



CRWP-6376-2024

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

109

CRWP-6376-2024

Date of decision: 08.07.2024

I++++ and others

...Petitioners

V/s

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Mohd. Arshad, Advocate for the petitioners.

SUMEET GOEL, J. (Oral)

1. This is a criminal writ petition under Section Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus directing respondent Nos.2 to 4 to protect the life and liberty of the petitioners at the hands of private respondent Nos.5 to 14 and with further prayer to decide the representation dated 18.06.2024 (Annexure P-4) within a stipulated time period, in accordance with law.

2. Succinctly facts first, as spelt out in the present petition is that on 06.07.2023 at about 02:30/03:00 A.M., the petitioner No.2 and her daughter namely Zafarina (deceased) went out to the cattle shed which is located around two killas from their house. On the way back, respondent No.5 and co-accused Jamshed, in connivance with each other, dragged Zafarina near their bungalow and took her inside. Thereafter, the accused committed rape with the deceased Zafarina. On hearing screaming and shouting of her sister Zafarina, the petitioner No.1 woke up and on reaching the scene of occurrence, he saw her sister Zafarina crying. He immediately freed her sister Zafarina from the clutches of the aforesaid accused.

**CRWP-6376-2024****2**

However, respondent No.5 and co-accused Jamshed managed to run away from the spot. Since petitioner No.1 had suspicion that her sister Zafarina had consumed some poisonous substance, he took her sister Zafarina to J.P. Hospital on Bhimsika road whereinafter she was referred to Nalhad Medical College, Nuh wherein she breathed her last. On the statement of petitioner No.1, FIR No.362 dated 06.07.2023 under Sections 376-D, 342, 306 and 506 of IPC was registered at Police Station Sadar Nuh against respondent No.5 and co-accused Jamshed (copy whereof has been appended as Annexure P-1 with the present petition). Investigation ensued. Post mortem of the deceased deceased Zafarina was conducted. The doctor who conducted the post mortem opined that the deceased had died by strangulation and not by consuming poison. Furthermore, during the course of investigation and on the basis of available evidence, it was found that deceased Zafarina, while doing the aforesaid wrong acts, was caught by her father Deen Mohammad and brother Imran and on account of this, she had been murdered by them by strangulation. It was further alleged that investigating officer without ascertaining the facts, held petitioner No.1 and his father, accused of murder of deceased Zafarina. Dissatisfied with the investigation conducted by the Police, the petitioners have approached the Director General of Police, Haryana (respondent No.2 herein) and submitted representation (Annexure P-3) to investigate the matter in proper manner and to initiate legal action against the private respondents as they had threatened the petitioners with dire consequences. The petitioners apprehended that the private respondents would cause harm to them, therefore, they filed a complaint/representation dated 18.06.2024 (copy whereof has been attached as Annexure P-4 with the



CRWP-6376-2024

3

present petition) before respondent Nos.2 to 4 but to no avail which necessitated the petitioners to approach this Court for protection of their life and liberty as also to decide their representation(s).

3. Learned counsel for the petitioners has argued that the complaint clearly brings out the factum of cognizable offence(s) having been committed and hence the Police ought to have registered an FIR but the same has not yet been done. Learned counsel has further argued that a representation/complaint dated 18.06.2024 was also made to the Director General of Police, Haryana for protecting the life and liberty of the petitioners at the hands of private respondents as also taking legal action against the persons named in the above-said complaint/representation but no action has yet been taken. The true translated copy of the prayer clause of the said representation/complaint reads as under:-

“The thing is that almost 8 months have passed since the case was registered but the local police has arrested Jamshed about 1 month ago. But Mujahid has not been arrested yet.

That accused persons are domineering type of person and still are roaming freely in the village. And they are saying that out hold is till the top. And the police cannot harm us. The culprits roam around with illegal weapons in their hands.

That I am not satisfied with the action of the local police in the above case. Because the police is connived with the accused and they are making me accused. Therefore, I shall be very thankful to you if the investigation of the above case is conducted outside Nuh district.”

4. It has been argued that after the aforesaid representation/complaint, no action has yet been taken. Thus, the petitioners have been constrained to file the instant petition seeking the prayer(s) as indicated hereinabove. Learned counsel for the petitioners has further argued



CRWP-6376-2024

4

petitioners met the higher officials and brought the matter in their knowledge, but no action has been taken.

5. I have heard learned counsel for the petitioners and have perused the paper-book.

6. It would be apposite to refer herein to a judgment of this Court passed in **CRM-M-11075-2024** titled as ***Talima vs. State of Haryana and others***, decided on 12.03.2024; relevant whereof reads as under:-

“10. As a result of above discussion, the following postulates emerge:

I) Ordinarily, an applicant/complainant ought to approach, in the first instance, the Court of Illaqa/Jurisdictional Magistrate to seek prayer(s) for issuance of direction(s) for registration of FIR, monitoring of investigation in FIR as also other prayers of akin nature.

II) An Illaqa/Jurisdictional Magistrate has, by virtue of section 156(3) of Cr.P.C. of 1973, the requisite powers and jurisdiction to grant plea(s) for issuance of direction(s) for registration of FIR, monitoring of investigation in an FIR, change of investigating officer and prayer(s) of alike nature.

III) In a given case, if the facts/circumstances of such case so warrant, the High Court is well within its jurisdiction to entertain and consider plea(s) seeking registration of FIR, monitoring of investigation in a FIR, constituting an SIT (Special Investigating Team), change of investigating officer & all such prayer(s) of such kind and nature. However, it would be prudent that an applicant/complainant, while seeking to invoke the jurisdiction of the High Court under Section 482 of Cr.P.C. in the first instance seeking prayer(s) of above nature, shows sufficient cause for not having approached the Illaqa/Jurisdictional Magistrate in the first instance.

IV) The High Court, in its inherent jurisdiction under Section 482 of Cr.P.C has unbridled, unfettered and plenary powers. The only restriction on exercise of such powers is self-restraint. No inflexible and comprehensive guidelines can conceivably be enumerated governing the exercise of these intrinsic powers by High Court under Section 482 of Cr.P.C. There is no gainsaying that the nature, mode and extent of such exercise of powers by High Court under Section 482 of Cr.P.C shall depend upon the judicial discretion exercised by the High Court in the facts and circumstances of a given case.”



The abovesaid principles would also apply in case of a criminal writ petition preferred under Articles 226/227 of Constitution of India.

7. The prime prayer made in the petition is for issuance of directions for initiation of appropriate action against the private respondents in view of representation dated 18.06.2024 made to Director General of Police, Haryana. The petitioners (herein) who claims that the private respondents extended threats to them and exerting pressure upon the Police to falsely implicate the petitioners in the present case, has chosen to invoke the inherent jurisdiction of this Court under Article 226 of the Constitution of India without even referring to, much less disclosing any impediment being faced by them in approaching the concerned Illaqa/Jurisdictional Magistrate by invoking Section 156(3) of Cr.P.C., 1973. Section 156 (3) *ibid*, empowers a Magistrate to direct for registration of FIR as also to monitor the Investigation thereof. In this regard, reference may be made to judgment of the Hon'ble Supreme Court in "***Sakiri Vasu versus State of U.P and others***2008 (2) SCC 409".

8. In the considered opinion of this Court, the petitioners ought to have approached the concerned Illaqa/Jurisdictional Magistrate in the first instance who is well empowered to grant the substantial relief(s) sought for in the present petition. As regards protection of life and liberty of the petitioners, no such accentuating facts/circumstances have been brought forward by the petitioners which may warrant interference by this Court under Article 226 of the Constitution of India. It is, thus, indubitable that said apprehension expressed on behalf of the petitioners is nothing but a bald assertion.



CRWP-6376-2024

6

9. Accordingly, this Court does not find the present case a fit one for exercise of its jurisdiction under Article 226 of the Constitution of India. The instant petition filed under Article 226 of the Constitution of India stands dismissed. Needless to state herein that the petitioners, if so advised, will be at liberty to file an appropriate petition under Section 156(3) of Cr.P.C., 1973 for redressal of their grievance(s), in accordance with law.

(SUMEET GOEL)
JUDGE

July 08, 2024
Ajay

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