

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

CRM-M No.35475 of 2018

Date of Decision: 07th September, 2022

Pawan Kumar

...Petitioner

Versus

State of Haryana & Others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present :- Mr. Balwinder Singh Sudan, Advocate,
for the petitioner.

Mr. Amrik Narwal, DAG, Haryana,
for respondents No.1 & 2.

Mr. Ravi Choudhary, Advocate,
for respondent No.3.

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MEENAKSHI I. MEHTA, J.(ORAL)

The petitioner herein seeks the indulgence of this Court for the issuance of the direction to respondents No.1 and 2 to register the FIR against respondent No.3 and thereafter, to entrust the investigation in respect thereof to any independent investing agency/Special Investigation Team consisting of some high ranked police officers, while alleging that respondent No.3 had subjected him to torture during custody and had also illegally kept him confined.

2. Joint reply on behalf of respondents No.1 and 2 and separate reply on behalf of respondent No.3 have already been submitted and the

same are available on the file and these documents are taken on the record.

3. I have heard learned counsel for the petitioner as well as learned State counsel and learned counsel for respondent No.3 in the present petition and have also perused the file carefully.

4. Learned counsel for the petitioner contends that respondent No.3 subjected the petitioner to custodial torture and also illegally kept him confined and these acts on his part constitute cognizable offences but the police authorities are not registering the FIR against the said respondent despite his (petitioner's) having moved the complaint Annexure P-5 in this regard and therefore, the necessary direction be issued to respondents No.1 and 2 for registering the criminal case against respondent No.3.

5. However, I do not find the afore-raised contentions to tenable at all because in **M. Subramaniam and another Versus S. Janaki and another (Criminal Appeal No.102 of 2011, decided on 20.03.2020)**, the three Judges' Bench of Hon'ble Supreme Court has set aside the direction given by the High Court for the registration of the FIR while relying upon an earlier judgment of the Apex Court rendered in **Sakiri Vasu Versus State of U.P., (2008)2 SCC 409**, to the effect that *"if a person has a grievance that his FIR has not been registered by the police or the same having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court but to approach the Magistrate concerned under Section 156(3) Cr.P.C."*

6. Moreover, in **Aleque Padamsee and others Versus Union of India and others (Criminal Writ Petition Nos.11-15 of 2003, decided on 18.07.2007)**, the Hon'ble Supreme Court has also observed that *"in case of*

non-registration of the FIR by the police, the aggrieved party can lay a complaint before the Magistrate under Sections 190 and 200 Cr.P.C. and the writ petition seeking direction to the police to register the case is not to be entertained.” In view of these observations, it is explicit that the present petition is not maintainable before this Court.

7. As a sequel to the foregoing discussion, it follows that the petition in hand deserves dismissal on the ground of its not being maintainable before this Court. Resultantly, the same stands dismissed accordingly.

07.09.2022
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(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>