

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M-22778-2017 (O&M)
Reserved on : 09.01.2024
Pronounced on : 16.01.2024

Parvesh Malhotra ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Ms. Doli Sharma, Advocate for
Mr. S. S. Majithia, Advocate
for the petitioner.

Mr. M. S. Nagra, AAG, Punjab.

MANISHA BATRA, J.

1. Prayer in this petition, filed under Section 482 Cr.P.C., is for issuing direction to respondent Nos. 2 and 3, i.e. Commissioner of Police, Ludhiana and SHO, Police Station Haibowal, respectively, to take appropriate legal action against respondent No. 4 to 6.
2. Brief facts of the case as culled out from the petition are that the present petitioner is a property dealer by profession. As a property dealer, the petitioner got effected a deal between respondent No.4-Manjit Kaur and SOI Global Business Pvt. Ltd., according to which, respondent No. 4 had to sell a house measuring 2000 sq. yards to said firm for a sale consideration of Rs. 3.5 crores, out of which, an amount of Rs. 3 crores was paid to her by the said firm. However, respondent No. 4 was not coming forward to get the sale deed executed and in connivance with respondent Nos. 5 and 6, was trying to sell the said property to someone else. The petitioner was also offered to join them in this act but he refused to do so. Respondent No. 4 had also sold a plot measuring 2280 sq. yards to petitioner for a sale consideration of Rs. 50

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Lakhs. However, instead of delivering the possession of said plot to petitioner, she had sold 500 sq. yards of land out of the said plot to some other person. It was further alleged that since the petitioner had refused to join hands with respondent No. 4 in her illegal acts, therefore, with an intent to exert pressure upon him, she in connivance with respondent Nos. 5 and 6 and some other persons barged into the house of the petitioner as on 16.01.2017; assaulted his father; damaged his house and outraged the modesty of his daughter and it was only on rescue alarm being raised by his father and daughter that respondent Nos. 4 to 6 along with other assailants had fled away from the spot while criminally intimidating them to face dire consequences. The further allegations as made by the petitioner are that though information of the incident was immediately given to respondent No. 3 by his father but no action has been taken at their end, despite repeated requests, so much so that his father had even fallen into depression and died on 07.04.2017 leaving a dying declaration. It was, therefore, prayed that appropriate direction be issued to respondent Nos. 2 and 3 to take legal action against respondent Nos. 4 to 6.

3. Learned counsel for the petitioner, while making submissions as already made in the petition, argued that despite the fact that a cognizable offence had been alleged by him in his complaint, no legal action was taken by the police against the culprits, who are private respondents herein. It is, therefore, prayed that the necessary directions be issued to respondent Nos. 2 and 3 to take appropriate legal action against the accused/respondent Nos. 4 to 6.

4. Upon notice, status report dated 15.12.2017, by way of affidavit of the Assistant Commissioner of Police (North), Ludhiana, had been filed on

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behalf of respondent Nos. 1 to 3, wherein it has been stated that as per allegations levelled in the complaint, on 16.01.2017 at about 02:50 PM, when father and daughter of the petitioner were present in their house, respondent Nos. 4 to 6 along with 3-4 unidentified persons forcibly entered into their house and while hurling abuses, the accused persons extended beatings to them. It was also alleged that the accused persons outraged the modesty of the daughter of the petitioner and also tried to kidnap her. During inquiry conducted by the SHO of the Police Station concerned, it had come on record that the location of the mobile phones of the aforesaid persons was found at Mansa. No truth was found in the complaint. As per inquiry, due to previous enmity, a false complaint was filed against respondent Nos. 4 to 6, which was ordered to be filed. Learned State counsel, in terms of this status report, has argued that there is no merit in the present petition and it deserves to be dismissed.

5. Due deliberations have been given to the contentions raised by the parties, besides going through the material placed on record.

6. This petition has been filed by the petitioner on the grounds and it was argued by his counsel that despite cognizable offences having been alleged against respondent Nos. 4 to 6, the police had neither registered any case nor had taken any legal action against the culprits. The core of the allegations of the petitioner as against respondent Nos. 4 to 6 is they had forcibly entered into their house on 16.01.2017 and had extended beatings to his father and daughter and also outraged the modesty of his daughter. Since despite all the efforts, no action was taken against the culprits, his father had died on 07.04.2017, due to the depression caused by the said incident. The incident pertains to the year 2017 and a period of about six years has elapsed

since then. As per status report filed on behalf of the official respondents, a detailed inquiry was conducted, wherein it was found that the location of the mobile phones of the alleged accused was at Mansa on the fateful day and not at Ludhiana. It also surfaced during inquiry that there was a previous enmity between the parties. As a result thereof, the complaint was filed by the police. The alleged incident had taken place in the house of the petitioner. All the accused persons with their names, addresses and even minute details about their background are known to the petitioner. Therefore, the fact of previous enmity, as concluded by the police inquiry, cannot be ruled out, though this is a matter of evidence that can be led and proved or otherwise only before the appropriate forum. The petitioner has placed on record copies of medical certificate and medical records received from a private hospital as Annexure P-8 (*colly.*), which cannot be looked into at this stage by this Court. If despite approaching the police, no action was being taken, the petitioner or his father could have approached the Magistrate by filing a complaint under Section 156(3) Cr.P.C. instead of rushing to this Court by way of filing the present petition under Section 482 Cr.P.C. Hon'ble Supreme Court in ***Aleque Padamsee and others vs. Union of India and others : 2007 (6) SCC 171*** has held that where a criminal offence is alleged and no action is being taken by the police, the appropriate remedy is in such a case for the complainant is to lay the complaint before the Magistrate concerned and the Magistrate is required to enquire into the same as provided in Chapter XV of the Cr.P.C. In ***Sakiri Vasu v. State of U.P. and others : 2008 (1) RCR (Criminal) 392***, Hon'ble Supreme Court has held that in case where police is not registering a FIR, the Magistrate has the power under Section 156(3) Cr.P.C. to order the police to register. It was held that the Magistrate has wide power to direct the

police to register, monitor the investigation and order reinvestigation or reopen the investigation on submission of a final report by the police, if the investigation is not done satisfactorily. It was held that the first remedy to the complainant in case the police is not registering the FIR is to approach the Superintendent of Police under Section 154 (3) Cr.P.C. or other police officers referred to in Section 36 Cr.P.C. and if despite approaching the Superintendent of Police or the officer referred to in Section 36 Cr.P.C. his grievance still persists then approach the concerned Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court. More so, the complainant has an alternative remedy of filing a criminal complaint under Section 200 Cr.P.C. Similar observations were made by a three Judges Bench of Hon’ble Supreme Court in *M. Subramaniam and another vs. S. Janki and another, 2020 (2) RCR (Criminal) 788*.

7. In view of the above discussion, this Court is of the considered opinion that no case has been made out by the petitioner to issue any direction to the official respondents. Accordingly, without expressing any opinion on the merits of the case, the present petition is dismissed.
8. However, the petitioner is granted liberty to avail his alternative remedy, if so advised, in accordance with law.

16.01.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes