

109 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-50227-2022

DECIDED ON: 31st OCTOBER, 2022

EKTA AGGARWAL

.....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sandeep S. Majithia, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

By this petition, the petitioner seeks direction to respondents No.2 and 3 to initiate appropriate legal action for offences under Sections 294, 352, 354, 395, 398, 445, 447, 452, 500, 504, 506, 509 and 120-B IPC against respondents No. 4 to 6, who illegally, broke open the locks of shop, which was in the possession of the petitioner and destroyed the belongings/articles therein and their said act has been duly recorded in the CCTV footage.

Learned counsel for the petitioner contends that complaints/representations dated 29.09.2022 and 30.09.2022 were made to the SHO, Police Station Civil Line, Amritsar and Commissioner of Police, Amritsar respectively by the petitioner on the allegations that on 19.09.2019, respondents No.4 and 6 along-with 2/3 unidentified person came to her shop and gave threats to her. She gave a complaint in that

regard at Police Station Civil Line, Amritsar and had also filed a case in the

court, which is pending adjudication with the Chief Judicial Magistrate, Amritsar. It has further been alleged that against the order of the Court below she has also filed a petition in the Appellate Court which is now fixed for 04.11.2022. It is alleged that during the pendency of petition before the Court below, respondent No.4 and 6 had broken the lock of her shop on 29.09.2022.

Now the present petition is filed for direction to the official respondents to initiate appropriate legal action against respondents No.4 to 6.

The petitioner instead of availing legal remedies, is before this Court for issuance of directions to the official respondents.

The Supreme Court has dealt with the issue in following judgments:-

In ***Sakiri Vasu Versus State of U.P. and others, (2008) 2 SCC 409***, 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 Criminal Procedure Code. 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 Criminal Procedure Code 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) Criminal

Procedure Code or other police officer referred to in Section 36 Criminal Procedure Code 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) Criminal Procedure Code instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Criminal Procedure Code Moreover he has a further remedy of filing a criminal complaint under Section 200 Criminal Procedure Code 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 Criminal Procedure Code 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) Criminal Procedure Code before the Magistrate or by filing a criminal complaint under Section 200 Criminal Procedure Code and not by filing a writ petition or a petition under Section 482 Criminal Procedure Code.”

In *M. Subramaniam and another Versus S. Janaki and another*, (2020) 2 R.C.R. (Criminal) 788, held as under:-

5. (11 to 14) XX XX XX

“15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. In cases where the Magistrate finds that the police has not done

its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

*16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide **State of Bihar v. J.A.C. Saldanha (SCC : AIR para 19)**.*

17. In our opinion Section 156(3) CrPC 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, 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.

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.”

Under the Cr.P.C. not only the remedies but complete machinery is provided. Though the alternative remedy is not an absolute bar but there is no case made out for carving out an exception in the present case to interfere under Section 482 of Cr.P.C.

For the grievance raised by the petitioner, the remedy lies under Sections 36 and 154(3) Criminal Procedure Code before the concerned police officers, and if that is of no avail, under Section 156(3) Criminal Procedure Code before the Magistrate or by filing a criminal complaint under Section 200 Criminal Procedure Code and not by filing a writ petition or a petition under Section 482 Criminal Procedure Code.

In view of discussions made hereinabove, this Court is of the considered opinion that once an alternative remedy is available with the petitioner, he directly approaches this Court by way of filing of present petition, which is an abuse of process of law.

The present petition stands dismissed with costs of ₹25,000/- to be deposited with the Poor Patients' Welfare Fund, PGIMER, Chandigarh.

SANDEEP MOUDGIL
JUDGE

31st OCTOBER, 2022.

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| 1. Whether speaking/ reasoned : | Yes / No |
| 2. Whether reportable : | Yes / No |