

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1286 of 2021**

- Xyz Nil

---- Petitioner**Versus**

1. State of Chhattisgarh Through Thana Ajak Korba, District Korba Chhattisgarh.
2. Dwarika Sharma, D/o Shri Sadabrij Sharma Niyukti- Mandal Adhyaksh Bhartiya Janta Party Bjp Avm Chunav Prabhari, Makan No. 89, Shahid Virnarayan Sinh, R/o Village Sirki, Katghora Road 02, Dipka, Tahsil Katghora, District Korba Chhattisgarh.

---- Respondents

For Petitioner	: Mr. Subhash Chandra Soni appears through virtual hearing and Ms. Laxmin Tondey, Advocate
For State/respondent No. 1	: Mr. Ayaz Naved, G.A.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****29.11.2021**

1. The petitioner has filed this petition under Section 482 of Cr.P.C. to re-register the FIR against threats and attempts to kill the victim and the victim's children in order to change the testimony of the accused to withdraw the case. Therefore, victim has filed the present petition praying for a direction to the police

authorities to re-register the FIR against the accused in the interest of justice.

2. Learned State counsel opposes the prayer of the petitioner and submits that the petitioner has no *locus standi* to file this petition.
3. Heard counsel for the parties and perused the material available on record.
4. The Hon'ble Supreme Court in case of **Sakiri Vasu Vs. State of Uttar Pradesh & Others** reported in **(2008) 2 SCC 409**, has examined the issue in paragraphs 27 and 28 and held as under:-

“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 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 Section 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 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. The judgment passed by Hon'ble the Supreme Court in Sakiri Vasu (Supra) has again come up for consideration before three judges Bench in case of **M. Subramaniam & another Vs. S. Janaki & another 2** reported in (2008) 2 SCC 409. The Supreme Court after considering the judgment has held at para 7 & 9 which are as under:-

"7. The said ratio has been followed in Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage, in which it is observed: (SCC p. 278, paras 2-4) "2. This Court has held in Sakiri Vasu V. State of U.P., 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 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."

"9. 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.”

6. From analysis of the above legal provisions, it is crystal clear that the petition under Section 482 of Cr.P.C. is not maintainable before the High Court. However, it is open to the petitioner to approach the court of Judicial Magistrate First Class having territorial jurisdiction over the place of offence if it deemed appropriate and necessary for filing of complaint under Section 156(3) of Cr.P.C or Section 200 of Cr.P.C. and in-turn Magistrate will follow the procedure prescribed under the provisions of the Cr.P.C. It is made clear that this Court has not expressed any opinion on merits of the case as to whether the averments made in the petition discloses any criminal offence or not and it is for the concerned Magistrate to decide the case on merits of the case without being influenced by any of the observations made by this Court.
7. Considering the facts and materials on record and in view of the law laid down by the Hon'ble Supreme Court, this Court is of the view that the present petition is not maintainable.
8. With the aforesaid observations, the petition is finally disposed of with the aforesaid liberty in favour of the petitioner.

**Sd/-
(Rajani Dubey)
Judge**

R/-