

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

CRM-M-61352-2023

Reserved on: 01.02.2024

Pronounced on: 08.02.2024

2024:PHHC:017802

DALJIT SINGH AND ANOTHER

. . . . PETITIONERS

Vs.

STATE OF PUNJAB AND OTHERS

. . . . RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Pranav Handa, Advocate, for the petitioners.

Mr. Karunesh Kaushal, AAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioners pray for issuance of direction by this Court to respondents No.1 to 3 i.e., State of Punjab, Sr. Superintendent of Police, Jalandhar Rural, Jalandhar; and Station House Officer, Police Station Patara, Jalandhar Rural, Jalandhar to conduct fair, proper and speedy investigation in the representation dated 06.10.2023 (Annexure P1) and for registration of the FIR against respondent No.4.

2. The grievance of the petitioners is that they made representation (Annexure P1) to SSP, Jalandhar Rural, Jalandhar and SHO, Police Station Patara, Jalandhar Rural, Jalandhar to take action in accordance with law and for registration of FIR against respondent No.4, who embezzled and misappropriated payment of water/sanitation bills, water tank bills and electricity bills of village Budhiana, District Jalandhar to the tune of ₹10 lakh, duping entire residents of the village. Petitioners also made reference of the earlier complaints made to the Deputy Commissioner, Jalandhar and

holdings of the inquiries etc., despite which no action has been taken against respondent No.4.

3. Since petitioners approached this Court for getting an FIR registered against respondent No.4, without approaching Jurisdictional Magistrate, this Court vide order dated 7th December, 2023 asked Ld. counsel for petitioner to assist this Court in the light of law laid down by Hon'ble Apex Court in '*Sakiri Vasu Vs. State of U.P. and others*' (2008) 2 SCC 409; and '*M. Subramaniam and another Vs. S. Janaki and another*' (2020) 16 SCC 728.

4. In response to the above, ld. counsel for the petitioner has referred to a decision of Hon'ble Supreme Court rendered in *SLP (Crl.) No. 5883 of 2020* tiled as '*Sidhu Janak Nagargoje Vs. The State of Maharashtra and others*' decided on 08.08.2023, wherein Hon'ble Supreme Court referred to the Constitutional Bench judgment of Hon'ble Supreme Court rendered in "*Lalita Kumari Vs. State of Uttar Pradesh and others*" (2014) 2 SCC 1 and held that registration of the FIR is mandatory under Section 154 CrPC, if the information discloses commission of cognizable offence. After holding so, the appeal filed against the order of the High Court, which had declined the Writ Petition seeking direction to register the FIR, was allowed.

5. This Court is receiving large number of such petitions filed either under Section 482 CrPC or under Article 226 of the Constitution of India seeking issuance of direction to the Police authorities to register the FIR and conduct investigation, without even approaching the Jurisdictional Magistrate. Ld. State counsel was accordingly asked to assist this Court as to whether this Court should issue directions, when a petitioner has

approached this Court despite having alternative remedy of approaching Jurisdiction Magistrate.

6. Ld. State counsel has referred to decisions of Hon'ble Supreme Court rendered in *Sakiri Vasu (Supra)* and *M. Subramaniam and another (Supra)*, so as to contend that petitioners should first approach the Jurisdictional Magistrate instead of straightway coming to this Court.

7. I have considered submissions of both the sides.

8. In the case of *Lalita Kumari (Supra)*, the issue considered by Constitutional Bench of Hon'ble Supreme Court was as to whether a police officer is bound to register a First Information Report upon receiving any information relating to commission of a cognizable offence under Section 154 CrPC; or the Police Officer has the power to conduct a preliminary inquiry in order to test the veracity of such information before registering the same. Hon'ble Supreme Court, while holding the registration of the FIR immediately as mandatory, if the information discloses commission of offence, concluded and issued directions as under: -

“Conclusion/Directions:

111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if

cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR, if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case.

The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

10. As will be evident from aforesaid directions, these were meant for the police officers. However, the question about the option before a person, who approaches the police officer for getting an FIR registered for a cognizable offence and the police does not perform its duty in doing so, then what remedy the said person has, was not considered in the aforesaid

case.

11. The issue as involved in the present case, was considered at length by Hon'ble Apex Court in the case of ***Sakiri Vasu (Supra)***, wherein It was held 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 or under Section 482 Cr.PC, but to approach the Magistrate concerned under Section 156 (3) CrPC. It will be apt to reproduce the observations made by Hon'ble Supreme Court in this regard, which are as under:

“11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156 (3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

12. Thus, in ***Mohd. Yousuf vs. Smt. Afaq Jahan & Anr. JT 2006(1) SC 10***, this Court observed:

“The clear position therefore is that any judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of

entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigating under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.”

*13. The same view was taken by this Court in **Dilawar Singh vs. State of Delhi JT 2007 (10) SC 585** (vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C.*

14. Section 156 (3) states:

“Any Magistrate empowered under Section 190 may order such an investigation as abovementioned. The words ‘as abovementioned’ obviously refer to Section 156 (1), which contemplates investigation by the officer in charge of the Police Station.”

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr.P.C. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

*16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power, and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order re-opening of the investigation even after the police submits the final report, vide **State of Bihar vs. A.C. Saldanna AIR 1980 SC 326** (para 19).*

17. In our opinion Section 156(3) Cr.P.C. 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) Cr.P.C., 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.”

Concluding Part:

“24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.

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?"

[underlined portion emphasized]

12. Later on, a three Judges Bench of Hon'ble Supreme Court again considered same question in the case of **M. Subramaniam and another (Supra)** and reiterating the same legal position, held as under: -

*"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** in which it has been inter alia held as under:"*

[Para N: 11 to 18 quoted]

*"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. 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 (2016) 6 SCC 277 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.”

[underlined portion emphasized]

13. Taking same view in *M/s Radha Krishan Industries Vs. State of Himachal Pradesh & Ors., Civil Appeal No. 1155 of 2021 (Arising out of SLP(C) No 1688 of 2021) decided on 20.4.2021*, Hon’ble Supreme Court held as under: -

“The principles of law which emerge are that :

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person; (2003) 2 SCC 107

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of

the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

[underlined portion emphasized]

14. Thus, legal position, which emerges is that though the existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution, but a writ petition can be entertained only in exceptional circumstances where there is:

- (i) a breach of fundamental rights;
- (ii) a violation of the principles of natural justice;
- (iii) an excess of jurisdiction; or
- (iv) a challenge to the vires of the statute or delegated legislation.

It further emerges that if a person has a grievance that despite commission of a cognizable offence, his FIR has not been registered at the Police Station, or that a proper investigation has not been done by the police, he cannot be allowed to rush to the High Court by filing a Writ Petition or a petition under Section 482 CrPC. The High Court should not encourage this

practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternate remedy, firstly, under Section 154(3) and Section 36 CrPC before the concerned police officer and if that is of no avail, then to approach the concerned Judicial Magistrate under Section 156(3) CrPC. Moreover, any such aggrieved person has a further remedy of filing criminal complaint under Section 200 CrPC.

15. In view of the consistent legal position as repeatedly explained by Hon’ble Supreme Court, no advantage can be given to the petitioner of *Sindhu Janak Nagargoje’s case (supra)*.

16. In the present case, as has already been noticed, petitioners have approached this Court for issuance of directions to get the FIR registered against respondent No.4, without approaching the Jurisdictional Magistrate. As such, the present petition is hereby disposed of by holding that no such directions are called for. However, petitioners are relegated to the alternative remedy so as to approach the Jurisdictional Magistrate or to the other remedies available to him, in accordance with law.

08.02.2024

Vivek

(DEEPAK GUPTA)
JUDGE

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes