

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

113

**CRM-M-34434 of 2023
Date of Decision:19.07.2023**

Sinder

....Petitioner(s)

Versus

State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vishal Deep Goyal,
Advocate, for the petitioner.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for issuance of direction to respondents No.2 to 4 to constitute a Special Investigation Team in FIR No.48 dated 22.04.2023, under Section 302 IPC, registered at Police Station Amargarh, District Malerkotla.

2. Learned counsel for the petitioner submitted that in the present case earlier the FIR was registered on the statement of the wife of the deceased under Section 302 IPC and thereafter the police deleted Section 302 IPC and added Section 304-A IPC and submitted that the police is not investigating the case properly and therefore a Special Investigation Team be constituted in this regard. He submitted that the matter is still at the investigation stage with the police. In support of his arguments, learned counsel for the petitioner relied upon a judgment of the Hon'ble Supreme Court in **Amar Nath Chaubey v. Union of India and others** 2021(11) SCC 804 in this regard by submitting that it is mandatory for the police to investigate the case properly.

3. I have heard learned counsel for the petitioner.

4. The present FIR was lodged on the basis of a statement of the wife of the deceased by alleging that the husband of the petitioner alongwith other persons had gone to a particular place where they had liquor together and at night when her husband came back beatings were given to him by one of the co-accused but thereafter the complainant did not complaint to the police but went to sleep and thereafter in the morning the husband of the petitioner was found dead. Learned counsel has argued that the police has not investigated the case properly and therefore the present petition has been filed. However, after hearing learned counsel for the petitioner, this Court is of the view that in case the petitioner is not satisfied with the investigation conducted by the police by which the provision of Section 302 IPC has been deleted and Section 304-A IPC was added then the petitioner is always at liberty to raise her grievance and file an appropriate application before the concerned Illaqa Magistrate in this regard.

5. So far as the judgment relied upon by learned counsel for the petitioner is concerned, it pertains to proposition of law that fair investigation should be done. However, the remedy with the petitioner is to file application before learned Illaqa Magistrate/appropriate Magistrate seeking proper and fair investigation. The Hon'ble Supreme Court in Sudhir Bhaskarrao Tambe versus Hemant Yashwant Dhage and others 2016 (6) SCC 277 following Sakiri Vasu versus State of Uttar Pradesh (2008) 2 SCC 409 observed that whenever there is an alternate remedy available to the petitioner, he can move appropriate application before the learned Illaqa Magistrate/Court and the petitioner should normally approach the Illaqa Magistrate since the High

Courts are over flooded with such kind of petitions. Thereafter, again the Hon'ble Supreme Court in M. Subramaniam and another v. S. Janaki and another 2020 (16) SCC 728 affirmed the view taken by the Hon'ble Supreme Court in *Sakiri Vasu's* case (supra), wherein it has been observed as under:-

“17. In our opinion section 156(3) CrPC 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 FIR 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) CrPC, 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 for its execution.”

- 6. In view of the above, the present petition is dismissed.
- 7. Needless to say that the petitioner is always at liberty to move an appropriate application in accordance with law before the appropriate Court at an appropriate stage.

(JASGURPREET SINGH PURI)
JUDGE

July 19, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No