

Sr. No.223

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

**CRM-M-58127-2023 (O&M)
Reserved on: 05th April, 2024
Date of decision: 18th April, 2024**

DHARAM PAL AND ANR.Petitioners

versus

STATE OF HARYANA AND OTHERSRespondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Chander Pal Tiwana, Advocate
for the petitioner.

Mr. Amrik Singh Narwal, D.A.G., Haryana.

HARPREET KAUR JEEWAN, J.

1. The petitioners have filed the present criminal petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as “the Code of 1973”) for issuance of an appropriate order or direction to the respondents No.1 to 4 to conduct fair and proper investigation of complaints dated 04.06.2023 (Annexure P-1), 08.06.2023 (Annexure P-3), 19.09.2023 (Annexure P-4 & P-5) and its subsequent reminder dated 03.10.2023 (Annexure P-6), submitted by the petitioners against respondents No.5 to 32 and case FIR No. 170 dated 04.06.2023, registered against the petitioner and his family members under Sections 354, 354-A, 354-D, 323, 341, 452, 506, 149 of I.P.C. at Police Station Sadar, Kaithal, District Kaithal, under the supervision of some senior officer/Special Investigative Team (SIT) of Haryana Police, as respondents No.1 to 4 are not taking any action on the complaints made by the petitioner.

2. Learned counsel for the petitioners contends that Amit s/o petitioner No.1-Dharam Pal and “PXX”, daughter of respondent No.13-Jai Bhagwan were

students of the same school. The respondents had doubts about some mutual relationship between the son of petitioner No.1 and daughter of respondent No.13. The family members of the private respondents are in majority in the village, whereas, the family of petitioner No.1 is in minority. On 04.06.2023, the private respondents detained the son of petitioner No.1, however, he could manage to escape. Thereafter, private respondents No.5 to 32 gathered in front of the house of the petitioners and inflicted injuries to the petitioners. The petitioners reported the matter to the Police but contrary to that, the Police registered FIR No.170 dated 04.06.2023 against the petitioners and their family members i.e. against 11 persons, on a false complaint dated 04.06.2023 (Annexure P-1), moved by "PXX", daughter of respondent No.13. Final report/challan under Section 173 of the Code of 1973 has been presented in the said FIR (Annexure P-2).

2.1. Learned counsel for the petitioners further submits that regarding the occurrence dated 04.06.2023, the brother of petitioner No.1 namely Rampal, had moved a complaint dated 08.06.2023 to the Superintendent of Police, Kaithal (Annexure P-3) along with the medical record. With the intervention of the local Panchayat, the petitioners were forced to accept the one-sided compromise.

2.2 It is further contended that on 19.09.2023, when petitioner No.2-Toshi was returning from the hospital after taking medicines, the official respondents misbehaved with her and outraged her modesty, as such, the matter was reported to the Police by way of a written complaint dated 19.09.2023 (Annexures P-4 and P-5) but the Police did not take any action against the accused persons. Again a reminder/complaint dated 03.10.2023 (Annexure P-6) was submitted by petitioner No.2 to respondent No.3 but no action was taken against the accused persons.

3. Official respondents have filed status report dated 18.01.2024 by way

respondent No.3, along with Report of Complaint Clerk (Annexure R-1), DDR No.18, Police Station Sadar Kaithal (Annexure R-2) and Report of Deputy Superintendent of Police, HQ Kaithal (Annexure R-3).

3.1 While referring to the status report dated 18.01.2024, the learned State counsel has refuted the claim of the petitioners regarding submission of representation dated 08.06.2023 (Annexure P-3) on the basis of the report of the complaint Clerk of respondent No.3 (Annexure R-1). As per the details given in the status report, the learned State counsel contends that all the representations given by the petitioner have already stood disposed of.

4. I have considered the aforesaid submissions and perused the paper book.

5. As per the status report dated 18.01.2024, the learned State counsel has denied having received the representation dated 08.06.2023 (Annexure P-3); however, a representation dated 06.06.2023 having been moved by Rampal s/o Harikesh (brother of petitioner No.1), has been admitted to have been received in the Police Station. On the basis of the said representation, DDR No.30 dated 06.06.2023 is stated to have been registered. Another DDR No.18 dated 05.06.2023 (Annexure R-2) is stated to have been registered and it has been alleged that after recording the statement of injured Angrejo Devi and Rampal (brother of petitioner No.1), the allegations were found to be false and the injured Angrejo Devi and Rampal were found to be the aggressive party in the occurrence dated 04.06.2023, regarding which, FIR No.170 dated 04.06.2023 was already registered against the petitioners and others.

6. As per the status report, regarding the representations dated 19.09.2023 (Annexures P-4 and P-5), preventive action is stated to have been taken

however, it has been alleged by State that the allegations levelled by petitioner No.2 in the said representations (Annexures P-4 and P-5), were found to be false, as such, after verification, the said representations were disposed of.

7. From the facts on record, it transpires that FIR No.170 dated 04.06.2023 is stated to have been registered against the petitioners. The representations filed by petitioner No.1 and his brother are stated to have been inquired into during the investigation of FIR No.170 dated 04.06.2023.

8. The petitioners are aggrieved by the inaction on the part of the official respondents in the said representations.

9. No doubt, this Court has inherent powers under Section 482 of the Code of 1973 to issue directions where the FIR has not been registered on the basis of a complaint/representation filed by all the petitioners. However, these powers are to be exercised keeping in view the following purposes:-

- (a) to give effect to any order passed under the Code of 1973; or
- (b) to prevent abuse of process of any Court; or
- (c) to otherwise secure the ends of justice.

10. The Magistrate has requisite powers to direct for registration of FIR, monitor investigation and also order to change the Investigating Officer, as provided under Section 156(3) of the Code of 1973, which has been well-explained by the Hon'ble Apex Court in **Sakiri Vasu vs. State of U.P. and others, 2008(2) SCC 409** and in **Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhange & Ors., 2016(6) SCC 277** as well as by a 3-Judge Bench of the Hon'ble Apex Court in **M. Subramaniam and another vs. S. Janaki and another 2020(16) SCC 728**.

10.1 The Hon'ble Apex Court in **Sakiri Vasu (supra)** held as under:-

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17. In our opinion Section 156(3) Criminal Procedure Code is wide enough to include all such powers in a Magistrate which are necessary for ensuring

a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Criminal Procedure Code, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. *It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.*

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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 Criminal Procedure Code. 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 Criminal Procedure Code before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

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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 Criminal Procedure Code 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) Criminal Procedure Code before the Magistrate or by filing a

criminal complaint under Section 200 Criminal Procedure Code and not by filing a writ petition or a petition under Section 482 Criminal Procedure Code.

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.

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10.2 The Hon’ble Apex Court in **Sudhir Bhaskarrao Tambe (supra)** held as under:-

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*5. This Court has held in **Sakiri Vasu vs. State of U.P. & Others, reported in AIR 2008 SC 907**, that if a person has a grievance that his F.I.R. 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 concerned Magistrate under Section 156(3), Cr.P.C. If such an application under Section 156(3), Cr.P.C. is made and the Magistrate is, prima facie, satisfied, he can direct the F.I.R. 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’s 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.*

6. 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 concerned Magistrate under Section 156(3), Cr.P.C. 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.

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10.3 The 3-Judge Bench of the Hon'ble Apex Court in **M. Subramaniam** (**supra**) held as under:-

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6. The said ratio has been followed in **Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and Others, (2016) 6 SCC 277**, 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, 1973. If such an application under Section 156(3) CrPC, 1973 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, 1973 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.

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11. Challan/final report under Section 173 Cr.P.C. has already been presented on the basis of a complaint given by the daughter of Jai Bhagwan (private respondent No.13) against the petitioner. The petitioners are aggrieved of non-registration of the FIR on the basis of the complaint dated 08.06.2023 (Annexure P-3) moved by Rampal (brother of petitioner No.1), complaint dated

19.09.2023 (Annexure P-4) moved by Toshi (petitioner No.2) and its subsequent reminder dated 19.09.2023 (Annexure P-5). The petitioners have not approached the Court of Area Magistrate at the first instance seeking registration of FIR on the basis of aforesaid complaints.

12. In view of the ratio of decision of this Hon’ble Apex Court in Sakiri Vasu (supra) and Sudhir Bhaskarrao Tambe (supra) as well as the decision of the three Judge Bench of the Hon’ble Apex Court in M. Subramaniam (supra) and also considering the fact that no circumstances have been brought forward by the petitioners warranting interference by the Court under Section 482 of the Code of 1973, no grounds are made out to exercise the jurisdiction under Section 482 of the Code.

13. Consequently, the present petition, filed under Section 482 of the Code, stands dismissed.

14. However, nothing expressed hereinabove, would be construed to be an expression of opinion on the merits of the case.

15. The petitioners are at liberty to avail appropriate remedy for redressal of their grievances, in accordance with law.

16. Pending miscellaneous applications, if any, shall stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

18th April, 2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No