

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 825 of 2021**

1. Dashrath S/o Late Manihar Satnami Aged About 32 Years
R/o Village Post Abhanpur, Tahsil Abhanpur, District
Raipur Chhattisgarh
2. Smt. Rajo Bai W/o Late Manihar Satnami Aged About 50
Years R/o Village Post Abhanpur, Tahsil Abhanpur, District
Raipur Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh Through The Secretary,
Department Of Home, Mahanadi Bhawan, Mantralaya,
Raipur District Raipur Chhattisgarh
2. Director General Of Police Chhattisgarh, Police Head
Quarter, Raipur District Raipur Chhattisgarh
3. Inspector General Of Police Raipur Chhattisgarh
4. Superintendent Of Police Raipur District Raipur
Chhattisgarh
5. Station House Officer Abhanpur District Raipur
Chhattisgarh
6. Mohamad Kalam S/o Shri Mohamad Qayum Aged About
40 Years R/o Nayapara, Sadar Bazar, Ward No. 39,
Raipur, P. S. And Tahsil Raipur District Raipur
Chhattisgarh
7. Mohamad Javed S/o Mohamad Ishmail Aged About 38
Years R/o Sanjay Nagar, Raipur, And Tahsil Raipur District
Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Rahil Kochar, Advocate
For State/respondents:		Mr. Sushil Sahu, P.L.

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

1. The facts projected by the petitioners are that the petitioner made a written report before police to lodge F.I.R. against respondent Nos. 6 to 7 but the police authorities are

not taking any action despite of evidence of forgery and cheating committed by them. It is alleged in the written complaint that the petitioners and co-owner executed an agreement with Mohammad Kalam and gave power of Attorney in his favour. As per the agreement, respondent No.6-Mohammad Kalam was to represent on behalf of the petitioners and co-owners in Court proceeding till its finalization, has to give complete document of the property, map, B-I etc to the owner and it was also agreed to give Rs.30 Lakh per acre to the owner in case of sale deed. Since the power of attorney was given without any consideration, it was cancelled by the petitioners and co-owners on 23.05.2016. It has been also alleged in the complaint that when the petitioners and owner came to know that respondent No.6 sold their property and did not give consideration amount to the petitioners and co-owners, they made complaint at Police Station Abhanpur.

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 issue a writ in the nature of mandamus directing concerned police authorities to investigate the matter in accordance with law.

10.2. That this Hon'ble Court may be further pleased to pass any other consequential and other orders/writs which this Hon'ble Court deems just 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 petitioners.

Sd/-

(Rajani Dubey)
Judge