

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 808 of 2021**

- Bhartendu Kumar Kamal, S/o Shri Ganesh Ram Kamal, Aged About 39 Years MIG 02, Pushp Vihar Colony Behind Ravishankar Nagar, Dadar Road Korba District Korba Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, Through Secretary Department of Home Mahanadi Bhawan, Naya Raipur, District - Raipur, Chhattisgarh.
2. State of Chhattisgarh, Through Secretary, Department of Panchayat and Rural Development, Mahanadi Bhawan, Naya Raipur, District - Raipur, Chhattisgarh.
3. Inspector General of Police, Raipur Range, Raipur, Chhattisgarh.
4. Superintendent of Police Raipur, Chhattisgarh.
5. Station House Officer, Police Station - Civil Lines, Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Shashank Thakur, Adv.
For Respondents	:	Mr. D.P. Singh, Dy. A.G.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****07/12/2021**

1. The petitioner has preferred this petition seeking direction to the respondents/ police authorities to comply the order dated 09.08.2021 passed by the Judicial Magistrate First Class, Raipur in the application u/s 156 (3) of the Cr.P.C. filed by the petitioner and to register the FIR and to lodge the Final Report before the competent Court.

2. The facts projected by the petitioner are that the Department of Panchayat & Rural Development, vide advertisement dated 23.02.2011, invited applications for 275 posts of Sub-Engineer from the aspirant candidates to be submitted before VYAPAM in the prescribed OMR form by 23.03.2011. After completion of the selection process, appointment orders were issued in favour of the shortlisted candidates. It is submitted that various media reports were published wherein it was alleged that huge manipulation has been committed in the recruitment process.

After going through the media reports with respect to the alleged irregularities in the selection process various applications under RTI were moved in the concerned department and on receipt of the information it came to notice that huge manipulation has been done and more than 89 persons who were not having the requisite qualification on the date of the submission of the form were appointed on the subject post. It was further revealed that the Respondent authorities of the department have given appointment to more candidates than the vacancies advertised i.e. 383 persons have been appointed against the advertised 275 posts of Sub-Engineers. Hence, this petition.

3. On the basis of the above factual matrix, the petitioner has filed this petition and prayed for following reliefs:-

a. The Hon'ble Court may kindly be pleased to direct the Respondents/Police Authorities to comply the order dated 09.08.2021 passed by the learned Judicial Magistrate First Class by registering an FIR and filing Final Report before the Jurisdiction Court after carrying out a fair and impartial investigation into the alleged malpractices committed during the process of recruitment on Sub-Engineer in the year 2011-2012.

b. The Hon'ble Court may kindly be pleased to grant any other relief as it deems fit and proper in the facts and circumstances of the case.

4. 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."

5. The judgment passed by Hon'ble Supreme Court in Sakiri Vasu (Supra) has again come up for consideration before three judges Bench (2008) 2 SCC 409 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.”

6. From the analysis of above legal provisions, it is crystal clear that the writ petition under Article 226 of the Constitution of India 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 deems 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 the 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 Hon'ble Supreme Court, this Court is of the view that the present writ petition is not maintainable.

8. With the aforesaid observations, the writ petition (criminal) is disposed of with the aforesaid liberty in favour of the petitioner.

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