

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**WPCR No. 715 of 2021**

- Tarini Chandraker W/o Nirmal Chandrakar aged about 33 Years
R/o Madhav Nirogpchar, Prakratik Chikitsalaya Padmanabhpur
Durg Chhattisgarh.

-----Petitioner**VERSUS**

1. State of Chhattisgarh Through Collector Durg District Durg Chhattisgarh
2. Superintendent of Police Durg District Durg Chhattisgarh
3. Pankaj Chandrakar S/o Late Laxminarayan Chandrakar R/o Plot No. 141/9 Madhav Nirogpachar Prakratik Chikitsalaya Padmanabhpur Durg District Durg Chhattisgarh
4. Nirmal Chandrakar R/o Plot No. 141/9 Madhav Nirogpachar Prakratik Chikitsalaya Padmanabhpur Durg District Durg Chhattisgarh
5. Station House Officer Police Station Durg Police Station Outpost S. H. O. Padmanabhpur District Durg Chhattisgarh

-----Respondents

For Petitioner : Mr. Anurag Jha, Advocate
For Respondent-State : Mr. D.P. Singh, Dy. Adv. Gen.

SB: Hon'ble Shri Parth Prateem Sahu, Judge**ORDER****15/11/2021**

1. Learned counsel for petitioner submits that petitioner is wife of Respondent 4. He along with his brother suspecting upon her, time and again abused and assaulted her. She filed complaint before the Superintendent of Police, Durg. Complaint of the petitioner was forwarded to the SHO of chowki, Padmabhpur, Durg for proper action. Police opining that dispute is between husband, wife and brother-in-law and injuries to be simple, drawn proceedings under Section 155 of CrPC on 12.03.2021 with advice of Counseling at Mahila Police station. Petitioner though reported cognizable offence but the FIR was

not registered. Petitioner has filed this petition seeking direction for registration of FIR against Respondents 3 & 4.

2. Mr. D.P. Singh, learned State counsel opposes the submissions made by learned counsel for petitioner and would submit that petitioner is having efficacious alternative remedy under the Code of Criminal Procedure (CrPC) by way of filing application under Section 156(3) before the jurisdictional Magistrate and if her grievance is not redress then to file complaint under Section 200 of CrPC. He further submits that Hon'ble Supreme Court has deprecated directly approaching High Court, filing writ petition, seeking direction of registration of FIR.
3. I have heard learned counsel for respective parties.
4. From the submissions made by learned counsel for the parties and perusal of record, it is apparent that the petitioner has reported same incident which occurred in the month of March 2021, based upon which police drawn proceedings under Section 155 of CrPC on 12.03.2021, since that date, petitioner has not taken any recourse of filing any proceedings before any of the authority by way of filing application before the Magistrate or complaint but has filed this writ petition on 25.10.2021. The relief sought for by the petitioner can be ordered even by the jurisdictional Magistrate on application under Section 156(3) of CrPC. Hon'ble Supreme Court in case of **Sakiri Vasu v. State of Uttar Pradesh and others** reported in **(2008) 2 SCC 409** considered the identical issue of issuing 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."

5. 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."

6. 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.
7. Considering the pleadings and submissions of learned counsel for respective parties, in the light of rulings of 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.
8. Accordingly, writ petition stands dismissed. However, the petitioner may approach the jurisdictional Magistrate by way of filing appropriate proceedings available to him under law for redressal of his grievance as sought for in this writ petition. If petitioner filed any application before the Magistrate, jurisdictional Magistrate may consider and decide the application strictly in accordance with law at the earliest.

Sd/-
(Parth Prateem Sahu)
 Judge