

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**WPCR No. 707 of 2021**

- Romnath Sahu S/o Late Shiv Prasad Sahu aged about 69 Years R/o Village Mudpar, Post Ganiyari via Kharora, Tahsil Tilda, District Raipur Chhattisgarh.

-----Petitioner**VERSUS**

1. State of Chhattisgarh Through The Secretary, Department of Home, Secretariat, Mahanadi Bhawan, Atal Nagar, Police Station and Post Rakhi, District Raipur Chhattisgarh.
2. Superintendent of Police Raipur District Raipur Chhattisgarh.
3. Station House Officer Police Station Saraswati Nagar, Raipur, District Raipur Chhattisgarh.
4. Ramayna Realtors (P) Ltd. Through Director Mukesh Jagat Jethwani, R/o 501 Lodha Internees Building No. 1, Gufiq Lab Compound, Mulgaon Road No. 11, MIDC Andheri (East) Mumbai (MH) 400093.
5. Vishal Mehta Office 111 Market Chambers IV, 11th Floor, Narman Point, Mumbai Maharashtra 400021.
6. Jagjit Singh Datta S/o Harbhajan Singh Datta R/o Near Flour Mill, Behind Ankur Hospital, Sai Nagar, Jail Road, Raipur Chhattisgarh.
7. Then Patwari (Year 2013 - 2014) Patwari Halka No. 107/51, Mauja Kota 3, Tahsil and District Raipur Chhattisgarh.
8. Then Revenue Inspector (Year 2013 - 2014) R.I.C. Mauja Kota 3, Tahsil and District Raipur Chhattisgarh.

-----Respondents

For Petitioner : Mr. Y.C. Sharma, Sr. Advocate with
Mr. Ajay Kumar Chandra, Advocate
For Respondent-State : Mr. Sudeep Verma, Dy.G.A.

SB: Hon'ble Shri Parth Prateem Sahu, Judge**ORDER****08/11/2021**

1. Petitioner has approached this Court with the following reliefs:

“RELIEFS SOUGHT:-

10.1 That this Hon'ble Court may kindly be pleased to allow the petition.

10.2 That the Hon'ble Court may kindly be

pleased to issue a writ in the nature of mandamus directing the State/ respondents authorities to register F.I.R. against the respondent No. 4 to 8, initiate enquiry and punish them for fraud, fabrication of documents and creation of misidentification.

10.3 That this Hon'ble Court may kindly further be pleased to grant compensation to the petitioner for the loss of 0.246 hectare (2463 sq. meters) land of khasra no. 180/9, 180/17 in village Kota-3, P.C. No. 107/51, R.I.C. Raipur-3, Tehsil and District Raipur as per new marker rate/ price from the respondent No. 4 to 8.

10.4 That the Hon'ble Court be pleased to grant any other relief or direction which this Hon'ble Court deems fit in the facts and circumstances of the case, in the interest of justice alongwith cost of litigation.”

2. Learned counsel for petitioner submits that the land bearing khasra number 180/3 is originally owned by late Ramprasad Dubey. Petitioner purchased the land from legal heirs of late Ramprasad Dubey on 28.03.2018 *vide* registered sale deed. The land in question is land bearing khasra number 180/9 (having khasra number as 180/3). After purchase of land, name of petitioner was mutated in revenue records. Subsequently, he came to know that permanent construction of house over the land is being raised by Respondent 4, petitioner by filing an application before the Tahsildar, Raipur got the land demarcated from the revenue authorities. Land was demarcated by the concerned halka patwari and Revenue Inspector, submitted report mentioning that the land bearing khasra number 180/3 measuring 0.159 hectare has been given in possession to Municipal corporation, Raipur by Respondent 4 for construction of house under EWS scheme. In demarcation report, it is further mentioned that on the land bearing khasra number 180/9 measuring 0.246 hectare which petitioner has purchased through

registered sale deed, Respondent 4 is raising permanent construction. After demarcation report submitted by the Revenue authorities before the Tahsildar, petitioner submitted an application before the concerned police authorities, mentioning that the land owned by Ramprasad Dubey (since deceased) bearing khasra number 180/3 measuring 0.405 hectare of land, after coming into force Ceiling on Agricultural Holdings Act, 1960, part of Khasra number 180/3 is 0.246 hectare of land was part of Ceiling proceedings. After repeal of Ceiling on Agricultural Holdings Act, land, subject matter of ceiling proceedings, was returned back to original owners and therefore the land was identified by Revenue Authorities, but even then Respondent 4 in collusion with revenue authorities has manipulated the revenue records which shows that Respondents 4 to 8 are indulged in criminal act, hence, a direction be issued to Respondents to register FIR on the complaint Annexure P-1 submitted by petitioner.

3. Mr. Sudeep Verma, learned State counsel opposes the submissions made by learned counsel for petitioner and would submit that the petitioner in this petition has sought relief for a direction to register FIR; under the Code of Criminal Procedure (CrPC), petitioner is having alternative remedy of filing application before the jurisdictional Magistrate under Section 156(3). Further remedy to file complaint case under Section 200 of CrPC. Petitioner has not availed alternative remedy available to him, hence, writ petition is not maintainable and no relief as sought for by the petitioner in this petition can be granted.

4. I have heard learned counsel for respective parties.

5. From the proceedings and submissions raised by petitioner, it is apparent that the petitioner is seeking direction to Respondent 3 for registering FIR based on the complaint Annexure P-5 for the reasons assigned therein. Petitioner is having efficacious remedy under Section 156(3) of CrPC of filing an application for the relief as sought for in this writ petition. Hence, in the opinion of this Court, writ petition, directly approaching this Court seeking relief of registering FIR by passing the efficacious remedy available under Code of Criminal Procedure (CrPC) should not be entertained.
6. 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 with regard to issuance of direction for registration of FIR and held thus:

“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 pleadings and submissions of learned counsel for respective parties, in the light of law laid down by Hon'ble Supreme Court, I am not inclined to entertain this 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