

(2022-2)206 PLR 787
PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Vikas Bahl

HUKAM SINGH – Petitioner,

Versus

STATE OF HARYANA and others – Respondents.

CRM-M-5230-2016

(i) Criminal Procedure Code, 1973, S. 482 – Petition filed under Section 482 for issuance of appropriate directions to the state to take action against private respondent who have taken away the vehicle of the petitioner forcibly – Petition filed under Section 482 of Cr.P.C. is not maintainable and deserves to be dismissed on the said ground alone – Banking – Repossession. [Para 11]

(ii) Criminal Procedure Code, 1973, S. 482 – 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. [Para 7]

Cases referred to:

1.2008(2) SCC 409 , *Sakiri Vasu v. State of U.P.* .

2.2020 S.Cej 352, 2020 PLRonline 6303 (SC), *M. Subramaniam v. S. Janaki*

Mr. Sahil Chowdhary, for Mr. Shiv Kumar, for the petitioner. Mr. Munish Sharma, AAG, Haryana.

Mr. Vijiyesh Malhotra, for Er. Sandeep Suri, Advocate, for respondent No.4.

Vikas Bahl, J. (Oral) – (17.05.2022) – The present petition has been filed under Section 482 of the Code of Criminal Procedure for issuance of appropriate directions to respondents No.2 and 3 to take action against respondent No.4 who have taken away the vehicle of the petitioner forcibly and also to look into the representation dated 26.05.2015 (Annexure P-2), filed by the petitioner, which is still pending with respondent No.2.

2.On 26.05.2016, a Co-ordinate Bench of this Court was pleased to pass the following order: –

“Mr. Sandeep Suri, Advocate has put in appearance on behalf of private respondent No.4.

Learned counsel appearing on behalf of the petitioner has sought an adjournment to enable him to place on record the hypothecation agreement of the vehicle in question.

List on 05.10.2016.

(FATEH DEEP SINGH) May 26, 2016

JUDGE”

3.Learned counsel for the petitioner has submitted that the above-said order has not been complied with. Learned counsel for the petitioner further submitted that he is not in touch with his client.

Learned State counsel as well as learned counsel for respondent No.4 have submitted that in the present petition, the petitioner is seeking registration of an FIR against respondent No.4 and such a petition is not maintainable in view of the judgments of Hon’ble the Supreme Court in case *Sakiri Vasu v. State of U.P. and others*,¹ reported as 2008(2) SCC 409 and in case *M. Subramaniam v. S. Janaki*,² 2020 S.Cej 352, 2020 PLRonline 6303 (SC), (Criminal Appeal No.102 of 2011, decided on 20.03.2020).

4.This Court has heard learned counsel for the parties and gone through the record.

5.Perusal of the complaint dated 26.05.2015 (Annexure P-2) would show that the petitioner is seeking action against the respondents for forcibly taking away his car and thus, in fact, is seeking registration of an FIR for the said act of the respondents.

6.Hon’ble the Supreme Court in *Sakiri Vasu’s* case (supra) has been 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.”

7. A perusal of the abovesaid 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.

8. Further, the Hon’ble Supreme Court in latest judgment in *M. Subramaniam’s case* (supra), has held as under:-

“xxx xxx xxx

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*

xxx xxx xxx

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."

xxx xxx

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."

9. 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), Hon'ble the 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.

10. Hon'ble the Supreme Court has repeatedly held that the petition under Section 482 of Cr.P.C. should not be entertained for registration of the FIR as there are several alternative remedies available to the petitioner.

11. Keeping in view the abovesaid facts and circumstances and the law as laid down by the Hon'ble Supreme Court in the abovesaid two judgments, this Court feels that the present petition filed under Section 482 of Cr.P.C. is not maintainable and deserves to be dismissed on the said ground alone.

12. Accordingly, the present petition is dismissed.

SS -