

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRMP No. 1168 of 2021

1. Ramesh Chand Seth S/o Late Devi Prasad Seth Aged About 55 Years R/o Hill View Colony, Near Mishra Hospital, Mango, Jamshedpur, Jharkhand.
2. Rajesh Mishra S/o Late Raghvendra Mishra Aged About 53 Years R/o Chandra Prabha Nagar, Nh - 33 MGM. Medical College, East Singh Bhoomi, Jharkhand.

---- **Petitioners**

Versus

1. State of Chhattisgarh Through Station House Officer, P.S. Dipka, District Korba Chhattisgarh.
2. Ambika Prasad Panda S/o Ambika Prasad Panda Aged About 56 Years Chairman and Managing Director, SECL, P.S. Sarkanda, Seepat Road, Bilaspur Chhattisgarh.
3. Rajan P. Shah G.M. SECL, Deepka Area P.S. Kusmunda, District Korba Chhattisgarh.

---- **Respondents**

For Petitioners	: Shri Raj Kumar Gupta, Advocate
For State	: Shri Sudeep Verma, Dy. Govt. Advocate

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

08.11.2021

1. Petitioners have filed this petition with a prayer to issue direction to respondent No.1 to register First Information Report against respondents No.2 and 3.
2. Shri Raj Kumar Gupta, learned counsel for petitioners submits that petitioners was engaged in transporting coal and minerals from Deepka Project of South Eastern Coalfields Limited (in short 'SECL'). Petitioners have purchased 30 Hyva Trucks financed by Shriram Finance Company Limited. They have deposited entire loan amount and have also secured 'No Objection Certificate' from Finance Company. 16 Hyva trucks are

kept within mining area of SECL. Even after request, vehicles were not released/handed over to petitioners and due to lapse of time, valuable parts of the vehicles have been theft and vehicle is not usable. Petitioners submitted report to concerned Police Station for taking action against respondents No.2 and 3, but Station House Officer, Police Station Deepaka District Korba has drawn proceeding under Section 155 of Code of Criminal Procedure, 1973 (in short 'Cr.P.C.'). There is clear involvement of respondents No. 2 and 3 in commission of alleged crime, hence a direction be issued to respondent No.1 to register First Information Report against respondents No.2 and 3.

3. Shri Sudeep Verma, Dy. Govt. Advocate for the State opposing the submissions made by learned counsel for the petitioner would submit that Police after considering the report (Annexure A/6) arrived at a conclusion that there was some mutual commercial transaction between the parties and relegated the complainant/petitioners to approach the Court. He further submits that if the petitioners are not satisfied with the proceeding initiated by Police based on the complaint, then petitioners are having alternative remedy to approach before the Court of jurisdictional Magistrate by way of filing application under Section 156(3) of Cr.P.C. or to file complaint under Section 200 of Cr.P.C., hence, the petition is not maintainable.
4. I have heard the learned counsel for the parties.
5. Based on the report lodged by petitioners, Police has drawn proceeding under Section 155 of Cr.P.C.. Petitioners if are not

satisfied with proceeding drawn by Police is having remedy under Section 156(3) of Cr.P.C. wherein Judicial Magistrate after considering the contents of complaint can pass appropriate orders in accordance with law for the relief sought for by petitioners in this petition. When there is efficacious alternative remedy available to petitioners, this Court will not exercise the inherent jurisdiction under Section 482 of Cr.P.C.

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. In view of aforementioned ruling of Hon'ble Supreme Court and considering the facts and circumstances of the case as well as nature of relief sought for by petitioners, I am not inclined to entertain this petition as efficacious alternate remedy is available to the petitioners under Code of Criminal Procedure, 1973.
10. In the result, petition stands dismissed. However, petitioners may be at liberty to file appropriate proceeding before the Court of jurisdictional Magistrate and if any such proceeding is filed by the petitioners, learned Magistrate shall consider and decide the same strictly in accordance with law.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh