

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-46103-2023 (O&M)
Date of decision: 15.09.2023

Rajesh Kumar Sharma

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. H.P.S. Ghuman, Advocate for the petitioner.

VIKAS SURI, J.

[1] This is second petition under Section 482 Cr.P.C. *inter alia* seeking issuance of direction to the official respondents to proceed against ASI Kamaljeet Singh, respondent No.7 on the complaint dated 23.12.2022 (Annexure P-6) and phone recording (Annexure P-5) by registration of FIR under Section 7, 13 of the Prevention of Corruption Act, 1988 and under Section 166 IPC. The contents of the complaint reads as follows:-

“1. That I had filed a case under Section 138 in the Hon'ble Court against Ranbir Singh son of Surjit Singh R/O H.No. 39, Street No.-1, Sangatpura, Patiala gate, Nabha, this case is going on in the Hon'ble Court at Patiala.(photocopy of the case is attached).

2. That on 23.09.2022, the Hon'ble Court had declared Ranbir Singh as proclaimed Offender and it was ordered to take action under Section 174-A to the police of P.S Tripari, Patiala against Ranbir Singh S/O Surjit Singh.

3. That a period of about 2 months had come to end while making requests to the police of P.S Tripari, Patiala and in the month of December my request was heard by S.HO. PS Tripari, Patiala.

4. That the orders sent by the Hon'ble Court for registration of **F.I.R** under Section 174-A against Ranbir Singh, the S.H.O. P.S Tripari assigned this duty to A.S.I Kamaljeet Singh.

5. That Kamaljeet Singh told me that if I want to take action on the orders passed by the Hon'ble Court, I will have to spend some expenses, otherwise I will go on making rounds of the police station.. I consented to Kamaljit Singh and asked him to take action as per the orders of the Hon'ble Court against accused. I am ready to bear expenses. Kamaljeet A.S.I. asked me how much I can spend I told him that I can bear the expenses of the fuel of his vehicle, he laughed that fuel in the vehicle can be filled by the petrol pump free of cost, your task is big, from Munshi to S.H.O you will have to pay the fee. You are a good person, just give Rs. 30,000/-. I agreed as I had become tired of visiting the police station for 2 months.

6. That on 16.02.2022 I had talk with Kamaljeet Singh on mobile phone and he stated that in the evening he is coming with his team, you just show me the face of Ranbir Singh S/O Surjit Singh, rest work is ours.

7. That on 16.12.2022 at 4.50 P.M. kamaljeet Singh A.S.I had taken in custody Ranbir Singh S/O Kamaljeet Singh, in my presence.

8. That thereafter Kamaljeet Singh ASI gave me signal for finding another accused Raju Kumar S/O Ram Pal R/O Dulladi gate, New Balmik Basti Nabha nad by showing him to go ahead. I by reaching Dulladi gate Nabha started searching Raju Kumar S/O Ram Pal

9. I had talk with Raju Kumar S/O Ram Pal on phone and Raju Kumar told that he has gone to Patiala and he is coming back.

10. That I started waiting for Raju Kumar and on the other side i was having talk with ASI Kamaljeet Singh.

11. That after sometimes Kamaljeet Singh ASI reached at the spot and started waiting for Raju Kumar and Raju Kumar S/O Ram Pal did not turn up.

12. That ASI Kamaljeet Singh by making phone call to me called me for coming to him and told me that I have not brought the papers Raju Kumar S/O Ram Pal R/O Dulladi gate, Balmik Basti Nabha Raju Kumar S/O Ram Pal shall be picked up on Monday, where he can go.

13. That Kamaljeet Singh ASI asked me for paying Rs. 30,000/- as your person has been caught and give us our fee. On 16.12.2022 at 5.31 P.M. I gave Rs 20,000/- to Kamaljeet Singh ASI in presence of my one friend as at that time I was having so much of money Kamaljeet Singh said that F.I.R shall be registered if you pay the balance Rs. 10,000/- and Kamaljeet Singh by taking Rs. 20,000/-, took accused Ranbir Singh S/O Surjit Singh towards Patiala.

14. That on next day I got information that Ranbir Singh was taken by police and on the same day 16.12.2022, the brother of Ranbir Singh got him released, how it can happen. When the police had taken proclaimed offender Ranbir Singh S/O Surjit Singh why ASI Kamaljeet Singh did not make arrest of Ranbir Singh S/O Surjit Singh

15. That if arrest was made then at about 9.00 P.M. on 16.12.2022, why Ranbir Singh S/O Surjit Singh was at his residence at Nabha.

16. That on next day on 17.12.2022 Kamaljeet Singh ASI produces proclaimed offender Ranbir Singh, without recording FIR, in the court and gets the bail for Ranbir Singh S/O Surjit Singh and the orders of the Hon'ble Court have not been fully complied with.

17. That this all happened due to the misconduct of ASI Kamaljeet Singh and same makes the character of police dirty and it is contempt of the orders of the Hon'ble court.

I request you that appropriate legal action be taken against Kamaljeet Singh.

I shall be thankful”

[2] Learned counsel for the petitioner submits that the main grievance of the petitioner is that respondent No.7 had asked for a bribe of Rs.30,000/- for arresting Ranbir Singh, respondent No.8, a proclaimed person in a complaint filed under section 138 of the Negotiable Instruments Act. Out of the amount so settled, the petitioner had paid amount of Rs.20,000/- to respondent No.7.

[3] Learned counsel for the petitioner submits that action of the police in not registering FIR is against the mandatory provisions of Section 154 Cr.P.C. Thus, a direction be issued by this Court to the official respondents for registration of FIR.

[4] On advance notice, Mr. Sanish Girdhar, AAG, Punjab, has put in appearance on behalf of the official respondents-State.

[5] *Per contra*, learned State counsel strenuously opposed the prayer so made. He submits that the petitioner has rushed to this Court without first having availed of the alternate statutory remedy under Section 156(3) Cr.P.C. On the contrary, a false averment has been made in para No.24 of the petition that the petitioner has not been left with any other statutory remedy except to approach this Court for issuance of direction to the official respondents. It is further submitted that no indulgence is warranted by this Court in light of the dictum of the judgment by the Apex Court in ***Sakiri Vasu vs. State of U.P. and others, (2008) 2 SCC 409*** and ***M. Subramaniam and another vs. S. Janaki and another, (2020) 16 SCC 728***.

[6] Heard rival contentions of learned counsel for the parties.

[7] In *Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and others*, (2016) 6 SCC 277, the Apex Court while following the ratio of the judgment in *Sakiri Vasu's* case (supra) held as under:-

“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] The law laid down in *Sakiri Vasu's case* and *Sudhir*

Bhaskarrao Tambe's case (supra) was approved by a three Judge Bench of the Apex Court in ***M. Subramaniam and another vs. S. Janaki and another, (2020) 16 SCC 728.***

[9] In the light of the law laid down by the Apex Court, I am of the considered opinion that the petitioner ought to have first approached the learned Area (*Illaq*) Magistrate under Section 156(3) Cr.P.C. for redressal of his grievance, if any, before directly approaching this Court. It may also be noticed that the first petition seeking same relief, was dismissed as withdrawn on 28.07.2023 with liberty to file a fresh one with better particulars.

[10] Section 156(3) Cr.P.C. empowers a Magistrate to ensure proper investigation. For the said purpose, Magistrate is also vested the power of recommending change of Investigation Officer, so that a proper investigation is done in the matter. Even otherwise, ordinarily in case of a grievance arising out of non-registration of an FIR, the aggrieved can seek recourse to remedy by approaching the concerned Superintendent of Police under Section 154(3) Cr.P.C. or any other competent police officer in terms of Section 36 Cr.P.C. Even thereafter, if grievance remains, then one can take recourse to judicial proceedings by approaching the Magistrate of competent jurisdiction under Section 156(3) Cr.P.C. This Court is conscious of the fact that alternate remedy is not an absolute bar, but it is equally well settled that if there is an alternate remedy, the High Court ought not to ordinarily interfere. It is not the case of the petitioner that an exceptional circumstance arises in the present case so as to not to relegate the petitioner to avail alternate statutory remedy. On the contrary, as pointed out by learned State

counsel, the categoric stand pleaded in para No.24 of the petition is that the petitioner is not left with any other statutory remedy except to approach this Court, which is not the correct position in law.

[11] In view of the above discussion, the instant petition lacks merit and is liable to be dismissed and it would be open to the petitioner to avail statutory remedy, in accordance with law.

[12] Resultantly, the present petition is dismissed with the aforesaid observations.

September 15, 2023
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No