

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1448 of 2021**

1. Ratni Bai, W/o Gangadhar Verma, Aged About 45 Years, R/o Village Kewanchi, Post Khandsara, Police Station & Tehsil Bemetara, District Bemetara Chhattisgarh.
2. Savita, W/o Herman Verma, Aged About 40 Years, R/o Village Kewanchi, Post Khandsara, Police Station & Tehsil Bemetara, District- Bemetara Chhattisgarh.

---- Petitioners**Versus**

1. The State of Chhattisgarh Through Secretary, Department of Home, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh.
2. The Superintendent of Police Bemetara, District Bemetara Chhattisgarh.
3. Station House Officer Police Station Bemetara, District Bemetara Chhattisgarh.
4. Kaushilya Bai Verma, D/o Kejauram, Aged About 60 Years, R/o Ward No. 20 Kurmipara, Bemetara, P.S. & District Bemetara Chhattisgarh.
5. Kamlarani Das, W/o Swikriti Das Ranjan, Aged About 70 Years, R/o Ward No. 17, Bemetara, P.S. & District Bemetara Chhattisgarh.
6. Swikriti Das Ranjan, S/o Nand Lal Das, Aged About 87 Years, R/o Ward No. 17, Bemetara, P.S. & District Bemetara Chhattisgarh.
7. Suniti Kumar @ Deju Das, S/o Swikriti Das, Aged About 50 Years, R/o Ward No. 17, Bemetara, P.S. & District Bemetara Chhattisgarh.

---- Respondents

For Petitioners	:	Mr. Kanwaljeet Singh Saini, Adv.
For Respondents No. 1 to 3	:	Ms. Ishwari Ghritlahare, P.L.

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

1. The facts projected by the petitioners are that on 26.05.2021, at

about 11.00 am, petitioners along with her family members were working in her field, at that time respondents came there along with 10-12 people carrying clubs and started abusing the petitioners and her family members and threatened to kill. Thereafter, they started assaulting the petitioners, caught them and took them out from the field. Petitioners approached the police station and filed written complaint but neither cognizance has been taken nor any effort was made for investigation by the police authorities. Hence, this petition is to register the FIR and to direct the police authorities to conduct proper investigation against the accused.

2. On the basis of the above 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 Respondents/Police Authorities to register an FIR on complaint of the petitioner against the accused in view of the provisions of Cr.P.C. and law laid down by the Hon'ble Supreme Court.

b. The Hon'ble Court may kindly be pleased to direct the Respondent/State to take appropriate action against the police officer who have not discharged their duties in view of the law laid down by the Hon'ble Supreme Court.

c. The Hon'ble Court may kindly be pleased to grant any other relief as it deems 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 Supreme Court in Sakiri Vasu (Supra) has again come up for consideration before three judges Bench (2008) 2 SCC 409 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 the analysis of above legal provisions, it is crystal clear that the petition under Section 482 of Cr.P.C. 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 deems 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 as to whether the averments made in the petition discloses any criminal offence or not and it is for the concerned 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 Hon'ble Supreme Court, this Court is of the view that the present petition is not maintainable.

7. With the aforesaid observations, the petition is disposed of with the aforesaid liberty in favour of the petitioner.

**Sd/-
(Rajani Dubey)
Judge**