

117 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-644-2023
DECIDED ON: 9th JANUARY, 2023

NARINDER SHARMA @ NARINDER KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Neeraj Jain, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

The jurisdiction of this Court under Section 482 Cr.P.C. has been invoked for issuance of directions to respondents No.2 and 3 to decide the representation dated 07.12.2022 (Annexure P-3) in accordance with law.

From perusal of file as well as submissions made by the counsel for the petitioner, it is abundantly clear that in the case in hand the dispute is between the brothers with regard to vacation of kitchen and in that regard the petitioner has already moved a representation dated 07.12.2022 to respondent No.2. The petitioner instead of pursuing with the representation has rushed to this Court and filed the present petition

The petitioner instead of availing legal remedies, is before this Court for issuance of directions to the official respondents.

The Supreme Court has dealt with the issue in following judgments:-

409, held 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 Criminal Procedure Code. 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 Criminal Procedure Code 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) Criminal Procedure Code or other police officer referred to in Section 36 Criminal Procedure Code. 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) Criminal Procedure Code instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Criminal Procedure Code. Moreover he has a further remedy of filing a criminal complaint under Section 200 Criminal Procedure Code. 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 Criminal Procedure Code 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) Criminal Procedure Code before the Magistrate or by filing a criminal complaint under Section 200 Criminal Procedure Code and not by filing a writ petition or a petition under Section 482 Criminal Procedure Code.”

In *M. Subramaniam and another Versus S. Janaki and another*, (2020) 2 R.C.R. (Criminal) 788, held as under:-

5. (11 to 14) XX XX XX

“15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. 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.

*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 reopening of the investigation even after the police submits the final report, vide **State of Bihar v. J.A.C. Saldanha (SCC : AIR para 19)**.*

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.”

Under the Code of Criminal Procedure not only the remedies but complete machinery is provided. Though the alternative remedy is not an absolute bar but there is no case made out for carving out an exception in the present case to interfere under Section 482 of Cr.P.C.

For the grievance raised by the petitioner, the remedy lies under Sections 36 and 154(3) Criminal Procedure Code before the concerned police officers, and if that is of no avail, under Section 156(3) Criminal Procedure Code before the Magistrate or by filing a criminal complaint under Section 200 Criminal Procedure Code and not by filing a writ petition or a petition under Section 482 Criminal Procedure Code.

In view of discussions made hereinabove, this Court is of the considered opinion that once an alternative remedy is available with the petitioner, he directly approaches this Court by way of filing of present petition, which is an abuse of process of law.

In view of afore-said discussions, the present petition being devoid of any merit, is dismissed.

9th JANUARY, 2023

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**(SANDEEP MOUDGIL)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>