

CRWP-10824-2023 (O&M)

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

131

CRWP-10824-2023 (O&M)

Date of decision:- 06.11.2023

PXXXXXX

... Petitioner

Vs.

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Prince Sarangal, Advocate for the petitioner.

Manisha Batra, J. (Oral)

1. By way of instant petition filed under Article 226 of the Constitution of India read with Section 482 of Code of Criminal Procedure, the petitioner (name withheld) is seeking indulgence of this Court for issuance of direction to the official respondents No.2 and 3 to conduct fair and impartial investigation in case bearing FIR No.233 dated 22.08.2023 registered at Police Station Sector 56, District Gurugram under Section 376(2)(n) of IPC, which was got registered by the petitioner as against respondent No.4 on the allegation that she had met respondent No.4 in the year 2019. Respondent No.4 had started maintaining physical relations with her and their marriage had also been settled. Subsequently, she suspected that respondent No.4 was maintaining relations elsewhere. He had avoided the questions put by her

and had forcibly subjected her to sexual intercourse in 20.08.2023 in a hotel at Gurugram. The investigation in the matter is going on. The petitioner has submitted that the investigation of the case is not being conducted by the official respondents in a fair and impartial manner and has further alleged that she is apprehending danger to her life and liberty at the hands of respondent No.4 Therefore, prayer has been made by her for giving direction to official respondents to provide police protection to her and also directing them to conduct investigation in a fair and impartial manner and further to arrest respondent No.4. She has submitted that she has filed representations, Annexures P-2 and P-3 in this regard but the same have also not been decided. Hence this petition.

2. Notice of motion.

3. On asking of the Court, Mr. Arjun Lakhanpal, Addl. A.G. Haryana, accepts notice on behalf of respondents No.1 to 3 and it is submitted by him that no direction can be issued to respondents No.2 and 3 to conduct investigation in a proper manner.

4. I have heard learned counsel for the petitioner and learned Additional Advocate General and has perused the record.

5. So far as the prayer made by the petitioner for directing respondents No.2 to 3 to conduct fair and impartial investigation and to take action on her representation is concerned, in the considered opinion of this Court, no such direction can be given to respondents No.2 and 3 by this Court as it is well settled proposition of law that the remedy for a person who is aggrieved of non-registration of an FIR or non-conducting

of investigation by the police in a proper manner is not to go to High Court under Article 226 of the Constitution of India but to approach the Magistrate concerned under Sections 156(3) of Cr.P.C. Reference in this regard can be made to ***Sudhir Bhaskar Rao Tambe Vs. Hemant Yashwant Dhage and others***, (2016)6 SCC 277 wherein the Hon'ble Supreme Court had observed so and had further held that it is the Magistrate who on filing of an application under Section 156(3) of Cr.P.C. and on being *prima facie* satisfied, can direct the FIR to be registered or if already registered, he can direct proper investigation to be done. He can also monitor the investigation, though he cannot investigate. Similar observations were made by Hon'ble Supreme Court in ***M. Subrahmaniam and another Vs. S. Janaki and another***, 2020(2) RCR (Criminal) 788. Reliance can also be placed upon the order dated 06.08.2021 passed by a co-ordinate Bench of this Court in CRM-M-31528-2021, ***Zaber Singh Gehlawat Versus State of Haryana and others*** wherein also a direction had been sought to be issued by the petitioner for commanding over the investigation to some independent agency on the ground that the investigation was not conducted in a proper manner. It was held that the remedy of the aggrieved person was not to come to the High Court but to approach the Magistrate concerned under Section 156(3) of Cr.P.C.

6. In view of the above discussed settled proposition of law, it is held that the prayer made by the petitioner for giving direction to respondents No.2 and 3 to conduct fair and impartial investigation or to

take action on her representation, which is filed on the similar grounds, cannot be granted being not maintainable. However, so far as the relief claimed by the petitioner for giving direction to respondents No.2 and 3 to provide protection her life and liberty as she is apprehending danger on her life and liberty at the hands of respondent No.4 is concerned, the same deserves to be granted as it is submitted by her that respondent No.4 is highly influential person having political clout and he has been extending threats to her by sending messages on her phone and she even been pressurized to withdraw the FIR.

7. Without going into the merits of the allegations as levelled by the petitioner, the petition is disposed of with a direction to respondent No.2 to look into the grievance of the petitioner as expressed in the representation dated 05.09.2023 (Annexure P-3) qua protection of her life and liberty at the hands of respondent No.4 and take appropriate action, if any, warranted in the circumstances.

06.11.2023
pooja saini

(MANISHA BATRA)
JUDGE

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