

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 827 of 2021**

1. Vishnu Koshle S/o Late Alen Koshle Aged About 55 Years Upsarpanch R/o Ward No. 6, Village Panchayat Kunra, District Bemetara, Chhattisgarh.
2. Jhaduram Kosle S/o Late Shyam Koshle Aged About 60 Years R/o Ward No. 6, Village Panchayat Kunra, District Bemetara, Chhattisgarh.
3. Koduram Yadav S/o Late Shriram Yadav Aged About 58 Years R/o Ward No. 6, Village Panchayat Kunra, District Bemetara, Chhattisgarh.
4. Smt. Mugeshiya Bai W/o Koduram Yadav Aged About 53 Years R/o Ward No. 6, Village Panchayat Kunra, District Bemetara, Chhattisgarh.

---- Petitioners**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Homes, D.K.S. Bhawan, Raipur Chhattisgarh.
2. Director General Of Police Police Head Quarter, Atal Nagar, Raipur, District Raipur Chhattisgarh.
3. Inspector General Of Police, Durg Range, District Durg Chhattisgarh.
4. Superintendent Of Police District Bemetara Chhattisgarh.
5. Station Hose Office, Police Station Nandghat, District Bemetara Chhattisgarh.
6. Smt. Sntoshi Baghel W/o Shri Satyasukrit Bashel Sarpanch Of Village Panchayat Kunra, Tahsil Navagarh, District Bemetara Chhattisgarh.
7. Poonam Chandra Jangde D/o Shri Ramkishun Jangde Secretary Of Village Panchayat Kunra, Tahsil Navagarh, District Bemetara Chhattisgarh.
8. Basant Gayakwad S/o Late Kamal Gayakwad, Rojgar Sahayak Of Village Panchayat Kunra, Tahsil Navagarh, District Bemetara Chhattisgarh.

---- Respondents

For Petitioners	:	Mr. R.K. Pali, Advocate
For State/respondents:		Mr. Ayaz Naved, G.A.

Hon'ble Smt. Justice Rajani Dubey

Order on Board**14/12/2021**

1. The facts projected by the petitioners are that the petitioners made a written report before police Nandghat to lodge F.I.R. against respondent Nos. 6 to 8 alleging therein that during their tenure as Up-Sarpanch and Panch they embezzled the government fund on the pretext of pond deepening under the Mahatma Gandhi Rojgar Guarantee Yojana and also prepared forged and fabricated muster roll but the respondent Nos. 1 to 5 have 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:-

10.1 That this Hon'ble Court may kindly be pleased to call the records pertaining to case of the petitioner.

10.2 That, this Hon'ble Court may kindly be pleased to direct the respondents authority to register the crime against the respondent Nos. 6 to 8 on the basis of written report.

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

10.4 Cost of the petition.

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