registration of FIR under Section 395 of IPC, wherein in present case no FIR has been registered and petitioner has filed this petition with a prayer for registration of FIR. The Hon'ble Supreme Court in above mentioned judgment in case of **Sakiri Vasu**(supra) has deprecated the practice of filing a writ petition before the High Court and held if FIR is not registered then writ petition for registration of FIR should not be entertained by the High Court. Therefore, in the light of the Judgment mentioned above in case of Sakiri Vasu (Supra) the submission of the petitioner is that the Police be directed to register the FIR against Dev Kumar Sinha is not acceptable. Accordingly, it is liable to be and is hereby rejected. 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. Hon'ble 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

² (2020) 16 SCC 728

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.”

13. 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 under Section 156(3) or 200 of the CrPC, 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.
14. 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 disposed off at motion hearing stage.
15. Consequently, the writ petition being devoid of any substance is liable to be and is hereby disposed off with liberty as aforesaid granted in favour of the petitioner.

Sd/-

(Narendra Kumar Vyas)
Judge

parul