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

CRWP-2291-2022

Date of decision : 23.03.2022

Sukhdarshan Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Lupil Gupta, Advocate for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a Criminal Writ Petition filed under Articles 226/227 of the Constitution of India, in which two fold prayers are ostensibly made. Primary prayer which has been made in the petition is to register criminal case on the basis of complaint dated 18.12.2021. Secondary prayer which has been made is for protection of life and liberty of the petitioner.

This Court vide judgment dated 14.10.2021 passed in CRM-M-43573-2021, after considering the judgments of the Hon'ble Supreme Court in *Sakiri Vasu Vs. State of U.P. and others*, reported as *2008(2) SCC 409* and *M. Subramaniam and another Vs. S. Janaki and another, Criminal Appeal No.102 of 2011, decided on 20.03.2020*, had held that the petition filed under Section 482 of Cr.P.C. for registration of FIRs is not

maintainable. Relevant portion of the said judgment is reproduced hereinbelow:-

*“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 abovesaid 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 the 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 under [Section 482](#) of [Cr.P.C.](#) It is further observed that the said person also has the remedy of filing a criminal complaint under [Section 200](#) of [Cr.P.C.](#) In para 27, it is stated that the High Court should discourage the practice of filing a writ petition or petition under [Section 482](#) of [Cr.P.C.](#) for the said cause.

Hon'ble the Supreme Court in latest judgment titled 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.

Keeping in view the abovesaid facts and circumstances and the law as laid down by the Hon'ble Supreme Court in the abovesaid two judgments, this Court feels that the present petition filed under Section 482 of Cr.P.C. is not maintainable and deserves to be dismissed on the said ground alone.”

A perusal of the above judgment would show that reference has been made to the judgment of the Hon'ble Supreme Court wherein it had been held that petition under Section 482 of Cr.P.C. should not be

entertained for registration of FIR as there are several alternative remedies available to the petitioner. In view of the above dictum of law, the present petition particularly qua the relief of registration of a criminal case, is not maintainable. In spite of the above position of law, learned counsel for the petitioner has insisted that the merits of the case of the petitioner for registration of FIR regarding which complaint dated 18.12.2021 (Annexure P-8) has been given, be considered.

A perusal of the paper book would show that a civil suit had been filed by the petitioner against respondent Nos.7, 9 and others and the said suit was for declaration to the effect that the plaintiff was owner in possession of 1/6th share and also that the proforma defendants were also owners and in possession in equal shares of 1/6th share. Further, in paras 2 and 3 of the civil suit, it was stated that the plaintiff and proforma defendants were also owners in possession over the land and it was stated that there were entries in the revenue record showing the defendants to be owners which are stated to be wrong and incorrect. Relevant portion of the suit is reproduced hereinbelow:-

“Sukhdarshan Singh aged about 57 years son of Shri Baldev Singh son of Shri Dalwara Singh, resident of Village Dabwali, Tehsil Dabwali, District Sirsa.

--Plaintiff

Versus

1. Darshan Singh adopted son of Shri Gurdev Singh son of Shri Dalwara Singh, resident of Village Dabwali, Tehsil Dabwali, District Sirsa.

..Defendant

2. Jagdev Singh son of Shri Gurdass Singh son of Shri

Baldev Singh,

3. Nihal Kaur wife of late Baldev Singh son of Shri Dalwara Singh,

4. Pinderpal Kaur daughter of Shri Gurdass Singh son of Shri Baldev Singh,

5. Ravinder Kaur daughter of Shri Gurdass Singh son of Shri Baldev Singh,

6. Sukhmander Kaur daughter of Shri Gurdass Singh son of Shri Baldev Singh,

7. Malkiat Kaur wife of late Gurdass Singh, son of Shri Baldev Singh, all residents of Village Dabwali, Tehsil Dabwali, District Sirsa.

...Performa Defendants

Suit for declaration to the effect that the plaintiff is owner and in possession of 1/6 share and the performa defendants are owners and in possession, in equal shares of 1/6 shares of land comprised in Khewat No. 124min, Khatoni No. 260, Rect. No. 83 Killa No. 32/1/2/2/1(3-5), vide fard Jamabandi for the year 2017-18, situated within the revenue estate of village Dabwali, Tehsil Dabwali, District Sirsa and the defendant has no concern or connection with the suit land, but the revenue record showing the defendant to be owner in possession of the suit land is wrong, against law and facts, null and void, void abinitio, ineffective and inoperative upon the rights of the plaintiff and performa defendants and the same is liable to be corrected in favour of the plaintiff and performa defendants; AND with a consequential relief of permanent injunction restraining the defendant from alienating or transferring the suit land, in any manner and also from causing any type of interference into the possession of the plaintiff and performa defendants over the suit land, in any manner; on the basis of evidence, oral as well as

documentary of all kinds.

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2. That the plaintiff and performa defendants are owners in possession over the land, described in detail in the head note of the plaint, situated within the revenue estate of village Dabwali, Tehsil Dabwali, District Sirsa.

3 That the defendant has no concern or connection with the suit land, but entries in the revenue record thereby showing the defendant to be owner in possession of the suit land are wrong, against law and facts, null and void, void abinitio, ineffective and inoperative upon the rights of the plaintiff and performa defendant and hence, the same are liable to be corrected in favour of the plaintiff and performa defendants, who are owners in possession of the suit land.”

From the abovesaid suit, it is apparent that even as per the case of the petitioner, the suit land is joint and even the defendants are shown to be owners in the revenue record and it is the admitted case of the petitioner that no injunction till date has been granted in favour of the petitioner in the said suit. It is further apparent from the record that FIR No.317 dated 07.09.2020 under Sections 323, 341, 506 of IPC has been registered by Amandeep Singh-respondent No.6 against petitioner and although, the petitioner has been granted bail in the same but the said FIR is still pending and the same has not been quashed. In the said background, with respect to the representation which was moved by the present petitioner, learned counsel for the petitioner prays that the same may kindly be decided/considered. A perusal of the representation would show that the petitioner is seeking legal action against the private respondents. On the said account as has already been observed hereinabove, the petition under

Section 482 of Cr.P.C. is not maintainable as in case, the petitioner had moved a representation for taking legal action/registration of FIR against the private respondents, then, the recourse available to him was to file an application/complaint under Section 156 of Cr.P.C. in case the police officials had refused to register an FIR and in case, any cognizable offence was made out. The primary allegations in the said representation are that the private persons had demolished the wall of the applicant's house. The question whether the petitioner is in possession of the property or not or whether the same is in the ownership of the defendants, is pending adjudication before the Civil Court and as per the very version of the petitioner in the said civil suit, he is only a co-sharer. No injunction regarding any piece of land has been granted in favour of the petitioner. All the said pleas and the necessary reliefs which may arise out of any dispute with respect to the property/suit land can always be taken/raised before the Civil Court. No proof has been annexed with the present petition to show that the petitioner is owner of the premises in question. Neither any sale deed nor any jamabandi has been annexed.

With respect to the aspect of protection of life and liberty of the petitioner, a perusal of the complaint dated 18.12.2021 (Annexure P-8) would show that after the alleged incident of demolishing of the wall on 18.12.2021, there is no such incident attributed to the private respondent Nos.6 to 9 so as to cause any apprehension to the petitioner with reference to life and liberty being under threat. In the representation, it is further the case of the petitioner himself that he had gone to the police for reporting the incident and thereafter, stated that the police had started calling him

repeatedly. It is the own case of the petitioner that he is involved in the FIR mentioned hereinbefore and thus, even if the said allegations are taken on face value, there could be every possibility that the police requires his presence with respect to the same. Moreover, it is highly unlikely that the petitioner himself had gone to the police and the police had summoned the petitioner and asked him to vacate the premises. Moreover, the incident is stated to be of 07.12.2021, when the police had asked him to vacate the premises but there is nothing to suggest that any further action has been taken on the said aspect by the police. The said prayer for protection on the reading of the complaint and the petition seems to have been made only to seek a direction for consideration on the representation dated 18.12.2021 in which, primary prayer is for the registration of the FIR, which, in view of the judgments of the Hon'ble Supreme Court, the present petition under Section 482 of Cr.P.C. is not maintainable.

This Court had even put it to the learned counsel for the petitioner that in case, he withdraws the present petition and files a fresh petition only with a prayer for protection of life and liberty and gives representation on the said aspect only, to the Senior police officials after giving the details of said apprehension, then, the said petition could be considered, but however, learned counsel for the petitioner did not choose to adopt the said course of action but pressed that the direction be given to consider the representation dated 18.12.2021 in which primary prayer is for taking legal action against the private respondents regarding which the petitioner has alternative remedies.

If this Court entertains the present petition then the same would

result in parallel proceedings between the parties, one being the civil suit where the entire matter qua the suit land is to be adjudicated and the other being a petition under Section 482 Cr.P.C. in which, in any case, disputed questions of fact cannot be seen. This Court has noticed the tendency of parties that, after having failed to get an injunction in their favour from the Civil Court, they file petitions under Section 482 of Cr.P.C. by giving a criminal colour to the civil dispute so as to gain an unfair advantage over the respondents (defendants in the suit). Such practices are to be curbed and deprecated.

Accordingly, the present petition is dismissed.

23.03.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No