

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-25992-2023

Date of Decision: 22.05.2023

Paramjit Kaur @ Parmjit Kaur

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Rajpal Singh, Advocate and
Mr. GS Verma, Advocate for the petitioner

Mr. Rajiv Verma, DAG Punjab

Sandeep Moudgil, J.

(1) This petition under Section 482 CrPC has been filed by the petitioner seeking a direction to respondents No.1 to 3 to register FIR against respondents No.5 to 9, who have allegedly committed the murder of husband of the petitioner, namely, Tasvir Singh. A further direction is sought to take strict legal action against the erring police officials who have not deliberately registered FIR being in active connivance with the private respondents despite the fact that cognizable offence is made out against respondents No.5 to 9 and as such have failed to comply with the guidelines framed by the Apex Court in **Lalita Kumari Vs. Govt. of U.P. & Ors.” decided on 12 November, 2013, in Writ Petition (Criminal) No. 68 of 2008.**

(2) Learned counsel for the petitioner submitted that husband of the petitioner Tasvir Singh was working under employment scheme framed under Mahatma Gandhi National Rural Employment Guarantee Act 2005 (MGNREGA) under the contractorship of respondent No.5 Lakhbir Singh and respondent No.6 Manju. Since the said respondents No.5&6 did not pay

wages to the Tasvir Singh, the latter visited the house of respondents No.5&6 and was allegedly beaten by respondents No.5 to 9 and thrown outside in the street from where, the petitioner, on having received such information, rushed to the spot and got her husband Tasvir Singh admitted to GNDH, Amritsar on 18.07.2021 where he succumbed to the injuries on 01.08.2021. The petitioner even made a request/representation to respondent No.4/SHO PS Rajasansi, District Amritsar on 17.07.2021 i.e. on the date of incident, for registration of case against respondents No.5 to 9 vide Annexure P4 but the police did not take any action in this regard.

(3) It is the contention of learned counsel for the petitioner that just after the death of Tasvir Singh, the son of the petitioner immediately reported the matter to local police/respondent No.4 stating that his father has died in hospital due to injuries sustained at the hands of respondents No.5 to 9 vide representation dated 01.08.2021 (Annexure P5). Since then the petitioner has been continuously filing one or the other representations/complaints to the local police authorities and the other higher echelons but the inaction on their part only proved that they have been won over or are conniving with respondents No.5 to 9.

(4) Learned counsel for the petitioner further contended that since the police is also hand in glove with respondents No.5 to 9, the enquiry in the murder of her husband be entrusted to an independent agency or crime branch to bring out the real truth as it is self-evident that even despite numerous representations (Annexure P4 to P7) coupled with the affidavits of the persons (Annexures P8 to P11) who were witness to the incident of beatings

given to Tasvir Singh, the police have only turned deaf ears to the prayer made by the petitioner for registration of FIR.

(5) Notice of motion. On the asking, Mr. Rajiv Verma, DAG Punjab accepts notice.

(6) Heard learned counsel for the parties and gone through the case file.

(7) While exercising powers under Section 482, this Court cannot interfere with the manner of investigation of a case or direct the investigating agency to investigate from a particular angle or to arrest the accused: The same was observed by the Apex Court in **“M.C. Abraham and Another vs State of Maharashtra and Others” (2003) 2 SCC 649**, wherein it has further gone to the extent of saying that investigating agency is the master of investigation and is at liberty to proceed in its desired direction being free from any interference. The Apex Court in the case of **“Sakiri Vasu vs State of Uttar Pradesh and others” (2008) 2 SCC 409**; has held as under:-

“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?”

(8) Thus a sequel to the above, it can well be crystallized that when an aggrieved person approaches the court in a petition under Section 482 Cr.P.C., then the court is possessed with enormous powers to do justice or remove injustice. The Court's vast powers are meant to prevent any abuse of the process or to secure the ends of justice. These powers must be exercised for the advancement of justice. Ends of justice are always higher than the ends of mere law and for accomplishing that noble goal the courts have rightly been vested with adequate powers. While saying so at the same time it has to be kept in mind that though the powers possessed by the High Court are extremely wide but the very plentitude of the power requires the courts to function with greater caution and circumspection in the exercise of those powers. In other words, the power under Section 482 Cr.P.C., is to be exercised, *ex debito justitiae*, i.e. to do real and substantial justice.

(9) Further the Apex Court in **"P. Chidambaram v Directorate of Enforcement" 2019 (4) R.C.R. (Criminal) 875** observed the following:-

*"63. Investigation into crimes is the prerogative of the police and excepting in rare cases, the judiciary should keep out all the areas of investigation. In **"State of Bihar and another v. P.P. Sharma, IAS" and another 1992 Supp. (1) 222**, it was held that "The investigating officer is an arm of the law and plays a pivotal role in the dispensation of criminal justice and maintenance of law and order.Enough power is therefore given to the police officer in the area of investigating process and granting them the court latitude to exercise its discretionary power to make a successful investigation...". In **"Dukhishyam Benupani, Asstt. Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria" (1998) 1 SCC 52**, this Court held that*

“.....it is not the function of the court to monitor investigation processes so long as such investigation does not transgress any provision of law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order fully insulating a person from arrest would make his interrogation a mere ritual.”

64. As held by the Supreme Court in a catena of judgments that there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused.

65. It is one thing to say that if the power of investigation has been exercised by an investigating officer mala fide or non-compliance of the provisions of the Criminal Procedure Code in the conduct of the investigation, it is open to the court to quash the proceedings where there is a clear case of abuse of power. It is a different matter that the High Court in exercise of its inherent power under Section 482 Cr.P.C., the court can always issue appropriate direction at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide and not in accordance with the provisions of the Criminal Procedure Code. However, as pointed out earlier that

power is to be exercised in rare cases where there is a clear abuse of power and non-compliance of the provisions falling under Chapter XII of the Code of Criminal Procedure requiring the interference of the High Court. In the initial stages of investigation where the court is considering the question of grant of regular bail or pre-arrest bail, it is not for the court to enter into the demarcated function of the investigation and collection of evidence/materials for establishing the offence and interrogation of the accused and the witnesses.”

(10) Considering the afore-said facts and circumstances and also in view of the judgments referred hereinabove, it is not open to this Court to exercise its inherent powers and extra ordinary jurisdiction under Section 482 Cr.P.C., to unsettle the investigating agency at this stage by no stretch of imagination. Since the petitioner has a grievance that her FIR is not being registered by the police station, her 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 CrPC. However, if her grievance still persists, then the petitioner can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court under Articles 226/227 of the Constitution.

(11) [Section 156](#) (3) states that any Magistrate empowered under [Section 190](#) may order such an investigation as abovementioned. The words as abovementioned obviously refer to [Section 156](#) (1), which contemplates investigation by the officer in charge of the Police Station. [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. 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](#).

(12) Thus [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. 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.

(13) It is often found that when someone has a grievance that his or her FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he/she rushes to the High Court to file a writ petition or a petition under [Section 482](#) CrPC. It is trite that the

High Court ought not encourage this practice and ordinarily should 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\(3\)](#). 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? It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy, the High Court should not ordinarily interfere.

(14) In **"M. Subramaniam and another versus S. Janaki and another, 2020(2) RCR (Criminal) 788"**, the Hon'ble Supreme Court held as under:-

“While it is not possible to accept the contention of the appellants on the question of locus standi, we are inclined to accept the contention that the High Court could not have directed the registration of an FIR with a direction to the police to investigate and file the final report in view of the judgment of

this Court in [Sakiri Vasu v. State Of Uttar Pradesh And Others \(2008\) 2 SCC 409](#) in which it has been inter alia held as under:

"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](#) CrPC, then he can approach the Superintendent of Police under [Section 154\(3\)](#) CrPC 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\(3\)](#) CrPC 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.

(15) The Supreme Court in [Sakiri Vasu v. State of U.P. Appeal \(Crl.\) 1685 of 2007](#), decided on 07.12.2007 held 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. It further held that:-

“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.”

(16) In **Secretary, Minor Irrigation & Rural Engineering Services U.P. and others vs. Sahngoo Ram Arya and another 2002 (5) SCC 521**

(vide para 6), the Supreme Court observed that the High Court though has that power to get investigated by an independent agency but it should only be exercised, if after considering the material on record, it comes to a conclusion that such material discloses prima facie a case calling for investigation by the CBI or by any other similar agency. An inquiry cannot be ordered as a matter of routine or merely because the party makes some allegation.

(17) In view of the above discussion, this petition fails.

(18) However, the petitioner would be at liberty 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. and if despite approaching the

Superintendent of Police or the officer referred to in Section 36, her grievance still persists, then she can approach the Magistrate under Section 156 (3) Cr.P.C. instead of rushing to this Court by way of a writ petition or a petition under Section 482 Cr.P.C. Needless to say, if any such application under Section 156(3) CrPC is made before the Magistrate concerned, the same shall be decided expeditiously in accordance with law.

22.05.2023

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No