

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-35650-2023
Decided on : 25.07.2023

Gurjit Singh

. . . Petitioner

Versus

State of Punjab and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

PRESENT: Mr. K. B. Raheja, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG, Punjab

AMAN CHAUDHARY, J.

1. Prayer in the present petition filed under Section 482 Cr.P.C. is for issuing direction to the official respondents to take action against private respondents as per application dated 23.06.2023 and for protecting the life and liberty of the petitioner.
2. Learned counsel submits that the petitioner and respondent No.4 got married 20 years ago and have 3 children out of the said wedlock. On 20.06.2023, respondent No.5 has taken respondent No. 4, wife of the petitioner with him. While leaving she took all the gold ornaments with her, weighing 12-13 tolas alongwith Rs.1 lakh, IELTS certificate of their daughter, Adhaar Card and other documents of the children as also Rs.40,000/- which were deposited by the petitioner in her account. The said complaint was filed before respondent No. 2 but no action has been taken till date.

3. On receipt of advance notice, Mr. Manipal Singh Atwal, DAG, Punjab puts in appearance on behalf of respondent Nos. 1 to 3 while opposing the petition contends that the petitioner has very recently filed an application dated 23.06.2023 and immediately approached this Court, that too without availing of the alternative efficacious remedy of filing complaint before the Magistrate under section 156(3) of Cr.P.C. Disputed questions of fact as being stated, cannot be gone into in the present proceedings. As such, the present petition is liable to be dismissed.

4. Heard the learned counsel for the parties.

5. The prayer made in the present petition reads thus:

“The present petition may kindly be allowed and the official respondents may kindly be directed to take action against private respondents as per application dated 23.06.2023 (Annexure P-1) and for protecting the life and liberty of the petitioner, in the interest of justice.

AND

Any other order or direction which this Hon’ble Court may deem fit and proper in the peculiar facts and circumstances of the present case may also be issued, in the interest of justice.”

6. It would be gainful to refer to the judgment of Hon’ble The Supreme Court in **Sakiri Vasu vs. State Of U.P. And Others** (2008) 2 SCC 409, wherein it was held thus:

“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.

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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.” 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.

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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.

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.

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. 28. 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.” (Emphasis supplied)

7. Hon'ble The Supreme Court in **Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage**, (2016) 6 SCC 277 while relying on **Sakiri Vasu** (supra) had observed and held thus:

“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.”

8. Considering that there are disputed facts involved inasmuch as respondent No.4 has allegedly taken gold items, money and certain documents along with her, when she left the house, which cannot be gone into in the present proceedings. Still further, this Court finds that the petitioner has filed the present petition in haste, without following the procedure as envisaged under the Code of Criminal Procedure and the dictum laid down in the afore-referred judgments.

9. Resultantly, the present petition is dismissed.

10. However, insofar as the prayer made for protection of life and liberty of the petitioner is concerned, respondent No.2- SSP, Ferozepur is directed to look into the matter and take appropriate action, if required, in accordance with law.

(AMAN CHAUDHARY)
JUDGE

25.07.2023
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Whether reasoned/speaking? : Yes / No
Whether reportable? : Yes / No