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

CRM-M-27937-2020
Date of Decision: 11.04.2023

SARITA

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Navmohit Singh, Advocate
for the petitioner.

Mr. G.G.S. Rai, D.A.G., Haryana.

Mr. Ramesh Hooda, Advocate
for respondent No.2.

HARSH BUNGER, J.

Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure, is for registration of FIR against respondents No.2 to 4 on the plea that respondent No.2 has executed sale deed dated 09.04.2018 (Annexure P-3) in favour of respondent No.3 by misrepresenting himself as 'General Power of Attorney' of the petitioner even when the GPA No.4/375 dated 16.02.1999 in favour of respondent No.2 stands revoked ten years back on 30.06.2009 (Annexure P-2).

Upon issuance of notice of motion in this case on 15.09.2020, respondent No.2-Surat Singh filed reply, wherein, *inter alia*, following stand was taken :-

*“3. That under Section 205 of the Act prescribe
that if there is an express or implied contract that the*

agency should be continued for any period of time, the principal must pay compensation to the agent for any previous revocation. Section 206 of the Act, prescribed that the reasonable notice must be given of such revocation. Since the word “must” has been mentioned in this section when it shows that this provision is mandatory and before revocation notice is mandatory. Section 208 prescribe that termination of the authority of an agent does not, so far as regard the agent, take effect before it comes known to him. It means that revocation has no meaning if no notice is given to the agent.

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*... In the present case, no notice was given of revocation. Even in the present petition, there is no averment that the deponent was given any kind of notice before cancellation of the GPA on 30.06.2009. Since this GPA was executed on 16.02.1999 and it was cancelled on 30.06.2009 i.e. after more than 10 years and nothing is mention that when the notice was given. There is only one averment that the deponent had the knowledge regarding the cancellation of GPA. Even the petitioner has filed the suit for declaration and permanent injunction challenging the sale deed dated 09.04.2018 and even in the sale deed, there is no averment that any kind of notice was given before the cancellation of the power of attorney and even any notice was given after the cancellation of power of attorney. In the suit also, it is only mention that the deponent had the knowledge regarding the cancellation of GPA. There is no averment of any kind that what is the source of knowledge and when and where and how the deponent was told regarding the cancellation of GPA. For the perusal of this Hon'ble High Court, copy of the suit dated 26.06.2020 is attached herewith as **Annexure R-2/2**.*

4. That in the suit, the Civil Court has passed the interim order that the plot will not be alienated further and

*even the defendant no.2 in the suit has been restrained to collect the rent from the tenant of the shop in dispute. Copy of the interim order dated 04.07.2020 is attached herewith as **Annexure R-2/3**.*

*5. That the petitioner gave the complaint to the police for lodging the FIR regarding the same dispute in the Economic Cell Jhajjar. The police conducted the enquiry, in the enquiry, it was found that since the case is pending before the Civil Court and it is a civil dispute and hence, no police action is required and the complaint was filed. True translation copy of the report dated 06.08.2020 is attached herewith as **Annexure R-2/4**.*

*6. That the petitioner give the complaint in police station Sadar Bahadurgarh also. There also the police conducted the enquiry and filed the complaint on the ground that the dispute is pending before the Civil Court and earlier also the matter inquired into by the police and no action was taken. Copy of the report dated 28.10.2020 prepared by SHO P.S. Sadar Bahadurgarh is attached herewith as **Annexure R-2/5**.”*

On the other hand, learned State counsel also appeared and filed reply by way of an affidavit of Sh. Ashok Kumar, HPS, Deputy Superintendent of Police, Badli District Jhajjar, on behalf of respondent No.1, wherein, the following stand has been taken :-

“...In this regard complainant Sarita has already filed one application No.991-SPR dated 20.07.2020 which was given in the office of Superintendent of Police, Jhajjar and the enquiry of which was already conducted by the Economic Offence Branch, Distt. Jhajjar. Regarding this complaint, case is already pending in the court. The complaint has been returned with the report and it is recommended to file and consigned in the record. Station House Officer PS Sadar Bahadurgarh vide his report dated 28.10.2020 disposed off the application because

matter was found regarding the civil nature and civil suit No.CS/140/2020 already pending between the parties regarding the same version.”

Learned counsel for the petitioner submits that the petitioner had executed 'General Power of Attorney' in the name of her father-in-law (respondent No.2/Surat Singh) on 16.02.1999 and the said 'General Power of Attorney' was cancelled by the petitioner vide Deed No.48 dated 30.06.2009 (Annexure P-2). Said fact was in the knowledge of respondent No.2 and other accused; still they had gone forward in executing the Sale Deed (Annexure P-3), which is an act of dishonesty, cheating and forgery and despite submission of representation dated 13.07.2020 (Annexure P-1), no action was taken by the police. Accordingly, the present petition has been filed.

Learned State counsel as well as learned counsel for respondent No.2 submitted that the matter is purely a civil dispute and the complaint(s) submitted by the petitioner have already been looked into and the same stands filed/consigned.

I have heard learned counsel for the parties and have also perused the paper-book as well as the respective replies filed by State and respondent No.2.

A perusal of file would manifest that the complaint filed by the petitioner already stands enquired and looked into and have been closed.

The question that arises now is as to what is the remedy available to the complainant once the concerned police authority has already looked into the complaint and filed it. The said issue is no more *res integra* and the same stands answered by Hon'ble Supreme Court in ***Sakiri Vasu v. State of U.P. and others, 2008(1) RCR (Criminal) 392***, wherein, it has been

held that 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. It was 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 the petitioner had various options to pursue her remedy, however for the reasons best known to the petitioner, she has not availed of the remedy available to her. Perusal of file shows that petitioner had filed a suit for declaration (Annexure R-2/2). Thus, I do not find any exceptional circumstance 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, the present petition is dismissed, however, the petitioner shall be at liberty to avail her other legal remedy/ies (if so advised) in accordance with law.

April 11, 2023
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(HARSH BUNGER)
JUDGE

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