

Ajit Singh Vs. State of Punjab and Others

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Court : Punjab and Haryana

Decided On : Feb-18-2014

Appellant : Ajit Singh

Respondent : State of Punjab and Others

Judgement :

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CRM No.M-39912 of 2012 (O&M) Date of Decision: February 18, 2014 Ajit Singh ...Petitioner VERSUS State of Punjab and others ...Respondents CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH Present: Mr.S.S.Majithia, Advocate for the petitioner. Mr.V.P.S.Sidhu, Asstt. Advocate General, Punjab for the respondent-State. Mr.Shashikant Gupta, Advocate for Mr.L.M.Gulati, Advocate for respondents No.4 to 6. **** INDERJIT SINGH, J.

Petitioner Ajit Singh has filed this petition against State of Punjab, Senior Superintendent of Police (Rural), Amritsar, Station House Officer, Police Station Beas, Amritsar and private respondents No.4 to 6 under Section 482 Cr.P.C. praying for issuance of direction to official respondents No.2 and 3 to take appropriate legal action against respondents No.4 to 6 in case FIR No.167 dated 27.08.2012 under Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as the police, under political pressure, is sitting over the matter since 27.08.2012 and further prayed to protect life and liberty of the petitioner. At the time of arguments, learned counsel for the petitioner has not pressed the relief regarding protection of life and liberty of the petitioner.

The only relief regarding proper investigation by the police Gulati Vineet 2014.02.20 12:49 I attest to the accuracy and integrity of this document Chandigarh CRM No.M-39912 of 2012 -2- has been pressed. Learned State counsel through their reply and learned counsel for respondents No.4 to 6 contested the petition. I have gone through the record and have heard learned counsel for the petitioner as well as learned State counsel and learned counsel for respondents No.4 to 6. From the record, I find that the only prayer in the petition is that the police is not conducting proper investigation under the political pressure and is sitting over the matter since 27.08.2012 in case FIR No.167 dated 27.08.2012 under Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. As held by the Hon'ble Supreme Court in Sakiri Vasu v. State of U.P. and others case, the petition under Section 482 Cr.P.C. should not be entertained by this Court because the petitioner has other alternative remedies. It has been further held in the above-said case that Magistrate has ample powers under Section 156(3) Cr.P.C. to supervise the investigation and even to monitor the investigation. The Hon'ble Supreme Court in Sakiri Vasu v. State of U.P. and others, 2008 (1) R.C.R. (Cr.) 392 has 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 Gulati Vineet Magistrate, the Magistrate can direct the FIR to be 2014.02.20 12:49 I attest to the accuracy and integrity of this document Chandigarh CRM No.M-39912 of 2012 -3- 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 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 Gulati Vineet 2014.02.20 12:49 I attest to the accuracy and integrity of this document Chandigarh CRM No.M-39912 of 2012 -4- 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.

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.

. The law laid down in this judgment has also been relied by the Hon'ble Supreme Court in T.C. Thangaraj v. V. Engammal and others, 2011 (3) R.C.R. (Cr.) 751. As the petitioner has alternative remedies as stated in the above-said case, especially to approach the Judicial Magistrate first class, 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. February 18, 2014 (INDERJIT SINGH) Vgulati JUDGE Gulati Vineet 2014.02.20 12:49 I attest to the accuracy and integrity of this document Chandigarh

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