

GAHC010019442024



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

Case No. : WP(C)/702/2024

SIPPO MALAKAR @ SIPPO KHAN
WIFE OF LATE SANJIT MALAKAR, RESIDENT OF RELIEF YARD COLONY,
LUMDING, P.O. AND P.S. LUMDING, DISTRICT- HOJAI, ASSAM, PIN- 782447

VERSUS

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

2:THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT DISPUR
GUWAHATI-06

3:THE CHIEF PERSONAL OFFICER
N.F. RAILWAY
MALIGAON
GUWAHATI- 7881011

4:THE DIVISIONAL RAILWAY MANAGER (P)
N.F.RAILWAY
LUMDING DIVISION
LUMDING
DIST.- HOJAI
ASSAM
PIN- 782447

5:THE DIRECTOR GENERAL OF POLICE
ASSAM POLICE HEAD QUARTER AT B.K. KAKOTY ROAD
ULUBARI
GUWAHATI-07
ASSAM

6:THE SUPERINTENDENT OF POLICE
HOJAI AT SANKARDEV NAGAR
DISTRICT- HOJAI
PIN- 782442
ASSAM

7:THE OFFICER-IN-CHARGE
LUMDING POLICE STATION
P.O. LUMDING
DIST. HOJAI
ASSAM
PIN- 782447

8:THE INVESTIGATION OFFICER
LUMDING POLICE STATION
P.O. LUMDING
DIST.- HOJAI
ASSAM
PIN- 78244

Advocate for the Petitioner : MS. D SINHA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 17-02-2024

Heard Ms. D. Sinha, learned counsel for the petitioner and Ms. S. Sharma, learned Junior Government Advocate, Assam for the respondent nos. 1, 2, 5, 6, 7 & 8.

2. The petitioner has instituted the instant writ petition under Article 226 of the Constitution of India seeking *inter alia* a direction to the respondent authorities, more particularly, the respondent no. 5 and the respondent no. 6 to investigate the case, Lumding Police Station Case no. 132/2019, registered for

offences under Sections 419/468/471/420/34, Indian Penal Code [IPC] which was registered on the basis of a First Information Report [FIR] lodged by the petitioner as informant on 01.07.2019, in a free, fair and impartial manner. The petitioner has stated that she lodged the FIR on 17.02.2019 before the Officer In-Charge, Lumding Police Station, Hojai alleging *inter alia* that one lady named Purnima Malakar claiming to be the wife of the petitioner's deceased husband had submitted a forged Family Declaration Form for the period : 2001 – 2007 before the employer of the petitioner's husband, that is, N.F. Railway on the premise that the said Family Declaration Form was purportedly signed by the petitioner's husband, Late Sanjit Malakar. The petitioner has stated that initially, the said FIR was not registered by the Officer In-Charge, Lumding Police Station, Hojai and it was after pursuing the matter by the petitioner before the Superintendent of Police, Hojai and the Director General of Police, Assam, the FIR stood finally registered on 01.07.2019 as Lumding Police Station Case no. 132/2019 under Sections 419/468/471/420/34, IPC. The petitioner has stated that her husband, Late Sanjit Malakar was an employee in the N.F. Railway and he died in harness on 22.05.2015. The Investigating Authority after completing the investigation in connection with Lumding Police Station Case no. 132/2019, submitted a final report being Final Report no. 32/2022 on 28.02.2022 before the Court of learned Chief Judicial Magistrate, Hojai, Sandardev Nagar stating that sufficient incriminating materials against the accused persons were not found. On receipt of the information about filing of the Final Report the petitioner approached the Court of the learned Judicial Magistrate, 1st Class, Hojai, Sankardev Nagar, Assam on 11.09.2023, the date fixed for filing of objection against the Final Report. By appearing before the learned jurisdictional Magistrate on 11.09.2023, the petitioner filed an objection petition praying for

further investigation in Lumding Police Station Case no. 132/2019 [G.R. Case no. 1556/2019]. The jurisdictional Magistrate upon perusal of the materials available in the case diary and the nature of offences alleged, had observed that the Investigating Officer ought to have conducted a more thorough investigation into the offences alleged. Finding the case a fit one for further investigation, the jurisdictional Magistrate, by his Order dated 11.09.2023, directed further investigation by a different Investigating Officer, if possible, who shall again examine the informant and any other witnesses who were aware of the allegations. The Officer In-Charge, Lumding Police Station was thereby, directed to conduct further investigation of the case and to submit the final form expeditiously. The petitioner has preferred this writ petition with a grievance that despite such direction made by the jurisdictional Magistrate on 11.09.2023 to cause further investigation in the manner indicated in the Order itself, the approach of the Investigating Authority in the course of further investigation is again lackadaisical and perfunctory.

3. It has been observed 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 if a person has a grievance that proper investigation is not being done by the Investigating Authority then he should approach the jurisdictional Magistrate who has very wide power to ensure a proper investigation and also to monitor the investigation to ensure that the investigation is being done properly. It has also been observed that the High Court should discourage the practice of filing a writ petition or a petition under Section 482, CrPC simply because if a person has a grievance that after being registered, proper investigation has not been done by the police his remedy lies under Section 156[3], CrPC before the Magistrate.

4. It is settled that if the Magistrate on an application under Section 156[3], CrPC is satisfied that proper investigation has not been done, or is not being done by the Officer In-Charge of the Police Station concerned, he can direct the Officer In-Charge of the Police Station to make proper investigation and can further monitor the same. In this connection, it is 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.”

5. In view of such settled position of law, this Court while not entertaining the present writ petition, observes that the petitioner shall avail the remedy by approaching the jurisdictional Magistrate under Section 156[3], CrPC and if the petitioner approaches the jurisdictional Magistrate under Section 156[3], CrPC, the jurisdictional Magistrate shall ensure, if *prima facie* he is satisfied, a proper investigation in the matter 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 a 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 Lumding Police Station Case no. 132/2019.

JUDGE

Comparing Assistant