

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

CRM-M-56394-2022 (O&M)

CRM-46631-2022

Date of Decision: 08.12.2022

IRSHAD

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mohammad Arshad, Advocate
for the petitioner.

HARSH BUNGER, J.

CRM-46631-2022

This is an application for placing on record the photocopies/translated copies of Annexures P-1 to P-5 and also to exempt from filing certified copies of the same.

Criminal Misc. Application is allowed, as prayed for.
Annexures P-1 to P-5 are taken on record, subject to all just exceptions.

CRM-M-56394-2022

Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure, is for issuance of direction to respondents No.2 and 3 to again conduct fair, impartial and scientific investigation in the complaints dated 18.04.2022 (Annexure P-1) and 05.05.2022 (Annexure P-2), which *prima facie* show that respondents No.5 to 7 have committed

cognizable offence, keeping in view the judgment rendered by Hon'ble the Apex Court in *Lalita Kumari vs Govt. of U.P. and others AIR 2014(SC) 187*.

Shorn of unnecessary details, the brief facts as borne out from the paper book are that the petitioner is stated to be a practicing Advocate and claims that there is no complaint, whatsoever, against him throughout his entire period of profession concerning his work, act and conduct. The petitioner, in his petition, has pleaded that respondent No.5-Memuna wife of Deen Mohammad was his client and he had filed an execution petition of an application under Section 125 Cr.P.C., Domestic Violence Act and complaint under Section 498-A of the IPC on behalf of respondent No.5-Memuna. It is stated that in the Execution petition under Section 125 Cr.P.C., the petitioner has got declared the husband of respondent No.5-Memuna, as proclaimed offender. It is further stated that on 08.04.2022, there was a Court hearing in a case titled as *State vsJahul*, wherein, the petitioner demanded fee from respondent No.5, on which, respondents No.5 and 6 instead of giving fee, went from there while threatening the petitioner to implicate him in a false case of molestation and rape. It is stated in the petition that after around 20 minutes, respondents No.5 and 6 along with three-four other persons came to the seat of the petitioner and started quarrelling with him. It is alleged that the above said persons forcibly snatched away the files from the seat of the petitioner, which contained the personal file of the petitioner and also the file of his client. It is further alleged that after snatching the file, the said persons while leaving also threatened the petitioner to kill and implicate him in a false rape case. It is stated that instead of paying the fee to the petitioner, respondents No.5 and 6

started extending threats of elimination to the petitioner. The petitioner claims that he had taken up the above said case at the instance of one Rati Mohammad, whereby it was settled that the fee shall be paid after the decision of the execution.

It is stated that in respect of the above said alleged incident, the petitioner submitted a complaint to the Station House Officer, City Nuh, District Nuh (Mewat), wherein, he had elaborately and categorically mentioned regarding the criminal acts of respondents No.5 and 6, however, when no action was taken on the above said complaint, the petitioner submitted a representation to the Senior Superintendent of Police, District Nuh, whereupon, the application was marked to the Station House Officer, City Nuh for necessary inquiry and report.

A perusal of paper book reveals that the Station House Officer, City Nuh, District Nuh (Mewat) carried out the inquiry and recorded the statements of respondent No.6-Asifa daughter of Deen Mohammad, respondent No.5-Memuna wife of Deen Mohammad, respondent No.7-Ibrahim son of Islam Baksh and petitioner-Irshad, which are annexed collectively as Annexure P-3. The same read thus :-

“ Statement of Asifa d/o Deen Mohammad R/o Kotla Police Station Sadar Nuh, aged around 21 years.

Stated that I am resident of above mentioned address, in the year 2015 my marriage was solemnized with Jahul S/o Jakir R/o Rajpura Palwal, that since the day of marriage Jahul and his family members had assaulted me and then I had come to my Village Kotla. That lot of mediation efforts were made but these people didn't adhere, after one year I had filed a divorce case at Nuh Court in which in the year 2018, the Hon'ble Court passed an order to give maintenance at the rate of Rs.3000/- per month, till date my total maintenance is worked out to the

tune of Rupees 3 lacs and on dated 08.04.2022, I had came to Nuh Court on bailable warrant, that Irshad Advocate didn't inform the date, I asked as to why the date was not informed then Irshad said that I am the counsel for your maintenance case, I want half money out of Rupees 3 Lacs. By saying this, he throw our file. And started hurling abuses to me and my mother. I took my file and given to Shaukat Advocate. We have not misbehaved with him nor snatched any file. I have recorded statement heard it, is correct.”

“ Statement of Memuna W/o Deen Mohammad R/o Kotla Police Station Sadar Nuh, aged around 50 years, Mobile No.7988778796.

Stated that I am resident of above mentioned address and I am doing household work. On dated 08.04.2022, I along with my daughter Asifa had come to the Court at Nuh. There was her bailable warrant. And I had engaged Irshad Advocate. That maintenance case of mine was pending with the Advocate. Files of both the cases were with Advocate Irshad. That Advocate Irshad said that he is having only maintenance file and talked about the fee, who thrown my file and I had handed over the file to Shaukat. Me and my daughter has not engaged in any brawl and nor done any misbehaving and Irshad misbehaved with us rather. That total maintenance is worked out to the tune of Rupees 3 Lac and the Advocate wants to get half of the same, therefore, we refused it. He filed false complaint, me and my daughter had not snatched any file. I have recorded statement heard it, is correct.”

“ Statement of Ibrahim S/o Islam Baksh R/o Kotla Police Station Sadar Nuh, aged around 62 years, Mob. 98138-91841.

Stated that I am resident of above mentioned address, and I am doing Agriculture work and I remained Sarpanch of the Village earlier. On dated 08.04.2022, I had gone to the Court at Nuh along with Memuna and Asifa. Asifa had engaged counsel namely Irshad Advocate for her divorce case. Whose

warrants were issued by the Court. Advocate Irshad was not informing dates to them. Memuna said that you have not informed us the date, then Advocate said that I am counsel in maintenance case, Irshad Advocate given file to Memuna and Memuna handed over her file to Shaukat. That no file was snatched in front of me. Advocate himself had thrown the file. No misbehave of any kind was caused. I have recorded statement heard it, is correct.”

“Statement of Irshad Advocate Seat No.81, Court Nuh S/o AasMohd. Village Sunari Police Station SadarTauru, aged 30 years, Mobile No.8683993030

Stated that I am resident of above mentioned address that I had moved applications against Ibrahim Ex-Sarpanch Kotla, (2) Memuna W/o Deen Mohd. (3) Asifa D/o Deen Mohd. R/o Kotla at Police Station City Nuh and senior officers and C.M. Window, that I have seen those applications, it bears my signatures, same may be considered as my statement. I have recorded my statement, it is correct, legal action may be initiated upon the applications.”

After recording the statements of all concerned and carrying out the enquiry from other Advocates, the Station House Officer, Police Station City Nuh, submitted the report dated 28.06.2022 (Annexure P-4), which reads as under :-

“ P.S. : City Nuh

District Nuh

Sir,

Investigation of the complaint No.507-IGPO dated 11.06.2022, Sr. No.412-IGP dated 09.05.22, Sr. No.645-PG/SPL dated 18.04.2022, Sr. No.66-CM/W dated 09.06.2022, of your office pertaining to Irshad Advocate, Court Nuh against Ibrahim Ex-Sarpanch, Memuna W/o Deen Mohammad, Asifa D/o Deen Mohammad residents of Kotla, Police Station Sadar Nuh, was conducted by ASI Mani Ram. During investigation, both the parties were made to join investigation proceedings and their statements were recorded and while reaching Court at Nuh

secret enquiry was conducted and oral enquiry was conducted from other Advocates. That during investigation the allegation levelled in the complaint were found as false. Neither any snatching of file was found nor giving of any threats was found, the matter is found regarding transaction of Advocate Irshad with his client. That from the investigation of the complaint occurrence of serious crime has not been found, so there is no need of initiation of any police action. The complaint may be filed in office record. Report is submitted please.”

Upon submission of the abovesaid report dated 28.06.2022, the petitioner has filed the instant petition on the allegation that the Station House Officer has not taken the matter seriously and he appears to have connived with respondents No.5 to 7 and for an extraneous consideration, has not carried out proper and effective investigation in the matter. Accordingly, it is prayed that a direction may be issued to respondents No.2 and 3 to again conduct fair, impartial and scientific investigation into the complaint submitted by the petitioner.

Learned counsel for the petitioner submits that in view of the law laid down by Hon’ble the Supreme Court in ***Lalita Kumari’s*** case (*supra*), the police was bound to register an FIR on the complaint made by the petitioner and to investigate the same in accordance with law.

Mr. Amrik Narwal, Deputy Advocate General, Haryana, pursuant to advance copy of petition having been served upon him, appears and opposes the prayer of the petitioner by submitting that the complaint submitted by him was inquired into and no offence worth taking cognizance was found and the complaint was filed/closed. He further submits that in view of judgment rendered by Hon’ble Apex Court in ***All India Institute of Medical Sciences Employees Union (Regd.) v. Union of India 1997 Supreme Court Cases (Criminal) 303***, the petitioner had an option to file a

criminal complaint before the Magistrate and that without availing the said procedure, the petitioner was not entitled to approach the High Court by filing the petition and seeking direction to register FIR and to conduct investigation. It is submitted that since the petitioner has not availed remedies available to him, accordingly, the present petition may be dismissed being bereft of any merit.

I have heard learned Counsel for the parties and have perused the paperbook.

The complaint lodged by the petitioner was inquired into by the police and it was found that the allegations made by the present petitioner regarding snatching of file and threats extended to him were false and finding no occurrence worth taking cognizance of, as such no FIR was registered and complaint made by the petitioner was ordered to be filed.

A perusal of petition would show that the issue appears to be primarily regarding some fee in regard to which different stands have been taken by the parties as culled out in the foregoing paras.

So far as the legal position is concerned, in *All India Institute of Medical Sciences Employees Union (Regd.)'s case (supra)*, it was held by Hon'ble Supreme Court that when the information is laid with the police but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 Criminal Procedure Code, 1973 to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. It was further held that without availing the said procedure, the petitioner was not entitled to approach the

High Court by filing a petition and seeking a direction to conduct an investigation by the CBI.

In *Gangadhar Janardan Mhatre v. State of Maharashtra and Others*, reported in (2004) 7 SCC 768, the Hon'ble Apex Court in paragraph 13 held as under:-

*"13. When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section [190](#) read with Section [200](#) of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section [203](#) of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in *All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India*. It was specifically observed that a writ petition in such cases is not to be entertained".*

The Hon'ble Apex Court while contemplating the options available to an informant/victim when his first information falls on deaf ears in the case of *Aleque padamsee and others v. Union of India and others* [2007(3) RCR (Criminal) 815] has laid down thus :-

"7. Whenever any information is received by the police about the alleged commission of offence which is a cognisable one there is a duty to register the FIR. There can be no dispute on

that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if the police does not do it. As was held in *All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India*, (1996) 11 SCC 582 and re-iterated in Gangadhar's case (supra) the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in All India Institute of Medical Sciences's case (supra), *Gangadhar Janardan Mhatre v. State of Maharashtra*, 2004(4) RCR (Criminal) 682 : (2004) 7 SCC 768, *Hari Singh v. State of U.P.* 2006(3) RCR (Criminal) 265 : (2006) 5 SCC 733, *Minu Kumari v. State of Bihar*, 2006(3) RCR (Criminal) 271 : (2006) 4 SCC 359, and *Ramesh Kumar v. (NCT of Delhi)* 2006(2) RCR (Criminal) 197 : (2006) 2 SCC 677, we find that the view expressed in Ramesh Kumari's case (supra) related to the action required to be taken by the police when any cognisable offence is brought to its notice. In Ramesh Kumari's case (supra) the basic issue did not relate to the methodology to be adopted which was expressly dealt with in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Minu Kumari's case (supra) and Hari Singh's case (supra). The view expressed in Ramesh Kumari's case (supra) was re-iterated in *Lallan Chaudhary and Ors. v. State of Bihar* (AIR 2006 Supreme Court 3376). The course available, when the police does not carry out the statutory requirements under Section 154 was directly in issue in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Hari Singh's case (supra) and Minu Kumari's case (supra). The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to its notice show that cognisable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Sections 190 read with Section 200 of the Code. It appears that in the present case initially the case was tagged by

order dated 24.2.2003 with WP(C) 530/2002 and WP(C) 221/2002. Subsequently, these writ petitions were delinked from the aforesaid writ petitions.

8. The writ petitions are finally disposed of with the following directions:

(1) If any person is aggrieved by the inaction of the police officials in registering the FIR, the modalities contained in Section 190 read with Section 200 of the Code are to be adopted and observed.

(2) It is open to any person aggrieved by the inaction of the police officials to adopt the remedy in terms of the aforesaid provisions.

(3) So far as non-grant of sanction aspect is concerned, it is for the concerned government to deal with the prayer. The concerned government would do well to deal with the matter within three months from the date of receipt of this order.

(4) We make it clear that we have not expressed any opinion on the merits of the case."

Hon'ble Supreme Court in *Sakiri Vasu v. State of U.P. and others, 2008(1) RCR (Criminal) 392*, held that it is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well sortied that if there is an alternative remedy the High Court should not ordinarily interfere. It was further held as under:

"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 petition or Section 482 petitions be entertained when there are so many alternative remedies?"

The above view has been re-affirmed by the Hon'ble Apex Court in the case of *Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and others reported in (2016) 6 SCC 277*, wherein the following observation was made :-

"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."

A Division Bench of Madhya Pradesh High Court in *Shweta Bhadauria v. State of M.P. and others*, 2017(4) RCR (Criminal) 705, considered the judgment rendered by the Hon'ble Apex Court in the case of *Lalita Kumari v. Government of U.P. & Ors.* reported in (2014) 2 SCC 1, and also the other judgments rendered in the case of *Aleque Padamsee and others v. Union of India and others*, (2007) 6 SCC 171 and *Sakiri Vasu v. State of U.P.*, (2008) 2 SCC 409 followed in the case of *Sudhir Bhaskar Rao Tambe v. Hemant Yashwant Dhage and others*, (2016) 6 SCC 277 and held as under :-

“7. The Constitution Bench in Lalita Kumari (supra) was considering the question as to whether registration of an FIR is mandatory, in case it discloses a cognizable offence. If the information does not disclose a cognizable offence, it mandates to conduct a preliminary enquiry. But, there is no mandate in the aforesaid judgment that this Court under Article [226](#) of the Constitution of India should issue a direction for registration of an FIR. Such a question has been specifically answered in Aleque Padamsee and others (supra), Sakiri Vasu (supra) and Sudhir Bhaskar Rao Tambe (supra)...”

Considering the instant case in the light of the above stated legal position, I am of the considered view that had the petitioner been really aggrieved, he had various options to pursue his remedy, however for the reasons best known to the petitioner, he has not availed of the remedy available to him and the facts and circumstances of the instant case do not spell out any exceptional circumstance so as to enable this Court to form any *prima facie* opinion to interfere or grant indulgence in this matter in exercise

of powers under Section 482 of the Code of Criminal Procedure.

The petition is accordingly dismissed.

December 08, 2022
gurpreet

(HARSH BUNGER)
JUDGE

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