

Sukhwinder Kaur and another

.... Petitioners

Versus

State of Punjab and others

.... Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present : Mr. Inder Pal Singh, Advocate for the petitioners.

B.S. Walia, J. (VC)

[1] Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

[2] Prayer in the petition under Article 226 of the Constitution of India is for the issuance of directions to the official respondents to protect the life and liberty of the petitioners and for issuance of directions to respondent Nos.1 to 4 to conduct investigation by forming SIT headed by an officer not below the rank of IPS/SP and also by issuing directions to the official respondents to restrain the private respondents from causing harm to the life and liberty of the petitioners and their family members. Representation Annexure P/2 & P/3 were submitted. Apparently, no action has been taken by the police on the same, therefore, the instant petition in the form of a petition seeking protection of life and liberty. However, perusal of representation (Annexure P-3) reveals that there is some dispute between petitioner No.2 and his father and sister-in-law,

removed from there, and despite the petitioners having made representation, no action having been taken in respect thereto.

[3] Notice of motion to respondent No.4 only.

[4] Mr. Hittan Nehra, learned Addl. A.G., Punjab, who is present, accepts notice and states that he has no objection to the prayer made by learned counsel for the petitioners for protection of their life and liberty but for action qua complaint Annexure P/3, learned Additional Advocate General contends that the petitioners be relegated to avail their remedy before the learned trial court.

[5] I have considered the submissions of learned counsel. As the main prayer of the petitioners is for protection of their life and liberty at the hands of respondent Nos.5 to 8, the instant petition is disposed of by directing respondent No.4 to consider and decide representation (Annexure P-2) dated 06.05.2020 in accordance with law and take such action in respect thereto, as may be warranted keeping in view the assessment of threat perception to the petitioners at the hands of respondent Nos.5 to 8.

[6] As regards, the prayer of the petitioners viz a viz the dispute between petitioner No.2 and his father and sister-in-law in respect of which the petitioners claim to have made a representation (Annexure P/3) to the SSP, Hoshiarpur but qua which no action has been taken, the writ petition is disposed of in the light of decision of Hon'ble the Supreme Court in '**Sakiri Vasu** versus **State of UP and others**', 2008(2) SCC 409.

Relevant extract of the same is reproduced as under:-

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 (3) Cr.P.C., then he can approach the Superintendent of Police Section 154 (3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application Section 156 (3) Cr.P.C. is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

12 & 13. xxx xxx xxx

14. *Section 156 (3) Cr.P.C. states:*

Any Magistrate empowered under Section 190 may order such an investigation as above mentioned. The words ‘as abovementioned’ obviously Section 156 (1), which contemplates investigation by the officer in charge of the Police Station.

15. *Section 156 (3) Cr.P.C. provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr.P.C. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue*

a direction to the police to do the investigation properly, and can monitor the same.

16. *The power in the Magistrate to order further investigation under Section 156 (3) Cr.P.C. is an independent power, and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173 (8). Hence the Magistrate can order re-opening of the investigation even after the police submits the final report, vide State of Bihar vs. A.C. Saldanna, AIR 1980 SC 326 (para 19).*

17. *In our opinion Section 156 (3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156 (3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.*

18. *It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or*

employ such means as are essentially necessary to its execution.

19. to 23. xxx xxx xxx .

24. *In view of the abovementioned legal position, we are of the view that although Section 156 (3) Cr.P.C. is very briefly worded, there is an implied power in the Magistrate under Section 156 (3) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156 (3) Cr.P.C., we are of the opinion that they are implied in the above provision.*

25. *We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154 (3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156 (3) Cr.P.C.*

26. *If a person has a grievance that his FIR has not been registered by the police station his first remedy is to*

approach the Superintendent of Police under Section 154 (3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 Cr.P.C. his grievance still persists, then he can approach a Magistrate under Section 156 (3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 Cr.P.C. petitions be entertained when there are so many alternative remedies?

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 Sections 36 and 154 (3) Cr.P.C. 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 482 Cr.P.C.

[7] In the light of the position as noted above, respondent No.4 is directed to decide representation (Annexure P-2) and take such action in respect thereto in accordance with law on assessment of threat perception to the petitioners at the hands of respondent Nos.5 to 8, while qua representation Annexure P/3 dated 15.05.2020 and the prayer seeking action in respect thereto, the petitioners are directed to avail their remedy, in accordance with law laid down by Hon'ble the Supreme Court in '**Sakiri Vasu's** case (*supra*).

[8] Petition disposed of with the aforementioned directions.

(B.S. Walia)
Judge

27.04.2021
'Rajneesh/Amit'

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.