

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-6832-2023 (O & M)

Date of decision: 16.02.2023

Beant Singh

..... Petitioner

V/s

State of Punjab and ors.

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vaibhav Sehgal, Advocate,
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for issuance of directions to respondents No.2 and 3 to conduct a free, fair and impartial investigation in FIR No.70 dated 14.06.2021 registered under Sections 458, 324, 506, 427, 148, 149 IPC (Section 326 IPC added later on) at Police Station Bhadson, District Patiala (Annexure P-1) as respondent No.4 has deleted Section 326 IPC despite an opinion of the doctors with regard to the nature of injuries suffered by the petitioner being grievous in nature. A prayer has also been made for constitution of an Special Investigation Team (SIT) and for recording the statements of the witnesses Sukhpal Singh @ Pali son of Ujjagar Singh.

2. The brief facts of the case are that an FIR No. 70 dated 14.06.2021 under Sections 458, 324, 506, 427, 148, 149 IPC (Section 326 IPC added later on) at Police Station Bhadson, District Patiala (Annexure P-1) came to be registered with the allegations that the petitioner has been assaulted by his neighbour Satpal Singh, his brother Jagpal Singh, Kirpal

Singh, Randeep Singh alongwith Amrik Singh former Sarpanch and resident of village Kishangarh, Gurthali. Certain other persons are also alleged to have attacked the complainant. A copy of the FIR is attached as Annexure P-1 to the petition. The injury stated to have been suffered by the petitioner is grievous in nature, though as per the doctors' opinion (Annexure P-2), it could be possibly self-inflicted or produced by a friendly hand.

3. An earlier petition had been filed bearing CRWP-7058-2022, which came to be disposed of by this Court vide order dated 22.07.2022 directing the respondent No.4-Senior Superintendent of Police, Patiala, District Patiala to look into the representation of the petitioner in accordance with law. A copy of the aforesaid order is attached as Annexure P-3.

4. It is the case of the petitioner that respondent No.4-Station House Officer, Police Station Bhadson, Patiala, called the petitioner and told him that since the accused Amrik Singh was politically powerful and there was pressure upon him from the local MLA, a cancellation report was to be presented. It is, thus, contended that a free, fair and impartial investigation has not taken place despite detailed representations being submitted vide (Annexure P-4) alongwith photographs of the crime scene (Annexure P-5) and video footage (Annexure P-6).

5. I have heard the learned counsel for the petitioner.

6. The Hon'ble Supreme Court in the case of '**Sakiri Vasu versus State of U.P. and others, 2008 (1) RCR (Criminal) 392**', has deprecated the practice of parties approaching the High Court in a petition under Section 482 Cr.P.C. seeking directions to be issued to investigating agencies to properly investigate the matter. In **Sakiri Vasu (supra)**, it was held as under:-

“10. It has been held by this Court in CBI & another vs. Rajesh Gandhi and another 1997 Cr.L.J 63 (vide para 8) that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under [Section 154 Cr.P.C.](#), then he can approach the Superintendent of Police under [Section 154\(3\) Cr.P.C.](#) by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under [Section 156 \(3\) Cr.P.C.](#) before the learned Magistrate concerned. If such an application under [Section 156 \(3\)](#) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

12. Thus in [Mohd. Yousuf vs. Smt. Afaq Jahan & Anr. JT 2006\(1\) SC 10](#), this Court observed:

The clear position therefore is that any judicial Magistrate, before taking cognizance of the offence, can order investigation under [Section 156\(3\)](#) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in [Section 154](#) of the Code. Even if a Magistrate does not say in so many

words while directing investigating under [Section 156\(3\)](#) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter. ^Λ

13. The same view was taken by this Court in Dilawar Singh vs. State of Delhi JT 2007 (10) SC 585 (vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under [Section 156\(3\)](#) Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under [Section 156\(3\)](#) Cr.P.C.

14. [Section 156](#) (3) states:

Any Magistrate empowered under [Section 190](#) may order such an investigation as abovementioned. ^Λ The words `as abovementioned obviously refer to [Section 156](#) (1), which contemplates investigation by the officer in charge of the Police Station.

15. [Section 156\(3\)](#) provides for a check by the Magistrate on the police performing its duties under Chapter XII [Cr.P.C.](#) 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 re-opening of the investigation even after the police submits

the final report, vide [State of Bihar vs. A.C. Saldanna](#) AIR 1980 SC 326 (para 19).

17. In our opinion [Section 156\(3\) Cr.P.C.](#) 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 F.I.R. 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\(3\) Cr.P.C.](#), 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 to its execution.

19. The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his Statutory Construction (3rd edn. page 267):-

If these details could not be inserted by implication, the drafting of legislation would be an indeterminable process and the legislative intent would likely be defeated by a most insignificant omission ^.

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24. In view of the abovementioned legal position, we are of the view that although [Section 156\(3\)](#) is very briefly worded, there is an implied power in the Magistrate under [Section 156\(3\) Cr.P.C.](#) to order registration of a criminal offence and /or to direct the officer in

charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in [Section 156\(3\)](#) Cr.P.C., we are of the opinion that they are implied in the above provision.

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](#) Cr.P.C. 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](#) Cr.P.C. 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\(3\)](#) 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 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](#) Cr.P.C. 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) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.”

7. The aforesaid judgment passed in **‘Sakiri Vasu (supra)’** was followed by this Court in a case titled as **‘Hansa Singh versus State of Punjab and others (CRM-M-18831-2022 decided on 12.05.2022)’**.

8. In view of the aforementioned discussion as also the judgments of the Hon’ble Supreme Court and this Court, I find no merit in the present petition and the same is dismissed. The petitioner is at liberty to avail his alternative remedies in accordance with law in case he still has a grievance that the investigation has not been conducted in a fair manner.

9. Disposed off in the above-terms.

(JASJIT SINGH BEDI)
JUDGE

February 16, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No