

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRWP-551-2022(O&M)

Date of decision : 21.01.2022

Saryam

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Azad Khan, Advocate
for the peitioner.

Mr.Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is a first criminal writ petition under Article 226 of the Constitution of India for directing the official respondents to provide adequate protection to the petitioner and also to restrain respondents no.4 to 10 from harassing the petitioner.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has given representation dated 30.12.2021 and prays that respondent no.2 be directed to decide the said representation.

This Court has heard learned counsel for the petitioner and has perused the paperbook.

A perusal of representation dated 30.12.2021 would show that the petitioner is seeking to get settled in her house from which, as per para 4 of the said representation, she was expelled. In case the petitioner is not in

available to the petitioner is to file a civil suit for possession and not to file a representation before the Superintendent of Police and subsequently, file a petition under Section 482 Cr.P.C. It is further apparent from the representation that the husband of the petitioner as well as her son are involved in a criminal case. The allegations levelled with respect to some persons committing theft are detailed in paragraph 3 of the representation. In case, the petitioner seeks to get an FIR registered on the basis of the alleged acts, then also petition under Section 482 Cr.P.C. would not be maintainable.

Hon'ble the Supreme Court in case titled ***Sakiri Vasu Vs. State of U.P. and others, reported as 2008(2) SCC 409***, has held as under:-

“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-reproduced judgment would show that the Hon'ble Supreme Court has observed that in case, a person has a grievance that his FIR has not been registered by a Police Station, then, he is first required to approach the Superintendent of Police. If despite approaching the Superintendent of Police, his grievance still persists, then he should approach the Magistrate under [Section 156\(3\)](#) of Cr.P.C. instead of rushing to the High Court by way of filing a writ petition or a petition

person also has the remedy of filing a criminal complaint under Section 200 of Cr.P.C. In para 27, it has been stated that High Courts should discourage the practice of filing a writ petition or petition under Section 482 of Cr.P.C. for the said cause of action.

Hon'ble the Supreme Court in latest judgment titled as "***M. Subramaniam and another Vs. S. Janaki and another***", ***Criminal Appeal No.102 of 2011, decided on 20.03.2020***, has held as under:-

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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](#).

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6. The said ratio has been followed in *Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and Others*, 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.”

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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.”

A perusal of the said judgment would show that in the said case, High Court had entertained the petition filed under Section 482 of Cr.P.C. and directions had been issued to register the FIR and after considering the earlier judgment passed in Sakiri Vasu (Supra), Hon'ble the Supreme Court had set aside the order passed by the High Court observing that in case, such like petitions are entertained by the High Courts then the High Courts will be flooded with such petitions and will not be able to do any other work except dealing with such petitions and further observed that the complainant must avail his alternative remedy to approach the Magistrate concerned under Section 156(3) of Cr.P.C.

Hon'ble the Supreme Court has repeatedly held that the petition under Section 482 of Cr.P.C. should not be entertained for registration of the FIR as there are several alternative remedies available to the petitioner.

Learned State counsel, on advance notice, appears and submits

that he is fully prepare to assist the Court. As per his instructions, the

petitioner's husband and son are involved in a case of murder and it is on the said account, the petitioner had left the village with all her belongings.

Be that as it may, the present petition either for seeking possession of property or for getting an FIR registered against private persons is not maintainable. Accordingly, the present petition is dismissed.

(VIKAS BAHL)
JUDGE

January 21, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No