

2024:PHHC:159716



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM M-17745-2023
Date of Decision: 02.12.2024

Narinder Kumar ...Petitioner
Versus
State of Punjab and others ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Krishan Singh Dadwal, Advocate
for the petitioner.

Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to direct the respondents No. 2 to 5 to submit the status report in complaint No. 465/SSP dated 24.03.2022. The petitioner has further prayed that after taking into account the action taken report dated 10.05.2022, submitted by respondent No. 3, the FIR may be ordered to be registered against the private respondents.
2. Learned counsel for the petitioner contended that the respondent No. 7 had entered into an agreement to sell with petitioner

and agreed to sell the house on 25.09.2018 for a sum of Rs. 25 lacs. After the execution of the agreement, the extensions were sought by respondents No. 7 and 8 and, ultimately, the sale deed (Annexure P-2) was executed by respondent No. 7. At the time of the sale deed, the petitioner was given the possession of only two rooms and the respondents No. 7 to 9 requested that they should be allowed to stay for 2/3 months as they were searching for an alternative accommodation. Thereafter, due to Covid 19 Pandemic, the petitioner did not ask for the possession. On 22.03.2022, the petitioner asked the private respondents to vacate the portion of the house, still, they requested for more time and requested the petitioner to come inside the house. While the petitioner was talking to them in the house, 2/3 police officials came at their house and inquired the matter from them. ASI Onkar Singh started misbehaving and threatening the petitioner and the matter was reported to the higher police officers. The petitioner also moved an application (Annexure P-3), which was marked to respondent No. 3. Respondent No. 3 found that the respondent No. 7 had committed the offence punishable under Sections 447 and 379 IPC. However, under the influence of respondents No. 7 to 9, no action was taken. Thereafter, the respondent No. 4 also inquired the matter and found that the case was of civil nature and since the matter was *sub-judice*, before the Civil Court, no further action was required. Learned counsel further submitted that even though the civil litigation was pending, but even

after taking the amount of Rs. 25 lacs, the private respondents had forcibly occupied two rooms in the house and they had cheated the petitioner. Learned counsel further argued that keeping in view the provisions of Chapter XII of the Code of Criminal Procedure and especially the provisions of Section 154 Cr.P.C., the police officials were under a legal obligation to register the FIR against the private respondents. Learned counsel also placed reliance on the law laid down by the Hon'ble Supreme Court in the matter of ***Lalita Kumari Vs. Government of U.P. and others, 2013(4) R.C.R. (Criminal) 979; AIR 2014 SC 187.***

3. On the other hand, learned State counsel vehemently opposed the submissions made by learned counsel for the petitioner on the ground that from the allegations levelled by the petitioner, a dispute of civil nature was disclosed and no cognizable offence was made out. Learned State counsel further submitted that the case was examined by the SSP, Hoshiarpur and he had ordered that the application filed by the petitioner may be filed. Learned State counsel further submitted that admittedly the parties have already availed their civil remedies, the present petition is not maintainable before this Court.

4. I have heard learned counsel for the parties and perused the record.

5. The Hon'ble Supreme Court of India has already examined the issue of maintainability of the writ petition or a petition under Section 482 Cr.P.C. for the purpose of registration of the FIR, when so many alternative remedies are already available in the statute. The Hon'ble Supreme Court has held in the matter of ***Sakiri Vasu Vs. State of U.P. and others, 2008 AIR Supreme Court 907*** 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”.

6. Still further, the Hon’ble Supreme Court of India has consistently held that the inherent powers under Section 482 Cr.P.C. should be used sparingly and in the rare cases, especially, when the statutory remedies are available. In the matter of **Shweta Bhadauria**

Vs. Ujjal Kumar Burdhan, (2012) 4 SCC 547, the Hon’ble Supreme Court has held that the power under Section 482 Cr.P.C. are broad, but must be used judiciously and not arbitrarily. Such powers should be exercised sparingly and only in extra ordinary cases. The intervention may be appropriate if the petition discloses extremely serious allegations and requires urgent intervention of the Constitutional Court. However, the Court should generally avoid interfering unless there is a clear case of gross misuse of the power. The allegations in the present case are also too wide, general in nature and unsubstantiated. Moreover, the parties have already availed their remedies before the Civil Court. Thus, the petitioner could very well avail his alternative remedies, which are already available to him before the Court of Magistrate.

7. At this juncture, without going into the merits of the case, this Court considers that the present petition is liable to be dismissed with liberty granted to the petitioner to avail his alternative remedies, if any, available to him. It is also made clear that this Court has not gone into the merits of the case and no expression made hereinabove shall tantamount to be an expression on the merits of the case.

8. The present petition alongwith all pending applications are dismissed and disposed off.

02.12.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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