

**HIGH COURT OF PUNJAB AND HARYANA
CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA
D.D: 29.11.2023**

CRM-M-48533-2022 (O&M)

HIMANSHU KAUSHAL ... Petitioner

Vs.

State of Punjab and others ... Respondents

Legislation:

Section 482 of the Code of Criminal Procedure (CrPC)

Subject: Petition for issuing directions to the Senior Superintendent of Police, Hoshiarpur, for legal action on petitioner's representation and enquiry report, including registration of FIR.

Headnotes:

Petition under Section 482 CrPC – Seeking action based on representation dated 10.03.2022 (Annexure P3) and enquiry report dated 12.08.2022 (Annexure P4) against the accused for posting vulgar and threatening comments on petitioner's family photographs on Facebook – Allegation of police inaction due to political influence. [Para 1]

FIR No. 154 of 2021 – Background of the case involving attack on petitioner's house and subsequent vulgar Facebook comments by one of the accused – Police filed a cancellation report, not accepted by Area Magistrate – Inquiry report recommended action under Section 66 of the IT Act, later altered due to legal interpretations. [Para 2]

Maintainability of the Petition – Respondent No.4 challenged the petition's maintainability citing Supreme Court precedents – High Court agreed, emphasizing the alternative remedy under Section 156(3) CrPC for grievances regarding FIR registration and investigation. [Paras 3-4]

Legal Precedents and Alternative Remedy – Reference to Sakiri Vasu vs. State of UP and others, and Radha Krishna Industries vs. State of Himachal Pradesh – High Court's discretion in writ jurisdiction and the principle of not entertaining petitions when effective alternative remedies exist. [Paras 5-7]

Disposal of Petition – High Court disposed of the petition with liberty to the petitioner to avail alternative remedy under Section 156 or Section 200 CrPC, as the case did not involve breach of fundamental rights, violation of natural justice, excess of jurisdiction, or challenge to the vires of legislation. [Para 9]

Referred Cases:

- Sakiri Vasu vs. State of UP and others, 2008(2) SCC 409

- Subramaniam and another Vs. S. Janki and another, Criminal Appeal No.102 of 2011
- Radha Krishna Industries Vs State of Himachal Pradesh, Civil Appeal No 1155 of 2021

Representing Advocates:

Ajay Pal Singh Rehan for petitioner

P.S. Pandher, AAG, Punjab, for State

Sandeep Kumar for respondent No.4

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioner has prayed to issue appropriate directions to respondent No.2 – Senior Superintendent of Police, Hoshiarpur to take necessary legal action on his representation dated 10.03.2022 (Annexure P3), including registration of FIR on the basis of said representation and the enquiry report dated 12.08.2022 (Annexure P4).

2. On 09.01.2023, following order was passed by this Court: -

“On the statement of petitioner – Himanshu Kaushal, FIR No.154 dated 01.09.2021 was registered at Police Station, Hariana, District Hoshiarpur under Sections 451, 427, 506, 509, 148 and 149 IPC against Sanjiv Kumar alias Mithu, Sanjay Kapila, Gunnu son of Sanjiv Kumar alias Mithu and various others, who had attacked the house of the complainant armed with weapons, had hurled pieces of bricks into the house, had entered the gate of the house, broke the table and chairs lying there besides the Aactiva Scooter and threatened to kill the complainant and his family members.

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This occurrence took place on 30.08.2021 and motive was stated to be rivalry of the Municipal Council elections. According to petitioner, all the accused are party workers of the ruling political party due to which, without conducting proper investigation, cancellation report was filed. However, the same was not accepted by the learned Area Magistrate, who treated the cancellation report as a complaint case.

Thereafter, on 21.03.2022, one of the accused of the abovementioned FIR, namely, Sumer Kapila alias Gannu, from his Facebook ID "Gannu Haryana" made highly vulgar and threatening comments on family photographs of the petitioner posted on his facebook ID "Himanshu Haryana." Copies of the prints out of the said comments made by accused Sumer Kapila alias Gannu are enclosed as Annexure P.2. A representation was made to respondent No.2 to take action against Sumer Kapila in this regard. Inquiry was marked to Deputy Superintendent of Police (Rural), Hoshiarpur, who associated the petitioner as well as Sumer Kapila alias Gannu in the inquiry besides the Cyber Crime Cell of the Hoshiarpur Police. After holding inquiry, it was found that Sumer Kapila alias Gannu had sent vulgar and threatening comments on the personal photographs of the petitioner from his facebook ID to the facebook ID of the petitioner and so case was recommended to be registered under Section 66 of the Information Technology Act, 2000. It is alleged that Sumer Kapila alias Gannu and his family members being active workers of the ruling political party, they got the inquiry report dated 12.08.2022 referred to the DSP (Economic Offences and Cyber Crime) Hoshiarpur for his comments. Said DSP (Economic Offences and Cyber Crime) Hoshiarpur, in order to help the accused because of their political influence, made the comments that since Section 66A of the IT Act had been struck down by the Hon'ble Supreme Court in **Shreya Singhal Vs. Union of India, (2015) SC 1523**, so it was not recommended to register the FIR under Section 66 of the IT Act. However, it was opined that the occurrence was in continuation of the previous occurrence of FIR No.154 of 2021 and so Sections 504 and 506 IPC could be added by the Investigating Officer.

It is contended by the petitioner that Police is restraining itself from registering the FIR against Sumer Kapila alias Gannu despite the fact that he has committed an offence under Section 67 and 67A of the Information Technology Act. The FIR is not being registered by wrongly

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making reference to Section 66A of the Information Technology Act which has already been struck down by Hon'ble Supreme Court.

In the short reply by way of affidavit, filed by DSP Sub Division Hoshiarpur on behalf of the respondents, he has defended the action to recommend the addition of Sections 504 and 506 IPC in the previous FIR.

After hearing learned counsel for the petitioner and the learned State Counsel and after going through the copies of the messages allegedly posted by Sumer Kapila on the personal photographs of the petitioner on his facebook ID, I am of the view that it is a moot point as to whether Sections 67 and 67A of the IT Act will be applicable to this case or not, as is contended by the petitioner.

Therefore, notice of motion to Sumer Kapila alias Gannu son of Sanjiv Kumar, resident of Haryana be issued for 02.03.2023. Said Sumer Kapila alias Gannu be impleaded as respondent No.4 in this petition. Amended title be also filed accordingly.”

3. Pursuant to the aforesaid order, respondent No.4 made appearance through his counsel and in his reply raised objection about the maintainability of this petition, in view of the settled proposition of law laid down by Hon’ble Supreme Court in **Sakiri Vasu Vs. State of UP and others, 2008(2) SCC 409** and **Subramaniam and another Vs. S. Janki and another, Criminal Appeal No.102 of 2011, decided on 20.03.2020** as per which, petition under Section 482 CrPC cannot be entertained, when alternative remedy to approach the Magistrate under Section 156(3) Cr.PC, is available.

4. Though certain other objections have also raised by respondent No.4 so as to contest this petition, but after hearing both the sides, this Court agrees with the initial contention to the effect that the present petition is not maintainable.

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5. In the case of **Sakiri Vasu (Supra)**, it has been held by Hon’ble Supreme Court that if a person has a grievance that his FIR has not been registered by 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. Elaborating, Hon’ble Supreme Court 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 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. xxxxxxxxxxxxxxxxxxxxxxxx

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

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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?"

6. It may also be noticed that in **Radha Krishna Industries Vs State of Himachal Pradesh**, Civil Appeal No 1155 of 2021 (Arising out of SLP(C) No 1688 of 2021) decided on 20.4.2021, Hon'ble Apex Court laid down certain exceptions, where the High Court could intervene, despite availability of the alternative remedy. It was held by Hon'ble Supreme Court 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*
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- (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.”

7. Thus, legal position, which emerges is that 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 in exceptional circumstances only, 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. 8. Applying

the legal position as above to the facts of the present case, FIR regarding the initial occurrence of 30.08.2021 has already been registered, in which police filed the cancellation report, but on the protest petition filed by the petitioner-complainant, the same has been treated as a criminal complaint by the Magistrate, which is still pending. As far as the subsequent occurrence of 21.03.2022, whereby respondent No.4 is alleged to have posted vulgar and threatening comments on the family photograph of the petitioner through his Facebook ID is concerned, though the police came to the conclusion that it was in continuation of the earlier offence and so, Section 504 and 506 IPC should be included and that provisions of IT Act are not attracted, but in case the petitioner is not satisfied with the said conclusion drawn by the police, he has the alternative remedy available to him to approach the concerned Magistrate by filing a complaint under Section 156 CrPC or under Section 200 CrPC. The allegations do not make out a case of breach of fundamental right; or violation of the principle of natural justice; or an excess of jurisdiction; or a challenge to the vires of the statute or delegated legislation and so,

present petition under Section 482 CrPC or a petition under Article 226 of the Constitution of India are not maintainable, in view of the legal position explained in the case of ***Radha Krishna Industries (Supra)***.

9. Consequent to the above discussion, the present petition stands disposed of with liberty to the petitioner to avail alternative remedy available to him, in accordance with law, if he so wishes.

Pending application (s), if any, shall stands disposed of.

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