

Sunder Lal Vs State of Haryana

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: June 2, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 154, 154(3), 156(3), 200, 36

Hon'ble Judges: Inderjit Singh, J

Bench: Single Bench

Advocate: Sharmila Sharma, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Inderjit Singh, J.

Petitioner Sunder Lal has filed this petition against State of Haryana and other respondents u/s 482 Cr.P.C. seeking

appropriate direction for taking action against the accused persons after registration of case in complaint dated 29.11.2012 moved by the

petitioner to respondent No. 3 regarding forgery and cheating committed by private respondents No. 4 and 5 to gain unlawfully and to cause loss

to the petitioner.

2. I have gone through the record and have heard learned counsel for the petitioner.

3. As per the arguments of learned counsel for the petitioner, petitioner wants to get registered the FIR against respondents No. 4 and 5.

4. I find that it is held by the Hon"ble Supreme Court in Sakiri Vasu Vs. State of U.P. and Others, that petition u/s 482 Cr.P.C. should be

discouraged for such a relief, when the petitioner has so many alternative remedies available to him/her. It is held in Sakiri Vasu"s case (supra) 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 u/s 154 Cr.P.C., then

he can approach the Superintendent of Police u/s 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 u/s 156(3) Cr.P.C. before the learned Magistrate concerned. If such an application u/s 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.

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.

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 u/s 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 u/s 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 u/s 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 u/s 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 u/s 156(3) Cr.P.C. instead of rushing to the High

Court by way of a writ petition or a petition u/s 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint u/s 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 u/s 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, u/s 156(3) Cr.P.C. before

the Magistrate or by filing a criminal complaint u/s 200 Cr.P.C. and not by filing a writ petition or a petition u/s 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.

5. The law laid down in above judgment has also been relied upon by the Hon"ble Supreme Court in T.C. Thangaraj Vs. V. Engammal and

Others, .

6. As the petitioner has alternative remedies as stated in the above-said case, especially to approach the Judicial Magistrate, therefore, this petition

cannot be entertained and the same is dismissed. However, it is observed that petitioner is at liberty to approach the Magistrate and can avail

alternative remedy.