

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**WPCR No. 672 of 2021**

- A. Jagdish Kumar Rao S/o Late Shri Pandu Ranga Rao aged about 48 Years R/o Vikas Nagar, Vinayak Chowk, Gudhiyari, Raipur Tahsil and District Raipur Chhattisgarh.

-----Petitioner**VERSUS**

1. State of Chhattisgarh Through Its Secretary, Department of Home Mantralaya, Mahanadi Bhavan, Atal Nagar, Naya Raipur, Raipur Chhattisgarh.
2. Director General of Police Raipur, District Raipur Chhattisgarh.
3. Superintendent of Police Raipur, District Raipur Chhattisgarh.
4. Station House Officer Police Station Civil Line, Raipur District Raipur Chhattisgarh.
5. Raj Kumar Agrawal @ Raju Agrawal S/o R.K. Agrawal aged about 40 Years Resident of Ishwar Sadan, Kota Road, Near Bharat Gas Godown, Bharatmata Chowk, Raipur District Raipur Chhattisgarh.
6. Radheshyam Agrawal S/o Late Shri Madan Lal Agrawal aged about 48 Years Resident of Agrasen Chowk, Bilaspur, District Bilaspur Chhattisgarh.

-----Non-applicants

For Petitioner : Mr. Anand Prakash Sharma, Advocate
 For Non-applicant- State : Mr. D.P. Singh, Dy. Advocate General.

SB: Hon'ble Shri Parth Prateem Sahu, Judge**ORDER****21/10/2021**

1. This writ petition has been filed with the following reliefs:-

“10.(i) That, this Hon'ble Court may kindly be pleased to issue a writ of mandamus, order or direction to the respondents police authorities be registered the offence on complaint of the petitioner, against accused person respondent no. 5 and 6, in the interest of justice.

(ii) That, this Hon'ble Court may kindly be pleased to issue an appropriate writ by directing the respondent no. 1 to 4 to take necessary steps upon complaint of the petitioner according to the law laid down by the Hon'ble Court in the case of Lalita Kumar v. State of U.P. in the interest of justice.

(iii) Any other relief which may be suitable in the facts and circumstances of the case, may also be granted.”

2. Learned counsel for the petitioner submits that the petitioner is a business man and doing business in the name and style as “Rudransh Fast Food” at Gudiyari, Raipur. Petitioner is known to Respondent 5, who is doing the business of kirana (grocery) shop as he used to purchase materials from his shop. Respondent 5 suggested the petitioner to purchase land from Respondent 6, if he is interested, upon which, petitioner agreed and entered into an agreement to purchase the land bearing khasra number 426/14 measuring 2.0230 hectare, situated at village Pasan, Tahsil Podi, District Korba, Chhattisgarh and paid Rs. 8 Lakh. Respondent 6, thereafter, has not executed the sale deed and upon enquiry it revealed that the said land, which is the subject matter of agreement to sale dated 22.01.2020, is recorded in name of some other person. Petitioner after realizing that he has been cheated, filed complaint before the concerned police station but till date FIR has not been registered against Respondents 5 & 6. Learned counsel submits that the petitioner has not only submitted complaint to concerned police station but also has lodged report before the Additional Superintendent of Police, Raipur on 20.01.2021 and prior to that petitioner had submitted complaint before the Superintendent of Police as well as SHO, police station, Civil Line on 20.10.2020. Copies of the same are placed on record. Offence alleged to be committed by Respondents 5 & 6 is cognizable, hence, respondent-authority and SHO of concerned police station was duty bound to register FIR in which they utterly failed, thus, directions be issued to Respondents 1 to 4 to register

FIR on the complaint.

3. Mr. D.P. Singh, learned State counsel submits that alternate remedy of filing an application under Section 156(3) of CrPC and the complaint under Section 200 of CrPC before the Judicial Magistrate, 1st Class is available to the petitioner, hence, no relief can be granted to him in this writ petition. He further submits that when there is specific provision prescribed under the Code of Criminal Procedure (CrPC) for the same relief as sought for by the petitioner in this writ petition, writ petition is not maintainable.
4. I have heard learned counsel for the parties.
5. Grievance raised by the petitioner in this writ petition is that even after lodging the complaint to police authorities, crime against Respondents 5 & 6 is not registered. Under Section 154(1) of CrPC, informations to be given to the police relating to commission of cognizable offence is to be entered into book kept by such Officer in such form. If for any reason, police has not registered the information as prescribed under Section 154(1) of CrPC then the person aggrieved is having alternative remedy to approach the Magistrate by filing an application under Section 156(3) of CrPC. Magistrate can also take cognizance of offence on complaint made by the person under Section 200 of CrPC. When specific provision under the CrPC is envisaged and remedy is provided to aggrieved person whose complaint/ information is not registered by police then the Courts can refrain from exercising discretionary jurisdiction because it will be opening of flood gate. All the person aggrieved instead of invoking alternate statutory remedy will directly approach to High Court.

6. Hon'ble Supreme Court in case of **Sakiri Vasu v. State of Uttar Pradesh and others** reported in **(2008) 2 SCC 409** has held as under.

“25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

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.”

7. Further, Hon'ble Supreme Court in case of **Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and others** reported in (2016) 6 SCC 277 has held as under:

“2. This Court has held in *Sakiri Vasu v. State of U.P.*, (2008) 2 SCC 409, 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 (supra)* 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 (supra)*, 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."

8. Recently, Hon'ble Supreme Court in case of **M. Subramaniam and another v. S. Janaki and another** reported in (2020) 16 SCC 728, considering its earlier judgment in cases of **Sakiri Vasu (supra)** and **Sudhir Bhaskarrao Tambe (supra)** has set aside the direction for registration of FIR issued by the High Court.
9. Considering the aforementioned facts and circumstances of the case and law enunciated by Hon'ble Supreme Court in the aforementioned judgments, I am not inclined to entertain this writ petition in view of alternative remedy available to the petitioner under CrPC of filing application before the Magistrate or filing the complaint case.
10. Accordingly, writ petition stands dismissed. However, the petitioner may approach the competent authority by way of filing appropriate proceedings available to him under law.

Sd/-
(Parth Prateem Sahu)
Judge