

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 788 of 2021**

- Dujan Bai Gond D/o Khorbahra Aged About 48 Years, R/o Village Agarikala, Out Post Dashrangpur, Police Station Pipariya, District Kabirdham, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, Through : The Secretary, Department of Home (Police) Mahanadi Bhavan, Capital Complex, Mantralaya, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh.
2. Director General of Police, Police Headquarters (PHQ) Raipur, District Raipur, Chhattisgarh.
3. Superintendent of Police Kawardha, District Kabirdham, Chhattisgarh.
4. Sub Divisional Officer (SDOP) Police Station Anusuchit Jati Kalyan Kawardha, District Kabirdham, Chhattisgarh.
5. The Station House Officer Police Station Pipariya, District Kabirdham, Chhattisgarh.
6. The In-charge Out Post Officer Out Post Dashrangpur, Police Station Pipariya, District Kabirdham, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Dharmesh Shrivastava, Adv.
For State	:	Mr. Devesh Verma, G.A.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****01/12/2021**

1. The facts projected by the petitioner are that the petitioner lodged a written report in Out Post-Dashrangpur, alleging therein that on 05.11.2021 at about 6:30 pm, when she was engaged in cooking then some of the villagers namely Khedu Chandrakar, Anand @ Guddu, Gopi Yadav and Ganga Prasad Nishad entered the house of the complainant and abusing her with filthy languages by caste and told her Godin, Tonhi. It is also alleged that the accused persons threatened to burn her house and thereafter assaulted by club and was also trying to outrage her modesty, she was dragged by the accused persons on this complainant shouted for help then her family members namely Futeniya Bai, Lata Bai, Ku. Mamta Gond came there who were also assaulted by the accused persons and abused by them by caste and the accused persons also threatened them to burn all the family members. On the basis of written

report preferred by the complainant, the respondent No. 6 lodged FIR on zero and subsequently it was registered in Police Station Pipariya as Crime No. 423/2021. The case belongs to Special Act Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, therefore, the same may be investigated by an officer not below the rank of SDOP, therefore, the case diary has been sent to the respondent No. 4 who has called and seized the caste certificate of the complainant but thereafter no action has been taken regarding investigation into the matter.

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

10.1. That this Hon'ble Court may kindly be pleased to call for the entire records which relates to the case of the petitioner from the possession of respondents for its kind perusal.

10.2. That this Hon'ble Court may kindly be pleased to direct the respondent No. 4 to take steps for fair and speedy investigation and to arrest the accused persons who are freely moving in the village and teasing and threatening the complainant to commit greater offence than earlier.

10.3. That this Hon'ble Court may kindly be pleased to direct the respondent No. 3 to take appropriate steps against the respondent No. 4 who is not taking steps for arresting of the accused persons who have committed an offence against a woman belongs to scheduled tribes.

10.4. That this Hon'ble Court may kindly be pleased to grant any other relief/reliefs in favour of the petitioner, which the Hon'ble Court deemed fit & just in the facts and circumstances of the case, including awarding of the costs 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. 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