

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

WPCR No. 709 of 2021

Firat Kapoor Kurrey S/o Dhanaran Kurrey, Aged About 50 Years
Working As Lecturer Biology At Govt. Higher Secondary School
Kirari (D) Block Dabhra, District Janjgir Champa Chhattisgarh.,
District : Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Education, Mahanadi Bhawan, Atal Nagar, Mantralaya, Naya Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Director, Directorate Of Chhattisgarh Public Instruction, Indravati Bhawan, Naya Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
3. District Education Officer, Education District Sakti, District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
4. Lekhram Patel Principal, Govt. Higher Secondary School Kirari (D) Block Dabhra, District Janjgir Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
5. Rajkamal Patel, S/o Subhas Chand Patel, Aged About 48 Years R/o Village Kirari (D) P.S. Dabhra, Block Dabhra, District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
6. Shrikant Patel, S/o Leeladhar Patel, Aged About 30 Years R/o Village Kirari (D) P.S. Dabhra, Block Dabhra, District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Ravipal Maheshwari, Advocate
For State	:	Shri Vinod Tekam, Panel Lawyer.

S.B.: Hon'ble Shri Parth Prateem Sahu, Judge

Order

09/11/2021

1. Learned counsel for the petitioner submits that the petitioner is working as Lecturer (Biology), his name was proposed for the State Teacher Award 2020. Respondent No.4 with connivance of respondents No.5 & 6 have got a complaint submitted against the petitioner from third person, based upon which, departmental enquiry was initiated against him. Because of departmental enquiry, proposal of his name for the prestigious Teacher Award was withheld. Upon withholding of his name, name of respondent No.4 has been proposed. After conclusion of departmental enquiry, petitioner was exonerated and there was a finding recorded that the complaint was lodged with ulterior motive. Hence, a direction be issued for lodging First Information Report against respondents No. 4 to 6.
2. Learned counsel for the State submits that the main relief sought for in this petition is for registration of First Information Report against respondents No.4 to 6. Case of the petitioner himself is that some departmental enquiry was initiated against him in which he was exonerated after full-fledged inquiry. If the petitioner is of the view that respondents No. 4 to 6 have intentionally or with malafide intention have got registered the complaint against the petitioner, then there is alternative remedy available with him of filing application under Section 156 (3) Cr.P.C. or complaint case before the Court of jurisdictional Magistrate under Section 200 of Cr.P.C. Hence the petition itself is not maintainable for the relief as sought for by the petitioner.
3. I have heard learned counsel for the parties and perused the records. Petitioner sought following reliefs:-

“ (i). That, this Hon'ble Court may kindly be pleased to issue an appropriate action by directing the respondent No.2 to take

necessary steps against the responsible persons respondent No.3 to 6, in interest of justice.

(ii) That, this Hon'ble court may kindly be pleased to issue writ/writs, order/orders thereby directing to respondent No.2 to lodge FIR against the respondent No.3 to 6 who has deliberately and repeatedly (two times) initiated malafide departmental enquiry against the petitioner, in the interest of justice.

(iii) That, this Hon'ble Court may kindly be pleased to consider and impose cost against the respondents No. 3 to 6 who has deliberately damaged the character of the petitioner, in which petitioner deprived off for rewards, in the interest of justice

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

4. The main relief as sought for by the petitioner is a direction for registration of FIR against respondents No.4 to 6 on the ground that they have acted intentionally and malafidely. The petitioner is having the efficacious alternative remedy to approach the Court of jurisdictional Magistrate by way of filing an application under Section 156 (3) of Cr.P.C. or complaint case under Section 200 Cr.P.C. When there is efficacious alternate remedy available with the petitioner for the relief as sought for by the petitioner in the instant petition, this Court will not exercise the extraordinary jurisdiction under Article 226 of the Constitution of India.
5. Hon'ble Supreme Court in case of **Sakiri Vasu v. State of Uttar Pradesh and others** reported in (2008) 2 SCC 409 has considered the issue of issuing a direction in writ petition filed

for registration of FIR and 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.”

6. 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.”

7. 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.
8. Considering the pleadings, prayer made by the petitioner in this petition as well as submission of learned counsel for the petitioner, in the light of the aforementioned ruling of Hon'ble Supreme Court, I am not inclined to entertain this petition.
9. In view of the above, the petition is dismissed. However, the petitioner will be at liberty to avail alternate remedy available to him in accordance with law.

Sd/
(Parth Prateem Sahu)
Judge