

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 160 of 2016

- Smt. Sakun Verma W/o Shri Jivanlal Verma, Aged About 56 Years R/o Mission Chowk Kedarpur, P.S. And Tahsil Ambikapur, Distt. Surguja, Chhattisgarh
---- **Petitioner**

Versus

1. State of Chhattisgarh Through The Secretary, Home Department, Mahanadi Bhawan, New Raipur, Distt. Raipur, Chhattisgarh
2. The Director General of Police, Police Headquarter, Raipur, Distt. Raipur, Chhattisgarh.
3. The Inspector General of Police, Surguja Range, Ambikapur, District Surguja, Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh
4. The Superintendent of Police, Surguja, Ambikapur, Dist. Surguja, Chhattisgarh , District : Surguja (Ambikapur), Chhattisgarh
5. The Station House Officer, Police Station Civil Line, Ambikapur, Distt. Surguja, Chhattisgarh , District : Surguja (Ambikapur), Chhattisgarh
6. The Jail Superindent, Central Jail Ambikapur, Distt. Surguja, Chhattisgarh , District : Surguja (Ambikapur), Chhattisgarh

---- **Respondents**

For Petitioners : Mr. A.N. Pandey, Advocate

For Respondents/State : Mr. Gurudev I Sharan, Govt. Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

16-06-2021

1. The petitioner, who is mother of deceased Nikhil Verma, has filed this writ petition (Cr) under Article 226 of the Constitution of India with a prayer that the respondents authorities be directed to investigate in respect of death of deceased Nikhil Verma, who died on 29-5-2015 in suspicious condition, by an independent agency and register the case against the responsible officer.
2. Brief facts as projected by the petitioner are that on 10-4-2015 at about 10.00 am., the son of the petitioner late Nikhil Verma went to Mission Hospital, Ambikapur for treatment , in the meantime, one constable namely Imtiyaj Ali who was posted in civil lines, Ambikapur, came and started abusing by filthy language and

assaulted him. The deceased made a complaint before respondent No.4 /The Superintendent of Police, Surguja, Range, Ambikapur against the constable due to which the constable Amtiyaj and since then he regularly harassed the deceased.

3. The deceased made a complaint on 10-4-201. The petitioner's son was admitted in hospital on 18-5-2015 for treatment and he was not discharged from the hospital but on 20-5-2015, the Police came to hospital and arrested him without informing to family members of the deceased and without permission of the hospital/authorities, he was taken by the Police and since then he was continuously assaulted by Police personnel on account of previous enmity. On 20-5-20215 Police took him on remand. Due to assault made by the Police, deceased suffered grievous injury on the basis of serious condition, the jail authority admitted the deceased to District Hospital, Ambikapur on 28-5-2015 and on the same day the Doctor referred the deceased at Raipur for treatment of higher centre due to serious condition of the deceased. Looking to the serious condition of the deceased, the jail authority has not sent the deceased to Raipur, therefore, he died on 29-5-2015 in absence of medical treatment. The death of petitioner's son was not natural death, but it was murder, therefore, she made several representations before the respondents authority on 18—6-2015 and 7-8-2015 but no action has been taken on the said representations. The action of the respondent authority is illegal, arbitrary and negligence, therefore, the petitioner has filed present Writ Petition (Cr) and prayed that any independent agency may conduct enquiry on the allegation and register the case against the responsible persons.
4. From perusal of reliefs sought, it is quite clear that petitioner wants that investigation be conducted by any independent agency and on the basis of complaint, FIR should be registered against responsible officers.
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 authorities to register FIR against responsible officer. Hon'ble the 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. Hon'ble the 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

¹(2008) 2 SCC 409

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 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

²(2020) 16 SCC 728

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, the present writ petition filed under Article 226 of the Constitution of India stands disposed of with liberty as aforesaid granted in favour of the petitioner.

Sd/-

(Narendra Kumar Vyas)

Judge

Raju