

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 781 of 2021**

- Dr. Manik Lal Soni S/o Late Shri Nandlal Soni Aged About 82, Years R/o Lormi Ward No. 7, Nagar Panchayat Lormi, District- Mungeli, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, Through- The Secretary, Ministry of Home Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
2. The Director General of Police, Police Headquarter, Atal Nagar, Naya Raipur, District- Raipur, Chhattisgarh.
3. The Inspector General of Police, Bilaspur Division, Post And District- Bilaspur, Chhattisgarh.
4. The Superintendent of Police, Mungeli, Post And District Mungeli, Chhattisgarh.
5. The Deputy Superintendent of Police, (Scheduled Caste And Scheduled Tribe) Mungeli, Post And District Mungeli, Chhattisgarh.
6. Anand Ram Station House Officer, Police Station Lormi, District Mungeli, Chhattisgarh.
7. Chandrabhan Rai S/o Rekhchand Rai Aged About 27 Years, R/o Rampur, P.S.- Jarhagaon, District- Mungeli, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Vikash Pandey, Adv.
For State	:	Mr. Sushil Sahu, P.L.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****29/11/2021**

1. The facts projected by the petitioner are that on 31.07.2019 petitioner made a complaint against the respondent No. 6. On the basis of said complaint made by the petitioner against the respondent No. 6 before the respondent No. 4, on 19.10.2018 on the day of festival of Dusshera between 1 to 2 pm, petitioner was taking rest in his bedroom, all of sudden respondent No. 6 along with 3 to 4 police constables have rushed to his house and used filthy language before petitioner's wife and daughter-in-law, forcefully taken away from his house to the police station without proper dress except banyan and underwear and told to sit quietly, in spite of that offence has not been registered against the respondent No. 6, who has committed offence.

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

10.1. To call for the records of the case for the kind perusal of this Hon'ble Court.

10.2. To issue an appropriate writ or order and declare that the letter dated 31.07.2019 is illegal, bad in law.

10.3. To issue an appropriate writ or order and quash the letter dated 31.07.2019 contained in Annexure P-1.

10.4. To issue an appropriate writ or order and direct the respondent No. 4 to register F.I.R. against respondent No. 6 for illegal activities with petitioner.

10.5. Any other relief deemed fit in the facts and circumstances of the case may also be granted.

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. From analysis of the 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 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 whether the averments made in the petition discloses any criminal offence or not, it is for the concerning Magistrate to decide the case on merits of the case without being influenced by any of the observations made by this Court.

6. 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 this writ petition is not maintainable.

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

Sd/-
(Rajani Dubey)
Judge