

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-9327-2024

Date of decision : 25.04.2024

Vijay Singh Kataria

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Jai Vir Yadav, Senior Advocate with
Ms.Parul, Advocate for the petitioner.

VIKAS BAHL, J.(ORAL)

1. This is a civil writ petition filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of mandamus directing the respondents to constitute an SIT (Special Investigation Team) under the supervision of a Senior Police Officer of the State to enquire into the complaint (Annexure P-5) made by the petitioner to the SHO, P.S. Sector 14, Gurugram. Prayer has also been made for issuance of necessary directions to respondent no.2 to take appropriate legal action on the letter / complaint dated 19.10.2023 (Annexure P-6/A) made by the petitioner regarding the renewal of affiliation to AVR Public school.

2. In the present writ petition, primarily two prayers have been made. The first prayer made is for constitution of an SIT to enquire into the complaint dated 15.12.2023 (Annexure P-5) of the petitioner. A perusal of the complaint dated 15.12.2023 would show that the same was made to the SHO, Police Station Sector 14, Gurugram for registration of an FIR under Sections 420, 177, 468, 471 and 474 IPC. With respect to the said prayer, it would be relevant to note that the Hon'ble Supreme court has repeatedly

held that a petition under Article 226/227 of the Constitution of India or under Section 482 Cr.P.C. should not be entertained where the prayer is for registration of the FIR as there are several alternative remedies available to the petitioner. In this regard, reference can be made to the judgment of the Hon'ble Supreme Court of India in the case titled as ***Sakiri Vasu vs. State of U.P. and others***, reported as **2008(2) SCC 409** in which the Hon'ble Supreme Court had 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](#) 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.”

A perusal of the above said judgment would show that the Hon'ble Supreme Court has observed that in case, a person has a grievance that his FIR has not been registered by the Police Station, then he is first required to approach the Superintendent of Police. If despite approaching the Superintendent of Police, his grievance still persists, then he should approach the Magistrate under Section 156(3) of Cr.P.C. instead of rushing to the High Court by way of filing a writ petition or a petition under Section 482 of Cr.P.C. It is further observed that the said person also has the remedy of filing a criminal complaint under Section 200 of Cr.P.C. In para 27, it is stated that the High Court should discourage the practice of filing a writ petition or petition under Section 482 of Cr.P.C. for the said cause.

3. Reference can also be made to the judgment of the Hon'ble Supreme Court in ***M.Subramaniam and another vs. Janaki and another, Criminal Appeal no.102 of 2011***, decided on 20.03.2020 in which the Hon'ble Supreme Court had held as under:-

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5. While it is not possible to accept the contention of the appellants on the question of locus standi, we are inclined to accept the contention that the High Court could not have directed the registration of an FIR with a direction to the police to investigate and file the final report in view of the judgment of this Court in *Sakiri Vasu v. State Of Uttar Pradesh And Others*.

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6. *The said ratio has been followed in Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and Others, in which it is observed.*

“2. This Court has held in [Sakiri Vasu v. State of U.P.](#), that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under [Article 226](#) of the Constitution of India, but to approach the Magistrate concerned under [Section 156\(3\)](#) CrPC. If such an application under [Section 156\(3\)](#) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

3. *We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under [Section 156\(3\)](#) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.*

4. *In view of the settled position in Sakiri Vasu case, the impugned judgment of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under [Section 156\(3\)](#) CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned a change of the investigating officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police). Parties may produce any material they wish before the Magistrate concerned. The learned Magistrate shall be*

uninfluenced by any observation in the impugned order of the High Court.”

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8. *In these circumstances, we would allow the present appeal and set aside the direction of the High Court for registration of the FIR and investigation into the matter by the police. At the same time, our order would not be an impediment in the way of the first respondent filing documents and papers with the police pursuant to the complaint dated 18.09.2008 and the police on being satisfied that a criminal offence is made out would have liberty to register an FIR. It is also open to the first respondent to approach the court of the metropolitan magistrate if deemed appropriate and necessary. Equally, it will be open to the appellants and others to take steps to protect their interest.”*

A perusal of the said judgment would show that in the said case, High Court had entertained the petition filed under Section 482 of Cr.P.C. and directions had been issued to register the FIR and after considering the earlier judgment passed in Sakiri Vasu (Supra), the Hon'ble Supreme Court had set aside the order passed by the High Court observing that in case, such like petitions are entertained by the High Courts then the High Courts will be flooded with such petitions and will not be able to do any other work except dealing with such petitions and further observed that the complainant must avail his alternative remedy to approach the Magistrate concerned under Section 156(3) of Cr.P.C.

4. In view of the law laid down in the above said judgments, the present writ petition qua the first prayer is dismissed as not maintainable. However, liberty is granted to the petitioner to avail an alternate remedy in accordance with law.

5. The second prayer which has been made in the present writ petition is for taking appropriate legal action on the letter/complaint dated 19.10.2023 (Annexure P-6/A) made by the petitioner regarding the renewal

of affiliation of AVR Public School. A perusal of the Annexure P-6/A would show that the petitioner had lodged a grievance to the Chairman, CBSE that the renewal of affiliation, which has been granted to the AVR Public School, is not legal. The said prayer is primarily directed against the AVR Public School the renewal of affiliation granted to whom is sought to be cancelled and thus, AVR Public School is a necessary party in the present writ petition. However, the said school has not been impleaded as a party in the present writ petition. On a pointed query raised by this Court, learned senior counsel for the petitioner has fairly submitted that the extension of general affiliation has been granted vide certificate dated 15.07.2023 (Annexure P-4) and in fact they are seeking cancellation of the said certificate. A perusal of the prayers made in the writ petition would show that no challenge has been laid to the said certificate dated 15.07.2023 granting the said extension of general affiliation to the AVR Public School. Moreover, no averment has been made as to whether a statutory appeal/ revision lies against the order granting extension of affiliation to AVR Public school or not, although in paragraph 12 of the writ petition, it has been stated that the petitioner has no other remedy of appeal or revision but the said averments have not been made on the aspect as to whether any alternative remedy is available to the petitioner in challenging the order / extension dated 15.07.2023.

6 In view of the said facts and circumstances, even the second prayer made on behalf of the petitioner cannot be considered on the basis of the averments and prayers made in the present petition and thus, even with respect to second prayer, the present petition is dismissed, but however liberty is granted to the petitioner to file a fresh petition / appropriate

proceedings after giving full and better particulars and after making appropriate prayers and also after specifically stating as to whether there is any alternative remedy against the order / extension dated 15.07.2023.

(VIKAS BAHL)
JUDGE

April 25, 2024
Davinder Kumar

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