

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 768 of 2021**

- Smt. Kiran Singh, Wd/o Late Ayodhya Prasad Singh, Aged About 37 Years, R/o - Jhumarpara, Police Station - Bishrampur, Thasil And District - Surajpur, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, Through - Secretary Department of Home (Police), Mantralaya, Naya Raipur, District - Raipur, Chhattisgarh.
2. Director General of Police, Head Quarter Raipur, District - Raipur, Chhattisgarh.
3. Inspector General of Police, Rang - Sarguja (Ambikapur), District - Surajpur, Chhattisgarh.
4. Superintendent of Police, District - Surajpur, Chhattisgarh.
5. Station House Officer, Bhatgaon, Surajpur, District - Surajpur, Chhattisgarh.

---- Respondents

For Applicant	:	Mr. Hemant Gupta, Adv.
For State/Respondents	:	Mr. Ghanshyam Patel, G.A.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****26/11/2021**

1. The brief facts as projected by the petitioner are that complainant lodged an FIR that on 04.11.2020 at about 6.30 pm., when the deceased Ayodhya Prasad Singh was going to his house at SECL Quarters New Mines, Bhatgaon on his motorcycle bearing registration No. CG-15-CK-6411, at about 9.15 hours dashed his bike by some unknown vehicle driven in rash and negligent manner, as a result of which Ayodhya Prasad Singh died on the spot. In the postmortem report, the doctor has opined that death was hemorrhagic shock due to Traumatic brain injury caused by impact on occipital part of head and it was Homicidal in nature but the police without conducting proper investigation, has lodged FIR against the accused under Section 304-A of IPC instead of Section 302 of IPC.

2. On above factual matrix, the petitioner has filed the present petition and prays for following relief(s):-

- I. That this the just and proper stage where the Hon'ble directs the respondents to change the investigating officer in this case and

re-initiate the investigation, under proper section in accordance of law, with a new officer other than the present one.

II. That, in alternative the Hon'ble Court may kindly be pleased to issue an appropriate writ/order/directing change the nodal agency which is not under the state authorities or any Special commission or Judicial Authority to register proper Sections & investigate the entire matter freely & fairly.

III. That it would be appropriate to direct the state police to hand over the documents and evidence collected by the respondent No. 5 till date under the Crime No. 102 of 2020, in the interest of Justice.

IV. That the Hon'ble Court may please to direct the state to compensate the petitioner in her sudden and deep financial crisis.

V. Any other relief/relief's, which this Hon'ble Court may think fit and proper in the facts and circumstances of the case, with cost of the petition, may also please be granted to the petitioner.

3. The Hon'ble Supreme Court in case of Sakiri Vasu Vs. State of Uttar Pradesh & others 1, 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, 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 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."

4. The judgment passed by Hon'ble the Supreme Court in Sakiri Vasu (Supra) has again come up for consideration before three judges (2008) 2

SCC 409 Bench in case of M. Subramaniam & another Vs. S. Janaki & another 2. The Supreme Court after considering the same 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."

5. The offence under Section 304-A of IPC has already been registered. The victim or complainant can file an application for alteration of charges as provided under Section 216 of CrPC if such material is available on record. The complainant or victim or the Court itself alter the charges if sufficient material available for commission of offence under Section 302 of IPC before the trial Court. Thus, petitioner has alternate efficacious remedy available to him as per provision of Section 216 of the CrPC. Therefore, present WPCR for alteration of charges under Section

302 is not maintainable.

6. Petitioner has liberty to file suitable application before the Concerned Court for alteration of charges.

7. With this aforesaid liberty in favour of the petitioner, the present WPCR is disposed of.

Sd/-
(Rajani Dubey)
Judge

H.L. Sabu