

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

2024:PHHC:074472-DB



(204/A)

CRM-M-6744-2022

Date of Decision: 24.05.2024

Jiwan Kumar Garg

--Petitioner

Versus

State of Punjab & others

--Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL.
HON'BLE MS. JUSTICE AMARJOT BHATTI.**

Present:- Mr. Krishan Singh, Advocate for petitioner.

Mr. Aditya Sharda, DAG, Punjab.

Mr. A.B.S. Sidhu, Advocate for respondents no.4 to 9
(through V.C).

LISA GILL.J (Oral)

Prayer in this petition is for directing respondents no.2 and 3 to consider the representation dated 20.10.2021 (Annexure P-1) submitted by petitioner to SHO, Police Station Sirhind, District Fatehgarh Sahib and to take appropriate action against respondents no.4 to 7 in accordance with law for commission of offences punishable under sections 467, 468, 471, 420, 380, 506, 34 IPC after registration of FIR against the said respondents.

2. In the representation dated 20.10.2021 it is stated that petitioner's factory is situated at Harbanspura. Loan facility had been availed from Punjab and Sind Bank while mortgaging the property. Authorized Officer of the Bank is stated to have taken possession of said factory on 11.03.2014 and at the time of taking possession Authorized Officer of the Bank had prepared an inventory of the goods lying in the factory premises like machinery, iron scrap and other articles but copy of

the same was not supplied to the petitioner despite various requests being made by him. In compliance of order dated 16.01.2015 passed by learned D.R.T-II, Chandigarh, Local Commissioner prepared an inventory on 17.03.2015 and took photographs in which details of machinery etc. is available. Officials of the respondent-Bank are claimed to have stolen and sold the iron scrap and other articles and thereafter misappropriated the amount. Petitioner, thus, sought action against the Bank officials in this regard.

3. Petitioner has also filed a complaint dated 13.11.2018 which is pending before the learned CJM, Fatehgarh Sahib. Copy thereof is attached as Annexure P-17. Allegations raised in the said complaint are identical to the extent that possession of the property in question was taken by the respondent-Bank on 11.03.2014 without preparation of any inventory or notice etc. and in a forcible manner. The petitioner is stated to have lodged a complaint with the S.S.P., Fatehgarh Sahib against the Bank officials for sealing and misappropriation of the valuable stocks of the company, however, when no action was taken, the aforementioned complaint was filed.

4. At this stage, we take note of the fact that this petition was adjourned on four occasions by learned Single Judge at request of learned counsel for the petitioner and ultimately this petition was directed to be heard along with CWP-1648-2022 vide order dated 19.05.2022. CWP-1648-2022 was filed by the petitioner for setting aside auction notice date 10.1.2022 issued by respondent-Bank in proceedings undertaken against the petitioner under SARFESI Act. Petitioner had also filed SA-152-2021 challenging the earlier auction notice dated 1.09.2021. In the above said

writ petition, petitioner also sought a direction to learned D.R.T.-I, Chandigarh to hear S.A-152-2021 and to postpone the date of auction after the date fixed before the said learned D.R.T.-I, Chandigarh. Said writ petition has been withdrawn today itself i.e. 24.05.2024 with liberty to petitioners to pursue S.A.-152-2021 while taking all pleas available to them. In view of withdrawal of the writ petition, it was open to this Court to direct placing of the present petition before the learned Single Bench for decision in accordance with law, however, in the given factual matrix where this petition was tagged with CWP-1648-2022 since May, 2022 and to obviate any further delay, we consider it just and expedient to dispose of the petition, wherein petitioner has admittedly filed a complaint dated 13.11.2018 in respect to identical allegations and same is pending adjudication and also keeping in view the judgement of Hon'ble the Supreme Court in ***Sakiri Vasu v. State of U.P., 2007(5) Law Herald (Supreme Court) 3910***, wherein it has been held as under:-

“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.”

5. In the instant case, complaint (Annexure P-17) already stands filed by the petitioner with the averments that he was constrained to file the said complaint once the police authorities never took any action on his representations. The said complaint is admittedly pending adjudication, though, learned counsel for the petitioner is unable to inform us about the stage thereof or furnish the zimni orders in the said complaint. The status as reflected on the website of the concerned court reveals the matter to be listed for 12.07.2024 for arguments.

6. Keeping in view the facts and circumstances as above, we do not find any ground to interfere in the present petition as the petitioner has already availed the remedy of filing a complaint and the present petition, in any case not being entertainable with no such extraordinary or exceptional circumstance pointed out to cause interference in this matter. This petition is, accordingly dismissed with liberty to the petitioner to pursue the

complaint already filed by him and pending before learned CJM, Fatehgarh Sahib while taking all pleas available to him in accordance with law. It is clarified that there is no expression of opinion on the merits of the matter.

(LISA GILL)
JUDGE

24.05.2024
lucky

(AMARJOT BHATTI)
JUDGE

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