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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-442-2023

Date of decision : 09.01.2023

Gurwinder Singh

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. D.S.Pheruman, Advocate for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

DEEPAK MANCHANDA, J.

This petition has been filed under Section 482 of the Code of Criminal Procedure with the prayer for issuance of directions to the respondent Nos. 2 and 3 to add offence under Section 302 Indian Penal Code, 1860 in case FIR No.58 dated 25.10.2022 (Annexure P-1) under Sections 304 and 34 IPC registered at Police Station Purana Shalla, District Gurdaspur.

Learned counsel for the petitioner contends that the FIR No. 58 dated 25.10.2022 under Section 304 and 34 IPC was got registered at Police Station Purana Shalla, District Gurdaspur by the petitioner (father of deceased-Jatinder Singh), as his son received five injuries on his person and that too on vital part of the body i.e testicle due to having kick below on the same, which resulted in his death. Learned counsel further contends that even as per the medical jurisprudence and toxicology, the injury at Sr.No. 1 in Form VI of the Post-Mortem Report has not been clarified and the blood was found on the scrotum, which is mentioned as injury No. 5. He further argues that initially the

case was registered under Sections 304 and 34 IPC, but Section 302 IPC had been omitted by ignoring the PMR, which was required to be added in the FIR as well as subsequent proceedings. He also argues that police has also deliberately waived the said offence, which is a serious matter, therefore, he prays for issuance of directions to respondent No. 2 and 3 for addition of offence under Section 302 IPC in the aforementioned FIR.

Having heard the counsel for the petitioner.

This court is of the considered view that after registration of FIR, the matter is under investigation and at this stage, such directions as prayed for addition of sections/offences during investigation cannot be issued. Even otherwise, the petitioner has remedy of filing appropriate application during the trial, where the Magistrate has got power under Section 156 (3) Cr.P.C. to monitor the investigation, if it is not done in accordance with law.

The Hon'ble Supreme Court in its judgment rendered in “**Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage & Ors.**” 2016 (6) SCC 277 has observed as under:-

“5. This Court has held in Sakiri Vasu v. State of U.P. & Others, reported in AIR 2008 Supreme Court 907, that if a person has a grievance that his F.I.R. has not been registered by 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 concerned Magistrate under Section 156(3), Cr.P.C. If such an application under Section 156(3), CrPC. is made and the Magistrate is, prima facie, satisfied, he can direct the F.I.R. 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's 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.

6. 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 concerned Magistrate under Section 156(3), Cr.P.C. 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.”

Thus, keeping in view the settled proposition, this Court is not inclined to exercise its jurisdiction under Section 482 Cr.P.C.

Accordingly, the present petition is dismissed.

(DEEPAK MANCHANDA)
JUDGE

09.01.2023
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No