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

CRM-M-16391-2022

Date of decision : 21.04.2022

Poonam

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Chandeeep Singh, Legal Aid Counsel
Advocate for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for transfer of investigation of case registered as FIR No.215 dated 06.07.2021 Police Station Division No.8, Ludhiana, Punjab to an independent investigating agency or to any other agency or by constituting Special Investigation Team headed by top police officials for ensuring proper and fair investigation.

Learned counsel for the petitioner has submitted that the petitioner had got the present FIR registered on 06.07.2021 and she is not satisfied with the investigation and as per her understanding, the investigation which is being carried out, is not fair.

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

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:-

“xxx xxx xxx

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.

First question that arises before this Court is as to whether such petition filed under Section 482 of Cr.P.C., in which the primary grievance is of investigation not having been done in a proper manner, is maintainable or not. In the present case, the petitioner has not even filed a representation before the Senior Superintendent of Police and no application has been moved before the Magistrate with the grievance that the investigation has not been done fairly. Thus, keeping in view the law laid down by the Hon'ble Supreme Court in the abovesaid two judgments, the filing of present petition filed under Section 482 of Cr.P.C. directly, without exhausting the said two alternative remedies, is not maintainable. It would

also be relevant to note that in the present case, there are no allegations of mala fide against any police officials nor any such police official has been made party by name and thus, investigation cannot be transferred merely on the asking of the petitioner.

Keeping in view the abovesaid facts and circumstances, the present petition is dismissed as not maintainable.

It would be open to the petitioner to seek alternative remedy in accordance with law and the dismissal of the present petition would not come in the way of the petitioner in seeking alternative remedy.

21.04.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No