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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 3486/2023**

BRIJESH KUMAR

.....Petitioner

Through: Mr. Mahesh Kumar Tiwari and Mr.
Bishnu Prasad Tiwari, Advocates.

versus

THE STATE NCT OF DELHI AND ANR

.....Respondents

Through: Mr. Amol Sinha, ASC (Crl.) with Mr.
Kshitiz Garg, Mr. Ashvini Kumar and
Ms. Chavi Lazarus, Advocates for the
State.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

07.10.2024

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1. By way of the present petition, the petitioner seeks the following direction:

a) Issue a writ of Mandamus, or any other writ or direction/ directions thereby the respondents may kindly be directed to register an FIR in the present case and investigation of the case may kindly be handed over to the Crime Branch of the Delhi Police.

2. The present petition has been filed in the context of an incident in which body of the deceased was found hanging in the rented premises on 20.06.2023.

3. The petitioner has filed the present petition under Article 226 of the Constitution, being aggrieved by alleged failure on the part of the police to register an FIR. Learned counsel for the petitioner



submits that despite the specific complaint made by the petitioner and the family, the police have arbitrarily assumed it to be a case of suicide and have therefore, not registered an FIR. It is further submitted that the police have inquired into the matter only to support the narrative of suicide while ignoring glaring evidence that clearly suggests homicide. Accordingly, it is the submission that the investigating agency is not conducting a fair, honest or complete investigation; and therefore it is urged that the case be transferred to the Crime Branch of the Delhi Police or to any other appropriate agency as well as prays to seek registration of the FIR. In support of the abovementioned submissions, the reliance has been placed on decision of the Supreme Court in the case of Awungshi Chirmayo & Anr. v. Government of NCT of Delhi and Others reported as **2024 SCC OnLine SC 377**.

4. Learned ASC (Crl.) for the State submits that the petitioner's prayer to seek registration of the FIR is in teeth of the decision of the Supreme Court in Sakiri Vasu v. State of U.P. & Ors. reported as **(2008) 2 SCC 409**. Accordingly, it is submitted that in view of the above decision the present petition is not maintainable.

5. I have heard the parties and perused the material on record.

6. It is settled position of law that the writ petition should not be entertained when the petitioner has an alternative remedy available under the Code of Criminal Procedure to get an FIR registered. The Supreme Court in the case of Sakiri Vasu(*supra*) has in unequivocal terms held 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 CrPC, then he can approach the



*Superintendent of Police under Section 154(3) CrPC 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) CrPC 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.***

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*15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. **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.***

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17. In our opinion Section 156(3) CrPC 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 FIR 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) CrPC, 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.

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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) CrPC or other police officer referred to in Section 36 CrPC. 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) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?”*

(emphasis supplied)

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.”*



7. Likewise, the Supreme Court in the case of Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage reported as (2016) 6 SCC 277 has also held that if a person has a grievance that the police have not registered his complaint, or having registered it, they have not investigated it properly, then the aggrieved person's remedy 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) of the Code. As such, the petitioners reliance on the decision in *Awungshi Chirmayo (supra)* is also misplaced inasmuch as in the said case the FIR was already registered and the prayer was only for the transfer of the investigation. In Sudhir Bhaskarrao Tambe (supra) the Supreme Court has observed:

“2. This Court has held in Sakiri Vasu v. State of U.P. [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440] , 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.”*

8. Recently, in Radha Krishan Industries v. State of H.P. reported as (2021) 6 SCC 771, the Supreme Court has reiterated and summarised the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. The Supreme Court has observed:

“28. 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.

(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.

(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.”

9. The principle that emerges from the above judgments is that the extraordinary writ jurisdiction should be invoked only in exceptional circumstances or specific situations. In the present case, the petitioner is yet to exercise and exhaust the alternate remedy available to him under provisions of the Code.



10. Considering the settled position of law in above-mentioned judgements, this court finds no reason to entertain the present petition any further. As such, the petition is dismissed with liberty to the petitioner to approach the Court of the concerned learned Judicial Magistrate.

MANOJ KUMAR OHRI, J

OCTOBER 7, 2024/da