

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 792 of 2021**

- Ezaj Ahmed S/o Late Mansoor Ahmed Baksh Aged About 32 Years R/o Juni Line, Police Station City Kotwali, Tehsil And District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. Superintendent of Police District Bilaspur, Chhattisgarh.
2. State of Chhattisgarh, Through : Station House Officer, Police Station Civil Line, District Bilaspur, Chhattisgarh.
3. Kadir Mohammad S/o Late Chedi Mia Aged About 49 Years R/o Aadarsh Chowk Mangla, Thana Civil Line District Bilaspur, Chhattisgarh.
4. Wazeer Mohammad S/o Late Chedi Mia Aged About 61 Years R/o Aadarsh Chowk Mangla, Thana Civil Line District Bilaspur, Chhattisgarh.
5. Wasir Mohammad S/o Late Chedi Mia Aged About 52 Years R/o Aadarsh Chowk Mangla, Thana Civil Line District Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Awadh Tripathi, Adv.
For State	:	Mr. Devendra Pratap Singh, Dy. A.G.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****03/12/2021**

1. The facts projected by the petitioner are that the respondents No. 3 to 5 who had executed the Ikrarnama as well as issued cheques in favour of the petitioner by agreeing and signing to provide the remaining amount on or before 30.11.2019. It had been settled between both the parties that if due to some reason the remaining amount could not provide by the respondents No. 3 to 5, then they will execute the registered sale deed of sanction lay out plot No. 14, 15, 16, 18, 19 and 20 total area 12375 by registered sale deed. But they refused to pay the settlement amount which they was agreed by way of *Ikrarnama* and also implicated the petitioner in a criminal case by saying that the *Ikrarnama* and the said cheque are forged and was not executed by the respondents No. 3 to 5, though the hand writing expert report totally against the respondent and when the petitioner filed the aforesaid handwriting expert

report and made a prayer for registering offence against the respondents No. 3 to 5 along with the documents, neither cognizance has been taken nor made any effort for investigation by the police. Hence, this petition is for registration of the offence and investigation against the respondents No. 3 to 5.

2. On the basis of this 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 Respondent no. 1 and 2 to investigate on the complaint of petitioner and register the FIR against the respondents No. 3 to 5 for the cognizance offence under Sections 420/34, 467, 468, 471 of the IPC.

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

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