

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 826 of 2021**

- Santram Baghel S/o Late Shri Bahadur Baghel Aged About 65 Years R/o Pendraavan, Tahsil Bilaigarh, District Baloda Bazar-Bhatapara Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Department Of Home, Mahanadi Bhawan, Mantralaya, Atal Nagar, Naya Raipur District Raipur Chhattisgarh
2. Collector, Baloda Bazar-Bhatapara, District Baloda Bazar-Bhatapara Chhattisgarh
3. Superintendent Of Police, Baloda Bazar-Bhatapara, District Baloda Bazar-Bhatapara Chhattisgarh
4. The Station House Officer, Police Station Sarsiwa, Civil And Revenue District Baloda Bazar-Bhatapara Chhattisgarh
5. Bhuvneshwar Mahish S/o Ranglal Mahish, Caste Satnami, R/o Pendraavan, Tahsil Bilaigarh, District Baloda Bazar-Bhatapara Chhattisgarh

---- Respondents

For Petitioner : Mr. U.R. Koshaley, Advocate
 For State/respondents: Mr. G.S. Patel, G.A.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****14/12/2021**

1. The facts projected by the petitioner are that the petitioner made a written report before police to lodge F.I.R. against respondent No. 5 alleging therein that he is elected Panch of Gram Panchayat Pendraavan, Ward No.14 and earlier also he was elected as Sarpanch of the same Gram Panchayat. During his tenure, he withdrew Rs.82,000/- and 92,000/- for construction of additional room of Govt. Higher Secondary School, Pendraavan, Police Station Sarsiwa, Tahsil

Bilaigarh, District Baloda Bazar, Bhatapara under the Rajeev Gandhi Shiksha Mission Scheme but the required work has not been done and thereby embezzled the government fund. The department has also not recovered the same amount from the respondent No.5, but the respondent Nos. 1 to 4 has not taken any action regarding investigation in to the matter.

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

(i) That this Hon'ble Court may kindly be pleased to issue a writ by directing the respondent Nos. 1 to 4 to take necessary steps upon complaint of the petitioner against respondent No.5 according to the law laid down by Hon'ble Court in the case of Lalita Kumar Vs. State of U.P., in the interest of justice.

(ii). That, this Hon'ble Court may kindly be pleased to direct the police authority to register the case committed under Section 419, 420, 468 and 471 of the Indian Penal Code against the respondent No.5 for committing embezzlement of government fund under the scheme of Rajeev Gandhi Shiksha Mission (Sarva Shiksha Mission) within stipulated time, in the interest of justice.

(iii) Any other relief which may be suitable 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 petitioners.

Sd/-

(Rajani Dubey)
Judge