

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.3069 of 2022

Date of Decision: 07th February, 2022.

Ashwani Kumar

...Petitioner

Versus

State of Punjab & Others

...Respondents

(Heard through Video-Conferencing)

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

Present: Mr. Mukesh Anand Advocate,
for the petitioner.

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MEENAKSHI I. MEHTA, J. (ORAL)

The petitioner herein seeks the indulgence of this Court for the issuance of direction to respondent No.2 to take appropriate action on the complaint (Annexure P-2), as moved by him regarding the minor daughter of respondent No.4 named Mansi Kumari and he also prays that respondent No.5 be ordered to be sent to her home, while averring that respondent No.5 named Khushi is the wife of his son and respondent No.4, her father, took her to his home on the pretext of some religious function and now, this respondent intends to marry respondent No.5 and his afore-named minor daughter to some local persons and the police has not taken any action on his above-said complaint.

I have heard learned counsel for the petitioner in this petition at the preliminary stage and have also perused the file thoroughly.

Learned counsel for the petitioner contends that respondent

No.4 is going to solemnize the marriage of both his afore-named daughters illegally and this act on his part constitutes an offence and respondents No.6 to 8 are abetting and conspiring with him in doing so and therefore, appropriate action is required to be taken against them for committing the offence under the Prohibition of the Child Marriage Act, 2005 and other relevant legal provisions by registering a criminal case against them but the police has not taken any such action in pursuance of his above-said complaint and therefore, the petitioner deserves the relief as prayed for in this petition.

However, this contention is not tenable in view of the judgment as recently handed down by the three Judges' Bench of Hon'ble the Supreme Court in *M. Subramaniam and another vs. S. Janaki and another (Criminal Appeal No.102 of 2011, decided on 20.03.2020)*, whereby the direction given by the High Court for the registration of the FIR has been set aside while relying upon the observations made by the Apex Court earlier in *Sakiri Vasu vs. 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*”.

Moreover, in *Aleque Padamsee and others vs. Union of India and others (Criminal Writ Petition Nos.11-15 of 2003, decided on 18.07.2007)*, the Apex 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 instant petition is not maintainable before this Court.

Seen from yet another angle also, the petitioner has categorically averred in Para No.8 in the petition that he had moved CRM-M No.32052 of 2021 for seeking the same relief but due to some defects therein, the same had been withdrawn with the liberty to file a fresh one. However, Annexure P-5 is the copy of the order as passed by this Court on 10.08.2021 in the above-said petition which reads as under:-

“After arguing for a while, learned counsel for the petitioners seeks permission to withdraw the instant petition while submitting that the petitioners would be availing the alternative efficacious remedy, as may be permissible to them under law, to seek the redressal of their grievance, as set-forth in this petition.

Ms. Samina Dhir, learned Deputy Advocate General, Punjab, who has joined the proceedings on behalf of respondents No.1 to 3 in this case, in pursuance of the copies of this petition having been sent to the respondent-State in advance, has no objection for the same.

Resultantly, the petition in hand stands dismissed for having been withdrawn accordingly.”

A bare perusal of the afore-referred order makes it explicit that learned counsel for the petitioners had withdrawn the said petition while

submitting that the petitioners would be availing the alternative efficacious remedy, as may be permissible to them under law and the petitioners neither sought nor were granted any liberty to file the fresh petition. Thus, it becomes clear that the petitioner has misrepresented the facts before this Court and this fact, in itself, disentitles him from seeking the relief as prayed for in this petition.

As a sequel to the fore-going discussion, it follows that the petition in hand deserves dismissal. Resultantly, the same stands dismissed accordingly.

(MEENAKSHI I. MEHTA)
JUDGE

07.02.2022.
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Whether speaking/reasoned?	Yes
Whether Reportable?	No