

CRM-M-45842 of 2022

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

CRM-M-45842 of 2022

Date of decision: - 16.12.2022

Pardeep Kumar and another

.....Petitioners

Versus

The State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : - None for the petitioners.
Mr. Adhiraj Singh, AAG, Punjab.

NAMIT KUMAR, J. (ORAL)

On 30.09.2022, the matter was adjourned on the request of the learned counsel for the petitioners for 02.11.2022. On 02.11.2022, since the members of the Bar were abstaining from work, therefore, no one appeared on behalf of the petitioners and the case was adjourned for today. Today also case has been called up twice, but learned counsel for the petitioners has not appeared.

This petition has been filed by the petitioners under Section 482 Cr.P.C. for issuance of direction to official respondents for taking appropriate action on representation/complaint dated 13.06.2022/17.06.2022 and 10.09.2022 (Annexures P-5 and P-6) submitted by the petitioners to official respondents against private respondents, since the petitioners are being harassed on the representation/complaints moved by the private respondents and no action is being taken on the representations of the petitioner.

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The sum and substance of the present petition is for registration of FIR against the private respondents on the basis of complaints made by the petitioners to the official respondents. The prayer made in representation dated 13.06.2022 (Annexure P-5) is reproduced as under: -

“It is, therefore requested that the SHO Sahib, Police Station SadarKhanna, may be directed to register FIR and investigate the case against the above named all accused and take action as per legal provision, with further request to immediately protect my & family life & liberty at the hand of above named accused who have threatened to eliminate my & my family life & liberty and to cause further cause harm; or alternatively your goodself may investigate the case personally after registering an FIR against all the accused.”

Hon'ble Supreme Court in the case of ***SakiriVasu v. State of U.P. and others, 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

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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 authorities, then he/she is first required to approach the concerned Superintendent of Police. If despite approaching the concerned Superintendent of Police,

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his/her grievance still persists, then he/she 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 thereof, 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 Supreme Court in the case of ***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 SakiriVasu v. State Of Uttar Pradesh And Others.

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6. The said ratio has been followed in SudhirBhaskarraoTambe v. HemantYashwantDhage and Others, 2016(6) SCC 277 in which it is observed.

“2. This Court has held in SakiriVasu 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

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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 SakiriVasu 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 SakiriVasu 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

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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 SakiriVasu (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

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registration of the FIR as there are several alternative remedies available to the petitioner.

Keeping in view the abovesaid facts and circumstances and the principles of 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. cannot be entertained by this Court.

In view of the above, as the alternative legal remedies are available to the petitioners under the law for redressal of their grievance, therefore, the present petition is disposed off accordingly.

(NAMIT KUMAR)
JUDGE

16.12.2022
R.S.

Whether speaking/reasoned : Yes

Whether Reportable : Yes