

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-31904-2021.
Date of Decision:-10.08.2021.

Som Nath

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gurdev Singh Kuka, Advocate for the petitioner.

(Through Video Conferencing).

VIKAS BAHL, J. (Oral)

The present petition has been filed under Section 482 of Cr.P.C., for issuance of necessary and appropriate directions to respondents No.2 and 3 to investigate the matter on the applications moved by the petitioner (Annexures P-2 to P-7).

The case of the petitioner is that respondent No.4 is the wife of the petitioner and the said respondent No.4, in order to grab his property, got executed a gift deed of his plot and house in her favour. It is further the case of the petitioner that after the execution of the said gift deed, the behaviour of respondent No.4 towards the petitioner changed suddenly and that respondent No.4, in connivance with respondent No.5, threw out the petitioner from his home. The petitioner had made several representations

which have been annexed as Annexures P-2 to P-7 with the present petition. The complaints/representations (Annexures P-2 to P-5) are almost verbatimly same and have been given to various authorities including the Home Minister, Director General of Police, Haryana, Senior Superintendent of Police, Hansi, Hisar, SHO, City Hansi, Hisar. The prayer made in the said representations, which is common in all, is reproduced hereinbelow:-

“Therefore, it is my request before you that as all this belongs to me, but still they have made me Orphan/Helpless. Kindly action should be taken against them and justice be done with me. So that I can stay at my home and can live my life.”

Learned counsel for the petitioner has submitted that the matter be investigated and action be taken against respondent Nos.4 and 5.

This Court has heard learned counsel for the petitioner and is not inclined to interfere in the present case and is of the view that a petition like the present one is not maintainable on account of several alternate remedies available to the petitioner in case the respondent authorities refuse to register an FIR or after registering an FIR do not carry out proper investigation. Hon'ble Supreme Court of India in case titled as **Sakiri Vasu Vs. State of U.P. and others**, reported as **(2008) 2 SCC 409** has specifically held 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 Cr.P.C.](#), then he can approach the Superintendent of Police under [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 under [Section 156 \(3\) Cr.P.C.](#) before the learned Magistrate concerned. If such an application under [Section 156 \(3\)](#) 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.

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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.

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24. In view of the abovementioned legal position, we are of the view that although [Section 156\(3\)](#) is verybriefly 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\(3\)](#).

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](#) 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](#) 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\(3\)](#) 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.”

A perusal of the above would show that the Hon'ble Supreme Court has specifically observed that the High Court should discourage the practice of filing a writ petition or petition under Section 482 of Cr.P.C., simply because a person has a grievance that an FIR has not been registered or after having been registered, proper investigation has not been done by the police. It has further been held that remedies in such a situation lie under Sections 36, 154 (3) Cr.P.C. before the concerned Police Officers and

if that does not bear any result, then under Section 156 (3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. The said judgment of **Sakiri Vasu (supra)** has been followed by the Hon'ble Supreme Court in ***Criminal Appeal No.102 of 2011*** titled as **M. Subramaniam and another S. Janaki and another**, decided on 20.03.2020.

The relevant portion of the said judgment is reproduced hereinbelow:-

“5. While it is not possible to accept the contention of the appellants on the question of locus standi, we are inclined to accept the contention that the High Court could not have directed the registration of an FIR with a direction to the police to investigate and file the final report in view of the judgment of this Court in Sakiri Vasu v. State Of Uttar Pradesh And Others 1 in which it has been inter alia held as under:

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6. The said ratio has been followed in Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and Others 2 , in which it is observed.

“ 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.

3. 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.

4. In view of the settled position in Sakiri Vasu case, the impugned judgment of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under Section 156(3) CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned a change of the investigating officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police). Parties may produce any material they wish before the Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.”

8. In these circumstances, we would allow the present appeal and set aside the direction of the High Court for registration of the FIR and investigation into the matter by the police. At the same time, our order would not be an impediment in the way of the first respondent filing documents and papers with the police pursuant to the complaint dated 18.09.2008 and the

police on being satisfied that a criminal offence is made out would have liberty to register an FIR. It is also open to the first respondent to approach the court of the metropolitan magistrate if deemed appropriate and necessary. Equally, it will be open to the appellants and others to take steps to protect their interest.”

This Court is, thus, of the view that the present petition is not maintainable and, thus, deserves to be dismissed on the said ground alone. Moreover, it would be relevant to add that the petitioner has neither challenged the alleged gift deed before any Civil Court nor has filed any suit for possession.

Without commenting any further, the present petition is held to be not maintainable. It would be open to the petitioner to avail any alternate remedy as may be available to him in accordance with law. If such an alternate remedy is availed, the observations made by this Court in the present case would not come in the way of the authority/Court who would consider the matter independently.

With the said liberty and observation, the present petition is dismissed.

(VIKAS BAHL)
JUDGE

August 10, 2021.

Sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.