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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-9493-2023
Date of decision: 25.09.2023

SHIVA

...Petitioner

VERSUS

UT CHANDIGARH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Rahul Vohra, Advocate and
Mr. Shivjot S. Modgil, Advocate
for the petitioner.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of mandamus directing respondents No.1 to 4 to ensure protection of the life, liberty and property of the petitioner and his other family members at the hands of respondents No.7 and 8 and their other companions and to protect the petitioner and his parents from false implication.

2. Learned counsel for the petitioner submitted that the parents of the petitioner were the caretaker of House No.625, Sector 36-B, Chandigarh, which was duly given to them by one Chander Sharma @ Chander Mohini Sharma, who is residing in United Kingdom and now through some of the property dealers she is forcing the petitioner and his parents to evict the said house and in

fact respondents No.5 and 6, who are the police officials have given beatings to the petitioner at the behest of respondents No.7 and 8. He further submitted that life and property of the petitioner and his parents may be protected and also there is civil litigation pending qua the aforesaid house.

3. I have heard the learned counsel for the petitioner.

4. In the present case, the petitioner is seeking to invoke the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of mandamus. However, the petitioner did not even approach any of the authorities before filing the aforesaid writ. It is a settled law that before seeking a writ in the nature of mandamus, a petition/complaint has to be filed before the appropriate authority before approaching the High Court for invoking its extraordinary jurisdiction. However, during the course of arguments when the query was raised to the learned counsel for the petitioner, he has submitted that now he will file a complaint to the concerned Senior Superintendent of Police. This Court is of the view that the present petition is not maintainable at all.

5. Apart from the above, in case any such offence has been committed by any person and the petitioner is aggrieved of the same with regard to the beatings, then the petitioner can always approach the concerned Illaqa Magistrate for filing an appropriate complaint. The petitioner cannot straightaway approach the High Court at the drop of a hat and hurriedly and should invoke the jurisdiction of the Illaqa Magistrate, if so required and so desired, strictly in accordance with law.

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

7. In view of the aforesaid position wherein the petitioner has sought the intervention of this Court under Articles 226/227 of the Constitution of India without even approaching any of the authorities, the present petition is devoid of any merit and is hereby dismissed.

25.09.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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