

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

**CRM-M-3542-2023 (O&M)
Date of Decision: 23.01.2023**

KAMA DEVI

...Petitioner

Versus

STATE OF U.T., CHANDIGARH AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Rupesh Kumar, Advocate
for the petitioner.

Mr. Anil Kumar Lamdharia, A.P.P. U.T., Chandigarh.

HARSH BUNGER, J.

Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure, is for issuance of direction to the respondents to register FIR in view of complaint dated 24.02.2022 (Annexure P-6) and complaint dated 01.11.2022 (Annexure P-7) made by the petitioner.

Shorn of unnecessary details, the brief facts as borne out from the paper book are that one Khushali Ram, ancestor of the petitioner's husband, was allotted a property/House No.2228/2 situated at Sector 37-C, Chandigarh by the Estate Office, Union Territory, Chandigarh. It appears that there was a dispute regarding the aforesaid property, for which, a Civil Suit No.2473/2009 titled as ***Dhanno vs Rup Kumar @ Munna*** was filed. It was *inter alia* claimed in the said suit that in the allotment letter, the house number of the property was wrongly mentioned as 2182/2 instead of 2228/2. In the suit, a further relief for mandatory injunction was also sought for directing defendants No.1 to 3 therein (Rup Kumar @ Munna;

Harish Kumar @ Tinku and Master Mukesh Kumar @ Master Sunny) to vacate the premises as they are the licencees and the licence stood terminated by plaintiff-Dhanno son of Khushali Ram. It is apposite to state here that defendant No.1 in the Civil Suit i.e. Rup Kumar @ Munna son of Narinder Kumar is the husband of the present petitioner-Kama Devi and defendant No.3-Master Mukesh Kumar @ Master Sunny is the son of present petitioner-Kama Devi. The said suit was partly decreed vide judgment and decree dated 21.11.2014 (Annexure P-3), whereby, the Estate Office, Sector 17, Chandigarh, was directed to make necessary amendment in the allotment letter. It was further held that there was no proof that defendants No.1 to 3, in suit, are in possession of the suit property.

The abovesaid judgment and decree dated 21.11.2014 passed by the Civil Judge (Junior Division), Chandigarh was further challenged by Dhanno son of Khushali Ram, by way of filing an appeal, which was allowed vide judgment and decree dated 03.09.2015 passed by the Additional District Judge, Chandigarh, whereby, the respondents in appeal i.e. defendants No.1 to 3 in the suit; were directed to vacate the possession of the premises in question. It is further borne out from the paper book that Rup Kumar @ Munna, has challenged the aforesaid judgment(s) and decree(s) dated 21.11.2014 and 03.09.2015 passed by the Civil Judge (Junior Division), Chandigarh and Additional District Judge, Chandigarh, respectively by way of filing a Regular Second Appeal No.1198 of 2016 before this Court, whereby, *status quo* regarding possession was directed to be maintained vide order dated 29.03.2016 (Annexure P-5). The said RSA No.1198 of 2016 is stated to be pending.

In the present petition, the petitioner claims that prior to the start of Covid-19 *pandemic* i.e. in the month of March, 2020, the petitioner along with her husband Rup Kumar, were living in House No.2228/2, Sector 37-C, Chandigarh. It is admitted in the petition that there was a dispute within the family with regard to the property left by Khushali Ram. It is claimed that when the petitioner returned back after Covid-19, she found that all of her household articles were missing from the house in question, whereupon, her husband had filed a complaint to the Senior Superintendent of Police, Chandigarh, vide complaint No.PW202203977 dated 24.02.2022 (Annexure P-6). It is further stated in the petition that the petitioner submitted her online complaint No.ICMS/2022/012528 dated 01.11.2022 to the Station House Officer, Police Station Sector 39, Chandigarh with regard to the theft, threatening, maltreatment, criminal breach of trust committed by culprits namely, Chayya, Mukesh, Nakul, Nitu etc.

A perusal of the paper book further reveals that two DDRs dated 30.04.2022 and 12.11.2022 are attached as Annexures P-8 and P-9, respectively. G.D. No.057 dated 30.04.2022 (Annexure P-8) would show that the concerned officer of Police Station, Sector 39, Chandigarh had considered the complaint/application submitted by the opposite party and after finding no merit in the same, observed as under :-

“ From the perusal of both the applications, the matter has not been found relating to any theft and dispute/fight. The matter relates to claim of share in H.No.2228/2, Sector 37-C, Chandigarh, case in respect of which is already pending in the Court. Both the parties have told that whatever decision is rendered by the Court, the same will be acceptable to both the parties. Prima facie, no

offence is made out which may require police interference. Report has been entered in the Roznamcha.”

In G.D. No.004 dated 12.11.2022 (Annexure P-9), the concerned officer of Police Station Sector 39, Chandigarh, observed thus :-

“At present, I, SI, alongwith colleagues Police Officials after entering report No.29 in Roznamcha, have come to Police Station after attending the spot. I, SI alongwith colleagues Police Officials reached at the spot where Chaya met and got recorded her statement, the contents of which is as follows. “Statement of Chhaya W/o Dhanuram, resident of H.No.2228/2, Sector 37-C, Chandigarh, aged 43 years, Mob. No.8968477896 stated that she is residing at the above said address alongwith her family. One lady namely Kama Devi, who is resident of my village Sambhal (U.P.), came to our house who was talking about the breaking of house hold language and she was already talking that I have share in this house and now we have communicated together and case regarding dispute over the house is pending in the Distt. Court, Sector 43, Chandigarh and is now fixed for 31.01.2023. Whatever the decision is rendered by the court, same will be acceptable to both the parties. Kama Devi will not come to house before the decision is rendered by the court. We both do not want any police action and nobody will interfere in the house hold items/articles. Statement has been got recorded, heard and admitted to be correct. RTI Chhaya. Sd/- Varsha Sd/- Kama Devi. Attested by S.I. Sapinder Singh 1632/CHG Police Station-39, Chandigarh. Prima facie no offence is made out which may require police interference. Report has been entered in the Roznamcha.”

In the backdrop of the afore-stated circumstances as borne out from the paper book, the present petition has been filed under Section 482 of the Code of Criminal Procedure, seeking direction to the respondents to

register FIR against Chayya widow of Dhanno, Mukesh (son-in-law of Chayya), Nakul S/o Chayya, Nitu and Varsha Daughters of Chayya, all resident of House No.2228/2, Sector 37-C, Chandigarh.

Mr. Anil Kumar Lamdharia, A.P.P., U.T., Chandigarh, pursuant to advance copy of petition having been served upon him, appears and opposes the prayer of the petitioner by submitting that she had an option to file a criminal complaint before the Magistrate and that without availing the said remedy, the petitioner was not entitled to approach this Court by filing this petition seeking direction to register FIR. Accordingly, it is prayed that the present petition may be dismissed.

I have heard learned counsel for the parties and have perused the paper book with their able assistance.

The complaints/counter complaints were looked into by the concerned officer(s) and after finding that no *prima facie* offence is made out which may require police interference, the same have been filed.

A perusal of the petition would show that the dispute *prima facie* is regarding the property, for which proceedings before Civil Court were initiated and are stated to be still pending.

So far as the legal position is concerned, in ***All India Institute of Medical Sciences Employees Union (Regd.) vs Union of India 1996(11) SCC 582***, 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".*

Considering the instant case in the light of the above stated legal position, it is observed that the complaints filed by the petitioner were looked into by the concerned Police authority/official and upon finding no cognizable offence, the complaint(s) were closed/filed. Further, the petitioner has not put forth 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.

Accordingly, finding no merit in the present petition, the same is hereby dismissed. However, the petitioner (if so advised) can avail the alternate remedy available to her in accordance with law.

January 23, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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