

GAHC010033872024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/827/2024

SRIMATI INDU DEVI
W/O LATE CHANDRA NATH SARMA
RESIDENT OF KAMKHYA DHAM, WEST KAMAKHYA PATH, WARD NO. 2 PO
ANDPS JALUKBARI, DIST KAMRUP M ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR GUWAHATI 06, ASSAM

2:THE SECRETARY
HOME DEPARTMENT
ASSAM GUWAHAWTI 06

3:THE COMMISSIONER OF POLICE
ASSAM GUWAHATI

4:THE DIRECTOR GENERAL OF POLICE
ULUBARI ASASM 781007

5:THE DEPUTY COMMISSIONER OF POLICE
WEST GUWAHATI SADILAPUR
JALUKBARI GUWAHATI

6:THE SUPERINTENDENT OF POLICE
KAMRUP
TRIPTI NAGAR
AMINGAON
GUWAHATI ASSAM

7:THE OFFICER IN CHARGE

CHANGSARI POLICE STATION
KAMRUP 781030

8:THE OFFICER IN CHARGE
NORTH GUWAHATI OUT POST
GAURIPUR
KAMRUP ASSAM 78110

Advocate for the Petitioner : MR H K J AHMED

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

19.02.2024

Heard Mr. H.K.J. Ahmed, learned counsel for the petitioner and Ms. S. Baruah, learned Junior Government Advocate, Assam for all the respondents.

2. The petitioner has approached this Court by instituting the writ petition seeking to invoke the extra-ordinary jurisdiction under Article 226 of the Constitution of India with a grievance that despite registration of a crime case, Changsari Police Station Case no. 198/2022 on the basis of a First Information Report [FIR] lodged by the petitioner, the Investigating Officer [I.O.] of the case has proceeded not been carrying out investigation in a fair and proper manner.

3. The case projected by the petitioner, briefly stated, is that the petitioner and her son are joint-pattadars of a plot of land measuring 3 Bighas, covered by Dag nos. 887, 946, 947 & K.P. Patta no. 457, situate at Village – Garal, Mouza – Ramcharani, District - Kamrup [‘the subject-plot’, for short]. The petitioner’s son is a resident of Canada and got married to a lady. But in course of time, the relationship between the petitioner and the accused got strained and got they separated in the year 2016. Litigations as regards separation/divorce/custody ensued thereafter, between the petitioner’s son and his estranged wife in courts of Canada.

The FIR, registered as Changsari Police Station Case no. 198/2022 on 12.05.2022, contained allegations against the estranged wife of the petitioner's son as an accused.

3.1. It is the allegation of the petitioner that the accused submitted an allegedly forged deed of agreement for sale in respect of the subject-plot stating that the said deed of agreement for sale of the subject-plot was executed by the petitioner and the petitioner's son in December, 2019. Stating that the said deed of agreement for sale in respect of the subject-plot, submitted by his estranged wife, as a forged one, the petitioner's son lodged the FIR on 12.05.2022 before the North Guwahati Outpost and the said FIR stood registered as Changsari Police Station Case no. 198/2022 for offences under Sections 420/406/471, Indian Penal Code [IPC]. The petitioner at an earlier point of time, alleging tardy investigation on the part of the I.O. in connection with Changsari Police Station Case no. 198/2022, approached the Court of learned Chief Judicial Magistrate [CJM], Kamrup, Amingaon by filing a complaint under Section 156[3], Code of Criminal Procedure, 1973. On the basis of the said complaint, the learned Additional Chief Judicial Magistrate, Kamrup, Amingaon after perusing a status report submitted by the I.O. on 12.05.2023, directed the I.O. to expedite further investigation, by an Order dated 25.04.2023.

3.2. The petitioner has now approached this Court by this writ petition with the grievance that despite the Order dated 25.04.2023 of the learned Additional Chief Judicial Magistrate, Kamrup, Amingaon, the I.O. has not expedited the investigation and the manner of investigation has given rise to a serious doubt in the mind of the petitioner that the investigation is not being carried out in a fair, proper and impartial manner. It is the allegation of the petitioner that the I.O. of the case has not taken proper steps as regards the alleged forged deed of agreement for sale in respect of the subject-plot and to arrest the accused person[s].

4. Section 156[3], CrPC has provided 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. A judicial Magistrate, before taking cognizance of the offence, mentioned in a complaint, can order investigation under Section 156[3], CrPC. It has been observed as settled by the Hon'ble Supreme Court of India in *Sakiri Vasu vs. State of Uttar Pradesh and others*, reported in [2008] 2 SCC 409, that there is an implied power in the Magistrate under Section 156[3] CrPC 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.

5. It is also apt to refer to the following observations made by the Hon'ble Supreme Court of India in *Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage*, reported in [2016] 6 SCC 277, :-

"2. This Court has held in *Sakiri Vasu Vs. 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 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.”

6. In view of such settled position of law, this Court while not entertaining the present writ petition, like to observe that the petitioner shall avail the remedy under Section 156[3], CrPC by approaching the jurisdictional Magistrate and if the petitioner approaches the jurisdictional Magistrate under Section 156[3], CrPC, the jurisdictional Magistrate shall ensure, if *prima facie* he is satisfied that a proper investigation in the matter is not being done, a proper investigation and if required, shall also monitor the investigation. It is further observed that if the jurisdictional Magistrate deems it necessary, he can also recommend to the concerned Superintendent of Police for change of the Investigating Officer so that a proper investigation is done. The petitioner is at liberty to produce any supporting materials with regard to the claim that proper investigation is not being done in connection with Changsari Police Station Case no. 198/2022.

JUDGE

Comparing Assistant