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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-8767-2023
Date of decision: 06.12.2023

SHOMA AND ANOTHER

...Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Manoj K. Sharma, Advocate
for the petitioners.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. for directing respondents No.1 to 4 to safeguard the life and liberty of the petitioners at the hands of respondents No.5 to 11 with a further prayer to direct respondents No.3 and 4 to conclude the investigation expeditiously in FIR No.22 dated 28.02.2022, under Sections 364-A, 365, 506, 120-B, 148 and 149 of the IPC, registered at Police Station Verowal, District Tarn Taran, Punjab and submit the final report under Section 173 Cr.P.C. before the competent Court.

2. Learned counsel for the petitioners submitted that the aforesaid FIR was registered in the year 2022 and till date, challan has not been presented before the competent Court and fair investigation has not been conducted in the present case. He further submitted that necessary direction may be issued to the respondents-State for conducting fair and impartial investigation.

3. I have heard the learned counsel for the petitioners.
4. During the course of arguments, learned counsel for the petitioners has emphasized upon the prayer by which direction is being sought for concluding the investigation expeditiously and submitted that in the present case, the investigation has not been conducted fairly and impartially. The petitioners instead of approaching this Court straightaway could have filed an application before the learned Illaqa Magistrate in this regard.
5. Hon'ble Supreme Court in **Sakiri Vasu versus State of Uttar Pradesh and another, (2008) 2 SCC 409**, observed as under:-

“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 police officers concerned, and if that is of no avail, by approaching the Magistrate concerned 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 police officers concerned, 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.”

6. Thereafter, again the Hon'ble Supreme Court in **M. Subramaniam and another versus 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.”

7. In view of the aforesaid facts and circumstances of the present case, this Court is of the view that the petitioners could have filed an appropriate application before the learned Illaqa Magistrate instead of straightaway coming to this Court just at the drop of a hat.

8. Consequently, finding no merit in the present petition, the same is hereby dismissed. However, the petitioners are always at liberty to invoke their alternative remedy and file any appropriate application before the appropriate Court below and strictly in accordance with law.

06.12.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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