

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

CRM-M-48865 of 2021

Date of Decision: March 30, 2022

*Pinki*

*...Petitioner*

*Versus*

*Union Territory of Chandigarh and others*

*... Respondents*

**CORAM: HON'BLE MR. JUSTICE VIVEK PURI**

Present: Mr. Raj Partap Singh Brar, Advocate,  
for the petitioner.

**Vivek Puri, J.**

The petitioner is seeking issuance of directions to the respondents especially respondent no.3 to consider the petitioner's complaint/representation dated 20.10.2021 (Annexure P-1) and to register FIR under Sections 376, 323, 379, 406, 420, 506, 120-B of the Indian Penal Code and other relevant Sections against the accused persons.

Briefly, the allegations as put forth by the petitioner are to the effect that she is a married lady, having two children. She was not having cordial relations with her husband and staying separate from him along with the children

in a rented accommodation. Ashu accused used to reside along with his parents in a rented accommodation adjoining to the petitioner's house. Ashu and his sister Tanu visited the petitioner at her house and enquired about her health as she was ill. Ashu gave her some medicines and at the insistence of both of them, the petitioner consumed the medicines. The petitioner started feeling dizzy, Ashu came to the room and sent her children to the market to buy something to eat. He bolted the door from inside and at that point of time, the petitioner started feeling unconscious. Taking the advantage of her condition, Ashu started forcing himself on her and committed rape. He also took photographs and videos of the petitioner in that state. He even threatened the petitioner at knife point. Subsequently, the petitioner narrated the incident to the mother of Ashu and also informed her that she will be filing a complaint with the police. Ashu's mother apologized and told the petitioner that if she has left her husband, then Ashu will solemnize marriage with her. Ashu also started behaving in a loving manner, but the same was a trick played upon the petitioner to escape

the consequences of rape. In April, 2021, Ashu took the petitioner and her children to Patna and he took her jewellery, ATM card and kept the same with him. He also started withdrawing the money from the account of the petitioner without informing her. Subsequently, the petitioner and her children were brought back to Chandigrh. Thereafter, the petitioner was taken to Delhi where she came to know that she was running third month of pregnancy. When she told the same to Ashu and his sister and requested for marriage, Ashu got the petitioner's child aborted by giving her medicine. Ashu had been committing rape upon the petitioner on the false pretext of marriage, taken away her jewellery and money and threatened to kill her and children. On the basis of such allegations, a representation (Annexure P-1) was submitted to the Senior Superintendent of Police, Chandigarh.

I have heard learned counsel for the petitioner.

It has been argued by the learned counsel for the petitioner that the allegations spelt out in the representation dated 20.10.2021 (Annexure P-1) discloses the commission of cognizable

offence under Sections 376, 323, 379, 406, 420, 506, 120-B of the Indian Penal Code, but neither an FIR has been registered nor any action has been initiated on the said representation.

In *Sakiri Vasu vs. State of U.P. and others, (2008) 2 SCC 409*, it has been laid down as following:-

*"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?*

*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.](#)*

*It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere."*

Furthermore, in *M.Subramaniam and another Vs. S. Janaki and another, (2020) 16, SCC, 728 (SC)*, it has also been reiterated that for the purpose of registration of FIR, the remedy of the aggrieved person is not to go to the High Court,

but to approach the Magistrate concerned under Section 156(3) of the Code of Criminal Procedure. In the said decision, it has been observed as following:-

*"In our opinion section 156(3) CrPC, 1973 is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, 1973 though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation."*

In the event, there is an allegation of commission of cognizable offence and the police is not registering the FIR, the petitioner can approach the Superintendent of Police under Section 154 (3) of the Code of Criminal Procedure. In the event, the same does not yield any satisfactory result, it is always open to the aggrieved person to approach the concerned Judicial Magistrate as per the provisions of

Section 156 (3) of the Code of Criminal Procedure. In view of existence of an alternate remedy, no reasonable or justified ground is made out for this Court to interfere in the matter.

Present petition is, accordingly, dismissed. However, the petitioner shall be at liberty to avail the alternative remedy as may be available to her.

March 30, 2022  
vkd

(Vivek Puri)  
Judge

|                             |        |
|-----------------------------|--------|
| Whether speaking/reasoned : | Yes/No |
| Whether reportable :        | Yes/No |