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HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 829 of 2021**

- Ashok Kumar Pathak S/o Late Shri Ganesh Prasad Pathak, Aged About 68 Years, Retd. District Judge, R/o Karbala Road Kanupriya Niwas, Bilaspur Tahsil And District Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Revenue, Mahanadi Bhawan, Mantralaya, Atal Nagar District Raipur Chhattisgarh
2. Collector, Bilaspur District, Bilaspur Chhattisgarh
3. Additional Director General Of Police, Anti Corruption Bureau, Head Office, Raipur District Raipur Chhattisgarh
4. Commissioner Income Tax, Raipur, Civil Line Raipur Chhattisgarh
5. Krishna Kumar Pathak, Patwari, Village Bodri, Tahsil Bilha, District Bilaspur Chhattisgarh
6. Assistant Superintendent Of Land Record-Cum-Enquiry Officer, Collectorate, Bilaspur District Bilaspur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Sourabh Sharma, Advocate
For State/respondents:		Mr. D.P. Singh, Dy. A.G.

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 Superintendent of Police, EOW, Head Office Raipur against respondent No.5 alleging therein that he earned unaccountable property in the name of his wife, daughter and relative, details of which has been provided by him to the concerned department. Though the complaint made by the petitioner discloses all the necessary ingredients of the criminal misconduct by the

private respondent under Section 13(1)(e) of the Prevention of Corruption Act and all the documents have been supplied by the petitioner to the authorities, but in the name of enquiry though committee has been constituted but till date no action has been initiated against the private respondent and the same has not been concluded till date as also and no communication has been made to the petitioner.

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 appropriate writ/writs, order/ orders, direction/ directions for fair and impartial enquiry on the complaint made by the petitioner, in which cognizance has been taken by the Collector and enquiry Committee has been constituted and to further direct the authorities to conclude the enquiry within the stipulated period and to take appropriate action in accordance with law in case of disproportionate property hold by the government servant/private respondent under the relevant provisions of law.

10.2 That, this Hon'ble Court may kindly be pleased to grant any other relief, as it may deem fit.

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