

CRM-M-42558-2022

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-42558-2022****Date of Decision: 16.09.2022****Kehar Chand****.....Petitioner****Vs.****State of Haryana and others****.....Respondents****CORAM: HON'BLE MR. JUSTICE VIKAS BAHL****Present: Mr. Paramjit Singh Jammu, Advocate,
for the petitioner.****Mr. Dhruv Sihag, A.A.G., Haryana.*************VIKAS BAHL, J. (Oral)**

1. Primary prayer in the present petition filed under Section 482 Cr.P.C is for issuance of directions to take action against the police officials/investigating officer who had made the statement before the court while hearing CRM-M-14775-2021 (Annexure P-4) to the effect that the cancellation report had been prepared and sent for approval to the higher officers, whereas, as per the case of the petitioner, no such cancellation report has been prepared, nor has been sent for approval to the higher authority. A further prayer has been made to hand over the investigation of the case in FIR No. 287, dated 11.06.2020, registered under Sections 420/467/468/471/397/120-B of the IPC to the Crime Branch or any other Independent Agency.
2. The present petition is vexatious and devoid of merit and the same is apparent from the facts detailed hereinbelow:

- i. The petitioner had first filed a petition, i.e., CRM-M-14775-2021 under Section 482 for a direction to Respondent no. 1 & 2 (i.e., State of Haryana & Supt. Of Police, Kurukshetra, who are respondent no.s 1 & 2 in the present petition also) to hand over the investigation of the case in FIR No. 287, dated 11.06.2020, registered under Sections 420/467/468/471/397/120-B of the IPC to the Crime Branch or any other Independent Agency. A further prayer was made for issuance of directions to Respondent no. 2 to properly investigate the case. The prayers made in the said petition were similar to the prayer 2 and 3 as made in the present petition and the said fact is apparent from a comparison of the headnote of CRM-M-14775-2021 (Annexure P-4 at pg. 33 of the paperbook) with that of the headnote of the present petition.
- ii. The said case came up for hearing on 19.05.2022 and this Court was pleased to pass the following order: -

“This is a first petition under Section 482 Cr.P.C. with a prayer for issuance of a direction to respondents no.1 and 2 to hand over the investigation of FIR no.287 dated 11.06.2020 registered under Sections 420, 467, 468, 471, 397, 120B IPC at Police Station Shahabad, Kururkshetra, to crime branch or to any other independent agency.

Learned State counsel has pointed out that in the present case, a cancellation report has been prepared on 16.05.2022 and has been sent for approval to the higher officer and, thus, the present petition has been rendered infructuous.

Keeping in view the fact that in the present case, cancellation report has been prepared, the present petition is disposed of as having been rendered

infructuous. Liberty is granted to the petitioner to raise all the pleas which have been raised in the present petition at the time of consideration of cancellation report.

Pending miscellaneous application, if any, stands disposed of in view of the abovesaid order.”

- iii. A perusal of the said order would show that it was stated on behalf of the State that a cancellation report had been prepared on 16.05.2022 and had been sent for approval to the higher officer and accordingly, the petition was disposed of as having been rendered infructuous and liberty was granted to the petitioner to raise all the pleas which have been raised in the said petition at the time of consideration of the cancellation report.
- iv. **The abovesaid order was not challenged by the petitioner and thus attained finality.**
- v. The petitioner then filed CRM-M-39849-2022, in which the following prayer was made: -

*“PETITION under Section 482 of Cr.P.C. with a prayer for issuance of appropriate directions to the respondents No.1 and 2 to **got conduct fair and impartial enquiry about the wrong statement made by the Investigating officer before this Hon'ble Court while hearing in other petition CRM-M-14775 of 2021 (Annexure P-4) to the effect that cancellation report has been prepared whereas no such cancellation report has been prepared or forwarded for approval of the higher authorities and no such cancellation report has been sent to the Illaqa Magistrate till today, the said statement is factually incorrect and to take appropriate legal action against the erring police officials.***

AND

Further issuance of a direction to the respondents No.1 and 2 to handover the investigation of case FIR No. 287 dated 11.6.2020 (Annexure P-1) under sections 420, 467, 468, 471, 397, 120B IPC of 1860 registered at P.S. Shahbad, District Kurukshetra to the crime branch or to any other independent agency or to any Gazetted Officer as the local police is conniving with the accused persons who are very influential persons having political links and muscle powers with them, the local police is harassing and humiliating the petitioner/complainant and other witnesses and has not effected the recovery from the accused respondent No.6 and other co-accused namely Sukbir Sinha, Chaman Lal, Ram Kumar, Har Kumar, Suraj Bhan, Balwinder @ Balli and Mam Chand.
AND

Further an appropriate order or direction to the respondent No.2 to properly investigate the case and to protect the life and liberty of the petitioner and other witnesses.

AND/OR

Any other order or direction which this Hon'ble Court, may deems fit and proper according to the facts and circumstances of the case, may kindly be issued."

- vi. The prayer no. 2 and 3 were the same as those made in the earlier petition i.e., CRM-M-14775-2021 and all the prayers made in the said petition are similar to the prayers made in the present petition.
- vii. The allegations to the effect that a wrong statement has been made by the investigating officer while CRM-M-14775-2021 (Annexure P-4) was primarily based upon an RTI information dated 04.08.2022 which was annexed as Annexure P-3 along with the said petition and the same has been annexed as

Annexure P-3 with the present petition. The relevant portion of the said RTI information, as translated by the Petitioner, is reproduced hereinbelow: -

“With reference to your application No. 987/RTI dated 23.6.2022

<i>Information Sought</i>	<i>Information provided</i>
<i>Regarding FIR No. 287/20 P.S. Shahbad</i>	<i>The information sought by you was received from police station Shahbad, Kurukshetra. Cancellation report has been written in FIR No. 287/2022 under sections 471, 468, 467, 420, 420, 379, 120B IPC, P.S. Shahbad as per the information received from the police station Shahbad, Kurukshetra and the same has not been sanctioned still in the court. Therefore, information cannot be provided under section 8-1 (H) of Right to Information Act, 2005.</i>

*Sd/-
State Public Information Officer
Cum Deputy Superintendent of Police,
HQ, Kurukshetra”*

viii. It was brought to the notice of this court by the Ld. State counsel that the abovesaid translation of Annexure P-3 in the said petition, which is also Annexure P-3 in the present petition, is incorrect and accordingly, this Court had sent a requisition for proper translation of Annexure P-3 of CRM-M-39849-2022 which is the same as Annexure P-3 in CRM-M-42558-2022, i.e.

present petition. The correctly translated copy of Annexure P-3 is reproduced hereinbelow:

“In reference to your application No.1138/R.T.I dated 23.06.2022.

<i>Information sought</i>	<i>Information provided</i>
<i>Regarding complaint/case F.I.R No.287/20 P.S Shahbad.</i>	<i>The information sought by you has been received from P.S Shahbad, Kurukshetra. As per information received from P.S Shahbad, Kurukshetra, F.I.R No.287/2022 under section 471, 468, 467, 420, 379, 120 (B) IPC is registered at P.S Shahbad. In abovementioned case, the cancellation report is prepared on 16.05.2022, which has not been sanctioned. Thus, the information cannot be provided under section 8-1 (H) of Right to Information, 2005.</i>

Sd/-

State Public Information Officer-cum-Deputy Superintendent of Police (H), Kurukshetra.”

A perusal of the above would show that as per the said RTI information, the cancellation report was prepared on 16.05.2022 which had not been sanctioned. The said information is substantially the same as has been stated by the Ld. State Counsel when CRM-M-14775-2021 had been taken up for hearing on 19.05.2022. Even as per the translation of Annexure P-3, as done by the petitioner, it is apparent that the cancellation report was stated to have been prepared and had not been sanctioned, and thus, it cannot

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be said that the statement made by the Ld. State Counsel on 19.05.2022, was incorrect.

Moreover, a perusal of the RTI information, as translated by the petitioner, as well as the correct translation would show that the cancellation report had been written in FIR No. 287 and thus, the averment made in the abovesaid prayer clause of CRM-M-42558-2022 to the effect that **“whereas no such cancellation report had been prepared or forwarded for approval” was factually incorrect.** In the translation done by the petitioner, the date 16.05.2022 is missing and there is an additional line to the effect “still in the court”.

- ix. During the course of hearing of CRM-M-39849-2022, the counsel for the petitioner had realized that the prayer with respect to taking action against police officials/Investigating Officer was meritless, and was based upon an incorrect averment made in the said petition and thus, the petitioner sought to withdraw the petition with liberty to file a fresh petition after rectifying the said mistake. The order dated 05.09.2022, passed in CRM-M-39849-2022 is reproduced hereinbelow: -

“This is a petition under Section 482 Cr.P.C. for issuance of appropriate directions to respondents no.1 and 2 to get a fair and impartial enquiry conducted in FIR no.287 dated 11.06.2020 registered under Sections 420, 467, 468, 471, 397, 120-B IPC at Police Station Shahbad, District Kurukshetra.

*Learned counsel for the petitioner has submitted that there are certain inadvertent/ **incorrect statement in the petition** and thus, seeks to withdraw the present petition*

with liberty to file a fresh petition after rectifying the said mistake.

In view of the statement made by learned counsel for the petitioner, the present petition is dismissed as withdrawn with liberty aforesaid. In case a fresh petition is filed, the same would be considered independently, on its merits.”

- x. That instead of deleting the prayer with respect to taking action against the police officials/investigating officer and limiting his prayer to the aspect of delay in filing of the cancellation report/report u/s 173, the petitioner again chose to file the present petition, i.e., CRM-M-42558-2022 with the following prayers: -

“PETITION under Section 482 of Cr.P.C. with a prayer for appropriate orders or directions to take action against the police officials/investigating officer who has made statement before this Hon'ble Court while hearing in CRM-M-14775 of 2021 (Annexure P-4) to the effect that cancellation report has been prepared and sent for approval to the higher officers whereas, no such cancellation report has been forwarded for approval to the higher authority and no such cancellation report has been sent to the Illaqa Magistrate till today.

AND

Further issuance of a direction to the respondents No.1 and 2 to handover the investigation of case FIR No. 287 dated 11.6.2020 (Annexure P-1) under sections 420, 467, 468, 471, 397, 120B IPC of 1860 registered at P.S. Shahbad, District Kurukshetra to the crime branch or to any other independent agency or to any Gazetted Officer as the local police is conniving with the accused persons who are very influential persons having political links and muscle powers with them, the local police is harassing and humiliating the petitioner/complainant and other witnesses

and has not got effected the recovery from the accused respondent No.6 and other co-accused namely Sukbir Sinha, Chaman Lal, Ram Kumar, Har Kumar, Suraj Bhan, Balwinder @ Balli and Mam Chand.

AND

Further an appropriate order or direction to the respondent No.2 to properly investigate the case and to protect the life and liberty of the petitioner and other witnesses.

AND/OR

Any other order or direction which this Hon'ble Court, may deems fit and proper according to the facts and circumstances of the case, may kindly be issued.”

- xi. That even in the present case, reliance was again sought to be placed on the RTI information dated 04.08.2022 which has been annexed as Annexure P-3 along with the present petition, the relevant portion of the same, as translated by the petitioner, is reproduced hereinbelow:

“With reference to your application No. 987/RTI dated 23.6.2022.

<i>Information Sought</i>	<i>Information provided</i>
<i>Regarding FIR No. 287/20 P.S. Shahbad</i>	<i>The information sought by you was received from police station Shahbad, Kurukshetra.</i> <i>Cancellation report has been written in FIR No. 287/2022 under sections 471, 468, 467, 420, 420, 379, 120B IPC, P.S. Shahbad as per the information received from the police station Shahbad, Kurukshetra and the same has not been sanctioned still in the court.</i>

	<i>Therefore, information cannot be provided under section 8-1 (H) of Right to Information Act, 2005.</i>
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*Sd/-
State Public Information Officer
Cum Deputy Superintendent of Police,
HQ, Kurukshetra.”*

- xii. The correctly translated copy of Annexure P-3 in the present petition has already been reproduced hereinabove in clause (viii) and it is reiterated that a perusal of the same would show that as per the said RTI information, the cancellation report was prepared on 16.05.2022 which had not been sanctioned. The said information is substantially the same as has been stated by the Ld. State Counsel when CRM-M-14775-2021 had been taken up for hearing on 19.05.2022. Even as per the translation of Annexure P-3, as done by the petitioner, it is apparent that the cancellation report was stated to have been prepared and had not been sanctioned, and thus, it cannot be said that the statement made by the Ld. State Counsel on 19.05.2022, was incorrect. In the translation done by the petitioner, the date 16.05.2022 is missing and there is an additional line to the effect “still in the court”.
3. That it would be relevant to note that the petitioner had although chosen to annex the first petition, i.e. CRM-M-14775-2021 and the order dated 19.05.2022 passed in CRM-M-14775-2021, but has neither chosen to place on record the second petition, i.e. CRM-M-39849-2022, nor the order dated 05.09.2022 passed in the said criminal miscellaneous petition and when the case was taken up in

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the morning session, the counsel for the petitioner had insisted on a decision on the present petition, after considering the prayer made regarding taking action against the police officials/Investigating Officer with respect to the statement made before this Court on 19.05.2022, while hearing CRM-M-14775-2021. This Court had then requisitioned the file of CRM-M-39849-2022 and had stated that the matter would be taken up at 4 p.m., after the file is received. This Court had also directed the Ld. State Counsel to get instructions with respect to the pendency of the cancellation report. Accordingly, upon the receipt of the file of CRM-M-39849-2022, the matter is now being taken up at 4 p.m. and the Ld. Counsel for the petitioner has not appeared. The Learned State counsel has got instructions in the matter and has submitted that after the cancellation report had been prepared, the same was sent to the office of the Supt. Of Police and was thereafter marked to the DSP Randhir Singh, Shahabad, and the same is pending for final sanction/approval before the senior police officials and has thus submitted that the statement which was made on 19.05.2022 was absolutely correct and the present petition has been filed only to browbeat and arm-twist the officials and the investigating officer. It is also submitted that the fact mentioned in the RTI information that the cancellation report has not been sanctioned would mean that the same has not been approved/sanctioned by the higher police official, and it is after the said sanction that the same is presented before the Trial Court which may or may not be accepted by the Trial Court.

4. No law has been cited with respect to the maintainability of a petition under Section 482 Cr.P.C. which would call for taking action against the police officials/investigating officer even if some incorrect statement has been made by them/him, although in the present case, no such incorrect statement has been made and rather, it is the petitioner who has made incorrect averments and has annexed wrongly translated documents.
5. It would also be relevant to take note of the judgment of the Hon'ble Supreme Court in case titled **Sakiri Vasu Vs. State of U.P. and others, reported as 2008(2) SCC 409**, in which it was held as under:

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*“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, or after being registered, proper investigation has not been done by the police., 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 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 xxxxxx

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., 1973.

6. Keeping in view the abovesaid facts and circumstances, this court is of the view that the present petition is completely devoid of merit and is frivolous and vexatious, and thus, deserves to be dismissed with costs and is accordingly, dismissed with costs of Rs. 20,000/-.
7. The petitioner is directed to deposit costs of Rs.20,000/- within a period of one month with District Legal Services Authority, Kurukshetra and after depositing the same, produce the receipt regarding the same within the abovesaid period of one month before the Deputy Commissioner, Kurukshetra.
8. In case, the petitioner does not deposit the said costs of Rs.20,000/- within the abovesaid stipulated period and does not produce the receipt of the same before the Deputy Commissioner, Kurukshetra, then the Deputy Commissioner, Kurukshetra, directed to proceed against the petitioner for recovery of the said amount of Rs.20,000/- as arrears of land revenue.

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A copy of this order be sent to District Legal Services Authority, Kurukshetra, as well as Deputy Commissioner, Kurukshetra for necessary action.

9. Before parting with this judgment, it would be relevant to note that although, neither a prayer has been made in the petition, nor it has been orally prayed, that directions be issued to the State to submit the cancellation report/ report u/s 173Cr.P.C. expeditiously, but keeping in view the fact that the cancellation report/ report u/s 173 was prepared on 16.05.2022, and till date, no final report under section 173 Cr.P.C. has been submitted, and also keeping in view the mandate of section 173 Cr.P.C., to the effect that every investigation shall be completed without unnecessary delay, this court directs the Ld. State Counsel to submit the final report u/s 173 Cr.P.C.expeditiously.

September 16, 2022
Nitin

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned?
Whether Reportable?

Yes/No
Yes/No